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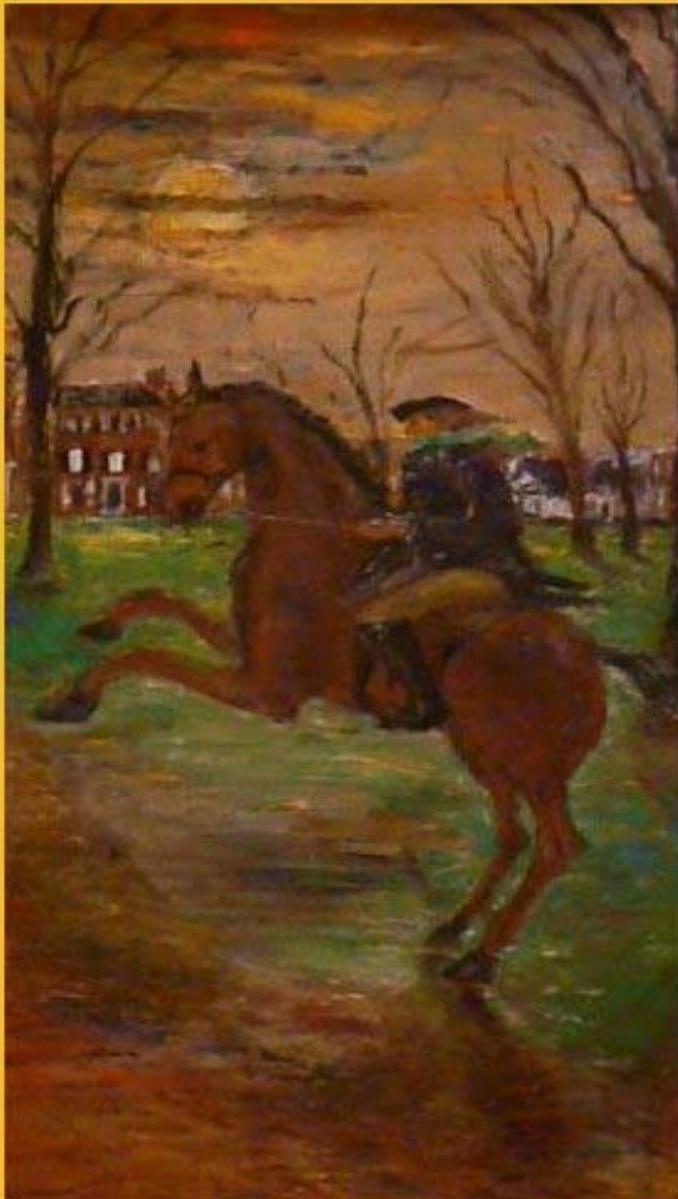
# Delaware Register of Regulations

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Issue Date: January 1, 2009

Volume 12 - Issue 7, Pages 853 - 1005

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Governor:  
Executive Orders

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 15, 2008.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**

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

**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 *Del.C.* §10005, proposes to change its Rule 9. The Commission will hold a public hearing on the proposed rule changes on February 10, 2009. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on January 1, 2009.

The proposed changes are for the purpose of updating Rule 9 to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) A copy is also available for inspection at the Racing Commission office.

**501 Harness Racing Rules and Regulations**

*(Break in Continuity of Sections)*

**9.0 Pari-Mutuel Wagering**

## 9.1 General Provisions

## 9.1.1 General

Each aAssociation shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the Commission. The totalisator shall be tested prior to and during the meeting as required by the Commission.

## 9.1.2 Records

The aAssociation shall maintain records of all wagering so the Commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each aAssociation and safeguarded for a period of time specified by the Commission. The Commission may require that certain of these records be made available to the wagering public at the completion of each contest.

**9.1.3 ~~Pari-Mutuel Tickets~~ Recording of a Wager**

A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the aAssociation and is evidence of the obligation of the aAssociation to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The aAssociation shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold, and for a specified period after the last day of the meeting.

9.1.3.1 To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the aAssociation and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

9.1.3.1.1 the name of the aAssociation operating the meeting.

9.1.3.1.2 a unique identifying number or code.

9.1.3.1.3 identification of the terminal at which the ticket was issued.

9.1.3.1.4 a designation of the performance for which the wagering transaction was issued.

9.1.3.1.5 the contest number for which the pool is conducted.

9.1.3.1.6 the type or types of wagers represented.

9.1.3.1.7 the number or numbers representing the betting interests for which the wager is recorded.

9.1.3.1.8 the amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

9.1.3.2 No pari-mutuel ticket recorded or reported as previously paid, canceled, or nonexistent shall be deemed a valid pari-mutuel ticket by the aAssociation. The aAssociation may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid.

**9.1.4 ~~Pari-Mutuel Ticket Sales~~**

9.1.4.1 Pari-mutuel tickets shall not be sold by anyone other than an aAssociation licensed to conduct pari-mutuel wagering.

9.1.4.2 No pari-mutuel ticket may be sold on a contest for which wagering has already been closed and no aAssociation shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalisator is closed for wagering on such contest.

9.1.4.3 Claims pertaining to a mistake on an issued or unissued ticket, or a mistake involving failure to issue a ticket, must be made by the bettor prior to leaving the seller's window. Cancellation or exchange of tickets issued shall not be permitted after a patron has left a seller's window except in accordance with written policies established by the aAssociation subject to review by the Commission.

9.1.4.4 Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official". Any subsequent change in the order of finish or award of purse money as may result from a subsequent ruling by the ~~State Steward~~ Presiding Judge, by the judges or by the Commission shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payout figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.

9.1.4.5 The aAssociation shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

**9.1.5 ~~Advance Performance Wagering~~**

- No aAssociation shall permit wagering to begin more than one hour before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the Commission.
- 9.1.6 **Claims for Payment from Pari-Mutuel Pool**  
In the case of a disputed claim made for payment on a pari-mutuel wager, and following receipt of a report by the aAssociation regarding the disputed claim, the Commission may adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the aAssociation, or may deny the claim, or may make such other order as it may deem proper.
- 9.1.7 **Payment for Errors**  
If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed; and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:
- 9.1.7.1 Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payoffs is equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payoff, the underpayment shall be added to the corresponding pool of the next contest. If underpayments are discovered after the close of the meeting, the underpayment shall be held in an interest-bearing account approved by the Commission until being added, together with accrued interest, to the corresponding pool of the next meet.
- 9.1.7.2 In the event the error results in an overpayment to winning wagers, the aAssociation shall be responsible for such payment.
- 9.1.8 **Betting Explanation**  
A summary explanation of pari-mutuel wagering and each type of betting pool offered shall be available upon request through aAssociation representatives.
- 9.1.9 **Display of Betting Information**
- 9.1.9.1 Approximate odds for Win pool betting shall be posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.
- 9.1.9.2 The probable payoff or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the Commission.
- 9.1.9.3 Official results and payoffs must be displayed upon each contest being declared official.
- 9.1.10 **Canceled Contests**  
If a contest is canceled or declared "no contest", refunds shall be granted on valid wagers in accordance with these rules.
- 9.1.11 **Refunds**
- 9.1.11.1 Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:
- 9.1.11.1.1 Win pools and first-half Double pools offered in contests in which the number of betting interests has been reduced to fewer than two (2).
- 9.1.11.1.2 Place pools, Exacta pools, Quinella pools, Trifecta pools, first-half Quinella Double pools, first-half Twin Quinella pools, first-half Twin Trifecta pools, and first-half Tri-Superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three (3).
- 9.1.11.1.3 Show pools, Superfecta pools, and first-half Twin Superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four (4).
- 9.1.11.2 Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.
- 9.1.12 **Coupled Entries and Mutuel Fields**
- 9.1.12.1 Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or

scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.

- 9.1.12.2 For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

9.1.13 Pools Dependent Upon Betting Interests

Unless the ~~State Steward~~ Presiding Judge otherwise determines, at the time the pools are opened for wagering, the aAssociation:

- 9.1.13.1 may offer win, place, and show wagering on all contests with six (6) or more betting interests.
- 9.1.13.2 may be allowed to prohibit show wagering on any contest with five (5) or fewer betting interests scheduled to start.
- 9.1.13.3 may be allowed to prohibit place wagering on any contest with four (4) or fewer betting interests scheduled to start.
- 9.1.13.4 may be allowed to prohibit Quinella wagering on any contest with three (3) or fewer betting interests scheduled to start.
- 9.1.13.5 may be allowed to prohibit Quinella Double wagering on any contests with three (3) or fewer betting interests scheduled to start.
- 9.1.13.6 may be allowed to prohibit Exacta wagering on any contest with three (3) or fewer betting interests scheduled to start.
- 9.1.13.7 may be allowed to prohibit Trifecta wagering on any contest with seven (7) or fewer betting interests scheduled to start.
- 9.1.13.8 may be allowed to prohibit Superfecta wagering on any contest with seven (7) or fewer betting interests scheduled to start.
- 9.1.13.9 may be allowed to prohibit Twin Quinella wagering on any contests with three (3) or fewer betting interests scheduled to start.
- 9.1.13.10 shall prohibit Twin Trifecta wagering on any contests with seven (7) or fewer betting interests scheduled to start.
- 9.1.13.11 shall prohibit Tri-Superfecta wagering on any contests with of seven (7) or fewer betting interests scheduled to start.
- 9.1.13.12 shall prohibit Twin Superfecta wagering on any contests with seven (7) or fewer betting interests scheduled to start.
- 9.1.13.13 may be allowed to prohibit Show Quinella wagering on any contest with four (4) or fewer betting interests scheduled to start.
- 9.1.13.14 may drop any entry from wagering.

9.1.14 Prior Approval Required For Betting Pools

- 9.1.14.1 An aAssociation that desires to offer new forms of wagering must apply in writing to the Commission and receive written approval prior to implementing the new betting pool.
- 9.1.14.2 The aAssociation may suspend previously- approved forms of wagering with the prior approval of the Commission. Any carryover shall be held until the suspended form of wagering is reinstated. An aAssociation may request approval of a form of wagering or separate wagering pool for specific performances.

9.1.15 Closing of Wagering in a Contest

- 9.1.15.1 A Commission representative shall close wagering for each live racing contest after which time no pari-mutuel tickets shall be sold for that contest.

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# PROPOSED REGULATIONS

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- 9.1.15.2 The aAssociation shall maintain, in good order, a system approved by the Commission for closing wagering.
- 9.1.16 Complaints Pertaining to Pari-Mutuel Operations
- When a patron makes a complaint regarding the pari-mutuel department to an aAssociation, the aAssociation shall prepare a complaint report, setting out:
- 9.1.16.1 the name of the complainant;
- 9.1.16.2 the nature of the complaint;
- 9.1.16.3 the name of the persons, if any, against whom the complaint was made;
- 9.1.16.4 the date of the complaint;
- 9.1.16.5 the action taken or proposed to be taken, if any, by the aAssociation.
- 9.1.17 Duty to Report Irregularities
- All employees and horsemen shall report any known irregularities or wrong doings by any person involving pari-mutuel wagering immediately to the Commission and to the aAssociation, and shall cooperate in subsequent investigations.
- 9.1.18 Unrestricted Access
- The aAssociation shall permit the Commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the aAssociation that relate to pari-mutuel wagering.
- 9.1.19 Emergency Situations
- In the event of an emergency in connection with the pari-mutuel department not covered in these rules, the pari-mutuel manager representing the aAssociation shall report the problem to the ~~State Steward~~ Presiding Judge and the aAssociation and the ~~State Steward~~ Presiding Judge shall render a full report to the Commission within 48 hours.
- 9.2 Account Wagering [Reserved]
- 9.3 Simulcast Wagering
- 9.3.1 Duties of Simulcast Host
- 9.3.1.1 Every host aAssociation simulcasting its performance, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast.
- 9.3.1.2 A host aAssociation is responsible for content of the simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of each performance.
- 9.3.1.3 Unless otherwise permitted by the Commission, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from where it emanates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.
- 9.3.1.4 The host aAssociation shall maintain such security controls including encryption over its uplink and communications systems as directed or approved by the Commission.
- 9.3.2 Duties of Authorized Receiver
- 9.3.2.1 An authorized receiver conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host aAssociations and with the approval of the Commission.
- 9.3.2.2 An authorized receiver shall provide:
- 9.3.2.2.1 adequate transmitting and receiving equipment of acceptable broadcast quality, which shall not interfere with the closed circuit TV system of the host aAssociation for providing any host facility patron information.
- 9.3.2.2.2 pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmissions, and data communications between the host and guest aAssociations.

~~9.3.2.2.3 a voice communication system between each guest association and the host association providing timely voice contact among the Commission designees, placing judges and pari-mutuel departments.~~

9.3.2.3 The guest aAssociation and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable Commission rules.

9.3.2.4 The Commission may appoint at least one designee to monitor and inspect as necessary all approved simulcast facilities.

9.3.2.5 Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests for each day or night, the guest aAssociation shall initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system.

9.3.2.6 Every authorized receiver shall file with the Commission an annual report of its simulcast operations as part of the financial reports required by 4.2.2 of these Rules.

#### 9.4 Interstate Common Pool Wagering

##### 9.4.1 General

9.4.1.1 Participation in interstate common pools shall be approved by the Commission.

9.4.1.2 Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.

9.4.1.3 Any surcharges or withholdings in addition to the takeout shall only be applied in the jurisdiction otherwise imposing such surcharges or withholdings.

9.4.1.4 In determining whether to approve an interstate common pool which does not include the host track or which includes contests from more than one aAssociation, the Commission shall consider and may approve use of a bet type which is not utilized at the host track, application of a takeout rate not in effect at the host track, or other factors which are presented to the Commission.

9.4.1.5 The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

##### 9.4.2 Guest State Participation in Interstate Common Pools

9.4.2.1 With the prior approval of the Commission, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state, or with corresponding pools established by one or more other jurisdictions.

9.4.2.2 The Commission may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that at the host track, or identical to that of other jurisdictions participating in the merged pool.

9.4.2.3 Where takeout rates in the merged pool are not identical, the net price calculation shall be the method by which the differing takeout rates are applied.

9.4.2.4 Rules established in the state of the host aAssociation designated for a pari-mutuel pool shall apply.

9.4.2.5 The Commission shall approve agreements made between the aAssociation and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

9.4.2.6 If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate common pool, the aAssociation shall make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere; or, alternatively, the aAssociation may determine to either pay winning tickets at the payoff prices at the host track, or declare such accepted bets void and make refunds in accordance with the applicable rules.

##### 9.4.3 Host State Participation in Merged Pools

- 9.4.3.1 An aAssociation licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari- mutuel wagering at guest facilities in other states, and may also determine that pari- mutuel pools in guest states be combined with corresponding wagering pools established by it as the host track or comparable wagering pools established by two or more states.
- 9.4.3.2 Rules of racing established for races held in this state shall also apply to interstate common pools unless the Commission shall have specifically otherwise determined.
- 9.4.3.3 The Commission shall approve agreements made between the aAssociation and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.
- 9.4.3.4 Any contract for interstate common pools entered into by the aAssociation shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another state into the interstate common pool formed by the aAssociation, or if, for any reason, the Commission's or the aAssociation's representative determines that attempting to effect transfer of pool data from the guest state may endanger the aAssociation's wagering pool, the aAssociation shall have no liability for any measures taken which may result in the guest's wagers not being accepted into the pool.
- 9.5 Calculation of Payouts and Distribution of Pools
- 9.5.1 General
- 9.5.1.1 All permitted pari-mutuel wagering pools shall be separately and independently calculated and distributed. Takeout shall be deducted from each gross pool as stipulated by law. The remainder of the monies in the pool shall constitute the net pool for distribution as payoff on winning wagers.
- 9.5.1.2 Either the standard or net price calculation procedure may be used to calculate single commission pools, while the net price calculation procedure must be used to calculate multi-commission pools.
- 9.5.1.3 Minimum payout shall be \$.05 for each dollar wagered. One half of the odd cents of all redistributions to be made on pari-mutuel or totalisator pool contributions exceeding the sum equal to the lowest multiple of 10, such odd cents to be calculated on the basis of each dollar wagered.
- 9.5.1.4 The individual pools outlined in these rules may be given alternative names by each aAssociation, provided prior approval is obtained from the Commission.
- 9.5.2 Win Pools
- 9.5.2.1 The amount wagered on the betting interest which finishes first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the betting interest finishing first, such quotient being the profit per dollar wagered to Win on that betting interest.
- 9.5.2.2 The net Win pool shall be distributed as a single price pool to winning wagers in the following precedence, based upon the official order of finish:
- 9.5.2.2.1 To those whose selection finished first; but if there are no such wagers, then
- 9.5.2.2.2 To those whose selection finished second; but if there are no such wagers, then
- 9.5.2.2.3 To those whose selection finished third; but if there are no such wagers, then
- 9.5.2.2.4 The entire pool shall be refunded on Win wagers for that contest.
- 9.5.2.3 If there is a dead heat for first involving:
- 9.5.2.3.1 contestants representing the same betting interest, the Win pool shall be distributed as if no dead heat occurred.
- 9.5.2.3.2 contestants representing two or more betting interests, the Win pool shall be distributed as a profit split.
- 9.5.3 Place Pools

- 9.5.3.1 The amounts wagered to Place on the first two betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into two equal portions, one being assigned to each winning betting interest and divided by the amount wagered to Place on that betting interest, the resulting quotient is the profit per dollar wagered to Place on that betting interest.
- 9.5.3.2 The net Place pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- 9.5.3.2.1 If contestants of a coupled entry or mutuel field finished in the first two places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise
  - 9.5.3.2.2 As a profit split to those whose selection is included within the first two finishers; but if there are no such wagers on one of those two finishers, then
  - 9.5.3.2.3 As a single price pool to those who selected the one covered betting interest included within the first two finishers; but if there are no such wagers, then
  - 9.5.3.2.4 As a single price pool to those who selected the third-place finisher; but if there are no such wagers, then
  - 9.5.3.2.5 The entire pool shall be refunded on Place wagers for that contest.
- 9.5.3.3 If there is a dead heat for first involving:
- 9.5.3.3.1 contestants representing the same betting interest, the Place pool shall be distributed as a single price pool.
  - 9.5.3.3.2 contestants representing two or more betting interests, the Place pool shall be distributed as a profit split.
- 9.5.3.4 If there is a dead heat for second involving:
- 9.5.3.4.1 contestants representing the same betting interest, the Place pool shall be distributed as if no dead heat occurred.
  - 9.5.3.4.2 contestants representing two or more betting interests, the Place pool is divided with one-half (1/2) of the pro-fit distributed to Place wagers on the betting interest finishing first and the remainder is distributed equally amongst Place wagers on those betting interests involved in the dead heat for second.
- 9.5.4 Show Pools
- 9.5.4.1 The amounts wagered to Show on the first three betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into three equal portions, one being assigned to each winning betting interest and divided by the amount wagered to Show on that betting interest, the resulting quotient being the profit per dollar wagered to Show on that betting interest. The net Show pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- 9.5.4.1.1 If contestants of a coupled entry or mutuel field finished in the first three places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise
  - 9.5.4.1.2 If contestants of a coupled entry or mutuel field finished as two of the first three finishers, the profit is divided with two-thirds (2/3) distributed to those who selected the coupled entry or mutuel field and one-third (1/3) distributed to those who selected the other betting interest included within the first three finishers; otherwise
  - 9.5.4.1.3 As a profit split to those whose selection is included within the first three finishers; but if there are no such wagers on one of those three finishers, then
  - 9.5.4.1.4 As a profit split to those who selected one of the two covered betting interests included within the first three finishers; but if there are no such wagers on two of those three finishers, then
  - 9.5.4.1.5 As a single price pool to those who selected the one covered betting interest included within the first three finishers; but if there are no such wagers, then
  - 9.5.4.1.6 As a single price pool to those who selected the fourth-place finisher; but if there are no such wagers, then

- 9.5.4.1.7 The entire pool shall be refunded on Show wagers for that contest.
- 9.5.4.2 If there is a dead heat for first involving:
  - 9.5.4.2.1 two contestants representing the same betting interest, the profit is divided with two-thirds (2/3) distributed to those who selected the first-place finishers and one-third (1/3) distributed to those who selected the betting interest finishing third.
  - 9.5.4.2.2 three contestants representing a single betting interest, the Show pool shall be distributed as a single price pool.
  - 9.5.4.2.3 contestants representing two or more betting interests, the Show pool shall be distributed as a profit split.
- 9.5.4.3 If there is a dead heat for second involving:
  - 9.5.4.3.1 contestants representing the same betting interest, the profit is divided with one-third (1/3) distributed to those who selected the betting interest finishing first and two-thirds (2/3) distributed to those who selected the second-place finishers.
  - 9.5.4.3.2 contestants representing two betting interests, the Show pool shall be distributed as a profit split.
  - 9.5.4.3.3 contestants representing three betting interests, the Show pool is divided with one-third (1/3) of the profit distributed to Show wagers on the betting interest finishing first and the remainder is distributed equally amongst Show wagers on those betting interests involved in the dead heat for second.
- 9.5.4.4 If there is a dead heat for third involving:
  - 9.5.4.4.1 contestants representing the same betting interest, the Show pool shall be distributed as if no dead heat occurred.
  - 9.5.4.4.2 contestants representing two or more betting interests, the Show pool is divided with two-thirds (2/3) of the profit distributed to Show wagers on the betting interests finishing first and second and the remainder is distributed equally amongst Show wagers on those betting interests involved in the dead heat for third.
- 9.5.5 Double Pools
  - 9.5.5.1 The Double requires selection of the first-place finisher in each of two specified contests.
  - 9.5.5.2 The net Double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
    - 9.5.5.2.1 As a single price pool to those whose selection finished first in each of the two contests; but if there are no such wagers, then
    - 9.5.5.2.2 As a profit split to those who selected the first-place finisher in either of the two contests; but if there are no such wagers, then
    - 9.5.5.2.3 As a single price pool to those who selected the one covered first-place finisher in either contest; but if there are no such wagers, then
    - 9.5.5.2.4 As a single price pool to those whose selection finished second in each of the two contests; but if there are no such wagers, then
    - 9.5.5.2.5 The entire pool shall be refunded on Double wagers for those contests.
  - 9.5.5.3 If there is a dead heat for first in either of the two contests involving:
    - 9.5.5.3.1 contestants representing the same betting interest, the Double pool shall be distributed as if no dead heat occurred.
    - 9.5.5.3.2 contestants representing two or more betting interests, the Double pool shall be distributed as a profit split if there is more than one covered winning combination.
  - 9.5.5.4 Should a betting interest in the first-half of the Double be scratched prior to the first Double contest being declared official, all money wagered on combinations including the scratched betting interest shall be deducted from the Double pool and refunded.
  - 9.5.5.5 Should a betting interest in the second-half of the Double be scratched prior to the close of wagering on the first Double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the Double pool and refunded.

- 9.5.5.6 Should a betting interest in the second-half of the Double be scratched after the close of wagering on the first Double contest, all wagers combining the winner of the first contest with the scratched betting interest in the second contest shall be allocated a consolation payoff. In calculating the consolation payoff the net Double pool shall be divided by the total amount wagered on the winner of the first contest and an unbroken consolation price obtained. The broken consolation price is multiplied by the dollar value of wagers on the winner of the first contest combined with the scratched betting interest to obtain the consolation payoff. Breakage is not declared in this calculation. The consolation payoff is deducted from the net Double pool before calculation and distribution of the winning Double payoff. Dead heats including separate betting interests in the first contest shall result in a consolation payoff calculated as a profit split.
- 9.5.5.7 If either of the Double contests are canceled prior to the first Double contest, or the first Double contest is declared "no contest", the entire Double pool shall be refunded on Double wagers for those contests.
- 9.5.5.8 If the second Double contest is canceled or declared "no contest" after the conclusion of the first Double contest, the net Double pool shall be distributed as a single price pool to wagers selecting the winner of the first Double contest. In the event of a dead heat involving separate betting interests, the net Double pool shall be distributed as a profit split.
- 9.5.6 Pick Three Pools
- 9.5.6.1 The Pick Three requires selection of the first-place finisher in each of three specified contests.
- 9.5.6.2 The net Pick Three pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- 9.5.6.2.1 As a single price pool to those whose selection finished first in each of the three contests; but if there are no such wagers, then
- 9.5.6.2.2 As a single price pool to those who selected the first-place finisher in any two of the three contests; but if there are no such wagers, then
- 9.5.6.2.3 As a single price pool to those who selected the first-place finisher in any one of the three contests; but if there are no such wagers, then
- 9.5.6.2.4 The entire pool shall be refunded on Pick Three wagers for those contests.
- 9.5.6.3 If there is a dead heat for first in any of the three contests involving:
- 9.5.6.3.1 contestants representing the same betting interest, the Pick Three pool shall be distributed as if no dead heat occurred.
- 9.5.6.3.2 contestants representing two or more betting interests, the Pick Three pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.
- 9.5.6.4 Should a betting interest in any of the three Pick Three contests be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
- 9.5.6.5 If all three Pick Three contests are canceled or declared "no contest", the entire pool shall be refunded on Pick Three wagers for those contests.
- 9.5.6.6 If one or two of the Pick Three contests are canceled or declared "no contest", the Pick Three pool will remain valid and shall be distributed in accordance with 9.5.6.2 of this rule.
- 9.5.7 Pick (n) Pools

- 9.5.7.1 The Pick (n) requires selection of the first-place finisher in each of a designated number of contests. The Association must obtain written approval from the Commission concerning the scheduling of Pick (n) contests, the designation of one of the methods prescribed in Part (2), and the amount of any cap to be set on the carryover. Any changes to the approved Pick (n) format require prior approval from the Commission.
- 9.5.7.2 The Pick (n) pool shall be apportioned under one of the following methods:
- 9.5.7.2.1 Method 1, Pick (n) with Carryover: The net Pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the remainder shall be added to the carryover.
- 9.5.7.2.2 Method 2, Pick (n) with Minor Pool and Carryover: The major share of the net Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the minor share of the net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the major share shall be added to the carryover.
- 9.5.7.2.3 Method 3, Pick (n) with No Minor Pool and No Carryover: The net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.
- 9.5.7.2.4 Method 4, Pick (n) with Minor Pool and No Carryover: The major share of the net Pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If the greatest number of first-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
- 9.5.7.2.5 Method 5, Pick (n) with Minor Pool and No Carryover: The major share of net Pick (n) pool shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick (n) contests, the entire net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests. If there are no winning wagers, the pool is refunded.
- 9.5.7.2.6 Method 6, Pick (n) with Minor Pool, Jackpot Pool, Major Carryover and Jackpot Carryover: Predetermined percentages of the net Pick (n) pool shall be set aside as a Major pool, Minor pool and Jackpot pool. The Major share of the net Pick (n) pool and the Major carry-over, if any, shall be distributed to those who selected the first-place

finisher of each of the Pick (n) contests, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the Pick (n) contests, the Major net pool shall be added to the Major carry-over. If there is only one single ticket selecting the first-place finisher of each of the Pick (n) contests, based on the official order of finish, the Jackpot share of the net Pick (n) pool and the Jackpot carryover, if any, shall be distributed to the holder of that single ticket, along with the Major net pool and the Major carryover, if any. If more than one ticket selects the first-place finisher of each of the Pick (n) contests the Jackpot net pool shall be added to the Jackpot carryover. The Minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher of the second greatest number of Pick (n) contests, based on the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the Minor net pool of the Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher of the greatest number of Pick (n) contests.

- 9.5.7.3 If there is a dead heat for first in any of the Pick (n) contests involving:
- 9.5.7.3.1 contestants representing the same betting interest, the Pick (n) pool shall be distributed as if no dead heat occurred.
  - 9.5.7.3.2 contestants representing two or more betting interests, the Pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.
- 9.5.7.4 Should a betting interest in any of the Pick (n) contests be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the host Association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
- 9.5.7.5 The Pick (n) pool shall be canceled and all Pick (n) wagers for the individual performance shall be refunded if:
- 9.5.7.5.1 at least two contests included as part of a Pick 3 are canceled or declared "no contest."
  - 9.5.7.5.2 at least three contests included as part of a Pick 4, Pick 5 or Pick 6 are canceled or declared "no contest."
  - 9.5.7.5.3 at least four contests included as part of a Pick 7, Pick 8 or Pick 9 are canceled or declared "no contest."
  - 9.5.7.5.4 at least five contests included as part of a Pick 10 are canceled or declared "no contest."
- 9.5.7.6 If at least one contest included as part of a Pick (n) is canceled or declared "no contest", but not more than the number specified in subsection 5 of this rule, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the Pick (n) carryover but not the carryover from previous performances.
- 9.5.7.7 The Pick (n) carryover may be capped at a designated level approved by the Commission so that if, at the close of any performance, the amount in the Pick (n) carryover equals or exceeds the designated cap, the Pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Pick (n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the Pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of Pick (n) contests for that performance.

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**PROPOSED REGULATIONS**

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- 9.5.7.8 A written request for permission to distribute the Pick (n) carryover on a specific performance may be submitted to the Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
- 9.5.7.9 Should the Pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the Pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests. The Pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- 9.5.7.9.1 Upon written approval from the Commission as provided in 9.5.7.8 of this rule.
- 9.5.7.9.2 Upon written approval from the Commission when there is a change in the carryover cap, a change from one type of Pick (n) wagering to another, or when the Pick (n) is discontinued.
- 9.5.7.9.3 On the closing performance of the meet or split meet.
- 9.5.7.10 If, for any reason, the Pick (n) carryover must be held over to the corresponding Pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Pick (n) carryover plus accrued interest shall then be added to the net Pick (n) pool of the following meet on a date and performance so designated by the Commission.
- 9.5.7.11 With the written approval of the Commission, the aAssociation may contribute to the Pick (n) carryover a sum of money up to the amount of any designated cap.
- 9.5.7.12 Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.
- 9.5.7.13 The aAssociation may suspend previously- approved Pick (n) wagering with the prior approval of the Commission. Any carryover shall be held until the suspended Pick (n) wagering is reinstated. An aAssociation may request approval of a Pick (n) wager or separate wagering pool for specific performances.
- 9.5.8 Place Pick (n) Pools
- 9.5.8.1 The Place Pick (n) requires selection of the first or second-place finisher in each of a designated number of contests. The aAssociation must obtain written approval from the Commission concerning the scheduling of Place Pick (n) contests, the designation of one of the methods prescribed in Part (2), the distinctive name identifying the pool and the amount of any cap to be set on the carryover. Any changes to the approved Place Pick (n) format require prior approval from the Commission.
- 9.5.8.2 The Place Pick (n) pool shall be apportioned under one of the following methods:
- 9.5.8.2.1 Method 1, Place Pick (n) with Carryover: The net Place Pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first or second-place finisher in each of the Place Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first or second-place finisher in the greatest number of Place Pick (n) contests; and the remainder shall be added to the carryover.
- 9.5.8.2.2 Method 2, Place Pick (n) with Minor Pool and Carryover: The major share of the net Place Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first or second-place finisher in each of the Place Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first or second-place finisher of all Place Pick (n)

contests, the minor share of the net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first or second-place finisher in the greatest number of Place Pick (n) contests; and the major share shall be added to the carryover.

- 9.5.8.2.3 Method 3, Place Pick (n) with No Minor Pool and No Carryover: The net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first or second-place finisher in the greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.
- 9.5.8.2.4 Method 4, Place Pick (n) with Minor Pool and No Carryover: The major share of the net Place Pick (n) pool shall be distributed to those who selected the first or second-place finisher in the greatest number of Place Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first or second-place finisher in a second greatest number of Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first or second-place finisher in the greatest number of Place Pick (n) contests. If the greatest number of first or second-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
- 9.5.8.2.5 Method 5, Place Pick (n) with Minor Pool and No Carryover: The major share of net Place Pick (n) pool shall be distributed to those who selected the first or second-place finisher in each of the Place Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first or second-place finisher in all Place Pick (n) contests, the entire net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first or second-place finisher in the greatest number of Place Pick (n) contests. If there are no wagers selecting the first or second-place finisher in a second greatest number of Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first or second-place finisher in each of the Place Pick (n) contests. If there are no winning wagers, the pool is refunded.
- 9.5.8.3 If there is a dead heat for first in any of the Place Pick (n) contests involving:
- 9.5.8.3.1 contestants representing the same betting interest, the Place Pick (n) pool shall be distributed as if no dead heat occurred.
- 9.5.8.3.2 contestants representing two or more betting interests, the Place Pick (n) pool shall be distributed as a single price pool with a winning wager including each betting interest participating in the dead heat.
- 9.5.8.4 If there is a dead heat for second in any of the Place Pick (n) contests involving:
- 9.5.8.4.1 contestants representing the same betting interest, the Place Pick (n) pool shall be distributed as if no dead heat occurred.
- 9.5.8.4.2 contestants representing two or more betting interests, the Place Pick (n) pool shall be distributed as a single price pool with a winning wager including the betting interest which finished first or any betting interest involved in the dead heat for second.
- 9.5.8.5 Should a betting interest in any of the Place Pick (n) contests be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the host ~~a~~Association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the

- betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
- 9.5.8.6 The Place Pick (n) pool shall be canceled and all Place Pick (n) wagers for the individual performance shall be refunded if:
- 9.5.8.6.1 at least two contests included as part of a Place Pick 3 are canceled or declared "no contest."
  - 9.5.8.6.2 at least three contests included as part of a Place Pick 4, Place Pick 5 or Place Pick 6 are canceled or declared "no contest."
  - 9.5.8.6.3 at least four contests included as part of a Place Pick 7, Place Pick 8 or Place Pick 9 are canceled or declared "no contest."
  - 9.5.8.6.4 at least five contests included as part of a Place Pick 10 are canceled or declared "no contest."
- 9.5.8.7 If at least one contest included as part of a Place Pick (n) is canceled or declared "no contest", but not more than the number specified in subsection 6 of this rule, the net pool shall be distributed as a single price pool to those whose selection finished first or second in the greatest number of Place Pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the Place Pick (n) carryover but not the carryover from previous performances.
- 9.5.8.8 The Place Pick (n) carryover may be capped at a designated level approved by the Commission so that if, at the close of any performance, the amount in the Place Pick (n) carryover equals or exceeds the designated cap, the Place Pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Place Pick (n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the Place Pick (n) carryover, shall be distributed to those whose selection finished first or second in the greatest number of Place Pick (n) contests for that performance.
- 9.5.8.9 A written request for permission to distribute the Place Pick (n) carryover on a specific performance may be submitted to the Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
- 9.5.8.10 Should the Place Pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first or second-place finisher in each of the Place Pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first or second in the greatest number of Place Pick (n) contests. The Place Pick (n) carryover shall be designated for distribution on a specified date and performance under any of the following circumstances:
- 9.5.8.10.1 Upon written approval from the Commission as provided in 9.5.8.9 of this rule.
  - 9.5.8.10.2 Upon written approval from the Commission when there is a change in the carryover cap, a change from one type of Place Pick (n) wagering to another, or when the Place Pick (n) is discontinued.
  - 9.5.8.10.3 On the closing performance of the meet or split meet.
- 9.5.8.11 If, for any reason, the Place Pick (n) carryover must be held over to the corresponding Place Pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Place Pick (n) carryover plus accrued interest shall then be added to the net Place Pick (n) pool of the following meet on a date and performance so designated by the Commission.
- 9.5.8.12 With the written approval of the Commission, the Association may contribute to the Place Pick (n) carryover a sum of money up to the amount of any designated cap.
- 9.5.8.13 Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is

strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

- 9.5.8.14 The aAssociation may suspend previously-approved Place Pick (n) wagering with the prior approval of the Commission. Any carryover shall be held until the suspended Place Pick (n) wagering is reinstated. An aAssociation may request approval of a Place Pick (n) wager or separate wagering pool for specific performances.

9.5.9 Quinella Pools

- 9.5.9.1 The Quinella requires selection of the first two finishers, irrespective of order, for a single contest.

- 9.5.9.2 The net Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

9.5.9.2.1 If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise

9.5.9.2.2 As a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then

9.5.9.2.3 As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one of the those two finishers, then

9.5.9.2.4 As a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then

9.5.9.2.5 The entire pool shall be refunded on Quinella wagers for that contest.

- 9.5.9.3 If there is a dead heat for first involving:

9.5.9.3.1 contestants representing the same betting interest, the Quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.

9.5.9.3.2 contestants representing two betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

9.5.9.3.3 contestants representing three or more betting interests, the Quinella pool shall be distributed as a profit split.

- 9.5.9.4 If there is a dead heat for second involving contestants representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

- 9.5.9.5 If there is a dead heat for second involving contestants representing two or more betting interests, the Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:

9.5.9.5.1 As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then

9.5.9.5.2 As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then

9.5.9.5.3 As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then

9.5.9.5.4 As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then

9.5.9.5.5 The entire pool shall be refunded on Quinella wagers for that contest.

9.5.10 Quinella Double Pools

- 9.5.10.1 The Quinella Double requires selection of the first two finishers, irrespective of order, in each of two specified contests.

- 9.5.10.2 The net Quinella Double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

- 9.5.10.2.1 If a coupled entry or mutuel field finishes as the first two contestants in either contest, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest, as well as the first two finishers in the alternate Quinella Double contest; otherwise
- 9.5.10.2.2 As a single price pool to those who selected the first two finishers in each of the two Quinella Double contests; but if there are no such wagers, then
- 9.5.10.2.3 As a profit split to those who selected the first two finishers in either of the two Quinella Double contests; but if there are no such wagers on one of those contests, then
- 9.5.10.2.4 As a single price pool to those who selected the first two finishers in the one covered Quinella Double contest; but if there were no such wagers, then
- 9.5.10.2.5 The entire pool shall be refunded on Quinella Double wagers for those contests.
- 9.5.10.3 If there is a dead heat for first in either of the two Quinella Double contests involving:
- 9.5.10.3.1 contestants representing the same betting interest, the Quinella Double pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest.
- 9.5.10.3.2 contestants representing two betting interests, the Quinella Double pool shall be distributed as if no dead heat occurred.
- 9.5.10.3.3 contestants representing three or more betting interests, the Quinella Double pool shall be distributed as a profit split.
- 9.5.10.4 If there is a dead heat for second in either of the Quinella Double contests involving contestants representing the same betting interest, the Quinella Double pool shall be distributed as if no dead heat occurred.
- 9.5.10.5 If there is a dead heat for second in either of the Quinella Double contests involving contestants representing two or more betting interests, the Quinella Double pool shall be distributed as profit split.
- 9.5.10.6 Should a betting interest in the first-half of the Quinella Double be scratched prior to the first Quinella Double contest being declared official, all money wagered on combinations including the scratched betting interest shall deducted from the Quinella Double pool and refunded.
- 9.5.10.7 Should a betting interest in the second-half of the Quinella Double be scratched prior to the close of wagering on the first Quinella Double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the Quinella Double pool and refunded.
- 9.5.10.8 Should a betting interest in the second-half of the Quinella Double be scratched after the close of wagering on the first Quinella Double contest, all wagers combining the winning combination in the first contest with a combination including the scratched betting interest in the second contest shall be allocated a consolation payoff. In calculating the consolation payoff the net Quinella Double pool shall be divided by the total amount wagered on the winning combination in the first contest and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers on the winning combination in the first contest combined with a combination including the scratched betting interest in the second contest to obtain the consolation payoff. Breakage is not declared in this calculation. The consolation payoff is deducted from the net Quinella Double pool before calculation and distribution of the winning Quinella Double payoff. In the event of a dead heat involving separate betting interests, the net Quinella Double pool shall be distributed as a profit split.
- 9.5.10.9 If either of the Quinella Double contests is canceled prior to the first Quinella Double contest, or the first Quinella Double contest is declared "no contest", the entire Quinella Double pool shall be refunded on Quinella Double wagers for those contests.

9.5.10.10 If the second Quinella Double contest is canceled or declared "no contest" after the conclusion of the first Quinella Double contest, the net Quinella Double pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Quinella Double contest. If there are no wagers selecting the winning combination in the first Quinella Double contest, the entire Quinella Double pool shall be refunded on Quinella Double wagers for those contests.

9.5.11 Show Quinella Pools

9.5.11.1 The Show Quinella requires selection of two (2) of the first three (3) finishers, irrespective of order, for a single contest.

9.5.11.2 The Show Quinella pool shall be apportioned under one of the following methods:

9.5.11.2.1 Method 1, Single Price and Refund: The net Show Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

9.5.11.2.1.1 As a single price pool to those whose combinations finished as the first two betting interests, the first and third betting interests and/or the second and third betting interests; but if there are no such wagers, then

9.5.11.2.1.2 The entire pool shall be refunded on Show Quinella wagers for that contest.

9.5.11.2.2 Method 2, Single Price and Carryover: The net Show Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

9.5.11.2.2.1 As a single price pool to those whose combinations finished as the first two betting interests, the first and third betting interests and/or the second and third betting interests; but if there are no such wagers, then

9.5.11.2.2.2 The net pool will be carried forward and added to the next Show Quinella pool.

9.5.11.2.3 Method 3, Profit Split and Refund: The net Show Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

9.5.11.2.3.1 As a profit split to those whose combinations finished as the first two betting interests, the first and third betting interests and/or the second and third betting interests; but if there are no such wagers, then

9.5.11.2.3.2 The entire pool shall be refunded on Show Quinella wagers for that contest.

9.5.11.2.4 Method 4, Profit Split and Carryover: The net Show Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

9.5.11.2.4.1 As a profit split to those whose combinations finished as the first two betting interests, the first and third betting interests and/or the second and third betting interests; but if there are no such wagers, then

9.5.11.2.4.2 The net pool will be carried forward and added to the next Show Quinella pool.

9.5.11.3 If there is a dead heat for first involving:

9.5.11.3.1 contestants representing two or three betting interests, the Show Quinella pool shall be distributed as if no dead heat occurred.

9.5.11.3.2 contestants representing four or more betting interests, the Show Quinella pool shall be distributed between all possible winning combinations based upon the method selected in 9.5.11.2.

9.5.11.4 If there is a dead heat for second involving:

9.5.11.4.1 contestants representing two betting interests, the Show Quinella pool shall be distributed as if no dead heat occurred.

9.5.11.4.2 contestants representing three or more betting interests, the Show Quinella pool shall be distributed between all possible winning combinations based upon the method selected in 9.5.11.2.

9.5.11.5 If there is a dead heat for third involving contestants representing two or more betting interests, the Show Quinella pool shall be distributed between all possible winning

- combinations, including those betting interests in the dead heat, based upon the method selected in 9.5.11.2.
- 9.5.11.6 Should any betting interest entered in the Show Quinella pool be scratched or excused from the contest, wagers including such betting interest shall be deducted from the Show Quinella pool and money refunded.
- 9.5.11.7 If, for any reason, the Show Quinella carryover must be held over to the corresponding Show Quinella pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Show Quinella carryover plus accrued interest shall be added to the net Show Quinella pool of the following meet on a date and performance so designated by the Commission.
- 9.5.12 Exacta Pools
- 9.5.12.1 The Exacta requires selection of the first two finishers, in their exact order, for a single contest.
- 9.5.12.2 The net Exacta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- 9.5.12.2.1 If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
- 9.5.12.2.2 As a single price pool to those whose combination finished in correct sequence as the first two betting interests; but if there are no such wagers, then
- 9.5.12.2.3 As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one of those two finishers, then
- 9.5.12.2.4 As a single price pool to those whose combination included the one covered betting interest to finish first or second in the correct sequence; but if there are no such wagers, then
- 9.5.12.2.5 The entire pool shall be refunded on Exacta wagers for that contest.
- 9.5.12.3 If there is a dead heat for first involving:
- 9.5.12.3.1 contestants representing the same betting interest, the Exacta pool shall be distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
- 9.5.12.3.2 contestants representing two or more betting interests, the Exacta pool shall be distributed as a profit split.
- 9.5.12.4 If there is a dead heat for second involving contestants representing the same betting interest, the Exacta pool shall be distributed as if no dead heat occurred.
- 9.5.12.5 If there is a dead heat for second involving contestants representing two or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence, based upon the official order of finish:
- 9.5.12.5.1 As a profit split to those combining the first-place betting interest with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then
- 9.5.12.5.2 As a single price pool to those combining the first-place betting interest with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
- 9.5.12.5.3 As a profit split to those wagers correctly selecting the winner for first-place and those wagers selecting any of the dead-heated betting interests for second-place; but if there are no such wagers, then
- 9.5.12.5.4 The entire pool shall be refunded on Exacta wagers for that contest.
- 9.5.13 Trifecta Pools

- 9.5.13.1 The Trifecta requires selection of the first three finishers, in their exact order, for a single contest.
- 9.5.13.2 The net Trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- 9.5.13.2.1 As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
- 9.5.13.2.2 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
- 9.5.13.2.3 As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
- 9.5.13.2.4 The entire pool shall be refunded on Trifecta wagers for that contest.
- 9.5.13.3 If less than three betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.
- 9.5.13.4 If there is a dead heat for first involving:
- 9.5.13.4.1 contestants representing three or more betting interests, all of the wagering combinations selecting three betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
- 9.5.13.4.2 contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place betting interest shall share in a profit split.
- 9.5.13.5 If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.
- 9.5.13.6 If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.
- ~~9.5.13.7 Coupled entries and mutuel fields shall be prohibited in Trifecta contests except in Grade-I races (as determined by the North American Graded Stakes Committee) with written approval of the host Commission.~~
- 9.5.14 Superfecta Pools
- 9.5.14.1 The Superfecta requires selection of the first four finishers, in their exact order, for a single contest.
- 9.5.14.2 The net Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- 9.5.14.2.1 As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
- 9.5.14.2.2 As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
- 9.5.14.2.3 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
- 9.5.14.2.4 As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
- 9.5.14.2.5 The entire pool shall be refunded on Superfecta wagers for that contest.
- 9.5.14.3 If less than four betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.
- 9.5.14.4 If there is a dead heat for first involving:

- 9.5.14.4.1 contestants representing four or more betting interests, all of the wagering combinations selecting four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
- 9.5.14.4.2 contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place betting interest shall share in a profit split.
- 9.5.14.4.3 contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.
- 9.5.14.5 If there is a dead heat for second involving:
  - 9.5.14.5.1 contestants representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second shall share in a profit split.
  - 9.5.14.5.2 contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.
- 9.5.14.6 If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for third shall share in a profit split.
- 9.5.14.7 If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth shall share in a profit split.
- 9.5.14.8 Coupled entries and mutuel fields shall be prohibited in Superfecta contests.
- 9.5.15 Twin Quinella Pools
  - 9.5.15.1 The Twin Quinella requires selection of the first two finishers, irrespective of order, in each of two designated contests. Each winning ticket for the first Twin Quinella contest must be exchanged for a free ticket on the second Twin Quinella contest in order to remain eligible for the second-half Twin Quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Quinella contest. There will be no monetary reward for winning the first Twin Quinella contest. Both of the designated Twin Quinella contests shall be included in only one Twin Quinella pool.
  - 9.5.15.2 In the first Twin Quinella contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Quinella contest:
    - 9.5.15.2.1 If a coupled entry or mutuel field finishes as the first two finishers, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners; otherwise
    - 9.5.15.2.2 Those whose combination finished as the first two betting interests shall be winners; but if there are no such wagers, then
    - 9.5.15.2.3 Those whose combination included either the first- or second-place finisher shall be winners; but if there are no such wagers on one of those two finishers, then
    - 9.5.15.2.4 Those whose combination included the one covered betting interest included within the first two finishers shall be winners; but if there are no such wagers, then
    - 9.5.15.2.5 The entire pool shall be refunded on Twin Quinella wagers for that contest.
  - 9.5.15.3 In the first Twin Quinella contest only, if there is a dead heat for first involving:
    - 9.5.15.3.1 contestants representing the same betting interest, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners.
    - 9.5.15.3.2 contestants representing two betting interests, the winning Twin Quinella wagers shall be determined as if no dead heat occurred.

- 9.5.15.3.3 contestants representing three or more betting interests, those whose combination included any two of the betting interests finishing in the dead heat shall be winners.
- 9.5.15.4 In the first Twin Quinella contest only, if there is a dead heat for second involving contestants representing two or more betting interests, the Twin Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
  - 9.5.15.4.1 As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then
  - 9.5.15.4.2 As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
  - 9.5.15.4.3 As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then
  - 9.5.15.4.4 As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then
  - 9.5.15.4.5 The entire pool shall be refunded on Twin Quinella wagers for that contest.
- 9.5.15.5 In the second Twin Quinella contest only, the entire net Twin Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Quinella contest:
  - 9.5.15.5.1 If a coupled entry or mutuel field finishes as the first two finishers, as a single price pool to those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
  - 9.5.15.5.2 As a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then
  - 9.5.15.5.3 As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one of those two finishers, then
  - 9.5.15.5.4 As a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then
  - 9.5.15.5.5 As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then
  - 9.5.15.5.6 In accordance with 9.5.15.2 of the Twin Quinella rules.
- 9.5.15.6 In the second Twin Quinella contest only, if there is a dead heat for first involving:
  - 9.5.15.6.1 contestants representing the same betting interest, the net Twin Quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
  - 9.5.15.6.2 contestants representing two betting interests, the net Twin Quinella pool shall be distributed as if no dead heat occurred.
  - 9.5.15.6.3 contestants representing three or more betting interests, the net Twin Quinella pool shall be distributed as a profit split to those whose combination included any two of the betting interests finishing in the dead heat.
- 9.5.15.7 In the second Twin Quinella contest only, if there is a dead heat for second involving contestants representing two or more betting interests, the Twin Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
  - 9.5.15.7.1 As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then
  - 9.5.15.7.2 As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
  - 9.5.15.7.3 As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then

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- 9.5.15.7.4 As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then
- 9.5.15.7.5 As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then
- 9.5.15.7.6 In accordance with 9.5.15.2 of the Twin Quinella rules.
- 9.5.15.8 If a winning ticket for the first-half of the Twin Quinella is not presented for exchange prior to the close of betting on the second- half Twin Quinella contest, the ticket holder forfeits all rights to any distribution of the Twin Quinella pool resulting from the outcome of the second contest.
- 9.5.15.9 Should a betting interest in the first-half of the Twin Quinella be scratched, those Twin Quinella wagers including the scratched betting interest shall be refunded.
- 9.5.15.10 Should a betting interest in the second-half of the Twin Quinella be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Quinella contest, the ticket holder forfeits all rights to the Twin Quinella pool.
- 9.5.15.11 If either of the Twin Quinella contests is canceled prior to the first Twin Quinella contest, or the first Twin Quinella contest is declared "no contest", the entire Twin Quinella pool shall be refunded on Twin Quinella wagers for that contest.
- 9.5.15.12 If the second-half Twin Quinella contest is canceled or declared "no contest" after the conclusion of the first Twin Quinella contest, the net Twin Quinella pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Twin Quinella contest and all valid exchange tickets. If there is no such wagers, the net Twin Quinella pool shall be distributed as described in 9.5.15.2 of the Twin Quinella rules.
- 9.5.16 Twin Trifecta Pools
- 9.5.16.1 The Twin Trifecta requires selection of the first three finishers, in their exact order, in each of two designated contests. Each winning ticket for the first Twin Trifecta contest must be exchanged for a free ticket on the second Twin Trifecta contest in order to remain eligible for the second-half Twin Trifecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Trifecta contest. Winning first-half Twin Trifecta wagers will receive both an exchange and a monetary payoff. Both of the designated Twin Trifecta contests shall be included in only one Twin Trifecta pool.
- 9.5.16.2 After wagering closes for the first-half of the Twin Trifecta and commissions have been deducted from the pool, the net pool shall then be divided into separate pools: the first-half Twin Trifecta pool and the second-half Twin Trifecta pool.
- 9.5.16.3 In the first Twin Trifecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Trifecta contest:
- 9.5.16.3.1 As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
- 9.5.16.3.2 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
- 9.5.16.3.3 As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
- 9.5.16.3.4 The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that contest and the second-half shall be canceled.
- 9.5.16.4 If no first-half Twin Trifecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Twin Trifecta pool. In such case, the second-half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.

- 9.5.16.5 Winning tickets from the first-half of the Twin Trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the Twin Trifecta. The second-half Twin Trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Trifecta contest:
- 9.5.16.5.1 As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first three betting interests; but if there are no such tickets, then
  - 9.5.16.5.2 The entire second-half Twin Trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Twin Trifecta pool of the next consecutive performance.
- 9.5.16.6 If a winning first-half Twin Trifecta ticket is not presented for cashing and exchange prior to the second-half Twin Trifecta contest, the ticket holder may still collect the monetary value associated with the first-half Twin Trifecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool.
- 9.5.16.7 Coupled entries and mutuel fields shall be prohibited in Twin Trifecta contests.
- 9.5.16.8 Should a betting interest in the first-half of the Twin Trifecta be scratched, those Twin Trifecta wagers including the scratched betting interest shall be refunded.
- 9.5.16.9 Should a betting interest in the second-half of the Twin Trifecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta contest, the ticket holder forfeits all rights to the second-half Twin Trifecta pool.
- 9.5.16.10 If, due to a late scratch, the number of betting interests in the second-half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Twin Trifecta pool for that contest as a single price pool, but not the Twin Trifecta carryover.
- 9.5.16.11 If there is a dead heat or multiple dead heats in either the first- or second-half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
- 9.5.16.11.1 the first-half of the Twin Trifecta, the payoff shall be calculated as a profit split.
  - 9.5.16.11.2 the second-half of the Twin Trifecta, the payoff shall be calculated as a single price pool.
- 9.5.16.12 If either of the Twin Trifecta contests are canceled prior to the first Twin Trifecta contest, or the first Twin Trifecta contest is declared "no contest", the entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that contest and the second-half shall be canceled.
- 9.5.16.13 If the second-half Twin Trifecta contest is canceled or declared "no contest", all exchange tickets and outstanding first-half winning Twin Trifecta tickets shall be entitled to the net Twin Trifecta pool for that contest as a single price pool, but not Twin Trifecta carryover. If there are no such tickets, the net Twin Trifecta pool shall be distributed as described in subsection 3 of the Twin Trifecta rules.
- 9.5.16.14 The Twin Trifecta carryover may be capped at a designated level approved by the Commission so that if, at the close of any performance, the amount in the Twin Trifecta carryover equals or exceeds the designated cap, the Twin Trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the Twin Trifecta carryover is frozen, 100 percent of the net Twin Trifecta pool for each individual contest shall be distributed to winners of the first-half of the Twin Trifecta pool.
- 9.5.16.15 A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

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- 9.5.16.16 Should the Twin Trifecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the Twin Trifecta after completion of the first-half of the Twin Trifecta:
- 9.5.16.16.1 As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
  - 9.5.16.16.2 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
  - 9.5.16.16.3 As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
  - 9.5.16.16.4 As a single price pool to holders of valid exchange tickets.
  - 9.5.16.16.5 As a single price pool to holders of outstanding first-half winning tickets.
- 9.5.16.17 Contrary to 9.5.16.4 of the Twin Trifecta rules, during a performance designated to distribute the Twin Trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Twin Trifecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the Twin Trifecta, all first-half tickets will become winners and will receive 100 percent of that days net Twin Trifecta pool and any existing Twin Trifecta carryover.
- 9.5.16.18 The Twin Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- 9.5.16.18.1 Upon written approval from the Commission as provided in 9.5.16 of the Twin Trifecta rules.
  - 9.5.16.18.2 Upon written approval from the Commission when there is a change in the carryover cap or when the Twin Trifecta is discontinued.
  - 9.5.16.18.3 On the closing performance of the meet or split meet.
- 9.5.16.19 If, for any reason, the Twin Trifecta carryover must be held over to the corresponding Twin Trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Twin Trifecta carryover plus accrued interest shall then be added to the second-half Twin Trifecta pool of the following meet on a date and performance so designated by the Commission.
- 9.5.16.20 Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.
- 9.5.16.21 The Association must obtain written approval from the Commission concerning the scheduling of Twin Trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Trifecta format require prior approval from the Commission.
- 9.5.17 Tri-Superfecta Pools
- 9.5.17.1 The Tri-Superfecta requires selection of the first three finishers, in their exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first Tri-Superfecta contest must be exchanged for a free ticket on the second Tri-Superfecta contest in order to remain eligible for the second-half Tri-Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Tri-Superfecta contest. Winning first-half

- Tri-Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Tri-superfecta contests shall be included in only one Tri-Superfecta pool.
- 9.5.17.2 After wagering closes for the first-half of the Tri-Superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half Tri-Superfecta pool and the second-half Tri-Superfecta pool.
- 9.5.17.3 In the first Tri-Superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first Tri-Superfecta contest:
- 9.5.17.3.1 As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
- 9.5.17.3.2 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
- 9.5.17.3.3 As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
- 9.5.17.3.4 The entire Tri-Superfecta pool shall be refunded on Tri-Superfecta wagers for that contest and the second-half shall be canceled.
- 9.5.17.4 If no first-half Tri-Superfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Tri-Superfecta pool. In such case, the second-half Tri-superfecta pool shall be retained and added to any existing Tri-Superfecta carryover pool.
- 9.5.17.5 Winning tickets from the first-half of the Tri-Superfecta shall be exchanged for tickets selecting the first four finishers of the second-half of the Tri-Superfecta. The second-half Tri-Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Tri-Superfecta contest:
- 9.5.17.5.1 As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then
- 9.5.17.5.2 The entire second-half Tri-Superfecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Tri-Superfecta pool of the next performance.
- 9.5.17.6 If a winning first-half Tri-Superfecta ticket is not presented for cashing and exchange prior to the second-half Tri-Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half Tri-Superfecta pool but forfeits all rights to any distribution of the second-half Tri-Superfecta pool.
- 9.5.17.7 Coupled entries and mutuel fields shall be prohibited in Tri-Superfecta contests.
- 9.5.17.8 Should a betting interest in the first-half of the Tri-Superfecta be scratched, those Tri-Superfecta tickets including the scratched betting interest shall be refunded.
- 9.5.17.9 Should a betting interest in the second-half of the Tri-Superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Tri-Superfecta contest, the ticket holder forfeits all rights to the second-half Tri-Superfecta pool.
- 9.5.17.10 If, due to a late scratch, the number of betting interests in the second-half of the Tri-Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover.
- 9.5.17.11 If there is a dead heat or multiple dead heats in either the first- or second-half of the Tri-Superfecta, all Tri-Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
- 9.5.17.11.1 the first-half of the Tri-Superfecta, the payoff shall be calculated as a profit split.

- 9.5.17.11.2 the second-half of the Tri-Superfecta, the payoff shall be calculated as a single price pool.
- 9.5.17.12 If either of the Tri-Superfecta contests are canceled prior to the first Tri-Superfecta contest, or the first Tri-Superfecta contest is declared "no contest", the entire Tri-Superfecta pool shall be refunded on Tri-Superfecta wagers for that contest and the second-half shall be canceled.
- 9.5.17.13 If the second-half Tri-Superfecta contest is canceled or declared "no contest", all exchange tickets and outstanding first-half winning Tri-Superfecta tickets shall be entitled to the net Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover. If no there are no such tickets, the net Tri-Superfecta pool shall be distributed as described in subsection 3 of the Tri-Superfecta rules.
- 9.5.17.14 The Tri-Superfecta carryover may be capped at a designated level approved by the Commission so that if, at the close of any performance, the amount in the Tri-Superfecta carryover equals or exceeds the designated cap, the Tri-Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Tri-Superfecta carryover is frozen, 100 percent of the net Tri-Superfecta pool for each individual contest shall be distributed to winners of the first-half of the Tri-Superfecta pool.
- 9.5.17.15 A written request for permission to distribute the Tri-Superfecta carryover on a specific performance may be submitted to the Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
- 9.5.17.16 Should the Tri-Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the Tri-Superfecta after completion of the first-half of the Tri-Superfecta:
- 9.5.17.16.1 As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
- 9.5.17.16.2 As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
- 9.5.17.16.3 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
- 9.5.17.16.4 As a single price pool to those whose combination included, in correct sequence, the first-place betting interest only; but if there are no such wagers, then
- 9.5.17.16.5 As a single price pool to holders of valid exchange tickets.
- 9.5.17.16.6 As a single price pool to holders of outstanding first-half winning tickets.
- 9.5.17.17 Contrary to 9.5.17.4 of the Tri-Superfecta rules, during a performance designated to distribute the Tri-Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Tri-Superfecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the Tri-Superfecta, all first-half tickets will become winners and will receive 100 percent of that days net Tri-Superfecta pool and any existing Tri-Superfecta carryover as a single price pool.
- 9.5.17.18 The Tri-Superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- 9.5.17.18.1 Upon written approval from the Commission as provided in subsection 15 of the Tri-Superfecta rules.

- 9.5.17.18.2 Upon written approval from the Commission when there is a change in the carryover cap or when the Tri-Superfecta is discontinued.
- 9.5.17.18.3 On the closing performance of the meet or split meet.
- 9.5.17.19 If, for any reason, the Tri-Superfecta carryover must be held over to the corresponding Tri-Superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Tri-Superfecta carryover plus accrued interest shall then be added to the second-half Tri-superfecta pool of the following meet on a date and performance so designated by the Commission.
- 9.5.17.20 Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.
- 9.5.17.21 The Association must obtain written approval from the Commission concerning the scheduling of Tri-Superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Tri-Superfecta format require prior approval from the Commission.
- 9.5.18 Twin Superfecta Pools
- 9.5.18.1 The Twin Superfecta requires selection of the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first Twin Superfecta contest must be exchanged for a free ticket on the second Twin Superfecta contest in order to remain eligible for the second-half Twin Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Superfecta contest. Winning first-half Twin Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Twin Superfecta contests shall be included in only one Twin Superfecta pool.
- 9.5.18.2 After wagering closes for the first-half of the Twin Superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half Twin Superfecta pool and the second-half Twin Superfecta pool.
- 9.5.18.3 In the first Twin Superfecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Superfecta contest:
- 9.5.18.3.1 As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
- 9.5.18.3.2 As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
- 9.5.18.3.3 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
- 9.5.18.3.4 As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
- 9.5.18.3.5 The entire Twin Superfecta pool shall be refunded on Twin Superfecta wagers for that contest and the second-half shall be canceled.
- 9.5.18.4 If no first-half Twin Superfecta ticket selects the first four finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Twin Superfecta pool. In such case, the second-half Twin Superfecta pool shall be retained and added to any existing Twin Superfecta carryover pool.
- 9.5.18.5 Winning tickets from the first-half of the Twin Superfecta shall be exchanged for tickets selecting the first four finishers of the second-half of the Twin Superfecta. The second-half Twin Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Superfecta contest:

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**PROPOSED REGULATIONS**

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- 9.5.18.5.1 As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then
- 9.5.18.5.2 The entire second-half Twin Trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Twin Superfecta pool of the next performance.
- 9.5.18.6 If a winning first-half Twin Superfecta ticket is not presented for cashing and exchange prior to the second-half Twin Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half Twin Superfecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool.
- 9.5.18.7 Coupled entries and mutuel fields shall be prohibited in Twin Superfecta contests.
- 9.5.18.8 Should a betting interest in the first-half of the Twin Superfecta be scratched, those Twin Superfecta tickets including the scratched betting interest shall be refunded.
- 9.5.18.9 Should a betting interest in the second-half of the Twin Superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Superfecta contest, the ticket holder forfeits all rights to the second-half Twin Superfecta pool.
- 9.5.18.10 If, due to a late scratch, the number of betting interests in the second-half of the Twin Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Twin Superfecta pool for that contest as a single price pool, but not the Twin Superfecta carryover.
- 9.5.18.11 If there is a dead heat or multiple dead heats in either the first- or second-half of the Twin Superfecta, all Twin Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
- 9.5.18.11.1 the first-half of the Twin Superfecta, the payoff shall be calculated as a profit split.
- 9.5.18.11.2 the second-half of the Twin Superfecta, the payoff shall be calculated as a single price pool.
- 9.5.18.12 If the either of the Twin Superfecta contests are canceled prior to the first Twin Superfecta contest, or the first Twin Superfecta contest is declared "no contest", the entire Twin Superfecta pool shall be refunded on Twin Superfecta wagers for that contest and the second-half shall be canceled.
- 9.5.18.13 If the second-half Twin Superfecta contest is canceled or declared "no contest", all exchange tickets and outstanding first-half winning Twin Superfecta tickets shall be entitled to the net Twin Superfecta pool for that contest as a single price pool, but not the Twin Superfecta carryover. If there are no such tickets, the net Twin Superfecta pool shall be distributed as described in 9.5.18.3 of the Twin Superfecta rules.
- 9.5.18.14 The Twin Superfecta carryover may be capped at a designated level approved by the Commission so that if, at the close of any performance, the amount in the Twin Superfecta equals or exceeds the designated cap, the Twin Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Twin Superfecta carryover is frozen, 100 percent of the net Twin Superfecta pool for each individual contest shall be distributed to winners of the first-half of the Twin Superfecta pool.
- 9.5.18.15 A written request for permission to distribute the Twin Superfecta carryover on a specific performance may be submitted to the Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

- 9.5.18.16 Should the Twin Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the Twin Superfecta after completion of the first-half of the Twin Superfecta:
- 9.5.18.16.1 As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
  - 9.5.18.16.2 As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
  - 9.5.18.16.3 As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
  - 9.5.18.16.4 As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
  - 9.5.18.16.5 As a single price pool to holders of valid exchange tickets.
  - 9.5.18.16.6 As a single price pool to holders of outstanding first-half winning tickets.
- 9.5.18.17 Contrary to 9.5.18.4 of the Twin Superfecta rules, during a performance designated to distribute the Twin Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Twin Superfecta. If there are no wagers correctly selecting the first-, second-, third-, and fourth-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-, second-, and third-place betting interests. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second- place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the Twin Superfecta, all first-half tickets will become winners and will receive 100 percent of that days net Twin Superfecta pool and any existing Twin Superfecta carryover as a single price pool.
- 9.5.18.18 The Twin Superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- 9.5.18.18.1 Upon written approval from the Commission as provided in 9.5.18.15 of the Twin Superfecta rules.
  - 9.5.18.18.2 Upon written approval from the Commission when there is a change in the carryover cap or when the Twin Superfecta is discontinued.
  - 9.5.18.18.3 On the closing performance of the meet or split meet.
- 9.5.18.19 If, for any reason, the Twin Superfecta carryover must be held over to the corresponding Twin Superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Twin Superfecta carryover plus accrued interest shall then be added to the second-half Twin Superfecta pool of the following meet on a date and performance so designated by the Commission.
- 9.5.18.20 Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.
- 9.5.18.21 The aAssociation must obtain written approval from the Commission concerning the scheduling of Twin Superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Superfecta format require prior approval from the Commission.
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**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 220

**220 Diversity****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 220 Diversity to add a definition and to clarify districts reflect practices related to ensuring the school community addresses diversity through its Success Plans.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2009 to Susan K. Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation continues to ensure schools address diversity through practice and information among staff and students that should result in continued improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation continues to ensure schools address diversity through practice and information among staff and students that to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation continues to ensure schools address diversity through practice and information among staff and students to ensure all students health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure schools address diversity through practice and information among staff and students to ensure all students legal rights are respected.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject of diversity continues to be in the same entity.

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

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

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

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## 220 Diversity

### 1.0 Definitions

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

**"Diversity"** in a school community means ~~it~~ ~~A school community that values diversity is one which~~ embraces and builds on the strengths of individual and group differences, and by so doing enriches the educational program for all students. A ~~The~~ curriculum that is inclusive of many racial, ethnic, regional, religious, linguistic, and socioeconomic groups, and ~~which~~ gives visibility to both women and men, to people of all ages, and to persons with disabilities, affirms the richness of our pluralistic society. ~~The Secretary of Education believes that students achieve their best in classrooms where diversity is commonplace.~~

**"Success Plan"** means the web-based document submitted to the Department of Education as part of the request for state and federal funds that provides the mission, goals, objectives, measures, and strategies of the district or school.

### 2.0 Each School District Shall

- 2.1 Infuse information on diverse cultural groups throughout the K to 12 curriculum in order to equip students with the knowledge and skills necessary to participate productively in a culturally diverse society.
- 2.2 Provide professional development to equip all teachers with various instructional techniques and best practices.
- 2.3 Describe in district ~~strategie~~ success plans and school success plans how disparities and gaps in student achievement associated with the student's gender, race, ethnicity, socioeconomic status, limited English proficiency, or disability will be identified and eliminated.
- 2.4 Provide student counseling, assessment, discipline and placement that is sensitive to the needs of diverse populations.
- 2.5 Provide appropriate instruction to limited English proficient students so that they will have success in a mainstream classroom where the medium of instruction is English.
- 2.6 Describe in the district ~~strategie~~ success plan a strategy to attract and retain a highly skilled and committed faculty and staff reflective of the diversity in the school community.
- 2.7 Enact measures to avoid and address inequitable and prejudicial behaviors among employees and students.
- 2.8 Describe in the school success plans specific ways principals and building staff create an atmosphere which recognizes, accepts and values diversity as a positive, integral resource of a democratic society.

2 DE Reg. 1244 (1/1/99)

7 DE Reg. 1177 (3/1/04)

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### OFFICE OF THE SECRETARY

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

14 DE Admin. Code 240

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

### 240 Recruiting and Training of Professional Educators for Critical Curricular Areas

#### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 240 Recruiting and Training of Professional Educators for Critical Curricular Areas with no changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact**

1. Will the reauthorized regulation help improve student achievement as measured against state achievement standards? The reauthorized regulation addresses some of the programs for the recruiting and training of educators in critical curricular areas and as such should continue to improve student achievement.

2. Will the reauthorized regulation help ensure that all students receive an equitable education? The reauthorized regulation addresses some of the programs for the recruiting and training of educators in critical curricular areas and as such should continue to ensure all students receive an equitable education.

3. Will the reauthorized regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation addresses some of the programs for the recruiting and training of educators in critical curricular areas and as such does not specifically address students' health and safety.

4. Will the reauthorized regulation help to ensure that all students' legal rights are respected? The reauthorized regulation addresses some of the programs for the recruiting and training of educators in critical curricular areas and as such does not specifically address students' legal rights.

5. Will the reauthorized regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The reauthorized regulation will preserve the necessary authority and flexibility of decision making at the local boards and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.

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

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

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

**240 Recruiting and Training of Professional Educators for Critical Curricular Areas**

The programs shall be administered in accordance with 14 **Del.C.** Ch. 11, and the following rules and regulations pursuant to the appropriation of funds in the annual Budget Bill.

**1.0 Designation of Critical Curricular Areas**

Annually, on a date not later than the July meeting of the State Board of Education, the Secretary of Education shall present a recommendation to the State Board on the Critical Curricular Areas to be

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addressed during that fiscal year. This recommendation will be based upon supply and demand information obtained from local school districts and from state and national sources.

**2.0 Allocation of Funds**

Annually, on a date not later than the July meeting of the State Board of Education, the Secretary of Education shall present a recommendation to the State Board of Education on the preliminary allocation of funds among the five programs authorized by Chapter 11. Final allocations will be based upon the total appropriation for that fiscal year and the number of eligible applicants for the five programs.

**3.0 Applications**

All applicants for funds under any of the five programs shall be required to complete an application on a form prescribed by the Department of Education and shall be required to provide whatever information and documents the Department determines are necessary for the effective and efficient management of the programs.

**4.0 Academic Year Institute**

The Academic Year Institute is an ongoing program specifically designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. This is a part time program which shall be offered during the regular school year. Participants will register for a maximum of three semester hours of graduate or undergraduate college courses per semester. The Institute will be sponsored by the Department of Education and will be located at the University of Delaware and/or Delaware State University.

**4.1 Eligibility**

- 4.1.1 The candidate shall be employed as a teacher in the public schools of Delaware or in another State agency offering secondary education programs.
- 4.1.2 The candidate shall submit a completed application and other documentation and information by the specified closing date for application.
- 4.1.3 The candidate shall express an intent to enroll in a course or courses which will lead to certification in one or more of the critical curricular areas.

**4.2 Financial Aid**

- 4.2.1 Academic Year Institute participants shall receive full support for tuition, textbooks, laboratory fees and mileage for approved courses.
- 4.2.2 Depending upon the institution and the course or courses in which the participant is enrolled, the Department of Education shall either make direct payment to the institution for tuition and laboratory fees or will reimburse the participant for costs upon receipt of proper documentation of the participant's expenses.
- 4.2.3 The Department of Education shall reimburse the participant for expenditures for textbooks and mileage upon receipt of a completed personal reimbursement form.

**4.3 Selection Procedures**

- 4.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.
- 4.3.2 An application review panel, composed of Department of Education staff members, shall meet twice each year after the close of the application period for each semester to review applications and select participants.

**5.0 Summer Inservice Program (Summer Institute)**

The Summer Institute Program is a summer program specifically designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. The program will be offered during a six week period in the summer beginning not later than the last week in June. Participants shall register for a minimum of six semester hours of graduate and

undergraduate credit in a specifically designed program focused on building skills and knowledge in the critical curricular areas. The Summer Institute, modeled after the National Science Foundation format, shall be sponsored by the Department of Education and will be located at the University of Delaware and/or Delaware State University.

5.1 Eligibility

- 5.1.1 The candidate shall be employed as a teacher in the public schools of Delaware or in another State agency offering secondary education programs.
- 5.1.2 The candidate shall not be currently certifiable in the critical curricular area being addressed by the Summer Institute for which application is made.
- 5.1.3 The candidate shall submit a completed application and other required information and documentation by the closing date for application.
- 5.1.4 The candidate shall express an interest and intent to pursue certification in one or more of the critical curricular areas for which he or she is not currently certifiable.
- 5.1.5 The candidate shall submit a letter of recommendation from the Superintendent or an appropriate supervisor of the candidate's school district or agency.

5.2 Financial Aid

- 5.2.1 Summer Institute participants shall receive full support for tuition, textbooks, and laboratory fees. Depending on the institution and the program in which the participant is enrolled, the Department of Education shall either make direct payment to the institution for these costs or shall reimburse the participant upon receipt of proper documentation of the participant's expenses.
- 5.2.2 The participants shall also receive a stipend as determined by the Department of Education. This stipend shall be paid by the Department of Education to the participant upon receipt of notification from the institution that the participant successfully completed all courses taken with a minimum grade of "C".

5.3 Selection Procedures

- 5.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.
- 5.3.2 An application review panel, composed of Department of Education staff members, shall meet annually after the close of the application period to review applications and select participants.

**6.0 Program For Persons From Other Professions Who Will Prepare To Teach**

This program is designed to provide financial assistance to persons from other professions who possess the training and skills to teach in the critical curricular areas of teacher shortage as determined by the Department of Education but who lack the professional education courses required to qualify for a standard certificate. Participants shall be permitted to enroll in the institution of higher education of their choice and shall be reimbursed for the tuition costs, within limits specified below, for up to six semester hours of credit per semester.

6.1 Eligibility

- 6.1.1 The candidate shall be a resident of the State of Delaware.
- 6.1.2 The candidate shall have a graduate or undergraduate degree from an accredited institution of higher education in a field related to one or more of the critical curriculum areas.
- 6.1.3 The candidate shall first submit official transcripts to the Department of Education for evaluation.
- 6.1.4 Candidates who lack no more than six semester credits of coursework from meeting the content area requirements in one or more of the critical curriculum areas shall be invited to apply for participation in the program.
- 6.1.5 The candidate shall submit a completed application form and must express an interest and intent to pursue certification.
- 6.1.6 The candidate shall submit a plan outlining educational plans, including a timeline, to complete the professional education courses needed to obtain certification.

6.2 Financial Aid

- 6.2.1 The participant shall receive financial support for tuition costs for up to six semester hours of credit per semester.
  - 6.2.2 The participant may receive assistance for a maximum of thirty semester credits of professional education courses but must update his or her application and receive approval in advance each semester.
  - 6.2.3 The participant shall be reimbursed for tuition costs in an amount not greater than the tuition charged a Delaware resident by the University of Delaware for a course or courses of equal credit value.
  - 6.2.4 The Department of Education shall reimburse the participant upon receipt of proper documentation of the participant's expenses and upon receipt of notification from the institution that the participant successfully completed the courses for which reimbursement is requested with a minimum grade of "C".
- 6.3 Selection Procedures
- 6.3.1 An application review panel, composed of Department of Education staff members shall meet on an as needed basis to review applications and select participants.
  - 6.3.2 Participants shall be selected from eligible applicants on a first come basis, except that applicants approved for one semester will be given preference in future semesters until they complete their educational requirements, use their total eligibility, or are unsuccessful in achieving the minimum grade of "C" in approved courses.
  - 6.3.3 Participants shall be limited and the approval process will be terminated when authorized funds for this program in any fiscal year have been allocated.

## 7.0 Teacher Scholarship Loan Programs

The Teacher Scholarship Loan Program is designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. This is a full time program offered during the regular school year. As a minimum, participants shall register for the number of semester hours required of a full time student.

### 7.1 Eligibility

- 7.1.1 The candidate shall have taught in a Delaware public school for at least one year prior to the year in which the scholarship is to be used.
- 7.1.2 The candidate shall be employed as a teacher in a Delaware public school and/or must be a resident of the State of Delaware at the time of application.
- 7.1.3 The candidate shall express an interest and intent to pursue certification in one or more of the critical curricular areas identified by the Department of Education.
- 7.1.4 The candidate shall hold a standard Delaware teaching certificate but must not be currently certifiable in the critical curricular area specified in 7.1.3 above.
- 7.1.5 The candidate shall submit a completed application and other documentation and information by the specified closing date for application.
- 7.1.6 The candidate shall, if currently employed, have prior approval from his or her employing local district board of education.
- 7.1.7 The candidate shall be accepted into an approved program in an institution of higher education leading to certification in the critical curriculum area specified in 7.1.3 above.

### 7.2 Financial Aid

- 7.2.1 Teacher Scholarship Loan Program participant shall receive a scholarship in an amount equal to the salary he or she would receive for service as a teacher, as specified in 14 **Del.C.** c. 13.
- 7.2.2 A participant, who was employed by a Delaware public school district in the year prior to receipt of the scholarship and who is on leave of absence during the year of the scholarship, shall continue to receive all State supported employee benefits through a grant from the Department of Education to the employing district. (Such participants shall be considered to be on sabbatical

leave and for purposes of salary increments and pension eligibility and computation, a year of leave shall be considered a year of experience as provided in 14 **Del.C.** §1325(9).

7.2.3 A participant may receive a local salary supplement and local employee benefits if the employing district elects to provide them at the expense of the employing district.

7.2.4 A district shall also be eligible to receive an interest free loan, in an amount to be determined by the Department of Education, which the participant may use to defray the cost of tuition and books. The actual amount of the loan will be dependent upon estimated costs of these two items and other financial resources available to the participant.

7.2.5 Participants receiving a loan shall execute a promissory note, in the amount of the loan, to the State Treasurer. This note will be forgiven at the rate of one third of the loan for each of three years of teaching in a Delaware public school after completion of the study authorized. In any year the teacher fails to meet the teaching obligation, the loan shall be due and payable for the unpaid balance plus interest specified in the note.

### 7.3 Selection Procedures

7.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.

7.3.2 The applicant review panel, composed of Department of Education staff members, shall meet once each year at the close of the application period to review applications.

## 8.0 Student Loan Program

The Student Loan Program is for Delaware residents who are accepted into an institution of higher learning to be trained as a teacher in the critical area of teacher shortage as determined by the Department of Education. A student selected for the program may attend any accredited college or university in the United States where the appropriate training will result in certification as a teacher for a critical area of teacher shortage as determined by the Department of Education.

### 8.1 Eligibility

8.1.1 The candidate shall have been a Delaware resident for a period of one year at the time of application.

8.1.2 The candidate shall have Scholastic Aptitude Test (SAT) scores of 500 verbal and 500 quantitative. Candidates already in a college or university program must be maintaining a "C" average or better in courses in the critical curriculum areas.

8.1.3 The candidate shall have been admitted to an accredited college or university program directed toward certification in a critical curricular area as determined by the Department of Education.

8.1.4 The candidate shall submit a completed application and other documentation and information by the specified date for application.

### 8.2 Financial Aid

8.2.1 Student Loan Program participants shall receive a loan, the amount to be determined by the Department of Education, for one year's study, less scholarship aid available from other sources.

8.2.2 The loan may be renewed from year to year through a four year training program.

8.2.3 Participants in the Student Loan Program shall execute a promissory note, in the amount of the loan, to the State Treasurer. The entire note will be forgiven on the basis of two years of teaching in a Delaware public school in a critical curriculum area for each year of loan granted.

8.2.4 Each year of the loan will be interest free to those who meet the two year teaching obligation for each year of loan granted.

8.2.5 In the event that the participant does not graduate, does not continue to study in the critical curriculum area, or does not meet the teaching obligation, the entire loan, with interest specified by the State Treasurer, shall be due and payable. Payment of the note and interest shall be in accordance with the time schedule specified in the note.

8.2.5.1 Pursuant to 14 **Del.C.** §1108(b) an exception may be made to 8.2.5 of this regulation in that the loan may be forgiven by the Secretary of Education if it is determined that the

recipient is unable to meet his or her payment obligation because of total and permanent disability or death. For purposes of this regulation, total and permanent disability shall mean the loan recipient is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. In order to qualify for this exception the loan recipient must provide documentation that has been completed, signed and certified by a licensed doctor of medicine or doctor of osteopathy with the following information:

"I certify, in my best professional judgment, the loan recipient \_\_\_\_\_ is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. I understand that any recipient able currently or in the future to work and earn money, even on a limited basis, is not considered to have a Total or Permanent Disability.

I am a (check one) \_\_\_ doctor of medicine \_\_\_ doctor of osteopathy legally authorized to practice in the state of \_\_\_\_\_ and my professional license number issued by that state is \_\_\_\_\_.

\_\_\_\_\_  
Physician's signature

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City,

\_\_\_\_\_  
State,

\_\_\_\_\_  
Zip

(\_\_\_\_) \_\_\_\_\_"  
Telephone

In the case of death, a surviving family member must provide a certified copy of the death certificate.

### 8.3 Selection Procedures

- 8.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.
- 8.3.2 The applicant review panel, composed of Department of Education staff members, shall meet twice each year at the close of the application period for each semester to review applications.

**3 DE Reg. 100 (7/1/99)**

**7 DE Reg. 994 (2/1/04)**

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## Professional Standards Board

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1580

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

### 1580 School Library Media Specialist

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1580 School Library Media Specialist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is appropriate to amend this regulation as it has been 5 years since the last review of this regulation and some clarification was warranted. This regulation sets forth the requirements for a School Library Media Specialist.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday February 4, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

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

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

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

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

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

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

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

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

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

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

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## 1580 School Library Media Specialist

### 4.0 Content

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

### 2.0 Definitions

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

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

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

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

### 3.0 Standard Certificate

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

- ~~3.1 Bachelor's degree in any content area from a regionally accredited college or university; and,~~
- ~~3.2 Completion of a Master's degree from a regionally accredited college or university in an American Library Association (ALA) approved program in School Library Media; or,~~
- ~~3.3 Master's degree from a regionally accredited college or university in any other content area, including a general Media Library Specialist (MLS) degree, and completion of a program in School Library Media approved by the Department pursuant to 14 DE Admin. Code 290 which meets ALA Standards.~~

~~7 DE Reg. 632 (11/1/03)~~

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

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for School Library Media Specialist. This certification is required for grades K to 12.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### 2.0 Definitions

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

### 3.0 Standard Certificate

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

**4.0 Additional Requirements**

An educator shall also meet the following:

4.1 Has satisfied at least one of the following additional requirements:

4.1.1 Holds a Masters or Doctoral degree from a regionally accredited college or university in an American Library Association approved program in School Library Media; or

4.1.2 Holds a Masters or Doctoral degree from a regionally accredited college or university in any area; and

4.1.2.1 Has completed a Department approved School Library Media program which meets American Library Association Standards.

**7 DE Reg. 632 (11/1/03)**

**Renumbered effective 6/1/07 - see Conversion Table**

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**Professional Standards Board**

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

14 DE Admin. Code 1597

**Educational Impact Analysis Pursuant To 14 Del.C. Section 122(D)****1597 Delaware Professional Teaching Standards****A. Type of Regulatory Action Requested**

Reauthorization of Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards. It was fitting to review this regulation as it has been 5 years since the initial draft and inception of this regulation. Upon review it was felt that the standing regulation language is still appropriate and relevant. This regulation sets forth the criteria for Delaware Professional Teaching Standards.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday February 4, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

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

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

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

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

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

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

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

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

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

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

### **1597 Delaware Professional Teaching Standards**

#### **1.0 Content**

The Delaware Professional Teaching Standards establish a common set of knowledge, skills, and attributes expected of Delaware's teachers. In accordance with 14 **Del.C.** §1205, this regulation shall be applied to all teachers employed within the public schools and charter schools of the State of Delaware.

#### **7 DE Reg. 75 (7/1/03)**

#### **2.0 Definitions**

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

**"Alignment of Assessment"** means the ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and tasks are aligned with, or in agreement with, the curriculum. Assessments should be aligned with the content of the curriculum, consistent with the instructional approaches, and address the range of topics as weighted in the curriculum.

**"Authentic Experiences"** means the use of performances, or "authentic activities", such as writing a letter, solving a real world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.

**"Culturally or Linguistically Diverse"** means students and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

**"Codes of Conduct"** mean codes of conduct adopted by professional educational organizations that establish the ethical parameters that guide professional behavior. The codes range from general guides for teachers (NEA) to more specific guidelines for teachers of certain subject area.

**"Communication Theory"** means an understanding of the principles of communication theory (e.g., productive and receptive communication, cultural context of language, metacommunication) as they apply in practice in the classroom.

**"Community"** means the school community and includes teachers, administrators, students, parents, guardians and Relative Caregivers. However, the schools are a part of a larger community (i.e., neighborhood, town, city) that supports the school and the students will live.

**"Disciplines"** means academic disciplines which include the arts, humanities, languages, mathematics, and natural and social sciences that provide the basis of the subjects taught in schools.

**"Discourse"** means to both the writing and speaking in the classroom that teachers and students engage in as they seek ways to represent ideas, concepts and their thinking. It is the ways in which they discuss agree and disagree, and explore the discipline.

**"Diverse Learners"** means students are individuals who differ in the ways in which they learn. They have different learning styles, modalities, interests, talents and personalities, all of which affect the ways in which teachers design instruction.

**"Domains"** means the broad areas of human development, intellectual, social, emotional, and physical, that influence learning.

**"Educational Technology"** means the use of any technology (e.g., word processing, data retrieval, electronic mail) as a set of skills that can be learned and used to support learning in the classroom.

**"Habits of Mind"** mean mental habits influence what students do and how they learn. The development of habits of mind, like perseverance, confidence, a willingness to explore new ideas and experiment, seeking feedback from others, valuing accuracy and precision, avoiding impulsivity, are a part of the teaching and learning process.

**"Health"** means health issues that can affect learning range from cerebral palsy, Downs Syndrome, and other severe disabilities to less pronounced and not easily detected concerns such as diabetes or asthma or nutrition. An awareness of these conditions and how they affect learning furthers a teacher's ability to meet the needs of students.

**"Instructional Technology"** means the use of specific technologies that are integrated with content to enhance learning within the disciplines (e.g., graphing calculators in mathematics, accounting or tax software in business, editing software for writing).

**"Learning Theory"** means an understanding of the principles of learning theory (e.g., behaviorism, constructivism, transmission of knowledge) as they apply in practice in the classroom.

**"Meaningful (to students)"** means to convey a sense of purpose to students for their learning. The content takes on significance because of the connections that are made between the learning and students' lives. It helps students make sense out of what they are learning.

**"Measurement Theory"** means an understanding of the principles of measurement theory (e.g., validity, reliability, bias in testing, test construction, interpretation of tests) as they apply in practice in the classroom.

**"Media Communication"** means the use of technologies that document events (e.g., audiotape, videotape, electronic transfer of information through computer programs) as a means of communicating information.

**"Methods (Process) of Inquiry"** means the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

**"Multicultural"** means diverse cultural backgrounds of students and their families and school personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

**"Multiple Assessments"** means decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence. Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations, performances) and address the full range of content.

**"Multiple Intelligences"** means based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical, mathematical, spatial, musical, bodily kinesthetic, inter personal, intra personal) that describe distinct aspects of "intelligent."

**"Nonverbal Communication"** means communication through means other than the use of words (e.g., facial expressions, body position, action).

**"Pedagogical Knowledge"** means the knowledge of how to teach the knowledge of instructional methods.

**"Performance"** means carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.

**"Performance Modes"** means the range of ways in which students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).

**"Professional Growth"** means the process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.

**"Structures"** means the structures of disciplines which provide the overall framework which both connects and transcends the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalties and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.

**"Technology"** means the use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.

**"Theory"** means the knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.

### **7 DE Reg. 75 (7/1/03)**

## **3.0 Content Knowledge**

The teacher understands the core concepts and structure(s) of the discipline(s) and their related content standards and creates learning experiences that make the content meaningful to students.

### **3.1 Knowledge Components**

- 3.1.1 Understands major concepts, principles, and theories that are central to the discipline
- 3.1.2 Understands the dynamic and complex nature of the content of the discipline
- 3.1.3 Understands the processes of inquiry central to the discipline
- 3.1.4 Understands the relationship of knowledge within the discipline to other content areas and to life applications

### **3.2 Performance Indicators**

- 3.2.1 Uses a variety of explanations and multiple representations of concepts to help develop conceptual understanding
- 3.2.2 Anticipates and adjusts for common misunderstandings that impede learning within the discipline
- 3.2.3 Engages students in generating and testing knowledge according to the processes of inquiry of the discipline
- 3.2.4 Creates learning experiences that make connections to other content areas and to life experiences

### **7 DE Reg. 75 (7/1/03)**

**4.0 Human Development and Learning**

The teacher understands how children develop and learn and provides learning opportunities that support the intellectual, social, emotional and physical development of each learner.

**4.1 Knowledge Components**

- 4.1.1 Understands learning theory, including how students construct knowledge, acquire skills, and develop habits of mind
- 4.1.2 Understands human development, including the ranges of individual variation within each domain
- 4.1.3 Understands the interaction between student development and learning

**4.2 Performance Indicators**

- 4.2.1 Chooses developmentally appropriate instructional strategies that promote student learning
- 4.2.2 Develops concepts and principles at different levels of complexity so that they are meaningful to students at varying levels of development

**7 DE Reg. 75 (7/1/03)****5.0 Diverse Learners**

The teacher understands how students differ and adapts instruction for diverse learners.

**5.1 Knowledge Components**

- 5.1.1 Understands how student learning is influenced by individual experiences, talents, and prior learning, as well as language, culture, gender, health, family, and community
- 5.1.2 Understands differences in approaches to learning and performance, including learning styles, multiple intelligences, and performance modes
- 5.1.3 Understands cultural diversity and how to incorporate multicultural experiences into instruction
- 5.1.4 Understands areas of exceptionality in learning, including talented and gifted and special needs, and how to access strategies to accommodate individual differences
- 5.1.5 Understands the process of second language acquisition and how to access strategies to support learning for students whose first language is not English
- 5.1.6 Understands the needs of culturally or linguistically diverse students
- 5.1.7 Understands when and how to access appropriate resources or services to meet special learning needs
- 5.1.8 Understands the major principles and parameters of federal and state disability legislation and regulation.

**5.2 Performance Indicators**

- 5.2.1 Accepts and values all students
- 5.2.2 Treats all students equitably
- 5.2.3 Respects students as individuals with differing experiences, skills, talents, and interests
- 5.2.4 Uses cultural diversity and individual student experiences to enrich instruction
- 5.2.5 Designs instructional activities that address the range of student learning styles, multiple intelligences and performance modes
- 5.2.6 Makes appropriate provisions for individual students who have particular learning differences or needs

**7 DE Reg. 75 (7/1/03)****6.0 Communication**

The teacher understands and uses effective communication.

**6.1 Knowledge Components**

- 6.1.1 Understands the general types of communication strategies and appropriate assistive technology that can be incorporated as a regular part of their instruction.
- 6.1.2 Understands effective oral, written, nonverbal, and media communication techniques

- 6.1.3 Understands the importance of audience and purpose when selecting ways to communicate ideas
- 6.1.4 Understands potential positive and negative effects of their verbal and non verbal messages on students with cultural, gender and ability differences.

## 6.2 Performance Indicators

- 6.2.1 Uses a variety of communication techniques
- 6.2.2 Communicates effectively with diverse populations
- 6.2.3 Models accurate and grammatically correct language
- 6.2.4 Creates opportunities for students to learn effective communication

### **7 DE Reg. 75 (7/1/03)**

## **7.0 Learning Environment**

The teacher understands individual and group behavior and creates a learning environment that fosters active engagement, self motivation, and positive social interaction.

### 7.1 Knowledge Components

- 7.1.1 Understands principles of effective classroom management
- 7.1.2 understands factors that influence motivation and engagement and how to help students become self motivated
- 7.1.3 Understands individual behavior and how individuals behave in groups
- 7.1.4 Understands group dynamics and how groups function within a community
- 7.1.5 Understands how to help students learn to participate effectively in groups

### 7.2 Performance Indicators

- 7.2.1 Establishes and maintains a classroom environment with clear expectations and standards of behavior
- 7.2.2 Organizes, allocates, and manages time, materials, and physical space to support learning
- 7.2.3 Establishes classroom practices that promote a safe environment
- 7.2.4 Creates a learning community which respects individual differences
- 7.2.5 Establishes a classroom environment which promotes positive relationships, cooperation, and purposeful learning
- 7.2.6 Creates a classroom environment where student thoughts and ideas are a basis for exploring and developing understanding
- 7.2.7 Creates a learning community in which students work independently and collaboratively
- 7.2.8 Encourages students to assume responsibility for their own learning and behavior

### **7 DE Reg. 75 (7/1/03)**

## **8.0 Planning for Instruction**

The teacher understands instructional planning and designs instruction based upon knowledge of the disciplines, students, the community, and Delaware's student content standards.

### 8.1 Knowledge Components

- 8.1.1 Understands how to incorporate learning theory, content, curriculum development, and assessment, and student development when planning
- 8.1.2 Understands that effective instructional planning includes the alignment of assessment and instruction prior to implementation
- 8.1.3 Understands how to develop short and long range plans consistent with curriculum goals, learner diversity, and learning theory
- 8.1.4 Understands how to make connections between student experiences and education goals
- 8.1.5 Understands how to maximize the participation and engagement of students with disabilities in a general or expanded curriculum.

### 8.2 Performance Indicators

- 8.2.1 Evaluates teaching resources and materials for accuracy and usefulness
- 8.2.2 Applies principles of scope and sequence when planning instruction
- 8.2.3 Creates approaches to learning that are interdisciplinary and that integrate multiple content areas
- 8.2.4 Creates and selects learning materials and learning experiences appropriate for the discipline and curriculum goals
- 8.2.5 Uses student prior knowledge and principles of effective instruction to plan learning activities relevant to students
- 8.2.6 Incorporates authentic experiences into instructional planning
- 8.2.7 Creates multiple learning activities that allow for student choice
- 8.2.8 Establishes and communicates expectations for student learning
- 8.2.9 Creates and adapts short and long range plans to achieve the expectations for student learning
- 8.2.10 Incorporates assessment components into instructional planning

**7 DE Reg. 75 (7/1/03)****9.0 Instructional Strategies**

The teacher understands a variety of instructional approaches and uses them to promote student thinking, understanding, and application of knowledge.

**9.1 Knowledge Components**

- 9.1.1 Understands principles and techniques of a broad range of instructional approaches, including questioning, problem solving, discourse, activation of prior knowledge, and student reflection on learning
- 9.1.2 Understands the relationship between instructional approaches, assessment, and the types of learning promoted
- 9.1.3 Understands how instructional materials and educational technologies enhance learning

**9.2 Performance Indicators**

- 9.2.1 Uses a range of instructional approaches that allows students to explore concepts and develop an in depth understanding of content
- 9.2.2 Designs lessons that routinely engage students in activities that develop problem solving and critical thinking skills
- 9.2.3 Designs instructional activities that provide opportunities for students to apply knowledge
- 9.2.4 Uses a variety of materials and educational technologies to enhance student thinking and further conceptual understanding
- 9.2.5 Assumes different roles in the instructional process based on the content and purposes of instruction
- 9.2.6 Uses a range of questioning techniques to promote different levels of understanding
- 9.2.7 Emphasizes communication as a vehicle for learning, through the use of discussion, listening, collaboration, and responding to the ideas of others
- 9.2.8 Links new concepts to student prior knowledge
- 9.2.9 Promotes student awareness of their own thought processes and how to use reflection to build new understandings
- 9.2.10 Incorporates assessment components into instructional delivery

**7 DE Reg. 75 (7/1/03)****10.0 Assessment**

The teacher understands multiple assessment strategies and uses them for the continuous development of students.

**10.1 Knowledge Components**

- 10.1.1 Understands measurement theory, including principles of testing and assessment (e.g., design, validity, reliability, and bias)
- 10.1.2 Understands assessment as a means of collecting information about student progress
- 10.1.3 Understands the purposes and characteristics of different kinds of assessments
- 10.1.4 Understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning
- 10.1.5 Understands how to use the results of assessment to reflect on and modify teaching

## 10.2 Performance Indicators

- 10.2.1 Uses assessment to diagnose student learning needs as a basis for designing instruction
- 10.2.2 Uses a variety of assessment modes and multiple measures to evaluate student learning
- 10.2.3 Uses both formal and informal assessment strategies to monitor and evaluate student understanding, progress, and performance
- 10.2.4 Aligns assessment with instruction
- 10.2.5 Maintains accurate records and communicates student progress
- 10.2.6 Involves students in self assessment to help them become aware of their strengths and needs
- 10.2.7 Encourages students to establish personal goals for learning based on self-assessment and assessment results
- 10.2.8 Modifies instruction based on assessment results

**7 DE Reg. 75 (7/1/03)**

## 11.0 Professional Growth

The teacher understands the importance of continuous learning and pursues opportunities to improve teaching.

### 11.1 Knowledge Components

- 11.1.1 Understands that reflection on teaching is an integral part of professional growth
- 11.1.2 Understands the implications of educational research for teaching
- 11.1.3 Understands methods of inquiry that provide for a variety of self assessment and problem solving strategies for reflecting on practice

### 11.2 Performance Indicators

- 11.2.1 Engages in continuous learning
- 11.2.2 Participates in professional discourse about educational issues
- 11.2.3 Uses classroom observation, information about students, pedagogical knowledge, and research as sources for active reflection, evaluation, and revision of practice
- 11.2.4 Collaborates with other professionals as resources for problem solving, generating new ideas, sharing experiences, and seeking and giving feedback

**7 DE Reg. 75 (7/1/03)**

## 12.0 Professional Relationships

The teacher understands the role of the school in the community and collaborates with colleagues, parents, guardians or Relative Caregivers, and other members of the community to support student learning and well being.

### 12.1 Knowledge Components

- 12.1.1 Understands how schools are organized and operate
- 12.1.2 Understands schools as organizations within the larger community context
- 12.1.3 Understands the importance of community school interaction
- 12.1.4 Understands the importance of collaboration in education

### 12.2 Performance Indicators

- 12.2.1 Cooperates with colleagues to develop an effective learning climate within the school

- 12.2.2 Collaborates with other professionals to solve problems and make decisions to promote student success
- 12.2.3 Develops relationships with parents, guardians and Relative Caregivers to acquire an understanding of the students' lives outside of the school
- 12.2.4 Works effectively with parents, guardians, Relative Caregivers and other members of the community to advocate for student need and to promote learning
- 12.2.5 Identifies and uses community resources to enhance student learning and to provide opportunities for students to explore career opportunities

**13.0 Educational Technology**

The teacher understands the role of educational technology in learning and uses educational technology as an instructional and management tool.

**13.1 Knowledge Components**

- 13.1.1 Understands how to use various educational technological tools to access and manage information
- 13.1.2 Understands how to integrate educational technology into classroom instruction
- 13.1.3 Understands how to review and evaluate educational technologies to determine instructional value
- 13.1.4 Understands the uses of instructional technology to address student needs

**13.2 Performance Indicators**

- 13.2.1 Designs instruction to promote student skills in the use of educational technologies to access and manage information
- 13.2.2 Uses a wide range of instructional technologies to enhance student learning and problem solving
- 13.2.3 Uses technological advances in communication to enrich discourse in the classroom
- 13.2.4 Uses appropriate educational technology to create and maintain data bases for monitoring student progress

**14.0 Professional Conduct**

The teacher understands and maintains standards of professional conduct guided by legal and ethical principles.

**14.1 Knowledge Components**

- 14.1.1 Understands school policies and procedures
- 14.1.2 Understands legal issues in education
- 14.1.3 Understands the codes of conduct of professional education organizations

**14.2 Performance Indicators**

- 14.2.1 Acts in the best interests of students
- 14.2.2 Follows school policies and procedures, respecting the boundaries of professional responsibilities, when working with students, colleagues, and families
- 14.2.3 Follows local, state, and federal law pertaining to educational and instructional issues, including regulations related to student rights and teacher responsibilities
- 14.2.4 Interacts with students, colleagues, parents, and others in a professional manner
- 14.2.5 Follows codes of professional conduct adopted by the Delaware Professional Standards Board.

**7 DE Reg. 75 (7/1/03)**

**Renumbered effective 6/1/07 - see Conversion Table**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 1008A (16 Del.C. §1008A)  
16 DE Admin. Code 4202

### PUBLIC NOTICE

#### 4202 Control of Communicable and Other Disease Conditions

The Department of Health and Social Services is proposing regulations which establish the regulation of Hospital Acquired Infections. 76 Del. Laws, c. 122, §1. creates the Hospital Infections Disclosure Act requiring hospitals and correctional facilities to report quarterly data on hospital-acquired infection rates. The law requires that the Department pass regulations to enforce compliance according to the provisions of Chapter 10, Title 16 of Delaware Code relating to Reporting and Disclosure of Infections.

The Health Promotion and Disease Prevention Section, Bureau of Epidemiology under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Regulations for Hospital Acquired Infections. The regulations for Hospital Acquired Infections will address National Health Safety Network participation, the clinical procedures that will be included, the requirements of the required "hospital background", the "summary information requirements", physician reporting requirements and timelines. Additionally, Appendix I State of Delaware – List of Notifiable Diseases/Conditions will be amended.

The public hearing will be held on January 29, 2009 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the January 1, 2009, edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Bureau of Epidemiology at (302) 744-4541.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by January 21, 2009. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 30, 2009 to:

Deborah Harvey, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Fax (302) 739-6659

#### 4202 Control of Communicable and Other Disease Conditions

*(Break in Continuity of Sections)*

### 7.0 Control of Specific Contagious Diseases

*(Break in Continuity of Sections)*

#### 7.6 Hospital Acquired Infections

By January 1, 2008, hospital acquired infections shall be reported to the Centers for Disease Control and Prevention (CDC) through the National Healthcare Safety Network (NHSN) in accordance with the NHSN and the Department of Health and Social Service requirements and procedures as cited in 16 Del.C. Ch. 10A.

##### 7.6.1 Definitions

# PROPOSED REGULATIONS

For the purpose of this section, the following definitions shall apply.

**“Centers for Disease Control and Prevention (CDC)”** An agency of the United States Department of Health and Human Services who works to protect public health and safety by providing information to enhance health decisions, and promoting health through partnerships with state health departments and other organizations. The CDC focuses national attention on developing and applying disease prevention and control (especially infectious diseases), environmental health, occupational safety and health, health promotion, prevention and education activities designed to improve the health of the people of the United States.

**“Correctional Facility”** Any health care facility operated at any Department of Correction facility in this State.

**“Department”** The Department of Health and Social Services

**“Hospital Acquired Infection (HAI)”** A localized or systemic condition that results from adverse reaction to the presence of an infectious agent(s) or its toxin(s); and that was not present or incubating at the time of admission to the hospital or the correctional facility.

**“Hospital Acquired Infection Advisory Committee”** A group that is appointed by the Secretary of the Department that includes one (1) infection control professional who has responsibility for infection control programs from each hospital or health care system in Delaware, four (4) infectious disease physicians with expertise in infection control, and one (1) representative from the State Division of Public Health, and the Public Health Hospital Infections Specialist responsible for collating and reporting data. The Secretary shall also appoint seven (7) other members of the Committee including representatives from direct care nursing staff, academic researchers, consumer organizations, health insurers, health maintenance organizations, organized labor and purchasers of health insurance, such as employers.

**“Infection Control Practitioner (ICP)”** A registered nurse, physician, epidemiologist, or medical technologist who helps to prevent healthcare-acquired infections by isolating sources of infections and limiting their spread. The ICP systematically collects, analyzes and interprets health data in order to plan, implement, evaluate and disseminate appropriate public health practices. The ICP also trains healthcare staff through instruction and dissemination of information on infection control practices.

**“National Healthcare Safety Network (NHSN)”** An internet-based surveillance system that is voluntary and confidential. It is managed by the Division of Healthcare Quality Promotion at the CDC and used for the monitoring events associated with health care. It provides risk adjusted data to the participating facilities to analyze in order to recognize trends. Its initial focus is on infections in patients and healthcare personnel. There are plans to expand NHSN to include noninfectious events (such as process measures).

**“Public Report”** the report provided to the hospitals, correctional facilities and the public by the Department as set forth in § 1003A(b) of this title. (76 Del. Laws, c. 122, §1).

**“Secretary”** The Secretary of the Department of Health and Social Services

## 7.6.2 Membership in NHSN

7.6.2.1 All hospitals in the State shall join the CDC’s NHSN. If the NHSN is not open for enrollment to all hospitals by this date, all hospitals shall join the NHSN within 180 days after the CDC permits such enrollment.

7.6.2.2 Hospitals shall confer rights to the Department to have access to hospital-specific data contained in the NHSN database consistent with the requirements of this chapter. (76 Del. Laws, c. 122, §1).

7.6.2.3 Hospital staff assigned to fulfill the obligations of reporting under these regulations shall be trained and shall follow the methods and procedures required by the NHSN as a condition of participation.

## 7.6.3 Persons and Institutions Required to Report

- 7.6.3.1 Physicians, who perform a clinical procedure, shall report to the ICP of the hospital where the clinical procedure was performed any hospital-acquired infection that the physician diagnosed at a follow-up appointment with the patient.
- 7.6.3.2 The hospital's reporting officer or his or her designee shall submit quarterly data on his or her hospital acquired infection rates to the Department through the NHSN, using the accepted CDC's NHSN definitions.
- 7.6.3.3 Correctional facilities shall collect data on hospital acquired infections and infections in the correctional health care facilities as determined by the Hospital Acquired Infection Advisory Committee and promulgated by the Department. They shall report this data to the Department on a monthly basis.
- 7.6.3.4 If the hospital is a division or subsidiary of another entity that owns or operates other hospitals or related organizations, the quarterly report shall be for the specific division of subsidiary and not for the other entity.

#### 7.6.4 Reporting of Data

- 7.6.4.1 Hospitals shall collect data on hospital acquired infection rates related to central line-related bloodstream infections (CLBSI) in an intensive care unit (ICU) on a monthly basis.
- 7.6.4.2 Other hospital-acquired infection rates shall be updated by the order of the Department per determination by the Hospital Acquired Infection Advisory Committee.
- 7.6.4.3 Hospitals shall report hospital acquired infections pursuant to 7.6.4.1 and 7.6.4.2 to the NHSN. In making such reports, hospitals shall abide by the reporting procedures required for NHSN participation, including the frequency of reports, the information to be reported, and other standards required by the NHSN.

#### 7.6.5 Quarterly Reports

- 7.6.5.1 In addition to reports of data required by 7.6.4, hospitals, including the Department of Correction, shall report the following information to be included in the quarterly report issued by the Department. This background information shall be included in the Public Report.
  - 7.6.5.1.1 For each hospital, adult and pediatric populations of each hospital, whether the hospital provides tertiary care, bed size, and specialty divisions of each hospital and whether a hospital is a teaching or a non-teaching institution shall be provided to the Department.
  - 7.6.5.1.2 All physicians who perform clinical procedures and the hospital at which the clinical procedures were performed when a hospital-acquired infection was diagnosed at a follow-up appointment with the patient shall be included in the report. The infection control department of each hospital shall only be required to report those physician-reported infections that meet the accepted NHSN definitions. This information shall be included in the hospital reports to the Department.
  - 7.6.5.1.3 For Department of Correction, the population census of each infirmary facility, the type of facility, the number of beds in correctional health facilities, and the types of medical care that are provided to the inmates shall be reported to the Department.
- 7.6.5.2 Quarterly reports shall be available to each hospital 45 days after submittal to the Department for review by the hospitals and correctional facilities. The hospitals and correctional facilities shall have 7 days to review the quarterly reports and report any changes or provide additional summary information to the Department. Following the 7-day review period, such quarterly reports shall be made available to the public at each hospital, each correctional facility, and through the Department (the "Public Report").
- 7.6.5.3 In addition to reports of data required by 7.6.4, hospitals, including the Department of Correction, shall report the following information. Each hospital and correctional facility shall provide a brief summary report to comment on performance improvement, changes in patient population, and risk factors. The information contained in this report shall be considered proprietary information and shall be utilized by the Department. Such

information shall not be included in the quarterly report issued by the Department and shall not otherwise be disclosed to the public.

- 7.6.6 No hospital report or Department disclosure may contain information identifying a patient, employee or licensed health care professional in connection with a specific infection incident. (76 Del. Laws, c. 122, §1.)

#### **APPENDIX I**

#### **State of Delaware - List of Notifiable Diseases/Conditions**

AIDS (S)  
Amoebiasis  
Anthrax (T)  
Arboviral human infections (including West Nile Virus, Eastern Equine Encephalitis, etc.)  
Babesiosis  
Botulism (T)  
Brucellosis (T)  
Campylobacteriosis  
Central line related bloodstream infections in an intensive care unit (H)  
Chancroid (S)  
Chickenpox (Varicella)  
Chlamydia (S)  
Cholera (toxigenic Vibrio cholerae 01 or 0139) (T)  
Coccidioidomycosis  
Creutzfeldt-Jakob Disease (T)  
Cryptosporidiosis  
Cyclosporiasis  
Cytomegalovirus (neonatal only)  
Dengue Fever (T)  
Diphtheria (T)  
Enterhemorrhagic E.coli including but not limited to E.coli 0157:H7 (T)  
Ehrlichiosis  
Encephalitis  
Enterococcus species, Vancomycin resistant (A)  
ESBL resistance (Extended-Spectrum B-lactamases) (A)  
Foodborne Disease Outbreak (T)  
Giardiasis  
Glanders (T)  
Gonorrhea (S)  
Granuloma inguinale (S)  
Guillain-Barre  
Hansen's Disease (Leprosy)  
Hantavirus (T)  
Haemophilus influenzae, invasive  
Hemolytic Uremic Syndrome (T)  
Hepatitis A (T)  
Hepatitis B

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Hepatitis C  
Hepatitis Other  
Herpes, congenital (S)  
Herpes, genital (S)  
Histoplasmosis  
HIV (S)  
Human Papillomavirus (S)  
Influenza  
Influenza Associated Infant Mortality (T)  
Kawasaki Syndrome  
Lead Poisoning  
Legionellosis  
Leptospirosis  
Listeriosis  
Lyme Disease  
Lymphogranuloma venereum (S)  
Malaria  
Measles (T)  
Melioidosis  
Meningitis  
Meningococcal Infections, all types (T)  
Monkey Pox (T)  
Mumps (T)  
Norovirus  
Nosocomial (Healthcare Associated) Disease Outbreak (T)  
Pelvic Inflammatory Disease (N. gonorrhoea, C. trachomatis, or unspecified) (S)  
Pertussis (T)  
Plague (T)  
Poliomyelitis (T)  
Psittacosis  
Q Fever  
Rabies (man and animal) (T)  
Reye Syndrome  
Rheumatic Fever  
Ricin Toxin (T)  
Rickettsial Disease  
Rocky Mountain Spotted Fever  
Rubella (including congenital which is rapidly reportable)  
Rubella, congenital (T)  
Salmonellosis  
Severe Acute Respiratory Syndrome (SARS) (T)  
Shigatoxin Production  
Shigellosis  
Silicosis  
Smallpox (T)  
Staphylococcal Enterotoxin (T)

Staphylococcal aureus, Methicillin Resistant (MRSA) (A)  
Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T) (A)  
Streptococcal Disease, invasive group A or B (T)  
Streptococcus pneumoniae, invasive (sensitive and resistant) (A)  
Syphilis (S)  
Tetanus (T)  
Toxic Shock Syndrome (Streptococcal or Staphylococcal)  
Toxoplasmosis  
Trichinellosis  
Tuberculosis (T)  
Tularemia (T)  
Typhoid Fever (T)  
Typhus Fever (endemic flea borne, louse borne, tick borne)  
Vaccine Adverse Reaction  
Vibrio, non-cholera  
Viral Hemorrhagic Fevers (T)  
Waterborne Disease Outbreaks (T)  
Yellow Fever (T)  
Yersiniosis  
(T) - report by rapid means (telephone, fax or other electronic means)  
(S) - sexually transmitted disease, report required within 24 hours  
(A) - Drug Resistant Organisms required to be reported within 48 hours  
(H) – Hospital Acquired Infection  
Others - report required within 48 hours  
**9 DE Reg. 1188 (2/1/06)**

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

**4202 Control of Communicable and Other Disease Conditions**

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### FOOD SUPPLEMENT PROGRAM

#### 9029 Household Cooperation

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program &

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Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2009.

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

## SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*.

### Statutory Authority

- 7 CFR §273.12(c)(3), *State agency action on changes – unclear information*;
- 7 CFR §273.16 (e)(2)(iii), *Disqualification hearing procedures*;
- 7 CFR §273.16 (f)(1)(ii)(B), *Advance notification*.

### Summary of Proposed Change

**DSSM 9029, *Household Cooperation*:** The United States Department of Agriculture/Food and Nutrition Service (USDA/FNS) published an administrative notice informing the Division of Social Services (DSS) that States cannot close client food supplement benefits due to non-cooperation with fraud investigators. FNS requested that DSS remove this language from state policy.

Management has already advised staff that they cannot close a food supplement case due to non-cooperation with Audit and Recovery Management Services (ARMS). If staff closes a food supplement case for non-cooperation with ARMS, it causes a negative error if reviewed by Quality Control. The worker must send the client a *Request for Contact* form and allow the client ten days to clarify or verify the information that is in question. The client must cooperate with the DSS worker in providing the information.

## 9029 Household Cooperation

### [7 CFR 273.2(d)]

~~To determine eligibility, the application form must be completed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate in completing this process, the application will be denied at the time of refusal.~~

~~To be denied, the household must refuse to cooperate, not merely fail to cooperate or be unable to do so. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process.~~

~~The household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to, reviews generated by reported changes, applications for recertifications, reviews of cases certified under disaster food stamp procedures and current eligibility reviews conducted by Audit and Recovery Management Services (ARMS). Benefits will not be terminated for refusal to cooperate with ARMS investigations of past eligibility.~~

~~Once denied or terminated for refusal to cooperate, the household may reapply but will not be determined eligible until it cooperates. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household should not be denied, and DSS shall provide assistance.~~

~~The household may voluntarily withdraw its application at any time prior to the determination of eligibility. Such action will be documented in the case record to include the reason for withdrawal and that contact was made with the household to confirm the withdrawal. Advise the household of its right to reapply at any time.~~

~~Do not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. Do not consider individuals identified as non-household members in DSSM 9013 as individuals outside the household.~~

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# PROPOSED REGULATIONS

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The household or its authorized representative must complete the application, have an interview, and verify certain information on the application before DSS can determine eligibility. If the household refuses to cooperate in completing this process, DSS will deny the application at the time the household refuses to cooperate.

DSS will not deny a case because a household merely failed to cooperate or was unable to cooperate. DSS must determine that the household refused to cooperate. Before DSS can make a determination of refused to cooperate, the household must:

- "be able to cooperate.
- "clearly demonstrate that it will not take actions that it can take, and
- "fail to take required actions to complete the application process.

DSS will determine the household ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to:

- "reviews generated by reported changes.
- "applications for recertification, and
- "reviews of cases certified under disaster FSP procedures.

After DSS a denial or termination for refusal to cooperate, the household may reapply and must cooperate before determined eligible. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the DSS worker will not deny the household. The worker must provide assistance.

The household may voluntarily withdraw its application at any time before the determination of eligibility. The worker will document the case record to include the reason for withdrawal. The worker will contact the household to confirm the withdrawal and document the case record. The worker will advise the household of its right to reapply at any time.

When a person, organization or agency outside of the household fails to cooperate with request for verification, DSS will not determine the household to be ineligible. The worker will document the case record.

For individuals identified as non-household members in DSSM 9013.2, DSS will not consider them as individuals outside the household.

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311; 19 Delaware Code, Section 2322B  
(18 Del.C. §311; 19 Del.C. §2322B)  
18 DE Admin. Code 804

### PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance **Regulation 804** relating to **WORKERS' COMPENSATION PROVISION OF SERVICES CONTRACTS**. The docket number for the proposed regulation is 1044.

The purpose for proposing Regulation 804 is to require contracts between an employer or insurance carrier and a health care provider for the provision of services to be in writing and to be signed by all parties. The text of the proposed regulation is reproduced in the January 2009 edition of the *Delaware Register of Regulations*. The

text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a hearing on this proposed regulation. Written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments are being solicited from any interested party. Written comments or other written materials concerning the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m., February 2, 2009, and should be addressed to Regulatory Specialist Mitchell G. Crane, Esquire, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

## **804 Workers' Compensation Provision of Services Contracts**

### **1.0 Authority**

This regulation is adopted and promulgated in accordance with 18 Del.C. §311, Delaware Insurance Code; 19 Del.C. §2322B, Workmen's Compensation Code; and 29 Del.C. c. 101, Administrative Procedures Act.

### **2.0 Purpose**

- 2.1 The purpose of this regulation is to implement §2322 of Title 19 regarding workers' compensation medical and other healthcare services. Section 2322 sets forth requirements for the provision, by an employer, of reasonable medical and related services to a disabled employee.
- 2.2 Section 2322B states that a health care payment system shall be developed in order to implement the intent of Section 2322.
- 2.3 This regulation is adopted in accordance with §2322.

### **3.0 Workers' Compensation Service Contracts.**

Any contract between an employer or insurance carrier and a health care provider for the provision of services under Chapter 23 of Title 19 of the Delaware Code which is authorized by 19 Del.C. §2322(B)(4) must be in writing, signed by the parties thereto, and specifically state that the contract pertains to services provided under Chapter 23 of Title 19 as of May 23, 2008.

### **4.0 Effective Date**

This regulation shall become effective 30 days after the Commissioner's signature.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 1141

### **REGISTER NOTICE**

**SAN #2008-06 and SAN #2008-07**

### **1. Title of the Regulation:**

Amendment to **regulation 1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**, Section 2.0 "Consumer Products" and Section 4.0 "Adhesives & Sealants".

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

Delaware is in non-attainment under the 8-hour ground-level ozone National Ambient Air Quality Standards (NAAQS) and further reduction in the emissions of volatile organic compounds (VOC), a precursor to ground-level ozone, is needed to meet the 2009 NAAQS.

As to Section 2.0, this amendment adds 23 new products and product types to the existing slate of consumer products for which VOC content has been regulated since 2001. A reduction of 220 tons per year VOC emissions is expected.

As to Section 4.0, this amendment adds a heretofore unregulated category of commercially used products including 25 adhesives, 4 adhesive primers, 5 sealants and 3 sealant primers. A 365 ton per year reduction in VOC emissions is expected.

**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:**

There will be a hearing on these proposed amendments on Wednesday, January 28, 2009 beginning at 6pm in the Priscilla Building conference room. Interested parties may submit comments in writing to Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

**7. Prepared By:**

Gene Pettingill (302) 323-4542

December 4, 2008

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

**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.(3) (7 Del.C. §903(e)(2)a.(3))  
7 DE Admin. Code 3504

**REGISTER NOTICE**

**SAN #2008-28**

**1. Title of the Regulation:**

Amend Tidal Finfish Regulation No. 3504 Striped Bass Possession Size Limit; Exceptions

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

most leave the Bay and River after spawning in the spring and often undergo extensive coastal migrations throughout the summer months. Large striped bass return in the late fall and winter. Male striped bass mature at an earlier age and often do not reach the current large minimum size limit. Tagging studies indicate male striped bass are also less migratory and often remain within the estuaries throughout the summer.

The Delaware Division of Fish and Wildlife has received approval from the Atlantic States Marine Fisheries Commission to establish a two-month season during the summer that would allow recreational anglers in Delaware Bay, Delaware River and its tributaries to land two striped bass per day between 20 and 26-inches. During this two-month period, anglers fishing within the designated areas of the River and Bay would be required to release any striped bass that were below or above the 20 to 26-inch slot limit. The slot-limit would not occur in coastal areas of Delaware. This regulation change will greatly increase the opportunity for anglers in the River and Bay to target male striped bass and keep a very desirable food fish.

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

These changes would go into effect March, 2009 and remain in effect indefinitely unless changed.

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

7 Delaware Code §903(e)(2)a.(3)

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

This would represent an amendment to the existing Tidal Finfish Regulation (No.3504). No other regulations are affected.

### 6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:30 PM on Monday, January 26, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us). The hearing record will remain open for written or email comments until 4:30 PM January 31, 2009.

### 7. Prepared By:

Craig A. Shirey      302-739-9914      December 10, 2008

## Regulatory Flexibility Act Compliance Form

**Background:** The Regulatory Flexibility Act (29 Del. C. Chapter 104) states that prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.

**Please explain your considerations for each of the following factors (attach additional pages or documents as needed):**

1. the nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:

No additional costs to the private sector is anticipated with this proposed regulation amendment.

2. The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:

If approved, this regulation change may stimulate sales of fishing equipment by local bait and tackle shops, sporting goods stores, and boat/motor dealerships. However, no additional costs or investments are expected or anticipated.

3. The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:

No additional legal, consulting, or accounting services are expected or likely to occur as a result of this regulatory change.

4. The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:

No negative monetary effect on individuals or small business associated with this regulation change is expected.

5. The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:

Because no one will be exempted from the proposed rule, there will be no additional cost to this agency from administering or enforcing the exemptions of individuals or small business.

6. The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.

None

7. What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?

There have been no individual or small business concerns, as identified above, associated with the development of this regulation change.

### 3504 Striped Bass Possession Size Limit; Exceptions

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

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than 20-inches and not greater than 26- inches from the Delaware River, Delaware bay, or their tributaries during the months of July and August.
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 3.0 It shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:
  - 3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March; or

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- 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
  - 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
  - 3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
  - 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
  - 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
  - 6.0 It shall be unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
  - 7.0 It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.
- 3 DE Reg. 1088 (2/1/00)**
  - 4 DE Reg. 230 (7/1/00)**
  - 4 DE Reg. 1552 (3/1/01)**
  - 6 DE Reg. 1512 (5/1/01)**
  - 7 DE Reg. 1205 (3/1/04)**
  - 8 DE Reg. 1718 (6/1/05)**
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**Symbol Key**

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

**Final Regulations**

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

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

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**DELAWARE STATE FIRE PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code, Section 6603 (16 **Del.C.** §6603)

**ORDER****Delaware State Fire Prevention Regulations, Part VIII, Fire Department and Ambulance Company  
Administrative Standards, Chapter 1 Financial Audit Regulations****Nature of the Proceedings**

The State Fire Prevention Commission ("the Commission") held a properly noticed, public hearing on October 21, 2008 to receive comment on new regulations proposed as the result of the enactment of House Bill 329, codified at 16 **Del.C.** §1622, which requires the Commission to establish minimum requirements related to the mandatory submission of financial audits by volunteer fire and ambulance companies. The new regulations will be included as Delaware State Fire Prevention Regulations, Part VIII, Fire Department and Ambulance Company Administrative Standards, Financial Audit Regulations.

**Summary of the Evidence**

1. The notices of the proposed hearing as published in the News Journal and the Delaware State News were admitted collectively as Exhibit 1.

2. An e-mail dated October 1, 2008 from Renee Villano, CPA, of Grabowski, Sparano and Vincellete, CPAs was admitted as Exhibit 2. In her written submission, Ms. Villano stated that under Regulation 3.0 a "Review" is not a type of audit. She suggested changing the heading to "Report Types" and stating in the regulation that the minimum acceptable report is a "review." She also suggested that the introductory

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language in Regulation 3.1.1 be changed from "The 'Review' Opinion Letter provided..." to "The 'Accountants' Report' provided to the..."

Finally, Ms. Villano questioned Regulation 3.2 which provides that "a full financial audit may be required...if a company receives a second annual 'review' report that continues to indicate various problems, including a lack of appropriate internal controls." Ms. Villano stated that an accountant is not required to report on or obtain an understanding of a company's internal controls when the accountant performs a "Review." Ms. Villano appended NPO-CR-10: Illustrative Engagement Letter for a Review to her e-mail.

3. An e-mail received from Roland Leathrum dated October 2, 2008 in response to Ms. Villano's comments was admitted as Exhibit 3. Specifically, Mr. Leathrum stated that "there may be as many ways to read Section 3 of the proposed regulation as there are accountants." He also added that he had received a verbal comment from Jon Townley of Control Temp, Inc., who does accounting work for various fire companies. Mr. Townley submitted that the word "certified" should be dropped from paragraph 3.1 because a "review" does not need the services of a CPA.

4. An e-mail received from Allen Methany dated October 2, 2008 in response to Ms. Villano's and Mr. Leathrum's comments was admitted as Exhibit 4. Mr. Methany stated that the purpose of requiring "certified" public accountants was to add increased credibility to the process to satisfy local constituents, municipal and county governments and State Officials. He likened getting an opinion from a certified public accountant to getting an opinion from a lawyer rather than a legal clerk.

Mr. Methany did not have an objection to revising 3.0 to read "Report Types."

He stated, however, that the terminology in the Illustrative Engagement Letter that says the purpose is "to express a limited assurance that there are no material modifications that should be made---" is right on target for what the Commission wants to achieve.

5. Faxed comments from George Kerr of Minquas Fire Company No.1 - Station 23 were admitted as Exhibit 5. Mr. Kerr believed that the language in 3.0 Audit Types should also contain the language "independent certified public accounting firm or public accounting firm" to help keep accounting costs reduced. He did not believe that the word "audit" should be used because volunteer fire companies are not publicly traded stock corporations. He believed that the wording should refer to "Compilation and Review" only because accounting educational seminars recommend using "Compilation and Review" and not "Audit." He also believed that requiring an independent audit would create problems for those fire companies that do not calculate their own depreciation or financial statements. He stated that an independent "Compilation and Review" requires that the accountant not perform any duty other than reviewing the fire company provided financial statements. If the accountant performs and other duties the words "I am not independent" must be in the opinion letter. He believes that the independent "Compilation and Review" should be sufficient otherwise fire companies will have to send the work prepared by the one accountant to another accountant for the independent audit wording resulting in higher accounting costs. Mr. Kerr hoped that if a full financial audit is required that a State of Delaware agency would perform the audit at no expense to the fire company.

Mr. Kerr stated that new accounting procedures "The Standards for Excellence: A Code for the Non-profit Sector (the "Standards")" will be in compliance with the new pieces of Form 990 and will be in effect for non-profits with fiscal years that begin in 2008 to be filed the year 2009. He stated that the new procedures will require a more sophisticated method of accounting.

Mr. Kerr recommended that fire companies that are not using an accounting system or doing their own check writing should be trained to use an accounting program that would provide an accountant with their financial statements for a "Compilation and Review." Doing so would also enable the provision of a financial condition report at any time. He recommended Quick Books Premiere; a user friendly software that has a budget module. The purpose of his suggestion is to keep accounting costs down.

Finally, Mr. Kerr commented that there should be a standard "chart of accounts" to provide accurate costs in each category since all fire companies have the same type of income and expenses. He provided example of how different companies post expenses to different accounts which he believes will make it hard for the Commission or the State of Delaware to be provided with accurate information for grant purposes. Mr. Kerr stated that it is time for fire companies to modernize their accounting systems. He stated that financial data should be kept current and that

treasurer reports should be given at monthly meetings to reduce the possibility of anyone taking funds for personal use. He believes all financial data should be disclosed during company meetings to enable officer and board for director monitoring of all funds.

Mr. Kerr concluded by stating that non-profits have an obligation to the public and that the new 990 will allow the public to see whether a non-profit is operating appropriately.

6. Correspondence dated October 13, 2008, from William Santora, CPA, of Santora CPA Group was admitted as Exhibit 6. Mr. Santora stated that certain areas in the proposed regulation are inconsistent with the American Institute of Certified Public Accountants' (AICPA) professional standards that govern the required services. In addition, he stated that the proposed sanctions may not be sufficient to secure compliance by all fire and ambulance companies.

Mr. Santora stated that the first area of concern had to do with the interchangeable use of the terms "Audit" and "Review" in the regulations. Although review is defined in Section 2 of the proposed regulations it is discussed in Section 3 in the context of being a lower-level audit. He expressed concern about possible confusion since the two types of reports are governed by separate professional standards; the Statements on Standards of Accounting and Review Services for reviews and the Statements on Auditing Standards for audits. He recommended clarification in the regulations.

As a second point, Mr. Santora stated that if information is provided in review engagement in accordance with the Statements on Standards of Accounting and Review Services, the Commission may not get the information that appears to be contemplated in Section 3 and Section 3.2 related to the adequacy of financial management and internal controls, as well as any issues or trends that indicate possible failure of the company. While egregious lapses internal controls might be detected and reported on, other equally important controls might go unnoticed. Also, while the review might identify trends indicating possible future failure, it would not provide the information necessary to assess the underlying management issues causing the possible failure. He suggested that the Commission may wish to consider full audits to achieve the stated objectives in the proposed regulations.

Finally, Mr. Santora questioned the effectiveness of a \$5000 maximum penalty for failure to comply. He noted that some companies may weigh the cost of the audit against the cost of the penalty and pay the penalty rather than complying with the reporting requirements. He believed a more effective penalty might be to withhold all future funding until all compliance requirements have been met.

7. Art Ricker of Citizens Hose Company (CHC), Station 51, stated that he has been the treasurer of CHC for 31 years. He expressed concern about the penalty of \$100 per day and felt that it should be capped at \$1,000 comparable to untimely responses on the pension program. He added that untimely reports may be beyond the control of the company. Mr. Ricker stated that ultimately the penalty is taking money out of the organization's pocket. Instead of a cash penalty he suggested that the Commission consider withholding funding for the companies. He stated that withholding funds is a bigger whip that affects a company's cash flow.

8. Allen Methany spoke in response to Mr. Ricker's comments and stated that the proposed regulations provide for a public hearing. Issues that are beyond a company's control, such as the report not being completed by the accountant on time, could be raised as a defense to the imposition of a penalty. Mr. Methany stated that he supports the regulations.

### Findings of Fact

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence.

1. The Commission received written and public comment in regard to the proposed regulations at the public hearing. The public comment was in the nature of clarification rather than opposition to the regulations.

2. The Commission is not persuaded by the public comment that it should allow the reports required by the regulations to be performed by public accountants rather than by certified public accountants. The Commission believes that the having the reports performed by independent certified public accountants adds credibility to the process. The Commission is cognizant of the fact that requiring a certified public accountant to prepare the reports

may increase costs; however, the Commission finds that it is in the best interests of the public to require the higher level of expertise where public funds are in issue.

3. The Commission is persuaded by the public comment that the use of the term audit in the regulations needs to be clarified to avoid confusion as to when a full audit is required as opposed to when a review level report is required. The Commission finds that the regulation would be improved by replacing the word "audit" with the word "report" or "reports" in those sections of the regulation referencing the review level report or when referring to submissions generally. The Commission finds that the changes are for clarification only and are, therefore, non-substantive. The changes are indicated in the copy of the Regulations attached this Order as Exhibit A.

4. The Commission is not persuaded it should require full financial audits in lieu of review level reports in all instances. The Commission recognizes that there is an increased cost associated with the full financial audit that may not be warranted in every case. The Commission is satisfied that the proposed regulations adequately address when a full audit will be required. If the Commission finds in the future that the review level reports are not achieving the stated objectives of the law, it may revisit the need for full audits in amendments to the Regulations. The Commission is likewise satisfied that the review level report which provides limited assurance that no material modification is required is not so burdensome that it should allow a compilation which provides no assurance.

4. The Commission appreciates the public comment in support of the withholding of funds from fire and ambulance companies that fail to comply with the reporting requirements. The Commission initially proposed that such a provision be added to the law; however, the final version of the law enacted does not give the Commission authority to direct the withholding of funds available to the fire and ambulance companies subject to these Regulations. The Commission is satisfied that that regulations as proposed provide a company with an opportunity for a hearing to challenge the imposition of penalties related to circumstances beyond their control.

#### **THE LAW**

The State Fire Prevention Commission's rulemaking authority for Financial Audit Regulations is found 16 Del.C. §6622 which provides:

§ 6722 Audits of volunteer fire and ambulance companies.

- (a) The State Fire Prevention Commission shall promulgate regulations requiring financial audits of volunteer fire and ambulance companies and the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad. The regulations shall include, but not be limited to, specifying the required types of audits, the reporting periods, procedures for reviewing the audits and the processes to be followed in the event a company fails to submit or submits an inadequate audits.
- (b) The State Fire Prevention Commission shall have the authority, after a hearing, to impose a civil penalty not to exceed \$100 against any volunteer fire and ambulance companies, the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad that fails to comply with any regulation promulgated pursuant to subsection (a) of this section. Each day a violation continues may be deemed a separate offense in the Commission's discretion. However, in no event shall the total penalties exceed \$5,000 per reporting period.
- (c) The penalties specified in this section are in addition to and not in lieu of any other penalties provided for under this chapter.

#### **Decision**

The Commission hereby adopts the Delaware State Fire Prevention Regulations, Part VIII, Fire Department and Ambulance Company Administrative Standards, Financial Audit Regulations as proposed with the alterations and clarifications noted in this Order. A copy of the Regulations as adopted is attached to this Order as Exhibit A.

SO ORDERED this 17th day of December, 2008.

**STATE FIRE PREVENTION COMMISSION**

Marvin C. Sharp, Jr., Vice-Chairman  
Bob Ricker, Vice-Chairman  
Willard (Bill) Betts  
Kenneth H. McMahon  
Douglas S. Murray, Sr.  
David Roberts

**Chapter 1 Financial Audit Regulations****1.0 General.**

- 1.1 **Purpose.** To establish the minimum requirements related to the mandatory submission of financial audits by volunteer fire and ambulance companies in accordance with the provisions of 16 Del.C. §6622.
- 1.2 **Scope.** These Regulations address the required types of audits, the reporting periods, procedures for reviewing the audits and the processes to be followed in the event a company fails to submit or submits an inadequate audit.
- 1.3 **Application.** These Regulations apply to all volunteer fire and ambulance companies and their approved subsidiaries (e.g. auxiliaries operating under the same tax identification number) in the State of Delaware and the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad. These regulations do not apply to independent auxiliary organizations operating under a tax identification number that is separate from the fire or ambulance company's number.

**2.0 Definitions.**

- 2.1 **Review:** Financial data analysis that provides less assurance than a full audit, but more than a compilation (which provides no assurance). In a review, an auditor expresses limited assurance that the company's financial statements do not require any material modification for them to be in conformity with the provisions of generally accepted accounting principles ("GAAP"). (Ref. Business Dictionary.com).

**3.0 [Audit Report] Types.**

- 3.1 **[Audits Reports]** must be completed by an independent certified public accounting firm at a minimum "Review" level. The [audit] submission shall include, but not be limited to, the following:
- 3.1.1 The [~~"Review"~~ ~~Opinion Letter~~ **Accountant's Report**] provided to the volunteer fire or ambulance companies by their independent accountant.
- 3.1.2 Financial statements, including:
- 3.1.2.1 Statement of financial position (Balance sheet).
- 3.1.2.2 Statement of revenue and expenses.
- 3.1.2.3 Statement of cash flow.
- 3.1.2.4 Notes to financial statements.
- 3.1.2.5 Letter of observations and/or comments.
- 3.1.2.6 Letter of representation.
- 3.1.3 The required documentation shall be submitted to the Commission with a cover sheet signed off on by the volunteer fire or ambulance company president verifying that he or she has reviewed the submission and all of the items required by subsections 3.1.1 and 3.1.2 are included.
- 3.2 A full financial audit may be required, in the Commission's discretion, if a fire department or ambulance company receives a second annual "Review" report that continues to indicate insufficient corrective

actions have been taken to address inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company.

- 3.3 A fire department or ambulance company may voluntarily submit a full financial audit rather than a review **[audit level report]** if it chooses to do so.

#### **4.0 [Audit Reporting] Periods.**

- 4.1 Any company whose fiscal year begins on or after January 1, 2009 must file **[an audit]** no later than six and one-half months after the close of the company's fiscal year. **[Audits Reports]** shall be submitted annually thereafter no later than six and one-half months after the close of the company's fiscal year. The **[audit report]** due date will be calculated by the Commission based on the information provided by the volunteer fire and/or ambulance company as to the close of its fiscal year.
- 4.2 No extensions will be granted except upon a showing of hardship. Requests for a hardship extension must be made in writing prior to the **[audit report]** due date. The request must specify in detail the nature of the hardship. A showing of hardship requires that the lack of compliance with this regulation is due to causes beyond the company's control. The Commission's decision on the extension request shall be final.

#### **5.0 [Audit Report] Compliance Committee.**

- 5.1 The Commission shall appoint **[an Audit a Report]** Compliance Committee to review **[audit]** submissions. The **[Audit Report]** Compliance Committee shall consist of at least of three (3) members who shall be appointed annually at the January meeting of the Commission. The members of the **[Audit Report]** Compliance Committee shall have a professional background that includes auditing and financial experience.
- 5.2 The **[Audit Report]** Compliance Committee will review the **[audit report(s)]** for compliance with the regulations and will look for any **[auditor accountant]** comments that indicate inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company. The **[Audit Report]** Compliance Committee shall report to the Commission as follows:
- 5.2.1 **[Audits Reports]** that are approved will be forwarded to the Commission with a recommendation for filing with no further action.
- 5.2.2 Fire department and ambulance companies that fail to file the mandatory financial **[audits reports]** will be referred to the Commission with a recommendation for a hearing before the Commission for the imposition of civil penalties as provided in 16 Del.C. §6622 (b) and any other penalties available under the Chapter.
- 5.2.3 Any **[audit report]** showing financial irregularities will be referred to the Commission with a summary of the deficiencies and a recommendation for a hearing before the Commission to establish a written corrective action plan and/or the imposition of civil penalties as provided in 16 Del.C. §6622 (b) and any other penalties available under the Chapter.
- 5.3 The **[Audit Report]** Compliance Committee may require the volunteer fire or ambulance company to submit such additional documentation as may be necessary for clarification in order for the **[Audit Report]** Compliance Committee to make a decision as to whether referral to the Commission for further action is warranted. Failure to comply with the **[Audit Report]** Compliance Committee's request for additional documentation will result in referral to the Commission for a hearing.

#### **6.0 [Audit Report] Compliance Hearings.**

- 6.1 The Commission shall schedule a hearing within thirty (30) days of receiving a referral from the **[Audit Report]** Compliance Committee.
- 6.2 Notice of the time and place of the hearing shall be personally served, or sent by registered mail to the address provided by the fire department or ambulance company at the time of the **[audit report]** submission, with return requested, to the fire department or ambulance company at least twenty (20) days prior to the date fixed for the hearing.

# FINAL REGULATIONS

- 6.3 Hearings will be conducted in accordance with the hearing procedures set forth in Commission Regulations, Part 1, Regulation 1-7.6.
- 6.4 The fire department or ambulance company that is the subject of the hearing will be provided with a copy of the **[Audit Report]** Compliance Committee's report to the Commission.

## 7.0 **Sanctions for Non-compliance.**

- 7.1 Where the Commission has determined, upon notice and hearing, that a fire department or ambulance company failed to file or has filed incomplete **[reports or]** audits in violation of 16 **Del.C.** §6622, the Commission may impose a civil penalty of \$100 per day beginning on the date the **[report or]** audit was due. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.
- 7.2 Where the Commission has determined, upon notice and hearing, that the **[reports or]** audits of a fire department or ambulance company indicate inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company the Commission may require a written corrective action plan. Failure to submit a written corrective action plan may result in the imposition of a civil penalty of \$100 per day. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.
- 7.3 Continued failure to file **[reports or]** audits or to take corrective action may also result in the Commission referring the fire department or ambulance company to other regulatory agencies for review and possible action under their governing authority, including but not limited to, the Internal Revenue Service, the Delaware Division of Revenue and the State Auditor's Office.

## 8.0 **[Audit] Documents**

- 8.1 **[Report and Aa]**udit submissions filed with the Commission may be considered public records under the Freedom of Information Act ("FOIA"). The records will not be released except pursuant to a valid FOIA request or subpoena. The volunteer fire department or ambulance company will be given notice of the request. It will be the responsibility of the volunteer fire department or ambulance company to challenge the request in the appropriate court within the time specified by the Commission in the notice; otherwise, the records will be released.

## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

#### 230 Promotion

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin Code** 230 Promotion. The regulation requires that local school districts have promotion policies in place for grades K through grade 12. The local policies must also incorporate the promotion requirements as defined in the *Delaware Code* and in 14 **DE Admin Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. The amendments: 1) clarify charter schools are subject to this regulation; 2)

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require a copy of the current promotion policy be on file with the Department; and 3) make a technical correction to a cited regulation.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday, November 3 2008, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities noting no substantive concerns. The State Board of Education recommended changing the date for submission of any revised promotion policy to the Department from 90 days to 30 days. This change was made.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 230 Promotion in order to clarify charter schools are subject to this regulation; require a copy of the current promotion policy be on file with the Department; and make a technical correction to a cited regulation.

## **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 230 Promotion. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 230 Promotion attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 230 Promotion hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. Text and Citation**

The text of 14 **DE Admin. Code** 230 Promotion amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 230 Promotion in the *Administrative Code of Regulations* for the Department of Education.

## **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18<sup>th</sup> day of December 2008.

### **DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 18<sup>th</sup> day of December 2008

### **STATE BOARD OF EDUCATION**

Jean W. Allen, President  
G. Patrick Heffernan  
Barbara Rutt  
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge L. Melendez  
Dennis J. Savage

## 230 Promotion

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

- 1.1 Local school districts and charter schools must follow, at a minimum, the requirements for promotion as defined in 14 **Del.C.** §153, titled Matriculation and Academic Promotion Requirements and 14 **DE Admin. Code** 925, Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.
- 1.2 The promotion policies for grades 1 to 8 must also, at a minimum, include the following:
- 1.2.1 Students in grades 1 to 8 must receive instruction in English Language Arts or its equivalent, mathematics, social studies and science each year as defined in the Delaware Content Standards.
- 1.2.2 Students in grades 1 to 8 must pass 50% of their instructional program each year (excluding physical education) to be promoted to the next grade level. One of the subject areas that must be passed is English Language Arts or its equivalent. English Language Arts or its equivalent includes English as a Second Language (ESL), and bilingual classes that are designed to develop the English language proficiency of students who have been identified as LEP. Classes in English Language Arts, mathematics, science and social studies include those which employ alternative instructional methodologies designed to meet the needs of LEP students in the content areas.

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

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

**2.0 Policy Reporting Requirements**

- 2.1 Each local school district and charter school shall have an electronic copy of its current promotion policy on file with the Department of Education.
- 2.2 Each local school district and charter shall provide an electronic copy of its promotion policy to the Department of Education within ninety ~~[(90) days]~~ **thirty (30)** of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance, or policies.

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 505

**REGULATORY IMPLEMENTING ORDER****505 High School Graduation Requirements and Diplomas****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas to include a requirement that the local school districts and charter schools review the Student Success Plan (SSP) of students at the end of the first and second year of high school to determine if the student is “on track” to graduate. The amended regulation establishes “on track” to mean the student has earned at least three (3) core course credits and two (2) other course credits for a total of five (5) course credits at the end of the first year, and the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits at the end of the second year. This regulation is re-advertised in the November *Register of Regulations* because of the proposed delay of the World Language

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graduation requirement from the class of 2013 to the class of 2015. The requirement is being delayed until 2015 to allow for additional capacity to be built in the districts and schools.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Thursday, October 2, 2008 and November 3, 2008 in the forms hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities suggesting "core course credit" be defined further; requesting an explicit review of the Student Success Plan with a parent, guardian or Relative Caregiver after the Plan has been reviewed to see if the student is on track to graduate; and noting the addition of commas in one section.

While the Department and State Board considered the first recommendation, the decision was made to keep the definition as is because of later definitions (English Language Arts, Mathematics, Science, and Social Studies) and the provisions of 3.1 in the regulation. While the Department and State Board of Education acknowledge the value of the second recommendation; the change is not being adopted because at least one annual review of the Student Success Plan by the parent, guardian, or Relative Caregivers is required and any additional review requirement may be too burdensome to the school or district. This does not preclude a school from adopting the practice of additional reviews with parents, guardians, and Relative Caregivers and the Department will be recommending this practice as part of the training on the Student Success Plans. The grammatical change was made.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to require that the local school districts and charter schools review the Student Success Plan (SSP) of students at the end of the first and second year of high school to determine if the student is "on track" to graduate and to delay the World Language graduation requirement from the class of 2013 to the class of 2015.

## **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. Text And Citation**

The text of 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in the *Administrative Code of Regulations* for the Department of Education.

## **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 20, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18th day of December 2008.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 18<sup>th</sup> day of December 2008**STATE BOARD OF EDUCATION**

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

\*Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 557 (12 DE Reg. 557). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[505 High School Graduation Requirements and Diplomas](#)

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**OFFICE OF THE SECRETARY**

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

**REGULATORY IMPLEMENTING ORDER****525 Requirements for Career Technical Education Programs****I. Summary of the Evidence and Information Submitted**

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

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, November 3 2008, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Councils did not note any substantive concerns and made a recommendation for a format change for clarification. The Department and State Board of Education has adopted this recommended format change and appreciates the Councils comments.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs in order to complement changes in teacher certification regulation 14 **DE Admin. Code** 1559 Trade and Industrial Education Teacher and changing the title to reflect the language of the federal law.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18<sup>th</sup> day of December 2008.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 18<sup>th</sup> day of December 2008

**STATE BOARD OF EDUCATION**

Jean W. Allen, President

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Richard M. Farmer, Jr., Vice President

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Dennis J. Savage

**525 Requirements for Career and Technical Education Programs****1.0 Career and Technical Education Programs**

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

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

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

- 2.1 Meet the requirements within the state plan for the Carl D. Perkins Career and Technical Education Act of 2006.
- 2.2 Have the approval of the Department of Education before implementing new CTE courses and or pathways.

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

### 3.0 Cooperative Education Programs

- 3.1 Cooperative Education Programs provide senior Career and Technical Education Program students with coordinated on the job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on the job training in occupations directly related to the Career and Technical Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.
- 3.42 In order to qualify for Career and Technical Education funding units the Career and Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make at least quarterly visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 3.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 3.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Cooperative Education programs without senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 3.25 In order to qualify for career and technical education funding units the students shall~~]; **possess minimum occupational competencies specified by the Career and Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed Career and Technical Education pathway, meet the requirements of 3.0 3.1 through 3.4 and be supervised through on site visits by an assigned Career and Technical Education Program Teacher Coordinator or Career Guidance Counselor.**~~
  - 3.5.1 Possess minimum occupational competencies specified by the Career and Technical Education Teacher Coordinator before being placed in cooperative employment;
  - 3.5.2 Be in their senior year or otherwise approved pursuant to 3.4;
  - 3.5.3 Be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed Career and Technical Education pathway;
  - 3.5.4 Meet the requirements of 3.1 through 3.4; and
  - 3.5.5 Be supervised through on site visits by an assigned Career and Technical Education Program Teacher Coordinator or Career Guidance Counselor.]
- 2 DE Reg. 111 (07/01/98)
- 6 DE Reg. 955 (02/01/03)
- 9 DE Reg. 1070 (01/01/06)
- 12 DE Reg. 439 (10/01/08)

4.0 Diversified Occupations Programs

- 4.1 Diversified Occupations Programs provide students with coordinated on the job training not ordinarily available in the classroom. During the student's junior or senior year or under unique circumstances as approved by the Department of Education, employers provide this on the job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

- 4.4~~2~~ In order to qualify for career and technical education funding units a Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make at least quarterly on site visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 4.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 4.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Diversified Occupations programs without junior or senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 4.2~~5~~ In order to qualify for career and technical education funding units the students shall possess minimum readiness competencies as specified by the Career Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, meet the requirements of ~~4.0~~ 4.1 through 4.4 and be actively enrolled in a Diversified Occupations Work Experience Program ~~and that~~ meets for at least one class period per week.

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

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

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

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

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**OFFICE OF THE SECRETARY**

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

**REGULATORY IMPLEMENTING ORDER**

**737 Tuition Billing for Special Schools and Special Programs**

**I. Summary of the Evidence and Information Submitted**

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

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

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*procedures for the review of included costs to ensure appropriateness as it relates to the ratio of state to local resources.”*

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 3, 2008, in the form hereto attached as *Exhibit “A”*. There were no formal comments received; however, the Department was asked by the Governors Advisory Council for Exceptional Citizens to provide a review of the regulation at their November 18<sup>th</sup> meeting. Mrs. Debbie Scanlon, Education Associate, Financial Practices from the Department of Education provided the overview at this meeting.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** in order to add a new regulation 737 Tuition Billing for Special Schools and Special Programs to meet the requirements of Senate Bill 300 of the 144<sup>th</sup> General Assembly.

## **III. Decision To Amend The Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** to add 737 Tuition Billing for Special Schools and Special Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 737 Tuition Billing for Special Schools and Special Programs attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 737 Tuition Billing for Special Schools and Special Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. Text and Citation**

The text of 14 **DE Admin. Code** 737 Tuition Billing for Special Schools and Special Programs amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 737 Tuition Billing for Special Schools and Special Programs in the *Administrative Code of Regulations* for the Department of Education.

## **V. Effective Date Of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18th day of December 2008.

### **DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 18<sup>th</sup> day of December 2008

### **STATE BOARD OF EDUCATION**

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

\*Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 566 (12 DE Reg. 566). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[737 Tuition Billing for Special Schools and Special Programs](#)

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**PROFESSIONAL STANDARDS BOARD**

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

**REGULATORY IMPLEMENTING ORDER**

**1502 Professional Growth Salary Increments**

**I. Summary of the Evidence and Information Submitted**

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

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 3, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

**II. Findings of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1502 of the *Administrative Code of Regulations* of the Department of Education.

**V. Effective Date of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

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APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4<sup>TH</sup> DAY OF DECEMBER, 2008

Kathleen Thomas, Chair  
Joanne Christian  
Samtra Devard  
Cathy Zimmerman  
Lori Hudson  
Jill Lewandowski  
Gretchen Pikus  
Michael Thomas

Cristy Greaves  
Marilyn Dollard  
Karen Gordon  
David Kohan  
Whitney Price  
Wendy Murray  
Karen Schilling-Ross  
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:  
Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** THIS 18<sup>TH</sup> DAY OF DECEMBER, 2008

## STATE BOARD OF EDUCATION

Jean W. Allen, President  
G. Patrick Heffernan  
Barbara Rutt  
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge L. Melendez  
Dennis J. Savage

### 1502 Professional Growth Salary Increments

(Effective 7/1/04)

#### 1.0 Content

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

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

#### 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

**"Two Years of College or Technical Training"** means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of ~~[the requirements for]~~ any one ~~[, or an appropriate combination]~~ of the following options in the specific career area of certification ~~[equaling]~~ (1) an Associate's degree with a major in the specific career area; (2) two years of college majoring in the specific career area with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; (4) completion of four years of sequential Delaware Trade Extension courses in the specific career area; (5) completion of four years of National Center for Construction Education and Research's Contren documented training in the specific career area; (6) a 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider's National Center for Construction Education and Research's Contren-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; (7) passage of a State of Delaware Licensing Test in the specific career area, offered through the Division of Professional Regulation; (8) 576 hours of military training in the specific career area; (9) 576 hours post-secondary trade school training in the specific career area; (10) a 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; (11) an industry recognized certification of technical competence or journey person status in the specific career area, or (12) DOE approved equivalents **[of any one of the above including but not limited to equivalents from any combination of the above options].**

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

*(Break in Continuity of Sections)*

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

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

8.1 Movement beyond the bachelor's degree level on the basic salary schedule for ~~trade and industry~~ Skilled and Technical Sciences teachers shall apply as follows:

- 8.1.1 Seventy-five (75) credits toward a bachelor's degree is equivalent to a bachelor's degree plus 15 credits.
- 8.1.2 Ninety (90) credits toward a bachelor's degree is equivalent to a bachelor's degree plus 30 credits.
- 8.1.3 A bachelor's degree is equivalent to a master's degree on the basic salary schedule.

- 8.1.4 A master's degree is equivalent to a master's degree plus ~~fifteen~~ 15 credits on the basic salary schedule.
- 8.1.5 A master's degree plus ~~fifteen~~ 15 credits is equivalent to a master's degree plus 30 credits on the basic salary schedule.
- 8.1.6 A master's degree plus ~~thirty~~ 30 credits is equivalent to a master's degree plus 45 credits on the basic salary schedule.
- 8.1.7 A master's degree plus 45 credits is equivalent to a doctorate degree on the basic salary schedule.
- 7 DE Reg. 1001 (2/1/04)**

*(Break in Continuity of Sections)*

**\*Please Note: As the rest of the sections were not amended since the proposal in the November 2008 issue, they are not being published here. A copy of the final regulation is available at:**

[1502 Professional Growth Salary Increments](#)

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**PROFESSIONAL STANDARDS BOARD**

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

**REGULATORY IMPLEMENTING ORDER**

**1510 Issuance of Initial License**

**I. Summary of the Evidence and Information Submitted**

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

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 3, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

**II. Findings of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1510 of the *Administrative Code of Regulations* of the Department of Education.

## V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4<sup>TH</sup> DAY OF DECEMBER, 2008

Kathleen Thomas, Chair	Cristy Greaves
Joanne Christian	Marilyn Dollard
Samtra Devard	Karen Gordon
Cathy Zimmerman	David Kohan
Lori Hudson	Whitney Price
Jill Lewandowski	Wendy Murray
Gretchen Pikus	Karen Schilling-Ross
Michael Thomas	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 18<sup>TH</sup> DAY OF DECEMBER, 2008

### STATE BOARD OF EDUCATION

Jean W. Allen, President	Richard M. Farmer, Jr., Vice President
G. Patrick Heffernan	Jorge L. Melendez
Barbara Rutt	Dennis J. Savage
Dr. Terry M. Whittaker	

### 1510 Issuance of Initial License

#### 1.0 Content

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

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

#### 2.0 Definitions

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

**"Alternative Routes to Licensure and Certification"** means programs approved by the Department of Education to certify or license candidates who hold bachelors' degrees appropriate to the instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

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

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

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

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

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

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

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

**"Jurisdiction"** means a state, territory or country.

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

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

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

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

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

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

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

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

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

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

**"Student Teaching Program"** means a traditional student teaching placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field

based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience within the last year consisting of a minimum of 91 days of long term teaching experience at one assignment during which regular evaluations were conducted, evidencing at least satisfactory performance.

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

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

"Trade and Industries" means Skilled and Technical Sciences.

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

7 DE Reg. 623 (11/103)

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

### 3.0 Requirements for Initial License

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

- 3.1 An applicant for an Initial License shall submit the completed application form, official transcripts, and official scores on an examination of general knowledge, such as the PRAXIS I tests in any format, as defined in 2.0, to the Department.
- 3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.
- 3.2 Examination of General Knowledge Requirements
- 3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests (PPST) or such alternatives as set forth in 3.2.4 below.
- 3.2.2 Scores of Examinations of General Knowledge.
- 3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.
- 3.2.2.1.1 Pre professional Skills Test (PPST) taken between July 1, 1983 and October 22, 1993: reading, 175, mathematics, 175, writing, 172.
- 3.2.2.1.2 PRAXIS I (PPST) Paper and Pencil Tests and thereafter with a possible score range of 150 to 190 and PRAXIS I Computerized Pre Professional Skills Tests taken January 1, 2002 and thereafter, both of which have a possible score range of 150 to 190, with passing scores of: reading, 175, mathematics, 174, writing, 173.
- 3.2.2.1.3 PRAXIS I, Computer Based Tests (CBT) (Tests taken between October 23, 1993 and December 31, 2001), with passing scores of: reading, 322, mathematics, 319, writing, 319.

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

- 3.2.6.1.4.1 Scores from either the paper and pencil PRAXIS I (PPST) test or from the computerized PRAXIS I (CPPST) test, begun in January, 2002, both of which have a possible score range of 159 to 190, may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT), taken between November, 1993 and December 31, 2001 may be used when applying the composite score provision, but may not be used in conjunction with the paper and pencil PRAXIS I test or with the computerized PRAXIS I (CPPST) test.
- 3.2.6.1.4.2 An applicant for an Initial License who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage.
- 3.2.6.1.4.3 Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content area of mathematics must meet the current state passing score for the PRAXIS I mathematics test. An applicant who seeks to teach in the secondary content area of English language arts must meet the current state passing score for the PRAXIS I reading and writing tests.
- 3.2.6.2 An applicant in a ~~vocational trade and industry~~ Skilled and Technical Sciences specific career area must pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the Initial License, whichever is later.
- 3.2.7 There is no limit on the number of times an individual may take the PPST or PRAXIS I. Once passed, a section need not be taken again.
- 3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.
- 3.2.8 Submission of Scores of Examination of General Knowledge.
- 3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.
- 3.2.8.2 Unopened, unaltered envelopes containing PPST or PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.
- 3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.
- 3.3 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.
- 3.3.1 **"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.
- 3.4 ~~Trades and Industry~~ Skilled and Technical Sciences Teacher Educational and Experience Requirements.
- 3.4.1 A bachelor's degree equivalent for a ~~trades and industry~~ Skilled and Technical Sciences teacher shall be two (2) years of college or technical training, plus six (6) years of ~~trade work~~ experience. The requirement for two (2) years of college or technical training may be satisfied through the satisfactory completion of ~~[the requirements for]~~ any one ~~[or an appropriate combination]~~ of the following ~~experiences options~~ in the specific career area to be taught ~~[equaling]~~:
- 3.4.1.1 An associate's degree with a major in the specific ~~occupational area to be taught~~ career area; or

- 3.4.1.2 Two years of college majoring in the specific ~~occupational career~~ career area ~~to be taught~~ with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; or
- 3.4.1.3 A state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; or
- 3.4.1.4 Completion of ~~F~~four (4) years of sequential Delaware Trade Extension courses in the specific career area; or
- 3.4.1.5 Completion of ~~F~~four (4) years of National Center for Construction Education and Research's Contren documented training in the specific career area; or
- 3.4.1.6 ~~Nine high school credits of career and technical high school training~~ A 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider's National Center for Construction Education and Research's *Contren*-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; or
- 3.4.1.7 Passage of the State of Delaware Licensing test in the specific career area, offered through the Division of Professional Regulation; or
- 3.4.1.8 576 hours of military training in the specific career area; or
- 3.4.1.9 576 hours postsecondary trade school training in the specific career area; or
- 3.4.1.10 ~~Completing the written and performance teacher testing for the National Occupational Competency Testing Institute with a minimum score set by the Department~~ A 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; or
- 3.4.1.11 An industry recognized certification of technical competence or journey person status in the specific career area; or
- 3.4.1.12 DOE approved equivalents **[of any one of the above including but not limited to equivalents from any combination of the above options]**.

#### 4.0 Validity of Initial License

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

#### 5.0 Applicants with Foreign Credentials

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

*(Break in Continuity of Sections)*

**\*Please Note:** As the rest of the sections were not amended since the proposal in the November 2008 issue, they are not being published here. A copy of the final regulation is available at:

[1510 Issuance of Initial License](#)

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**PROFESSIONAL STANDARDS BOARD**

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

**REGULATORY IMPLEMENTING ORDER**

**1559 Skilled and Technical Sciences Teacher**

**I. Summary of the Evidence and Information Submitted**

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

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 3, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

**II. Findings of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1559 of the *Administrative Code of Regulations* of the Department of Education.

**V. Effective Date of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

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APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4<sup>TH</sup> DAY OF DECEMBER, 2008

Kathleen Thomas, Chair  
Joanne Christian  
Samtra Devard  
Cathy Zimmerman  
Lori Hudson  
Jill Lewandowski  
Gretchen Pikus  
Michael Thomas

Cristy Greaves  
Marilyn Dollard  
Karen Gordon  
David Kohan  
Whitney Price  
Wendy Murray  
Karen Schilling-Ross  
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 18<sup>TH</sup> DAY OF DECEMBER, 2008

## STATE BOARD OF EDUCATION

Jean W. Allen, President  
G. Patrick Heffernan  
Barbara Rutt  
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge L. Melendez  
Dennis J. Savage

### ~~1559 Trade and Industrial Education Teacher~~

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

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

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

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

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

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

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

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

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

~~“Two Years of College or Technical Training”~~ means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of the requirements for any one, or an appropriate combination, of the following options in the occupational area to be taught equaling (1) an associate’s degree with a major in the specific occupational area to be taught; (2) two years of college majoring in the specific occupational area to be taught with at least 50% of the major courses required for a bachelor’s degree satisfactorily completed; (3) a state issued certificate

indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers); (4) four years of sequential Delaware Trade Extension courses; (5) four years of National Center for Construction Education and Research's *Contron* documented training; (6) nine high school credits of career and technical high school training; (7) passage of the State of Delaware Licensing Test, offered through the Division of Professional Regulation; (8) 576 hours of military training; (9) 576 hours postsecondary trade school training; (10) completing the written and performance teacher tests for the National Occupational Competency Testing Institute at or above the minimum score set by the Department; (11) industry recognized certification of technical competence or journey person status, or (12) DOE approved equivalents.

### 3.0 Standard Certificate

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

#### 3.1 Professional Education

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

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

- 3.1.1.1.1 Educational Psychology or Human Development;
- 3.1.1.1.2 Career Technical Education Assessment and Course Construction;
- 3.1.1.1.3 Methods of Teaching Career Technical Education I or Materials and Approaches to Career Technical Education I;
- 3.1.1.1.4 Methods of Teaching Career Technical Education II or Materials and Approaches to Career Technical Education II;
- 3.1.1.1.5 Introduction to Education of Exceptional Children;
- 3.1.1.1.6 Behavior management or Classroom Management;
- 3.1.1.1.7 Instructional Technology; and
- 3.1.1.1.8 Multicultural Education or Diversity in the Classroom; and

3.1.1.2 Required Electives: 12 semester hours of college level course work, taken either as part of a degree program or in addition to it, or the equivalent of 12 semester hours of documented industry or skills training, or a combination thereof, taken to assist the teacher in maintaining current craftsmanship and teaching skills in the vocational area covered by the license that include:-

- 3.1.1.2.1 Student Organizations in the Curriculum;
- 3.1.1.2.2 History and Regulations of Career Technical Education;
- 3.1.1.2.3 Student Testing and Evaluation;
- 3.1.1.2.4 Education of Exceptional Children (at a level above any previous course work)
- 3.1.1.2.5 Career Technical Guidance;
- 3.1.1.2.6 DOE approved apprenticeship, military, or trade school and extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE approved industry certification;
- 3.1.1.2.7 National Center for Construction Education and Research (NCCER) Instructor Certification course or DOE approved Instructor's Certification course(s);
- 3.1.1.2.8 DOE approved test based Professional Municipal License;
- 3.1.1.2.9 DOE approved test based Professional Municipal License Preparation course; or
- 3.1.1.2.10 College courses in the occupational area to be taught; or

- ~~3.1.2 Associate's degree from a regionally accredited college or university in the occupational area to be taught and four (4) years of current trade experience in the area to be taught; and~~
- ~~3.1.2.1 Required Courses: 24 semester hours of course work, taken either as part of a degree program or in addition to it, from the following:~~
- ~~3.1.2.1.1 Educational Psychology or Human Development;~~
  - ~~3.1.2.1.2 Career Technical Education Assessment and Course Construction;~~
  - ~~3.1.2.1.3 Methods of Teaching Career Technical Education I or Materials and Approaches to Career Technical Education I;~~
  - ~~3.1.2.1.4 Methods of Teaching Career Technical Education II or Materials and Approaches to Career Technical Education II;~~
  - ~~3.1.2.1.5 Introduction to Education of Exceptional Children;~~
  - ~~3.1.2.1.6 Behavior Management or Classroom;~~
  - ~~3.1.2.1.7 Instructional Technology; and~~
  - ~~3.1.2.1.8 Multicultural Education or Diversity in the Classroom; and~~
- ~~3.1.2.2 Required Electives: 12 semester hours of college level course work, taken either as part of a degree program or in addition to it, or the equivalent of 12 semester hours of documented industry or skills training, or a combination thereof, taken to assist the teacher in maintaining current craftsmanship and teaching skills in the career technical area covered by the certificate that include:~~
- ~~3.1.2.2.1 Student Organizations in the Curriculum;~~
  - ~~3.1.2.2.2 History and Regulations of Career Technical Education;~~
  - ~~3.1.2.2.3 Student Testing and Evaluation;~~
  - ~~3.1.2.2.4 Education of Exceptional Children (at a level above any previous course work)~~
  - ~~3.1.2.2.5 Career Technical Guidance;~~
  - ~~3.1.2.2.6 DOE approved apprenticeship, military, trade school or extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE approved industry certification;~~
  - ~~3.1.2.2.7 National Center for Construction Education and Research (NCCER) Instructor Certification course or DOE approved Instructor's Certification course(s);~~
  - ~~3.1.2.2.8 DOE approved test based Professional Municipal License;~~
  - ~~3.1.2.2.9 DOE approved test based Professional Municipal License Preparation course; or~~
  - ~~3.1.2.2.10 College courses in the occupational area to be taught; or~~
- ~~3.1.3 Two (2) years of college or technical training, plus 6 years of current trade experience in the area to be taught; and~~
- ~~3.1.3.1 Completion of a DOE approved Trade and Industrial teacher education associate's or bachelor's degree program; or~~
- ~~3.1.3.2 Required Courses 24 semester hours of course work from the following:-~~
- ~~3.1.3.2.1 Educational Psychology or Human Development;~~
  - ~~3.1.3.2.2 Career Technical Education Assessment and Course Construction;~~
  - ~~3.1.3.2.3 Methods of Teaching Career Technical Education I or Materials and Approaches to Career Technical Education I;~~
  - ~~3.1.3.2.4 Methods of Teaching Career Technical Education II or Materials and Approaches to Career Technical Education II;~~
  - ~~3.1.3.2.5 Introduction to Education of Exceptional Children;~~
  - ~~3.1.3.2.6 Behavior Management or Classroom Management;~~
  - ~~3.1.3.2.7 Instructional Technology; and~~
  - ~~3.1.3.2.8 Multicultural Education or Diversity in the Classroom; and~~

- 3.1.3.3 ~~Required Electives: 12 semester hours of college-level course work or industry training or skills documentation to assist the teacher in maintaining current craftsmanship and teaching skills in the vocational area covered by the license that include:~~
- 3.1.3.3.1 ~~Career Technical Student Organizations in the Curriculum;~~
  - 3.1.3.3.2 ~~History and Regulations of Career Technical Education;~~
  - 3.1.3.3.3 ~~Student Testing and Evaluation;~~
  - 3.1.3.3.4 ~~Education of Exceptional Children (at a level above any previous course work);~~
  - 3.1.3.3.5 ~~Career and Technical Guidance;~~
  - 3.1.3.3.6 ~~DOE approved apprenticeship, military, or trade school and extension courses appropriate to the area taught or National Occupational Competency Testing (NOCT) Written and Performance Tests or DOE approved industry certification;~~
  - 3.1.3.3.7 ~~National Center for Construction Education and Research (NCCER) Instructor Certification course or DOE approved Instructor's Certification course(s);~~
  - 3.1.3.3.8 ~~DOE approved test-based Professional Municipal License;~~
  - 3.1.3.3.9 ~~DOE approved test-based Professional Municipal License Preparation course; or~~
  - 3.1.3.3.10 ~~College courses in the occupational area to be taught; and~~
- 3.1.3.4 ~~Required General Education: 15 semester hours of general preparation from a regionally accredited college or university, with at least one course in each of the following area:~~
- 3.1.3.4.1 ~~Science;~~
  - 3.1.3.4.2 ~~Mathematics;~~
  - 3.1.3.4.3 ~~Social Studies;~~
  - 3.1.3.4.4 ~~English Communications; and~~
  - 3.1.3.4.5 ~~Computer Literacy.~~

### 3.2 Skilled Trade Experience

- 3.2.1 ~~A minimum of six years of successful, full time work training experience, at least two years of which must have been within the last ten years, in the trade or industrial occupation to be taught. Full time teaching or direct supervision in the trade or industrial occupation qualifies as current work experience, provided the applicant has at least six (6) years of successful, full time prior work training experience.~~

### 3.3 Professions and Occupations License.

- 3.3.1 ~~In trade or industrial occupations where a state license or registration is required by law, all applicants, except applicants for electrician's or plumber's trade and industrial certification must present a valid and current Delaware license or registration upon application for a standard certificate. Applicants for an electrician's or a plumber's trade and industrial certification must present a valid and current Delaware license as part of completing certification requirements. The state license or registration must be renewed as required by law.~~

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

## 1559 Skilled and Technical Sciences Teacher

### 1.0 Content

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

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## 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

“Two Years of College or Technical Training” means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of ~~[the requirements for]~~ any one ~~[- or an appropriate combination]~~ of the following options in the specific career area of certification ~~[equating]~~ (1) an Associate’s degree with a major in the specific career area; (2) two years of college majoring in the specific career area with at least 50% of the major courses required for a bachelor’s degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; (4) completion of four years of sequential Delaware Trade Extension courses in the specific career area; (5) completion of four years of National Center for Construction Education and Research’s *Contren* documented training in the specific career area; (6) a 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider’s National Center for Construction Education and Research’s *Contren*-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; (7) passage of a State of Delaware

Licensing Test in the specific career area, offered through the Division of Professional Regulation; (8) 576 hours of military training in the specific career area; (9) 576 hours post-secondary trade school training in the specific career area; (10) a 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; (11) an industry recognized certification of technical competence or journey person status in the specific career area, or (12) DOE approved equivalents [of any one of the above including but not limited to equivalents from any combination of the above options].

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

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

### **3.0 Standard Certificate**

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

### **4.0 Educational Requirements**

An educator shall also have met the following:

- 4.1 Satisfactorily completed nine (9) Career-Related Credits related to their area of certification and six (6) Career and Technical Education Pedagogy credits; and
- 4.2 **Bachelor’s Degree:**  
Holds a Bachelor’s degree from a regionally accredited college or university in any content area; or
- 4.3 **Equivalent of a Bachelors Degree:**  
Acquired the knowledge and training equivalent to a Bachelor’s Degree by meeting one of the following:
- 4.3.1 **Associate’s Degree and additional education:**  
Holds an Associate’s degree in any content area and has met the following criteria:
- 4.3.1.1 Satisfactorily completed nine (9) college credits in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university in the following content areas:
- 4.3.1.1.1 Career and Technical Education Pedagogy (6 credits); and
- 4.3.1.1.2 Special Education (3 credits); and
- 4.3.1.2 Satisfactorily completed twelve (12) college credits or their equivalent in professional development or technical training in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university or from a technical training or professional development provider in any combination of the following content areas:
- 4.3.1.2.1 Career and Technical Education Pedagogy

- 4.3.1.2.2 Education Pedagogy
- 4.3.1.2.3 Educational Psychology
- 4.3.1.2.4 Special Education
- 4.3.1.2.5 Science
- 4.3.1.2.6 Mathematics
- 4.3.1.2.7 English
- 4.3.1.2.8 Computer Literacy
- 4.3.1.2.9 Social Studies; or
- 4.3.1.2.10 Education in the specific career area of certification including specifications listed in the Department's specific career area program certification requirements; or;

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

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

- 4.3.2.1 Satisfactorily completed the requirements in 4.3.1.1 and 4.3.1.2; and
- 4.3.2.2 Satisfactorily completed fifteen (15) college credits in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university, with at least one (1) course in each of the following content areas:
  - 4.3.2.2.1 Science (3 credits)
  - 4.3.2.2.2 Mathematics (3 credits)
  - 4.3.2.2.3 English (3 credits)
  - 4.3.2.2.4 Psychology (3 credits)
  - 4.3.2.2.5 Computer Literacy (3 credits).

## **5.0 Experience Requirements**

An educator shall also have met the following:

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

## **6.0 Professional and Occupational License Requirements**

An educator shall also have met the following:

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

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

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

**ORDER****3201 Skilled And Intermediate Care Nursing Facilities****Nature of the Proceedings**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 **Del.C.**, Ch. 101 to adopt Regulations for Skilled and Intermediate Care Nursing Facilities. On November 1, 2008, DLTCRP published proposed regulations in the *Register of Regulations* and received written and verbal comments at public hearings on December 2 and December 4, 2008.

Upon review of the comments received, the Division of Long Term Care Residents Protection has made non-substantive changes to five sections; 6.6.4, 6.9.6, 6.11.2.1, 6.11.2.2 and 7.6.5.

The evaluation of the comments received is in the accompanying Summary of Evidence.

**Findings of Fact**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Skilled and Intermediate Care Nursing Facilities are adopted effective January 11, 2009.

**Summary of Evidence**

Comments on the proposed regulations have been received and evaluated as follows:

The regulations are intended to clarify but not repeat state laws. Therefore, except for purposes of explanation in limited circumstances, the Division has not incorporated repetitions of law in the regulations. Commenters proposing such inclusions are referred to the title page of the regulations which specifies that the regulations should be read in conjunction with applicable statutes.

Similarly, these regulations cannot and do not override any statute, which always takes precedence over regulations. Therefore, for example, employees exempt from criminal background checks under the law remain exempt under these regulations.

A commenter suggested that the Division delete the phrase "should the individual become incapacitated" from the definition of "advance directive." The definition as written accords with statutory language.

A comment called attention to the regulation requiring facilities to comply with the applicable residents rights sections of 42 CFR "and/or" 16 **Delaware Code**. The comment described the use of "and/or" as "disjunctive." The use of "and/or" is deliberate and reflects the fact that most but not all nursing facilities are subject to federal regulations while all are subject to state law.

With regard to the requirement to document an employee's refusal to be vaccinated against influenza, one comment speculated that an employee may not be forced to sign such a refusal. The regulation does not specify that documentation of such a refusal be accompanied by an employee's signature.

Another similar comment described documentation of influenza vaccination or refusal to be vaccinated as worthless unless accompanied by a requirement for vaccination. To the contrary, since influenza outbreaks occur periodically in nursing facilities, a record of when and whether employees have been vaccinated is useful information.

A comment objected to the requirement that the director of nursing or a nurse designee participate in the selection of prospective residents. The comment indicated that directors of admission could make decisions regarding admission. This regulation is not newly proposed, but rather exists in current regulations. Its purpose is to ensure that admissions to a facility take into consideration the nursing needs of each prospective resident and the nursing competencies required to care for each resident.

Comments expressed concern regarding the regulation permitting residents to receive prescription medications from the pharmacy of the resident's choice. The comments raised concerns about similar dispensing systems, stat medications or new orders during holidays or weekends and also questioned the reliability of possibly depending on others such as family members to provide the required medications. The purpose of this regulation is to prohibit the practice of some facilities from denying residents access to routine medication when residents are entitled to receive medication from the Veterans Administration. To the extent that certain medications are unavailable in specific circumstances, the regulation does not envision a resident being denied medication from an alternative source.

Comments described the proposed regulation regarding the division of medication doses by individual and by administration time as unworkable. That proposed regulation has been deleted from the final regulations.

Several comments urged the Division to adopt regulations which would establish definitions or regulations in conflict with the federal regulations which apply to the overwhelming number of nursing facilities. For example, a commenter suggested a more comprehensive definition of "restraint" than that contained in the proposed regulation.

Similarly, in the definition of "social worker," a comment suggested deleting a degree in sociology as an acceptable educational requirement while the federal regulations accept such a degree. Another comment urged the reduction of the number of medications triggering a pharmacy review to eight, in contrast to the federal regulation which specifies nine medications. In each instance, the Division declines to establish a conflicting definition.

A comment proposed a minor grammatical change. The Division finds the proposal to be inconsequential to the meaning of the regulation.

Several comments questioned as inadvertent duplication the requirements for physician and pharmacist reviews of medications within ten days for residents admitted or readmitted from the hospital with orders for nine or more medications. The physician and pharmacist reviews are both requirements which are intended to address the problem of polypharmacy which the Division observes as often associated with initial admission or readmission from a hospital to a nursing home. In this instance, the Division is intentionally imposing a stricter requirement than the federal regulation which requires a pharmacy review within 30 days.

A comment objected to the medication reviews as requiring the facility to practice medicine and as intended to enable the Division to cite facilities. Under federal regulations, a facility is responsible for the use of unnecessary or excessive drugs. This regulation reduces the nursing facility's potential for a citation by requiring physician and pharmacist reviews in a more timely manner than the federal requirement.

The proposed regulations require an accounting of each resident's personal funds quarterly or upon request. A comment proposed monthly statements. Since the information is to be available upon request, such a change is unnecessary.

One comment proposed the addition of a definition of "advanced practice nurse." Terms such as "registered nurse," "licensed practical nurse," and "advanced practice nurse" all reflect specific categories of licensure in commonplace usage in the field of health care and do not require definition in these regulations.

Several comments pertained to the appropriate roles of registered nurses and licensed practical nurses. The Nurse Practice Act differentiates those roles.

Regulations pertaining to nursing staffing and staffing by a certified nursing assistant qualified to assist with self-administration of medication apply only to facilities offering intermediate care. These regulations upgrade current requirements. The nursing staffing for all skilled facilities is as specified in statute.

One comment called for the resident's comprehensive assessment to include assistive technology. That topic is adequately addressed in the responsibilities for the facility's social services.

A comment called attention to differing language in the assisted living and neighborhood home regulations regarding food service from that which appears in these regulations. An assumption that each set of regulations

should contain identical wording would fail to take into account the differing circumstances of residents in various types of facilities.

A comment erroneously states that the regulations disallow self-administration of medications. Further, the comment refers to lotion and lip balm as medications, neither of which would fall under a description of medication were a resident deemed to be inappropriate for self-administration of medication.

These regulations specify that new construction, extensive remodeling or conversions to a nursing facility comply with current Guidelines for Design and Construction of Health Care Facilities. Implicit in that requirement is a recognition that the current Guidelines may not have existed when some facilities were built and may not exist in their current form when new facilities are built in the future. The Division is not requiring facilities to remodel except under the circumstances specified in the regulation, and is requiring the remodeling, not the entire facility, to meet the current requirements. Consequently, the Division declines to prohibit facilities from using four-bed rooms and declines to impose new requirements on cottages at the Stockley Center.

A commenter called attention to a conflict with DNREC regulations regarding the inclusion of "fecal matter and biological liquid waste" under "Infectious Waste." That proposed regulation has been deleted from the final regulations.

A comment proposed that the Division regulate off-site laundries. The Division has no authority over commercial laundries. In any event, safe laundering practices, such as those suggested in the comment, are in routine use by both in-house laundries and off-site laundries.

While a comment indicated that the requirement that each resident be provided with a "chair suitable for resident relaxation" was subject to some confusion, the Division finds that regulation to be clear in its intent.

A proposal recommends changing the record retention requirements in these regulations. The Division considers those requirements to be adequate and declines to increase them.

Another commenter criticized both the use of "absolute" terms and indefinable terms. Where terms such as "shall" and "every" are used, they convey that compliance with the regulation is mandatory. The examples of indefinable terms cited in the comment track the federal regulations, and those terms are currently in effect for skilled nursing facilities.

Similarly, a comment objects to the inclusion in these regulations of federal requirements for plans of correction. This regulation standardizes for all nursing facilities the requirements which presently apply to all skilled nursing facilities.

A comment objects to the requirement that all resident records be transferred with the resident when a facility closes. Access to such records by the resident, or the resident's new facility is a reasonable requirement.

A comment misstates the requirement to notify the Division when the administrator will be absent for longer than two weeks. The regulation simply clarifies the statutory requirement that a nursing home operate under the direction of a nursing home administrator.

The requirement that each resident be provided with an over-bed table was described in a comment as "an antiquated concept." Facilities routinely provide such tables for residents.

Another comment stated that physician assistants are barred by federal regulation from alternating visits with a physician. There is no such federal prohibition.

A commenter suggested there was confusion between the terms "initial" visit and "full H&P" with regard to the conduct of such visits by the physician or an advanced practice nurse. The regulations require both the initial visit and the history and physical to be performed by the physician. These regulations require that the initial visit occur within 14 days, not 30 days, of admission.

In reference to several proposed regulations, comments urged the Division to establish precise timeframes for various actions. The Division declines to impose such restrictions.

A comment urged that all medications be verified at the time of a resident's admission. Current practice includes such a review either at the time of admission or prior to admission.

A comment proposed that each resident's weight be obtained and documented monthly. The regulations include such a requirement.

Another comment related to the availability of therapy services on weekends. Therapy services are provided in accordance with a physician order.

One comment stated a belief that facilities are frequently short-staffed. Individuals who have reason to believe that a facility is staffed below the legal requirement should contact the Division with that complaint.

A comment suggested that facility inspections should be frequent short spot checks rather than systematic inspections. Inspections are conducted in accordance with federal requirements.

A commenter objected to facilities admitting Medicare-eligible residents for rehabilitation in preference to other residents. Facility admission decisions related to payer source are beyond the authority of these regulations as long as the facility is able to provide the required services.

Comments were received pertaining to hospice services and certified nursing assistant training. Both those issues are the subject of separate regulations.

## *(Break in Continuity of Sections)*

### **6.0 Services To Residents**

#### **6.1 General Services**

- 6.1.1 The nursing facility shall provide to all residents the care necessary for their comfort, safety and general well-being, and shall meet their medical, nursing, nutritional, and psychosocial needs.
- 6.1.2 The nursing facility shall have in effect a written transfer agreement with one or more hospitals to ensure inpatient hospital care, emergency care, or other hospital services are available promptly to residents when needed.
- 6.1.3 The nursing facility shall have written agreements for promptly obtaining required laboratory, x-ray and other ancillary services.
- 6.1.4 Each nursing facility providing skilled services shall implement each resident's physician's orders obtained on the day of admission and renewed or revised at least every 30 days for the first 90 days after admission, and every 60 days thereafter. Any nursing facility not providing skilled services shall implement each resident's physician's orders obtained on the day of admission and renewed or revised every 60 days thereafter.

#### **6.2 Financial Services**

- 6.2.1 The facility shall deposit any residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there shall be a separate accounting for each resident's share.)
- 6.2.2 The facility shall establish and maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds which shall be available through quarterly statements and on request to the resident or his/her representative.
- 6.2.3 Upon the death of a resident, the facility shall convey within 30 days the resident's funds, and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.
- 6.2.4 The facility shall purchase a surety bond to assure the security of resident funds.

#### **6.3 Medical Services**

- 6.3.1 All persons admitted to a nursing facility shall be under the care of a physician licensed to practice in Delaware.
- 6.3.2 All nursing facilities shall arrange for one or more licensed physicians to be called in an emergency. Names, telephone and fax numbers of these physicians shall be posted at all nurses' stations.
- 6.3.3 For a resident admitted or readmitted from the hospital with orders for nine or more medications (excluding over-the-counter medications), the attending physician or designee or medical director shall conduct a comprehensive medication review within 10 days.
- 6.3.4 All written or verbal physician orders shall be signed by the attending physician or prescriber within 10 days.

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# FINAL REGULATIONS

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6.3.5 After the initial physician visit, an advanced practice nurse or physician's assistant, affiliated with the physician, may alternate with the physician, making every other required visit.

6.3.6 A progress note shall be written and signed by the physician or designee (an advanced practice nurse or physician's assistant) after examining the resident at each visit

## 6.4 Therapy Services

6.4.1 All specialized services such as physical therapy, occupational therapy, and speech therapy shall be ordered by the attending physician. The facility shall assure the provision of these services through a written plan of care in accordance with physician orders.

6.4.2 Upon completion of a specialized service, the therapist shall communicate to the interdisciplinary team in writing any maintenance program to be included in the care plan.

## 6.5 Nursing Administration

6.5.1 The facility's director of nursing shall:

6.5.1.2 Develop and/or maintain nursing policy and procedure manuals

6.5.1.3 Assign duties to and supervise all levels of nursing services direct caregivers

6.5.1.4 Coordinate nursing services with medical, therapy, dietary, pharmaceutical, recreational, and other ancillary services

6.5.1.5 Coordinate orientation programs for new nursing services direct caregivers (including temporary staff) and in-service education, as appropriate, for such staff. Written records of the content of each in-service program and the attendance records shall be maintained for two years

6.5.1.6 Participate in the selection of prospective residents by evaluating the nursing services required and the facility's ability to competently provide those required services or ensure that such an evaluation is conducted by a designated registered nurse

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

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

6.5.3.1 Identification, background and demographic information

6.5.3.2 Customary routine

6.5.3.3 Cognitive patterns

6.5.3.4 Communication

6.5.3.5 Vision

6.5.3.6 Mood and behavior patterns

6.5.3.7 Psychosocial well-being

6.5.3.8 Physical functioning and structural problems

6.5.3.9 Continence

6.5.3.10 Disease diagnoses and health conditions

6.5.3.11 Dental and nutritional status

6.5.3.12 Skin condition

6.5.3.13 Activity pursuits

6.5.3.14 Medications

6.5.3.15 Special treatments and procedures

6.5.3.16 Discharge potential

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

6.5.5 Based on the physician's admission orders and the admission information for each resident, an interim individual nursing care plan shall be developed within 24 hours of admission pending the completion of a comprehensive resident assessment.

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

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# FINAL REGULATIONS

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

6.7 Social Services

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

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

6.7.1.2 Making referrals and obtaining services from outside entities

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

6.7.1.4 Discharge planning services

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

6.7.1.6 Meeting the needs of residents who are grieving

6.8 Food Service

6.8.1 Meals

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

6.8.1.2 The facility shall offer snacks at bedtime daily.

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

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

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

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

6.8.2 Menus

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

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

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

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

6.8.3 Nutritional Assessment

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

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

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

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

6.9 Housekeeping and Laundry Services

- 6.9.1 The facility shall employ sufficient housekeeping personnel and provide the necessary equipment to maintain a safe, clean, and orderly environment, free from offensive odors, for the interior and exterior of the facility.
- 6.9.2 A full-time employee shall be designated responsible for housekeeping services and for supervision and training of personnel.
- 6.9.3 The facility shall have written policies and procedures and schedules for cleaning all areas of the facility.
- 6.9.4 The facility shall maintain a supply, in the amount of 3 sets per resident, of towels, washcloths, sheets and pillowcases changed weekly or whenever soiled.
- 6.9.5 The facility's handling, storage, processing and transporting of linens shall comply with facility infection control policies and procedures.
- 6.9.6 The facility shall contract with a licensed pest control vendor to ensure that the entire facility is free of [live] insects and other vermin.

## 6.10 Pharmacy Services

- 6.10.1 Each nursing facility shall have a consultant pharmacist who shall be responsible for the general supervision of the nursing facility's pharmaceutical services.
- 6.10.2 For a resident admitted or readmitted from the hospital with orders for nine or more medications (excluding over-the-counter medications), the facility shall complete an on-site or off-site pharmacy review within 10 days of admission or readmission.

## 6.11 Medications

### 6.11.1 Medication Administration

- 6.11.1.1 All medications (prescription and over-the-counter) shall be administered to residents in accordance with orders which are signed and dated by the ordering physician or prescriber. Each medication shall have a documented supporting diagnosis. Verbal or telephone orders shall be written by the nurse receiving the order and then signed by the ordering physician or prescriber within 10 days.
- 6.11.1.2 Standing orders may be established for over-the-counter medications that have been approved by the resident's attending physician.
- 6.11.1.3 Standing orders shall be initiated by licensed nurses, but shall not be used for more than 72 hours without approval by the physician.
- 6.11.1.4 When any standing order is initiated, it shall be written as a complete order on the MAR for the specified time period and charted when administered.
- 6.11.1.5 Medications shall be given only to the individual resident for whom the prescription or order was issued, and shall be given in accordance with the prescriber's instructions.
- 6.11.1.6 An individual resident may self-administer medications upon the written order of the physician, following determination by the interdisciplinary team that this practice is safe. The facility shall establish policies and procedures pertaining to the security of self-administered medication.
- 6.11.1.7 The facility's policies and procedures shall not prohibit or restrict a resident from receiving medications from the pharmacy of the resident's choice. However, the resident and/or his representative shall be informed of any ramifications of ordering medications from other than the facility's pharmacy, such as cost differences, responsibility for delivery of medication to the facility and length of ordering time.
- 6.11.1.8 Only licensed nurses shall administer medications and then record the administration on the resident's Medication Administration Record (MAR) immediately after administration to that resident.
- 6.11.1.9 The facility shall ensure that licensed nurses administering medications count controlled substances at the beginning and end of each shift. The on-coming medication nurse shall conduct, verify, and document the controlled substance count in the presence of the off-going medication nurse.

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- 6.11.1.10 Any medications removed but not administered to the resident shall not be returned to the original container. In circumstances such as refusal of drugs by the resident, the drugs shall be discarded and the refusal recorded on the resident's Medication Administration Record (MAR). If the medication is a controlled substance, the signature of the administering nurse is required on the record of the controlled substance count.
- 6.11.1.11 Each nursing home shall have available a current edition of at least one drug reference text for the nursing staff.
- 6.11.1.12 Medication shall be released to residents on discharge or transfer only by the written authorization of the resident's physician. A resident who leaves the nursing facility on a short leave may be issued a quantity of medication to meet his/her needs, with the approval of the resident's physician.
- 6.11.1.13 The barrel, plunger, needle and contents of disposable hypodermic syringes shall be properly discarded in accordance with OSHA regulations immediately after use.
- 6.11.1.14 The administrator or designee shall notify the Office of Controlled Substances in the Division of Professional Regulation and the Division of Long Term Care Residents Protection of any unexplained loss of controlled substances, syringes, needles, or prescription pads within 8 hours of discovery of such loss or theft.
- 6.11.2 Medication Storage and Stocks
- 6.11.2.1 Stock supplies of drugs available without a prescription (over-the-counter drugs such as antacids, aspirin, laxatives) may be kept in the facility. These over-the-counter drugs shall be labeled "house stock". ~~and dated when sent by the supplier~~
- 6.11.2.2 Prescription medications for emergency or interim use may be stocked ~~in a secured box~~ by the facility subject to Board of Pharmacy regulations.
- 6.11.3 Medication Labeling
- 6.11.3.1 Medications shall be labeled in accordance with 24 **Delaware Code**, §2522 and the regulations of the Board of Pharmacy.
- 6.11.3.2 Medications dispensed using a unit dose system shall be pharmacy-prepared or manufacturer-prepared in individually packaged and sealed doses that are identifiable and properly labeled. The label shall include, at a minimum, the brand and/or generic name of the medication, strength, and lot number and expiration date.
- 6.11.3.3 Doses of medications for individual residents shall be placed into individual resident bins, compartments or drawers and shall be subdivided by administration time, labeled with the resident's name.
- 6.12 Communicable Diseases
- 6.12.1 General Requirements
- 6.12.1.1 The facility shall follow Division of Public Health regulations for the Control of Communicable and Other Disease Conditions and Centers for Disease Control guidelines for communicable diseases.
- 6.12.1.2 The facility shall establish written policies and procedures implementing the Division of Public Health regulations and Centers for Disease Control guidelines for communicable diseases.
- 6.12.1.3 The nursing facility shall ensure that the necessary precautions stated in the policies and procedures are followed.
- 6.12.1.4 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the appropriate precautions as recommended for that disease by the Centers for Disease Control. Residents infected or colonized with the same organism may share a room based on current standard of practice.
- 6.12.1.5 The admission of a resident with or the occurrence of a disease or condition on the Division of Public Health List of Notifiable Diseases/Conditions within a nursing facility shall be reported to the resident's physician and the facility's medical director.

The facility shall also report such an admission or occurrence to the Division of Public Health's Health Information and Epidemiology office.

#### 6.12.2 Specific Requirements for Tuberculosis

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

#### 6.12.3 Immunizations

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

#### 6.12.4 Employee Health

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

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

**6.13 Infection Control**

**6.13.1 Infection Control Committee**

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

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

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

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

6.13.1.4.1 Prevent the spread of infections and communicable diseases

6.13.1.4.2 Promote early detection of outbreaks of infection

6.13.1.4.3 Ensure a sanitary environment for residents, staff and visitors

6.13.1.4.4 Establish guidelines for the implementation of isolation/precautionary measures

6.13.1.4.5 Monitor the rate of nosocomial infection

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

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

**6.13.2 Infectious Waste**

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

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

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

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

**7.0 Plant, Equipment and Physical Environment**

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

7.2 The facility shall be handicapped accessible and meet applicable American National Standards Institute (A.N.S.I.) standards.

7.3 Facility Systems Requirements

## 7.3.1 Water Supply and Sewage Disposal

7.3.1.1 The facility water supply and sewage disposal system shall comply with Division of Public Health and Department of Natural Resources and Environmental Control standards, respectively.

7.3.1.2 The water system shall supply hot and cold water under sufficient pressure to satisfy facility needs at peak demand.

7.3.1.3 Hot water accessible to residents shall not exceed 110° F.

## 7.3.2 Heating, Ventilation, Air Conditioning

7.3.2.1 The HVAC system for all areas used by residents shall be safe and easily controlled.

7.3.2.2 Ambient temperature in areas used by residents shall be maintained in a range from 71° F. to 81° F.

7.3.3 Facility lighting shall meet current standards of the Guidelines for Design and Construction of Health Care Facilities.

7.3.4 The facility shall be equipped with a resident call system which meets the current standards of the Guidelines for Design and Construction of Health Care Facilities. An intermediate care facility serving only developmentally disabled residents shall be exempt from this regulation.

## 7.4 Physical Environment Requirements

### 7.4.1 Safety Requirements

7.4.1.1 Stairs shall have stair treads and handrails.

7.4.1.2 Hallways shall have handrails on both sides of corridors. An intermediate care facility serving only developmentally disabled residents shall be exempt from this regulation.

7.4.1.3 Non-skid flooring materials shall be used and maintained in good condition.

### 7.4.2 Bedrooms

7.4.2.1 Each room shall be an outside above-grade room with at least one window opening to the outside.

7.4.2.2 Residents' rooms shall open directly into a corridor.

7.4.2.3 Each resident shall be provided with a reading light. At least one bedroom light shall be controlled by a switch at the bedroom entrance.

7.4.2.4 The facility shall provide at least one room with private toilet and hand washing sink for residents who require isolation.

7.4.2.5 The maximum capacity per room shall be four residents.

### 7.4.3 Bathrooms

7.4.3.1 Bathroom walls and floors shall be impervious to water. Bathrooms shall have at least one window or mechanical ventilation.

7.4.3.2 A minimum of one bathtub or shower shall be provided for every 20 residents not otherwise served by bathing facilities within residents' rooms. Each nursing unit shall have at least one bathtub.

7.4.3.3 Each tub or shower in a central bathing facility shall be in an individual room or enclosure with space for the private use of the tub or shower, for drying and dressing, and for a wheelchair and attendant. Showers shall be at least four feet square without curbs. Toilets in central bathing facilities shall have provisions for privacy.

7.4.3.4 Each resident's room shall have direct access to a hand washing sink and a toilet.

7.4.3.5 A wall-mounted hand grip shall be provided at each resident toilet, bath tub and shower.

7.4.3.6 Separate bathroom and hand washing sinks shall be provided for the staff.

### 7.4.4 Resident Common Areas

7.4.4.1 Areas for resident recreational and social activities shall provide at least 30 square feet per bed for the first 100 beds and 27 square feet per bed for beds in excess of 100.

7.4.4.2 The dining areas shall accommodate all residents.

7.4.4.3 Facilities for resident hair care and grooming shall be separate from resident rooms.

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

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

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

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311; 19 Delaware Code, Section 2301E  
(18 **Del.C.** §311; 19 **Del.C.** §2301E)  
18 **DE Admin. Code** 803

### ORDER

#### 803 Workers' Compensation Data Collection

Proposed Regulation 803 relating to Workers' Compensation Data Collection was published in the Delaware *Register of Regulations* on November 1, 2008. The comment period remained open until December 1, 2008. There was no public hearing on proposed Regulation 803. Public notice of the proposed Regulation 803 in the *Register of Regulations* was in conformity with Delaware law.

#### Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed regulation for comment.

#### Findings of Fact

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

1. 19 **Del.C.** §2301E of the Delaware Code requires a protocol for the collection of workers' compensation medical cost data.
2. 19 **Del.C.** §2301E further requires the adoption of rules establishing said protocol.

#### Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and 1718 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 803 as may more fully and at large appear in the version attached hereto to be effective on January 12, 2009.

#### Text and Citation

The text of proposed Regulation 803 last appeared in the *Register of Regulations* Vol. 12, Issue 5, pages 610-611.

**IT IS SO ORDERED** this 8<sup>th</sup> day of December, 2008.

Matthew Denn, Insurance Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 610 (12 DE Reg. 610). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[803 Workers' Compensation Data Collection](#)

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# FINAL REGULATIONS

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## DEPARTMENT OF INSURANCE

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

### ORDER

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

Proposed amendments to Regulation 1301 relating to internal review, arbitration and independent utilization review of health insurance claims, were published in the *Register of Regulations* on November 1, 2008. The comment period remained open until December 1, 2008. There was no public hearing on proposed amendments to Regulation 1301. Public notice of the proposed amended Regulation 1301 in the *Register of Regulations* was in conformity with Delaware law.

#### Summary of the Evidence and Information Submitted

Public comment was received from six sources. The Delaware Chapter of the American College of Emergency Physicians, Doctors for Emergency Service, and the Delaware Healthcare Association expressed support for the proposed modifications. State Farm Mutual Insurance Company, the State Council for Persons with Disabilities, and the Delaware Developmental Disabilities Council issued comments; however, none of those comments were to the proposed amendments to Regulation 1301. Those comments were directed to the sections of Regulation 1301 not being amended. The proposed change allows better access to medical care for Delaware residents and creating a safety net for both those residents and medical providers.

#### Findings of Fact

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

1. The proposed amendments streamline and improve procedures put into place upon the previous amendments to Regulation 1301 in June, 2007.
2. The proposed amendments comply with Delaware law.
3. The suggested changes received in the aforementioned comments are not relevant to the proposed amendments.

#### Decision and Effective Date

Based on the provisions of 18 Del.C. §§311(a) and 6408 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt amended Regulation 1301 as amended and as may more fully and at large appear in the version attached hereto to be effective on January 12, 2009.

#### Text and Citation

The text of proposed amended Regulation 1301 last appeared in the *Register of Regulations* Vol. 12, Issue 5, pages 611-620.

**IT IS SO ORDERED** this 8<sup>th</sup> day of December, 2008.

Matthew Denn, Insurance Commissioner

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\*Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 611 (12 DE Reg. 611). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims](#)

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF FISH AND WILDLIFE**

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

**Secretary's Order No.: 2008-F-0059**

#### **3203 – Seasons and Area Closed to Taking Horseshoe Crabs 3214 – Horseshoe Crab Annual Harvest Limit**

**Date of Issuance: December 11, 2008**

**Effective Date of the Amendment: January 11, 2009**

#### **I. Background:**

A public hearing was held on Monday, November 3, 2008, in the Richardson and Robbins Auditorium of DNREC, 89 Kings Highway, to receive public comment on proposed amendments to Delaware's horseshoe crab regulations, specifically, regarding only Sections 3203 (Seasons and Area Closed to Taking Horseshoe Crabs) and 3214 (Horseshoe Crab Annual Harvest Limit). The Department is proposing regulation amendments designed to be in compliance with the provisions of the Atlantic States Marine Fisheries Commission Addendum V to the Interstate Fishery Management Plan for Horseshoe Crab. These proposed amendments would extend for another year the prohibition on the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year. During the period of June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. These harvest limits may be extended for a second year, according to the provisions of Addendum V, provided the Atlantic States Marine Fisheries Commission elects to do so.

In addition, it is proposed that where beach collecting is presently legal, that beach collecting of horseshoe crabs be allowed to continue until July 31 of each year. Since no harvesting is allowed prior to June 8, and most of the migratory shorebirds that feed on horseshoe crab eggs will have departed from the Delaware Bay by then, there should be no additional impacts to shorebirds from allowing harvesting to extend beyond the last day of June until the end of July. By harvesting only male horseshoe crabs, females would be fully protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year.

Given the much narrower scope of the present proposed amendments to Delaware's Horseshoe Crab Regulations, the public comment received by the Department regarding this matter was greatly reduced from that which was received during previous horseshoe crab regulatory amendment promulgation matters. Nevertheless, public comment was received by the Department, voicing both support and opposition, to these proposed changes to Section 3203 and 3214 of Delaware's existing horseshoe crabs regulations. Environmental groups, as well as individual citizens, forwarded documentation to the Department, which also became part of the record in this case. Proper notice of this hearing was provided, as required by law.

#### **II. Findings:**

The Department has provided appropriate reasoning, scientific analysis, and sound conclusions with regard to the drafting of these regulation amendments and consideration of the public comments received, as reflected in the Hearing Officer's Report of December 8, 2008, which is attached and expressly incorporated into

this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding, to wit: 7 *Del.C.* §103, §1902, §2701 and §2703; and Chapter 15 of 7 **Delaware Code**.
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations.
3. The Department held a public hearing in a manner required by the law and regulations.
4. The Department considered all timely and relevant public comments in making its determination.
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.
6. Formal promulgation of these proposed amendments would update Delaware's current regulations, so that Delaware will be in compliance with Addendum V to the Interstate Fishery Management Plan for Horseshoe Crab, issued by the Atlantic States Marine Fisheries Commission (ASMFC).
7. Once promulgated, this regulation may be extended for an additional year beyond 2009, pending approval by ASMFC.
8. Once promulgated, Delaware will maintain a closed season on the harvest of horseshoe crabs from January 1 through June 7. No horseshoe crabs may be taken during that time period.
9. Beginning June 8, and lasting until the end of the year, up to 100,000 male horseshoe crabs may be taken for purposes of bait reduction, or bait generation, from approved harvest areas in Delaware.
10. No female horseshoe crabs may be taken at any time during the year, including the period when males may be taken.
11. Where beach collecting is presently legal, beach collecting of horseshoe crabs shall be allowed to continue until July 31 of each year.
12. Existing regulations allow dredging of horseshoe crabs beginning July 1 by five permitted dredgers selected by lottery, so both forms of harvesting may continue into July until the harvest quota has been met.
13. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
14. The Department's proposed regulation, as published in the October 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;
15. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

### III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated December 8, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Horseshoe Crab Regulations as follows: 3203 – Seasons and Area Closed to Taking Horseshoe Crabs; and 3214 – Horseshoe Crab Annual Harvest Limit - be promulgated in final form in the customary manner and established rule-making procedure required by law.

### IV. Reasons:

The promulgation of the amendments to Delaware's Regulations regarding the harvesting of horseshoe crabs is a reasonable action for the Department to take at this time, as it will bring Delaware into compliance with Addendum V to the Interstate Fishery Management Plan for Horseshoe Crabs, issued by ASMFC. Failure to amend the existing horseshoe crab harvesting regulations would result in federal sanctions being taken against Delaware, including, but not limited to, the federal government closing Delaware's horseshoe crab fishery. Such actions would result in economic detriment to Delaware's fishermen, and therefore it is reasonable to enact these regulatory amendments at this time to prevent such detriments to Delaware's economy from occurring.

Conservation measures with regard to the harvesting of the horseshoe crab began to be applied in Delaware by ASMFC starting in 1999. Over the years subsequent to those measures being implemented, there are data indicating that the horseshoe crab population has stabilized and has begun to increase. The proposed harvest of 100,000 male horseshoe crabs would result in a taking of a very small percentage of this species' overall

population, and thus it is believed to not be detrimental to the overall population of this species.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the economic interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del.C. §103, §1902, §2701 and §2703, and Chapter 15 of 7 Delaware Code.

David S. Small, acting for John A. Hughes, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2008 issue of the *Register* at page 423 (12 DE Reg. 423). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[3203 Seasons and Area Closed to Taking Horseshoe Crabs](#)  
[3214 Horseshoe Crab Annual Harvest Limit](#)

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

### 2400 Board of Examiners of Constables

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)

#### ORDER

Pursuant to the Guidelines in 29 **Del.C.** Section 10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 3.0 Law Enforcement Exemption, rule 4.0 Employment, the Board makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to add another acceptable psychological evaluation, and to clarify the employment requirements necessary to become a constable.

#### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will add another acceptable psychological evaluation. The Board also finds that the adoption of this rule will clarify the employment requirements necessary to become a constable.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to add another acceptable psychological evaluation, and clarifies the employment requirements necessary to become a constable.

**Conclusion**

7. The proposed rules were published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** Section 2701 et seq. and, in particular, 10 **Del.C.** Section 2702(b).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** Section 2701 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts this amendment pursuant to 10 **Del.C.** Section 2702(b) and guidelines of 29 **Del.C.** Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be January 11, 2009.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 25th day of November, 2008.

Colonel Thomas F. MacLeish, Chairman

**APPROVED AS TO FORM:**

Patricia D. Murphy, Esquire  
Deputy Attorney General

**\*Please note that no changes were made to the regulation as originally proposed and published in the October and November 2008 issues of the *Register* at pages 427 and 629 respectfully (12 DE Reg. 427 and 629). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[2400 Board of Examiners of Constables](#)

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**EXECUTIVE DEPARTMENT  
DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Statutory Authority: 29 Delaware Code Sections 5005(11) and 5053(k)  
(29 **Del.C.** §§5005(11) and 5053(k))

**ORDER****454 Procedures Governing Delaware Tourism Grant Program**

AND NOW, this 4th day of December, 2008, Judy McKinney Cherry, as Director of the Delaware Economic Development Office, in accordance with 29 **Del.C.** §§5005(11) and 10118(b), for the reasons stated below enters this ORDER adopting and promulgating Regulation No. 7 – Procedures Governing Delaware Tourism Grant Program.

**Nature of Proceedings, Synopsis of the Subject and Substance of the Proposed Regulation**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Director of the Delaware Economic Development Office is adopting the final Regulation governing the administration and

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operation of the Delaware Tourism Grant Program. The proposed regulation sets forth the procedures governing the requirements, approval process and issuance of funds appropriated to the Delaware Economic Development Office to administer the Delaware Tourism Grant Program.

## Findings of Fact and Conclusions

1. In accordance with the recommendations of the Tourism Advisory Board, the Delaware Economic Development Office has developed procedures for the administration and operation Delaware Tourism Grant Program.
2. The Regulation reflects these procedures.
3. The Director of the Delaware Economic Development Office has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §5005(11).

## Decision and Order Concerning the Regulation

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Economic Development Office does hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Judy McKinney Cherry, Director, Delaware Economic Development Office

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 661 (12 DE Reg. 661). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[454 Procedures Governing Delaware Tourism Grant Program](#)

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## DELAWARE HEALTH CARE COMMISSION

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

### ORDER

## Report and Recommendation

### Introduction

The Chair of the Delaware Health Care Commission appointed Leah Jones as the hearing officer for the public hearing and comments on the proposed regulation for the Delaware Health Information Network ["DHIN"]. The public hearing was convened on Tuesday, November 25, 2008 at the Delaware Technical and Community College, Room 400B, Dover, Delaware. The proceedings opened at or about 10:00 a.m. and concluded prior to noon. There was no public comment or testimony offered at the hearing (the transcript record of the hearing is maintained by the staff of the Commission).

Pursuant to 29 **Del.C.** Subchapter II, the proposed regulation was published in the *Register of Regulations* on November 1, 2008 at Volume 12, Issue 5, Page 540. The legal reference is **12 DE Reg. 540**. Additionally, Notice of the Public Hearing was advertised in the two newspapers of general circulation, *The News Journal* and the *Delaware State News*, on Saturday, November 1, 2008. The Notice contained a summary of the proposed regulation, announced the time and place of the public hearing, and invited written comment up to the close of

business on December 1, 2008. Two written public comments were received. The first was a November 18, 2008 letter from the Chair of the Delaware Developmental Disabilities Council and the second was a November 26, 2008 Memorandum from the Chair of the State Council for Persons with Disabilities.

### Discussion

While the documents were received from different organizations on different dates, the content of both is almost identical. The comments suggest a number of mostly grammatical or word changes for clarity. The commenters do suggest at least two substantive changes: as to the proposed §3.2.12, it is suggested that it should be deleted to “enhance enforcement”; and §5.2, where it is suggested by the commenters that the imposition of financial sanctions may be “ultra vires” under 16 **Del.C.** § 9926. (November 18, 2008 Letter from Chair of Delaware Disabilities Council, page 2; November 26, 2008 Memorandum from Chair of State Council for Persons with Disabilities, page 2)

The public comments have been reviewed by the hearing officer and, after consultation with staff and counsel for the Commission and the Delaware Health Information Network, makes the following recommendations:

Some of the suggested grammatical or word changes for purposes of clarity should be incorporated into the proposed regulation. Those include changes to §§1.1, 2.1, 2.3, 4.1, 4.1.1, 4.1.4, 6.1 and 8.1. However, the balance of the suggested changes or comments should not be made for 3.2.12 and §5.2 either for clarity or substantive reasons.

While it is recognized that §§3.2.2, 3.2.3, 3.2.5, 3.2.9 are seemingly long and difficult to parse, they reflect the essential terms of a highly technical nature of the required Business Associate [“BA”] agreements required by HIPAA (Health Insurance Portability and Accountability Act of 1996, and regulations promulgated there under, including the Standards for Privacy of Individually Identifiable Health Information and Security Regulations, 45 Code of Federal Regulations Parts 160, 162 and 164.) One of the fundamental purposes of the proposed regulation was to streamline the application process by importing the HIPAA standards for the required BA agreements into the fabric of DHIN participation. Those sections are the boilerplate provisions of BA agreements which affect a ‘covered entity’s’ obligation to maintain control over the sensitive health care information through its agents or subcontractors.

For these same reasons, the proposed elimination of § 3.2.12<sup>1</sup> should be rejected as well. The commenters suggest without explanation that the elimination of that section will “enhance enforcement.” In fact the opposite is more likely, it will unnecessarily complicate the duties of the parties under a BA agreement. The purpose under HIPAA for BA agreements is for the covered entity to control the sensitive health care information delivered to its agent or contractor. Elimination of the section (which both the Commission and DHIN routinely use in their own contracts) would engender confusion and permit individuals such as competitors to make a legal argument that they have rights under the BA agreements. Additionally, elimination of the section would invite litigation under this sensitive area that is precluded by the very statutory provisions that created the DHIN. (see 16 **Del.C.** §§9923, 9925 and 9926)

The commenters suggest that §5.2 may be “ultra vires”, but do not suggest any changes. The term “ultra vires” is reference to a legal doctrine that an organization cannot act in excess of its authority. Specifically, the commenters suggest that the possible awarding of financial sanctions may exceed the statutory mandate of 16 **Del.C.** §9926<sup>2</sup>. However, the section in question is directed to dispute resolution which is authorized under 16 **Del.C.** §9925. Additionally, the issue of financial sanctions is also part of the participation agreement and is enforceable under contract. It is recommended that no change be made to proposed §5.2.

1. That section provides: “No Third Party Beneficiaries. There are no third party beneficiaries to the obligations of the participants of DHIN under this section.”

2. Subsection (c) provides: “Any violation of the Commission’s rules or regulations regarding **access or misuse** of the DHIN health information shall be reported to the office of the Attorney General....(emphasis added)”

The final proposed regulation is attached with the proposed changes to the published Regulation. The changes made in response to the public hearing, are indicated in **[BOLD]** brackets and deletions are shown in bold bracketed ~~[strike-outs]~~.

## Recommendation

The hearing officer hereby recommended that the proposed Regulation with the above changes, which are not substantive, be promulgated as the final Regulation to be effective 10 days after the Commission's Order adopting the Regulation is published.

Hearing Officer Leah Jones

**IT IS SO ORDERED this 4th day of December 2008**, that the proposed 12 DE Reg. 540 with the non-substantive changes from public comments is hereby adopted by the Delaware Health Care Commission. The staff is directed to transmit this order and form of regulation to the Register for publication.

John C. Carney, Jr.	
Lisa C. Barkley, MD	Vincent P. Meconi
Theodore W. Becker, Jr.	Janice E. Nevin, MD, MPH
Richard S. Cordrey	Dennis Rochford
Matthew Denn	Henry Smith
A. Richard Heffron	Frederick A. Townsend

## **102 Delaware Health Information Network Regulations on Participation**

### **1.0 Statutory Authority**

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

- 1.1 The Delaware Health Information Network ["DHIN"] was created by statute, 16 Del.C. Ch. 99, Subchapter IV, to be a public instrumentality of the State of Delaware to promote the design, implementation, operation and maintenance of facilities for public and private use of health care information. The DHIN is operated through a Board of Directors. In keeping with the purpose, it is now more convenient to promulgate a regulation that will provide the requirements of participation in the DHIN and replace the numerous written documents among the participants and the DHIN. The regulation also seeks to clarify the obligations, requirements, permitted use and privacy of data for the participants.
- 1.2 As use in this regulation, the term "DHIN" refers to the entity unless the context refers to the electronic interchange system operated and maintained by the entity. Unless otherwise required any action by the entity shall be by majority vote of the quorum of the present members of the Board of Directors ["Board"]. Meetings of the Board may include members that are participating electronically or telephonically, as long as the public can hear or observe the participation of such members.

### **2.0 Participation and withdrawal.**

- 2.1 Participation in the DHIN is voluntary and is commenced by filing with the Executive Director ["Director"] of the DHIN a document that is known as **[a an]** application for participation agreement ["Application"]. The Application shall: identify the individual or entity in detail, provide its healthcare activity and purpose, **[shall]** identify the individual or individuals that have the authority to bind the entity and conduct its business affairs, and **[include]** such other information as may be required by the Board. The Participation agreement shall also contain a statement that the entity agrees to be bound without reservation by this and other regulations**[,policies and/or procedures]** that involve the DHIN.
- 2.2 The participation agreement along with other information that may be reasonable as determined by the Director and the Executive Committee ["Committee"] of the Board shall be reviewed by the Director and the Committee to their satisfaction. The Executive Committee may request additional information

or may grant initial participation to the applying entity subject to certain conditions. The initial participation determination is subject to a subsequent ratification by the Board. If no action is taken by the Board during its next two regular meetings with a quorum present, the Board is deemed to have ratified the initial participation of the applying entity. If the Committee denies initial participation to an applying entity, it will provide the reason or reasons for denial. After such denial, the applying entity may request the Board reconsider the Committee's denial. If the Board denies reconsideration, the applying entity may then seek legal review in accordance with 29 Del.C. Ch. 101, Subchapter V.

- 2.3 Withdrawal from participation is commenced by filing with the Director and the Committee a document that is known as notice of withdrawal. The Board will ~~provide~~ **determine** the **[specific]** information and **[other]** requirement[s] that will ~~comprise~~ **be contained in** the notice of withdrawal. The Director, the Committee and the withdrawing entity shall seek agreement as to the effective date of withdrawal and any other reservations or conditions. If the parties cannot agree, the Committee with the subsequent ratification of the Board shall determine the effective date of withdrawal and any other conditions or reservations of the withdrawal.
- 2.4 Participation may be involuntarily terminated due to security or privacy breaches or failure or refusal to perform obligations of participation. Involuntary termination shall be subject to the procedures for dispute resolution contained below.

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

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

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

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

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

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

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

- 3.2 Obligations of Business Associate

- 3.2.1 Initial Effective Date of Performance. The obligations created under this section are effective upon initial participation in the DHIN.
- 3.2.2 Permitted Uses and Disclosures of Health Information. Business Associate shall Use and Disclose Health Information as necessary to perform services for Covered Entity, provided that such Use or Disclosure would not violate the Privacy Regulations if done by Covered Entity. Business Associate may Use and Disclose Health Information for the proper management and

- administration of Business Associate, or to carry out the legal responsibilities of the Business Associate, provided that the disclosure is required by law, or the Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that: (i) that it will be held confidentially and used or further disclosed only for the purpose for which it was disclosed; and (ii) the person is obligated to notify Business Associate (who will notify Covered Entity) of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3.2.3** Adequate Safeguards for Health Information. Business Associate warrants that it shall implement and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity and to prevent the Use or Disclosure of Health Information in any manner other than as permitted by this Agreement.
- 3.2.4** Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Health Information by Business Associate in violation of the requirements of this Agreement.
- 3.2.5** Reporting Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity each Use or Disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors that is not specifically permitted by this Agreement. The initial report shall be made by telephone call to Covered Entity's Privacy Officer within forty-eight (48) hours from the time the Business Associate becomes aware of the non-permitted Use or Disclosure, followed by a written report to the Privacy Officer no later than five (5) days from the date the Business Associate becomes aware of the non-permitted Use or Disclosure. Business Associate shall report to Covered Entity any security incident of which it becomes aware.
- 3.2.6** Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Health Information available to the Covered Entity, or at the request of Covered Entity, to the Secretary of the U.S. Department of Health and Human Services ("Secretary"), in a time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Regulations.
- 3.2.7** Access to and Amendment of Health Information. Business Associate shall, to the extent Covered Entity determines that any Health Information constitutes a "designated record set" under the Privacy Regulations, (a) make the Health Information specified by Covered Entity available to the individual(s) identified by Covered Entity as being entitled to access and copy that Health Information, and (b) make any amendments to Health Information that are requested by Covered Entity. Business Associate shall provide such access and make such amendments within the time and in the manner specified by Covered Entity.
- 3.2.8** Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Health Information made by Business Associate or its employees, agents, representatives or subcontractors as required by the Privacy Regulations. Any accounting provided by Business Associate under this Section 3.2.8 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Health Information; (c) a brief description of the Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that requires an accounting under this Section 3.2.8, Business Associate shall track the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure.
- 3.2.9** Restrictions: Requests for Confidential Communications. Business Associate will comply with any agreements for confidential communications of which it is aware and to which Covered Entity agrees pursuant to 45 C.F.R. §164.522 (b) by communicating with individuals using agreed upon alternative means or alternative locations.
- 3.2.10** Disposition of Health Information Upon Termination or Expiration. Upon termination or expiration of this Agreement, Business Associate shall either return or destroy, in Covered Entity's sole

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# FINAL REGULATIONS

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- discretion and in accordance with any instructions by Covered Entity, all Health Information in the possession or control of Business Associate and its agents and subcontractors. However, if Covered Entity determines that neither return nor destruction of Health Information is feasible, Business Associate may retain Health Information provided that Business Associate (a) continues to comply with the provisions of this Agreement for as long as it retains Health Information, and (b) further limits Uses and Disclosures of Health Information to those purposes that make the return or destruction of Health Information infeasible.
- 3.2.11 Term and Termination. Unless sooner terminated, this Agreement shall continue in effect so long as Business Associate continues to provide services or perform functions on behalf of Covered Entity. A material breach by Business Associate of any provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Agreement providing grounds for immediate termination of this Agreement. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may provide an opportunity for Business Associate to cure the breach or end the violation and may terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible. Notwithstanding the above, any breach related to the sale, transfer, or use or disclosure of Health Information for commercial advantage, personal gain, or malicious harm shall be considered non-curable. Business Associate's obligations under Article II shall survive the termination or expiration of this Agreement. Nevertheless, DHIN may continue to hold data in the terminated participant's data stage for historical and other purposes.
- 3.2.12 No Third Party Beneficiaries. There are no third party beneficiaries to the obligations of the participants of DHIN under this section.
- 3.2.13 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Health Information from Business Associate to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.
- 3.2.14 Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of Health Information. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Health Information that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of Health Information that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HIPAA Regulations.

## **4.0 Other obligations of participation.**

- 4.1 Application for and participation in DHIN requires each participating entity and its agents and employees to the following ~~[in addition to provisions of this section as well as]~~ the obligations imposed elsewhere.
- 4.1.1 The participating entities, their agents and employees shall conduct their affairs with all other ~~[participates participants]~~ as well as the agents and employees of DHIN with the highest level of candor, complete honesty-in-fact, civility and professionalism.

- 4.1.2 The participants must respond to requests for information and complaints in a reasonable period. Participants must respond to requests for information and complaints that involve security and privacy within twenty-four hours unless the Director or his or her designee extends the time.
- 4.1.3 The participants must provide financial support by prompt payment in accordance with their prior agreement or as may be promulgated by rule by the Board in the future.
- 4.1.4 The participants must promptly report Security Incidents as defined in the prior section promptly to the Director and any other ~~affected~~ affected participant.

## **5.0** Dispute resolution and inquiries

- 5.1 Any dispute that involves the DHIN or its interchange shall be subject to dispute resolution under this section. Such disputes may involve participants, the DHIN or members of the public where there is a claim that this or other regulations or statutes were violated by any of the forgoing. A dispute may also be an inquiry or request for information that is not responded to in a reasonable manner.
- 5.2 The Chair of the Board may appoint a number of individuals subject to approval by the Committee to serve on the Dispute Resolution Committee ["DRC"]. The DRC shall be comprised of panels of no less than three or more than five members. No member may serve on a case before the DRC where that member has a conflict of interest as set forth in 29 Del.C. Chapter 58. The presiding member of the panel must be a member of the Board. The Board may promulgate rules for procedures for matters to be determined by the DRC. The DRC and the Board are authorized to grant relief to include financial penalties, suspension and termination of an entity or individual's participation or use of the DHIN.
- 5.3 Any party aggrieved by the decision of the Panel may seek review by filing written exceptions to the Panel's decision within ten days of the decision as would be computed in the Delaware Superior Court. The review shall be presented to the Board who may overturn the Panel's decision by a majority vote of a quorum of the Board.
- 5.4 A aggrieved party may seek legal review on the record only in accordance with 29 Del.C. Ch. 101, Subchapter V.

## **6.0** Permitted uses by participants

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

## **7.0** Patient access

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

## **8.0** Technical Standards

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

**STATE EMPLOYEE BENEFITS COMMITTEE**

Statutory Authority: 29 Delaware Code, Sections 5210(4) and 9602(b)(4)  
 (29 **Del.C.** §§5210(4) and 9602(b)(4))  
 19 DE Admin. Code 2001

**ORDER**

**Employees Eligible to Participate in the State Group Health Insurance Program  
 Eligibility and Enrollment Rules**

Effective on January 1, 2009, under the authority of Title 29 of the **Delaware Code**, Section 9602(b)(4), the State Employee Benefits Committee is amending the Eligibility and Enrollment Rules regarding the Employees Eligible to Participate in the State Group Health Insurance Program to read as provided below. These amended rules were prepared by the Statewide Benefits Office and have been approved by the State Employee Benefits Committee with the consent of the State Employee Benefits Advisory Council. The amended rules are effective upon publication in the *Register of Regulations* in accordance with Senate Bill 300, Section 34.

**2001 Group Health Care Insurance Eligibility and Coverage Rules**

(Used to determine who may enroll. See "Cost of Coverage" to determine the amount of State contributions, toward an employee's coverage.)

**1.0 Authority**

Pursuant to the authority vested in the State Employee Benefits Committee (SEBC) by 29 **Del.C.** §§5210(4), 9602(b)(4), the SEBC adopts these eligibility and coverage rules for the State of Delaware Group Health Insurance Program ("State Plan"). In the event of a conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules.

- 1.1 An Employee or pensioner must meet one of the following definitions to be eligible for coverage under the State's plan:
- 1.1.1 a permanent full-time employee (regularly scheduled 30 or more hours per week or 130 or more hours per month);
  - 1.1.2 an elected or appointed official as defined by 29 **Del.C.** §5201;
  - 1.1.3 a permanent part-time employee (regularly scheduled to work less than 130 hours per month);
  - 1.1.4 a limited term employee (as defined by Merit Rule 10.1);
  - 1.1.5 a pensioner receiving or eligible to receive a pension from the State;
  - 1.1.6 a per diem or contractual employee of the Delaware General Assembly who has been continuously employed for 5 years.
  - 1.1.7 a temporary employee (regularly scheduled 30 or more hours per week or 130 or more hours per month) as defined by 29 **Del.C.** §5207.
- 1.2 Those employees who meet the definition outlined in rule 1.1.1, 1.1.2, 1.1.4 and 1.1.5 are considered "regular officers and employees", or "eligible pensioners" as provided by 29 **Del.C.** §5202 and are to receive State Share contributions.
- 1.3 Short term disability beneficiaries receiving benefits under 29 **Del.C.** §5253(b) will be treated as "regular officers and employees" under these regulations. Long term disability beneficiaries receiving benefits under 29 **Del.C.** §5253(c) will be treated as "eligible pensioners" under these regulations.
- 1.4 Casual and seasonal and substitutes are not eligible for the State Plan.
- 1.5 Newly employed school teachers become eligible employees when they start employment not when they sign their contract. (Review the Eligibility Table, see Appendix "A", for coverage start date

dependent upon the September hire date). Temporary teachers who are re hired in September are eligible to elect coverage when re-hired. Temporary teachers who are re hired in the next contract year are eligible to elect coverage when re hired without fulfilling another 3 month waiting period.

- 1.6 Employees or pensioners who are enrolled in Medicare Part D may not have prescription coverage in the State Plan.

**6 DE Reg. 690 (11/1/02)**

## 2.0 Dependents Eligible to Participate

- 2.1 Dependents must meet one of the following definitions to be eligible for enrollment in the State plan:

- 2.1.1 A regular officer's or employee's or eligible pensioner's:

2.1.1.1 legal spouse (Delaware law does not recognize common law or same sex marriage). Ex spouses may not be enrolled in the State's group health insurance program - even if a divorce decree, settlement agreement or other document requires an employee to provide coverage for an ex spouse;

**IMPORTANT NOTE:** Spousal Coordination of Benefits Policy has been in effect since 1/1/93. The policy applies to a spouse who is eligible for health coverage through his/ her own employer. Spouses who work full time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Plan. A new Spousal Coordination of Benefits form must be completed each year during Open Enrollment or anytime throughout the year if the spouse's employment or insurance status changes. Employees should refer to the Statewide Benefits Office's website at <http://ben.omb.delaware.gov/documents/cob/index.shtm> or individual benefit booklets for each plan for more detailed information.

2.1.1.2 unmarried child/ren under age 21 (age 24 if a full time student), born to or legally adopted or placed for adoption by a regular officer, or employee or eligible pensioner or a regular officer or employee's or pensioner's legal spouse, as defined in 29 **Del.C.** §5201(a);

2.1.1.3 unmarried dependent child/ren under age 21 (age 24 if a full time student), not born to or legally adopted, but residing with a regular officer or employee or eligible pensioner in a regular parent child relationship, and who is dependent upon the regular officer or employee or eligible pensioner for at least fifty (50) percent support. A statement of support form must be completed by the regular officer or employee or eligible pensioner and forwarded to the employee's Benefit Representative or Human Resources Office with the request for coverage together with a copy of the legal guardianship, permanent guardianship or custody order for the dependent child. If a natural parent resides in the same household as the insured regular officer or employee or eligible pensioner, it will be deemed that a regular parent-child relationship does not exist unless the regular officer or employee or eligible pensioner has legal guardianship documents or has legally adopted the dependent child.

2.1.1.4 unmarried dependent child/ren who meet the criteria of sections 2.1.1.2 or 2.1.1.3 above, but who is over age 21 and incapable of self-support because of a mental or physical disability which existed before the child reached age 21. The child/ren must have been covered under employee's contract immediately preceding age 21, or age 24 if a full time student.

**IMPORTANT NOTE:** Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office.

- 2.2 Eligible dependent child/ren covered under the health insurance plans of both parents will be primary to the parent's plan whose birthday is the first to occur during the calendar year. In the event the birth dates are the same, the dependent child will be primary to the parent with the longest employment service. In the event birth dates and length of service are the same, the dependent child will be primary to the male parent's plan.

- 2.3 Adult Dependent Program - Provides a period of health care coverage up to age 24, if an adult dependent's coverage was terminated or will terminate due to his/her age; i.e., dependent was terminated from coverage effective December 31 in the year he/she turned 21 and is not a full-time student, or the end of the month in which he/she graduated from college and is not yet 24.
- 2.3.1 Eligibility Requirements. An Adult Dependent eligible to be covered under this program is a covered person's (employee's or pensioner's) child by blood or by law who meets all of the following:
- 2.3.1.1 Is less than 24 years of age;
  - 2.3.1.2 Is unmarried;
  - 2.3.1.3 Has no dependents of his/her own;
  - 2.3.1.4 Is either a resident of the State of Delaware or is enrolled as a full-time student at an accredited institution of higher learning; and
  - 2.3.1.5 Is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, or church plan, or entitled to benefits under a state's Medical Assistance program.
- 2.3.2 If an Adult Dependent is no longer eligible to be covered under the health plan of the parent or legal guardian (referred to as covered person) because of his/her age, he/she is eligible to enroll in this program provided the covered person continues to have health care coverage through the State of Delaware. The Adult Dependent must contact the health care carrier within 30 days of their loss of coverage to enroll or may enroll during an Open Enrollment period. If an Adult Dependent is between the ages of 21 and 24 and is enrolled as a full-time student at an accredited institution of higher learning he/she is eligible to be covered under the health care coverage of the covered person and does not need to enroll in this program.
- 2.3.3 Program Requirements
- 2.3.3.1 Employee or pensioner must remain actively enrolled in a State of Delaware Group Health Insurance plan provided by one of the State designated health care providers.
  - 2.3.3.2 Adult Dependent must enroll in the same health care plan, which provides coverage to their parent or legal guardian who is an employee or pensioner with Group Health Insurance through the State of Delaware.
  - 2.3.3.3 Health care premiums must be paid directly to one of the State designated health care providers.
  - 2.3.3.4 Payroll deductions from the paycheck of the parent or legal guardian with group health insurance through the State are not an option.
- 2.3.4 End of Coverage. Coverage of an eligible Adult Dependent who enrolls in this Adult Dependent Program is provided until the earlier of the following:
- 2.3.4.1 Adult Dependent child no longer meets the definition of an Adult Dependent because he/she:
    - 2.3.4.1.1 Reaches 24 years of age;
    - 2.3.4.1.2 Marries;
    - 2.3.4.1.3 Has his/her own dependents;
    - 2.3.4.1.4 Is not a resident of the State of Delaware or is not enrolled as a full-time student at an accredited institution of higher learning; or
    - 2.3.4.1.5 Has his/her own coverage as a named subscriber, insured, enrollee, or covered person under another group or individual health benefits plan, group health plan, or church plan, or entitled to benefits under a state's Medical Assistance plan;
  - 2.3.4.2 Date on which coverage ceases under the contract by reason of failure to make a timely payment of premium required under the contract. Payment of any premium is considered to be timely if made within 30 days after the due date; or
  - 2.3.4.3 Date upon which coverage under the State Plan is terminated for the covered person (parent or legal guardian) of the eligible Adult Dependent.

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## 6 DE Reg. 690 (11/1/02)

### 3.0 Coverage

- 3.1 Coverage of an eligible regular officer or employee and his/her eligible dependents will become effective on the first of the month following date of hire provided the employee submits a signed application within 30 days of the employee's date of hire or within 30 days of the employee becoming eligible for the State Share. Refer to Eligibility Table for specific coverage date options for employees who elect coverage when eligible for State Share.
- 3.1.1 Coverage may become effective on date of hire provided the employee submits a signed application within 30 days of the employee's date of hire. Premiums are not pro-rated.
- IMPORTANT NOTE:** Spousal Coordination of Benefits Policy became effective 1/1/93 for a spouse who is eligible for health coverage through his or her own employer. Spouses who work full time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Plan. Employees should refer to the individual benefit booklets for each plan for more detailed information or see <http://ben.omb.delaware.gov/documents/cob/index.shtml>.
- 3.2 Employees of the State of Delaware who are enrolled in a health insurance benefit plan must re-enroll in a plan of their choice during the Open Enrollment period as determined by the SEBC. Should such employee(s) neglect to re-enroll in the allotted time, said employee/s and any spouse or dependents shall be automatically re-enrolled in their previous plan as long as verification of employment is provided by the employee and the Statewide Benefits Office.
- 3.3 Employees or pensioners who cover their spouse on the State Plan must complete a Spousal Coordination of Benefits Policy Form during each annual Open Enrollment period as well as anytime there is a change in the spouse's employment or an insurance status change. Failure to supply the Spousal Coordination of Benefits form shall result in the spouse's medical claims being reduced to 20 percent and inability to have prescriptions filled.
- IMPORTANT NOTE:** Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office.
- 3.4 If an employee elects not to enroll in the State Plan, the employee must complete and sign an application/enrollment form acknowledging the desire not to enroll by noting "waive" on the appropriate form.
- 3.5 Eligible employees who fail to submit a completed and signed application/enrollment form within 30 days of their date of hire or their date of eligibility for State Share may not join the State Plan until the next open enrollment period (usually May), unless the employee meets the requirements of Eligibility and Enrollment Rule 3.6.
- 3.6 Pursuant to a federal law, Health Insurance Portability and Accountability Act (HIPAA), if an employee declines enrollment for him or herself or their dependent/s (including the spouse) because of other health insurance coverage and later involuntarily loses the coverage, the State employee and/or spouse may be eligible to join the State Plan, without waiting for the next Open Enrollment period, as long as the request to enroll is made within 30 days of the loss of coverage. Necessary forms must be completed within 30 days of the request to enroll. If such a change is not made in the time period specified, the eligible employee/and or spouse must wait until the next Open Enrollment period.
- 3.6.1 The following list includes examples of loss of coverage or loss of eligibility for coverage rules under which an employee may request enrollment for him/her-self and for dependent/s:
- Loss of eligibility for coverage as a result of legal separation, divorce, death, termination of employment or reduction in the hours of employment;
  - Loss of eligibility for coverage provided through a Health Maintenance Organization (HMO) because the individual no longer resides, lives, or works in an HMO service area (regardless of whether the choice of the individual) and no other benefit package is available to the individual;
  - Loss of eligibility for coverage due to the cessation of dependent status;

- Loss of coverage because an individual incurs a claim that meets or exceeds a lifetime limit on all benefits under the plan;
  - A plan discontinues a benefit package option and no other option is offered;
  - If the employer ceases making contributions toward the employee's or dependent's coverage, the employee or dependent will be deemed to have lost coverage and does not need to drop coverage to have special enrollment rights;
  - Exhaustion of Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, except that an employee/dependent losing coverage under another plan is not required to elect COBRA under that plan before using their special enrollment rights to enroll with the State.
- 3.6.2 An increase in employee contribution, change of benefits or change of carrier of the spouse's plan shall not constitute loss of coverage, except where the other plan terminates employer contributions. Employees should contact their Benefit Representative or Human Resources Office and pensioners should contact Pension Office to ask specific questions about eligibility.
- 3.7 If an employee declines enrollment for him/her-self or his/her dependents (including the spouse) and later has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may be able to enroll him/her-self and his/her dependents provided that he/she request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption. Necessary forms must be completed within 30 days of the request to enroll.
- 3.8 The eligible employee who is currently enrolled in a group health plan, may change his/her benefit plan upon the dependent's involuntary loss of coverage, pursuant to Eligibility and Enrollment Rule 3.06, and addition to the State's Plan, provided the request for enrollment is made within 30 days of the loss of dependent's coverage and necessary form must be completed within 30 days of the request. In addition, if the employee has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may change his/her benefit plan upon the addition of the dependent to the State Plan provided the request for enrollment is made within 30 days after the marriage, birth, adoption, or placement for adoption and the necessary paperwork is completed within 30 days of the request.
- 3.9 When husband and wife are eligible State employees, the two employees, or each eligible pensioner, and all eligible dependents may elect to enroll under one family contract. When the employees are both active, and an employee and spouse or family contract is chosen, the spouse whose birthday occurs earlier in the calendar year shall sign an application for coverage form requesting coverage. A change of agency is considered re-enrollment. (In the event the birth dates are the same, length of service and/or gender will be applied as described in Eligibility and Enrollment Rule 2.2.) Beginning with the effective date of these rules, State Share contributions for all new enrollments will be charged to the agency or organization whose employee enrolls for employee, employee and spouse, employee and child/ren or family coverage. Enrollments prior to February 1990 shall continue to be charged to the agency or organization as was previously determined.
- 3.9.1 Each regular officer or employee or each eligible pensioner may elect to enroll under a separate contract. Eligible dependent/s may be enrolled under either contract, but no dependent shall be enrolled more than once under the State Plan.
- 3.9.2 The increment of cost of the options selected by the two regular officers or employees or eligible pensioners, which exceeds the cost of two First State Basic family plans, shall be deducted by the Director of the Office of Management and Budget (OMB) from salary, pension or disability payments or checks.
- 3.10 When the spouse of an eligible regular officer or employee is a retired State of Delaware employee receiving a pension, and enrolled under separate individual contracts, the employing agency and the Pension Office will carry the coverage for their respective employee/pensioner. If an Employee & Spouse, or a Family contract is chosen, the coverage will continue to be carried through the active employee's agency until such time that the Pensioner turns 65. The over age 65 spouse may continue to have the State Plan as primary payor of benefits with the contract to continue under the active employee's agency, or the spouse may choose Medicare as the primary payor through the Pension Office. Also see Eligibility and Enrollment Rule 4.8.

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## 6 DE Reg. 690 (11/1/02)

### 4.0 Changes In Coverage

- 4.1 An eligible employee who elects to be covered on his/her EMPLOYMENT COVERAGE DATE may change coverage when the employee first becomes eligible for the State Share payment. (Examples: (1) An employee who at hire enrolls in the "First State Basic" plan may change to "Comprehensive PPO" (or another optional coverage) when beginning State Share contribution, without waiting for the next open enrollment period. (2) An employee who at hire enrolls for "Employee" coverage may change to "Employee and Child/ren", "Employee and Spouse", or "Family" coverage when he/she begins to receive State Share, without waiting for the next open enrollment period.
- 4.2 When a covered regular officer or employee or eligible pensioner marries, coverage for the spouse will become effective on the date of marriage, or first of the month following the date of marriage provided the regular officer or employee or eligible pensioner requests enrollment of the new spouse within 30 days of the date of the marriage and provides the necessary paperwork within 30 days of the request to enroll. A copy of valid marriage license must be provided. (Delaware law does not recognize common law or same sex marriage). Premiums are paid on a monthly basis and not pro rated; therefore, if a regular officer or employee or eligible pensioner adds the new spouse effective the date of the marriage, the regular officer or employee or eligible pensioner must remit the difference in employee contribution for the entire month. The regular officer or employee or eligible pensioner may submit a signed application within thirty (30) days prior to the date of marriage. If a request to enroll is not made within 30 days after the marriage, a covered regular officer or employee or eligible pensioner must wait until the next open enrollment period to add the spouse. A Spousal Coordination of Benefits Policy form must be completed when adding spouse to coverage.
- 4.3 Coverage for a child/ren born to a regular officer or employee or eligible pensioner or legal spouse who is covered under the State Plan will begin on the date of birth provided a request to enroll the child is made within 30 days of the date of birth and provided the necessary paperwork is received within 30 days of the request to enroll. A copy of a valid birth certificate must be provided. Premiums are paid on a monthly basis and not pro rated. If such a change is not made in the time period specified, a covered employee must wait until the next Open Enrollment period to add the child/ren. For an employee who has an existing Employee and Child, or Family type contract, the 30 day time period does not apply. However, the application to add the newborn child/ren must be made within a reasonable time period and copy of valid birth certificate provided.
- IMPORTANT NOTE:** Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office.
- 4.4 Coverage for a child/ren legally adopted or placed for adoption with a regular officer or employee or eligible pensioner or legal spouse who is covered under the State Plan will begin on the date of adoption or placement for adoption provided a request to enroll for the child/ren is made within 30 days of the date of adoption or placement for adoption and provides the necessary paperwork within 30 days of the request to enroll.
- 4.4.1 A copy of a valid legal document attesting to the adoption or placement for adoption must be provided. Premiums are paid on a monthly basis and not pro rated. If such a change is not made in the time period specified, a covered employee must wait until the next Open Enrollment period to add the child. For an employee who has an existing Employee and Child/ren, or Family type contract, the 30 day time period does not apply. However, the application to add the newly adopted child must be made within a reasonable time period.
- 4.5 Coverage for an eligible dependent, other than a newborn child/ren, who becomes an eligible dependent after the employee has been enrolled, becomes covered on the first day of the month following eligibility provided the regular officer or employee or eligible pensioner requests enrollment within 30 days of eligible status. The necessary paperwork must be completed within 30 days of the request for enrollment. A copy of valid documentation of dependent status must be provided, i.e. legal guardianship, permanent guardianship, custody order. Applicable premiums must be paid.

- 4.6 An employee who transfers to another agency or school district may change his/her plan and coverage without waiting until the next Open Enrollment period if the transfer impacts the employee contribution to health benefits provided the employee makes the required change within 30 days of the transfer.
- 4.7 Changes in coverage can only be made at the annual Open Enrollment period, except:
- 4.7.1 A regular officer or employee or eligible pensioner is making a change due a qualifying event or Special Enrollment Right as previously outlined in Eligibility and Enrollment Rules 3.6 through 3.8;
  - 4.7.2 In the case of divorce, if there is a "qualifying event" under Eligibility and Enrollment Rules 3.6 through 3.8, the regular officer or employee or eligible pensioner's coverage status may change, but the plan cannot unless Double State Share (DSS) is applicable;
  - 4.7.3 The spouse of a regular officer or employee or eligible pensioner has become a State of Delaware employee entitled to State Share in which case the plan may be changed if an Employee and Spouse or Family contract is chosen;
  - 4.7.4 A regular officer or employee or eligible pensioner may change coverage and/or plan if no longer entitled to DSS, provided application is made within 30 calendar days of the qualifying event; or
  - 4.7.5 A regular officer or employee or eligible pensioner electing to drop health coverage or drop one or more dependents (including the spouse of such regular officer, employee, or eligible pensioner) from health coverage may drop coverage of dependents, under the following limited circumstances as per Section 125 of the Internal Revenue Service Code:
    - “1. Change in status.
      - (i) Due to death of spouse.
      - (ii) Due to changes in employment status of the employee, the employee's spouse or dependent (e.g., commencement of employment, change of worksite or return from an unpaid leave of absence).
      - (iii) Change in the eligibility conditions for coverage under the spouse's or dependent's employer's plan.
      - (iv) Events that cause the employee's dependent to cease to satisfy the plan's eligibility requirements. (e.g. age, student status or similar circumstance).
      - (v) Change in the place of residence of the employee, spouse or dependent provided that in each of the circumstances described in subparagraphs (i) through (v), inclusive, the cessation of coverage for the dependent is on account of and corresponds with a change in status that affects eligibility for coverage under the plan.
    - 2. Judicial Order, Decree, or Judgment. Health coverage for one or more of dependent children may be dropped if a judicial order, decree, or judgment permits the cancellation of dependent child coverage, provided that the spouse, former spouse or another individual is required to cover such child and such coverage is in fact provided.
    - 3. Medicare or Medicaid Eligibility. If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., becomes enrolled) under Part A or Part B of Title XVII of the Social Security Act (Medicare) (Public Law 89-97 (79 Stat. 291) or Title XIX of the Social Security Act (Medicaid) (Public Law 89-97 (79 Stat. 343), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), the regular officer, employee or eligible pensioner may for themselves or for their dependents make a prospective election change to cancel or reduce coverage of that employee or dependent under the health plan.
    - 4. Change in Costs or Coverage. If the cost charged to an employee for health coverage significantly increases during a period of coverage, the regular officer, employee or eligible pensioner may make a corresponding change in election under the plan, including commencing participation in an option with a decrease in cost, or, in the case of an increase in cost, revoking an election for that coverage and, in lieu thereof, either receiving on a prospective basis coverage under another benefit package option providing similar coverage or dropping coverage if no other health plan option providing similar coverage is available. (For purposes of this paragraph, a cost

increase or decrease refers to an increase or decrease in the amount of the elective contributions under the cafeteria plan, whether that increase or decrease results from an action taken by the employee (such as switching between full-time and part-time status) or from an action taken by an employer (such as reducing the amount of employer contributions for a class of employees).”

- 4.8 An eligible regular officer or employee or a legal spouse (eligible to receive State Share) who reaches age 65 and becomes eligible for Medicare shall continue to be covered under the State Plan as the primary payor of benefits.
  - 4.8.1 Regular officers or employees or eligible pensioners and dependents eligible for Medicare, by reason of age or disability, must apply for Medicare Part A when first eligible regardless of their coverage under the State Plan. Also see Eligibility and Enrollment Rule 3.10.
  - 4.8.2 If an employee or dependent covered under the State Plan becomes eligible for Medicare Parts A and B due to End Stage Renal Disease (ESRD), the covered individual must enroll in Medicare Parts A and B and these plans will be primary to the State Plan for the period of time as outlined in the Medicare guidelines. Employees with ESRD should contact their State Plan insurance carrier to discuss coverage options.
- 4.9 An employee who becomes eligible for pension or Long-Term Disability (LTD) may change their plan at the onset of receiving pension or LTD.
- 4.10 A regular officer or employee or eligible pensioner who is required by Court or Administrative Order to provide health insurance coverage for a child/ren shall be permitted to enroll under family or employee and child/ren coverage, any child/ren who is eligible for such coverage (without regard to any Open Enrollment restriction). If the employee is enrolled, but fails to make application to obtain coverage of the child/ren, the child/ren shall be enrolled under such family or employee and child/ren coverage upon application by the child/ren's other parent, the Division of Child Support Enforcement or Division of Social Services. The employee shall not disenroll (or eliminate coverage of) any child/ren unless the employer is provided satisfactory written evidence that:
  - 4.10.1 The Court or Administrative Order is no longer in effect, or
  - 4.10.2 The child/ren is or will be enrolled in comparable health coverage, which will take effect no later than the effective date of such disenrollment.
- 4.11 When a covered regular officer or employee or eligible pensioner divorces, coverage for the ex spouse will terminate on the day following the date of divorce. Premiums are paid on a monthly basis and not prorated. The regular officer or employee or eligible pensioner must remit the employee contribution for the plan, which included the spouse for the entire month. The regular officer or employee or eligible pensioner must submit a signed application within 30 days prior to or 30 days following the date of divorce. If DSS terminates as a result of the divorce, the regular officer or employee or eligible pensioner must pay the employee contribution for the entire month that the divorce occurred.

**6 DE Reg. 690 (11/1/02)**

**5.0 Cost Of Coverage**

(Used to determine the amount of State Share contributed toward an employee's coverage and the amount of employee contributions required, if any.)

- 5.1 "Regular officers and employees" begin earning State Share contributions on the first of the month following three full months of employment. See Eligibility Table for specific information regarding State Share payments and employee payroll deductions for employees who elect coverage when eligible for State Share.
- 5.2 Permanent part-time, temporary per diem and contractual employees of the General Assembly as described in Eligibility and Enrollment Rule 1.01 are eligible to participate in the State Plan, but are not eligible for State Share. Therefore, any such employee joining the State Plan must pay the full cost of the health plan selected. Payment must be collected by the organization and forwarded to the Statewide Benefits Office by the first day of the month for which the employee's coverage becomes effective.

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- 5.2.1 If an existing full time state employee takes a limited term position, State Share shall continue.
- 5.2.2 Casual and seasonal employees and substitutes are not eligible to participate in the State Plan, nor are they eligible for State Share.
- 5.3 When a husband and wife are both permanent full time active employees, they shall earn State Share contributions in accordance with the following:
- 5.3.1 If they elect to enroll in two individual contracts, the increment of cost of the options selected by the two employees which exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
- 5.3.2 If they elect to enroll in one employee and spouse or family contract, the increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
- 5.4 When the spouse of an eligible employee is a retired State of Delaware employee receiving a monthly pension or a Disability Insurance Program (DIP) LTD beneficiary receiving an LTD check, each may enroll as two individual contracts, employee and spouse contract or a family contract. The increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments. (A notation should be made in the employee's file that the spouse is a State of Delaware Pensioner or DIP LTD beneficiary). The Pension Office should be notified when the active employee terminates State Service.
- 5.5 An eligible employee who elects to be covered prior to becoming eligible for State Share must pay the full cost of coverage, State Share and employee share, until State Share begins.
- 5.6 If a regular officer, employee, eligible pensioner, or beneficiary selects coverage under any plan other than the First State Basic Plan, the employee is responsible for paying the additional cost, if any, over and above the cost of the same coverage class (individual, employee & child, employee & spouse, or family) under the First State Basic plan.
- 5.7 A regular officer or employee or eligible pensioner who is eligible for the State Share contribution may not receive the cash equivalent in lieu of the coverage itself.
- 5.8 Health coverage premiums are collected on a lag basis. (Example: January coverage is paid by deduction in the second pay of January plus deduction in the first pay of February). Each agency/school district/sub group is responsible for reconciling premiums to ensure that proper payment has been remitted. Payments, other than those made through OMB's automated payroll system, and all adjustments must be submitted in a timely manner to the Statewide Benefits Office. The State Plan will not be responsible for payment of premiums and/or claims if a signed enrollment form/confirmation statement/waiver is not in the employee file.
- 5.9 An eligible employee who returns from an authorized unpaid leave of absence is entitled to State Share payments upon return without fulfilling another three month waiting period. The employee must request enrollment by contacting their Human Resources Office within 30 days of return from leave of absence. State Share and coverage (if it has lapsed) begin on the date of return from leave of absence.
- 5.10 Any regular officer or employee or eligible pensioner who fails to make payment for his/her share of the cost of health coverage when he/she is eligible to continue coverage and does not have sufficient salary from which payment can be deducted will have coverage canceled on the first day of the month following any month that a regular officer or employee or eligible pensioner fails to pay the required share for the coverage selected.
- 5.10.1 Family and Medical Leave Act (FMLA) regulations provide that employees have a 30 day grace period for late premium payments. The employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Benefit Representative or Human Resources Offices should continue the employee's health coverage for the 30 day period provided under FMLA. The Benefit Representative or Human Resources Offices can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30 day grace period.
- 5.11 An employee who has a break in active employment due to authorized leave of absence, suspension, termination or unauthorized leave of absence without pay for a full calendar month, shall not be eligible
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for State Share for that calendar month and any subsequent calendar month that the employee is in a non pay status for the entire calendar month. In the case of an authorized leave of absence, an intermittent return to work or use of paid leave of less than five full days in one month, the employee shall not be entitled to State Share contributions. Full payment must be made for the month in order to retain coverage. Upon return, the employee is eligible for State Share without fulfilling another three month waiting period, provided the break was the result of any of the following:

- 5.11.1 an authorized leave of absence;
- 5.11.2 a suspension without pay;
- 5.11.3 termination or unauthorized leave of absence for a period less than 30 calendar days.

Coverage begins on the date of employee's return to work.

- 5.12 State Share will be paid for employees drawing Workers' Compensation, provided the employee is not eligible for coverage from a subsequent employer. Such an employee must submit payment for the share of the coverage that would normally be deducted from his/her salary.
- 5.13 State Share will be paid for employees who are approved for Short Term and/or Long Term Disability through the State's DIP.
  - 5.13.1 Employee's share of premium shall be deducted by OMB from employee's salary or DIP LTD check.
  - 5.13.2 Employees whose STD claims are in a pending status are entitled to receive State Share.
  - 5.13.3. Employees who are appealing a STD termination and/or benefit denial are eligible to receive State Share. If the appeal results in a denial, the employee is responsible for the State Share paid on his/her behalf while the claim was in a pending appeal status.
- 5.14 Any refund of State Share or employee share is subject to the following requirements:
  - 5.14.1 An employee who has paid the State Share in order to insure continuation of health coverage and then later is found to have been eligible for receipt of State Share, is to be refunded the amount that was not paid by the State. The employee must make application for the refund within one calendar year of the date the employee paid the State Share to be refunded;
  - 5.14.2 An employee who has paid the employee share then later is found to have been eligible for receipt of DSS is to be refunded the amount paid for employee share for a period not to exceed one calendar year. The employee seeking a refund must make application for the refund within one year of the date the employee paid the employee share to be refunded;
  - 5.14.3 An employee who has paid the employee share for an ineligible dependent (for example following a divorce, death or exceeding the dependent age limits) is to be refunded the amount paid for employee share for a period not to exceed 60 days, provided that the employee seeking a refund must make application for the refund within 60 days of the date the employee paid the employee share to be refunded and further that the employee shall be liable for any amounts paid by the State Plan on behalf of the ineligible dependent until the employee provides notice to the Statewide Benefits Office of the dependent's ineligibility;
  - 5.14.4 In any event, refunds of less than \$1.00 will not be made.
- 5.15 Teachers who are granted a sabbatical leave of absence are eligible for State Share while they are on such leave. Also see Eligibility and Enrollment Rule 6.3.
- 5.16 All employees whose positions are involuntarily terminated after they have been employed for a full calendar year who return to full time State employment within 24 months of their termination will be eligible for State Share without fulfilling another three month qualification period.
- 5.17 A temporary, casual, seasonal employee, or substitute who becomes a "Regular Officer or Employee" shall have his/her unbroken temporary, casual, seasonal, or limited term, provisional or permanent part time "Aggregate State Service" applied toward the three month qualification period for State Share contributions. The "Aggregate State Service" must immediately precede becoming a "Regular Officer or Employee". The temporary, casual, seasonal employee, or substitute must have worked each pay cycle for the three months prior to hire eligibility for state share - or last three full months of the school year prior to September hire.

- 5.18 State Share shall continue for a "Regular Officer or Employee" who is temporarily appointed to a position that results in a dual incumbency.
- 5.19 Any active employee who is also receiving a survivor's pension through the State of Delaware shall receive DSS. The increment of cost, which exceeds the cost of two First State Basic family plans, shall be deducted from employee's salary.
- 5.20 A regular officer or employee called to active duty with the National Guard or Reserve for other than training purposes shall continue to receive state share toward health insurance coverage for a period of up to two years. Employee's share must be remitted to Benefit Representative or Human Resources Office for further processing.

**6 DE Reg. 690 (11/1/02)****6.0 Continuation Of Coverage**

- 6.1 To continue coverage other than the First State Basic Plan, a covered employee must pay the difference between the State Share contribution and the cost of the coverage selected. Coverage will be terminated on the first day of the month employee did not make required payment.
- 6.2 An employee granted an unpaid authorized leave of absence can maintain membership in the group health plan by paying the full cost of coverage (State Share plus employee share) during the period of the leave as long as that leave of absence does not exceed two years. An employee who returns from an authorized leave of absence, whether he/she maintains coverage or not while on leave of absence, is authorized to receive State Share immediately upon return. (Eligibility for State Share begins upon return without fulfilling another three month qualification period). An employee on FMLA leave is entitled to have pre existing health insurance benefits (including the State Share) maintained while on an FMLA leave. If an employee was paying State Share and/or employee share of the premium payments prior to leave, the employee would continue to pay the same share during the leave period. Failure to make such payment within 30 days of the due date will result in termination of coverage.
- 6.3 Coverage other than the First State Basic Plan continues for teachers who are granted sabbatical leave provided they make the required payments for their share of the cost of their coverage; otherwise, their coverage reverts to the First State Basic Plan. (State Share continues while employee is on sabbatical leave.) Also see Eligibility and Enrollment Rule 5.15.
- 6.4 Employees leaving State employment, except for termination due to gross misconduct or whose application for LTD benefits under the DIP has been approved, are eligible for continuation under COBRA. Employees should contact their Benefits Representative or Human Resources Office for details of this continuation option.
- 6.5 An eligible employee or eligible dependent that loses coverage under the State Plan may continue coverage under COBRA. If a COBRA qualifying event occurs, the employee or the employee's dependent(s) must notify the employee's Benefit Representative or Human Resources Office or the State's COBRA Administrator to provide notice of the qualifying event within 60 days of its occurrence.
- 6.6 Upon expiration of the covered individual's COBRA eligibility, the individual may apply directly to the insurance company for a direct billed health insurance contract.

**7.0 Termination Of Coverage**

- 7.1 Coverage ends on the last day of the month in which the employee terminates employment. A public school or higher education employee (less than 12 month employee) whose employment during a school year continues through the last scheduled work day of that school year shall retain coverage through August 31 of the same year so long as the required employee share has been paid. In the event an employee fails to make the required payment for any optional coverage selected, coverage will be terminated. If an employee works one day in the month in which he/she terminates, he/she shall earn State Share for the entire month. Coverage will be terminated on the first day of the month employee did not make required payment.

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- 7.2 Coverage (and dependent coverage, if applicable) ends as of the end of the month in which the employee ceases to be an eligible employee for coverage (due to some change such as a reduction in the number of hours the employee works).
- 7.3 Coverage of dependents, except for dependents of pensioners and dependents eligible for a survivor's pension, ends as of the last day of the month of the employee's death. Dependents who lose coverage as a result of the employee's death are eligible for continuation under COBRA. Contact the State's COBRA administrator for details of this continuation option.
- 7.4 Ex spouses not employed by the State of Delaware are not eligible for coverage under the State Plan - even if a divorce decree, settlement agreement or other document requires an employee to provide coverage for an ex spouse. Coverage for the ex spouse will terminate on the day after the date of divorce. Premiums are paid on a monthly basis and not prorated. The regular officer or employee or eligible pensioner must remit the employee share for the plan which included the spouse for the entire month. The regular officer or employee or eligible pensioner must submit a signed application within 30 days prior to or 30 days following the date of divorce. If DSS terminates as a result of the divorce, each regular officer, employee or eligible pensioner must pay the employee contribution for the entire month that the divorce occurred. The State Plan will not be responsible for payment of claims when a dependent is no longer eligible for coverage.
- 7.5 Coverage for a dependent child/ren will end the earlier of the following:
- 7.5.1 December 31st of the year in which he/she reaches age 21. If a full time student, coverage will end on the earlier of the following: (1) the end of the month in which the dependent child is no longer a full time student, or (2) the end of the month in which the dependent child/ren attains age 24. Student certification must be updated each year between ages 21 and 24.
  - 7.5.2 The last day of the month in which the child/ren marries;
  - 7.5.3 The date the child/ren ceases to be dependent on you or your spouse for at least 50% support per Sections 2.1.1.3 and 2.1.1.4.
  - 7.5.4 Adult Dependent Program coverage is as provided in Section 2.3.
- 6 DE Reg. 690 (11/1/02)**  
**6 DE Reg. 1515 (5/1/03)**

## **8.0 Reinstatement of Coverage**

- 8.1 Once a regular officer or employee or eligible pensioner has requested that his/ her coverage be canceled, he/she cannot rejoin the State Plan until the next annual Open Enrollment period unless such regular officer or employee or eligible pensioner qualifies for re-enrollment under the applicable exceptions to these Eligibility and Enrollment Rules.
- 8.2 An employee who returns from an authorized leave of absence not exceeding 24 months in duration who does not maintain coverage while on leave of absence, is permitted to enroll immediately upon return without waiting for the next Open Enrollment period, provided the employee requests enrollment within 30 days of return and completes the necessary paperwork required to enroll within 30 days of the request. Coverage will begin as of the date the employee returns from leave following completion of the necessary paperwork and payment of any required employee share. Premiums are paid on a monthly basis and are not prorated.
- 8.3 Employees whose positions are involuntarily terminated after they have been employed for a full year (or full school year) will be eligible for State Share immediately if they return to full time State employment within 24 months of termination.

**6 DE Reg. 690 (11/1/02)**

## **9.0 Miscellaneous**

- 9.1 It is the responsibility of the regular officer, employee or eligible pensioner to keep his/her Benefit Representative or Human Resources Office informed of any change of address or change in status which results in the adding or dropping of dependent/s (marriage, divorce, birth, death, adoption, etc.) that affects his/her health care coverage. In turn, it is the responsibility of the Benefit Representative or

Human Resources Office to make the necessary changes in the appropriate payroll system, or to notify the Statewide Benefits Office of these changes. Failure to do so may affect eligibility of coverage or extent of coverage for any participant and could impose an extreme hardship on a regular officer or employee or eligible pensioner. The State Plan will not be responsible for payment of premiums and/or claims in the event of ineligibility and/or the absence of a signed enrollment form/confirmation statement in the regular officer or employee or eligible pensioner's file.

- 9.2 If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Rules and Regulations which can be given effect without the invalid provision or application, to that end the provisions of these Rules and Regulations are declared to be severable

**6 DE Reg. 690 (11/1/02)**

**10.0 Dental Plan**

- 10.1 Employees electing to pay for and receive coverage under one of the Dental Plans should be aware of the following terms:
- 10.1.1 Dental is not affected by Double State Share (DSS) and dental insurance plans cannot be changed upon eligibility for DSS;
  - 10.1.2 Employees may enroll in a dental plan during the first of month after being hired, becoming eligible, or 90 days after the first of the following month after being hired;
  - 10.1.3 The Dental Plan's effective date is always the first of the month and not on event date as for the health plan;
  - 10.1.4 Dental Plan refund rules are limited to 60 days or less because the Dental Plan is fully insured;
  - 10.1.5 Dental Plan term dates are limited to 60 days or less;
  - 10.1.6 Dental Plan will be terminated in the event that employee is 60 days delinquent in payment of Dental Plan premium and any paid claims in the same period will be reversed;
  - 10.1.7 If an employee is terminated from employment and does not pay the Dental Plan premium for the second half of the month in which terminated, coverage under the Dental Plan is terminated as of the first of the month, any claims paid for that month will be reversed and a refund will be given, if employee makes request for refund within 60 days;
  - 10.1.8 School district employees (except those of Delaware Technical and Community College) who are offered school district dental coverage are not eligible for coverage under the State Dental Plans;
  - 10.1.9. Terminations in dental coverage can only be made during the annual Open Enrollment period, except that a regular officer or employee or eligible pensioner may elect to drop dental coverage for one or more dependents within the plan year due to same circumstances as noted in Section 4.75.
  - 10.1.10 The employee's election of a dental insurance plan is binding for the plan year.
  - 10.1.11 An employee on approved leave of absence without pay may waive participation in Dental Plan. Employee must notify his/her Benefit Representative or Human Resources Office of request as waive must be designated in the appropriate enrollment system. When employee returns to work, participation must be reinstated in the appropriate enrollment system to be effective the first of the month following employee's return to work.
  - 10.1.12 An employee on approved leave of absence without pay may continue to participate in Dental Plan by making full payment of premium by end of each month or coverage will be terminated. Employee must make payment to Benefit Representative or Human Resources Office for further processing.

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**STATE OF DELAWARE GROUP HEALTH INSURANCE PROGRAM ELIGIBILITY TABLE**

<b>Employee Start Date</b>	<b>Coverage Start Date (Employee pays the full cost)</b>	<b>Eligible for State Share</b>
January 2 <sup>nd</sup> through February 1 <sup>st</sup>	February 1 <sup>st</sup>	May 1 <sup>st</sup>
February 2 <sup>nd</sup> through March 1 <sup>st</sup>	March 1 <sup>st</sup>	June 1 <sup>st</sup>
March 2 <sup>nd</sup> through April 1 <sup>st</sup>	April 1 <sup>st</sup>	July 1 <sup>st</sup>
April 2 <sup>nd</sup> through May 1 <sup>st</sup>	May 1 <sup>st</sup>	August 1 <sup>st</sup>
May 2 <sup>nd</sup> through June 1 <sup>st</sup>	June 1 <sup>st</sup>	September 1 <sup>st</sup>
June 2 <sup>nd</sup> through July 1 <sup>st</sup>	July 1 <sup>st</sup>	October 1 <sup>st</sup>
July 2 <sup>nd</sup> through August 1 <sup>st</sup>	August 1 <sup>st</sup>	November 1 <sup>st</sup>
August 2 <sup>nd</sup> through September 1 <sup>st</sup>	September 1 <sup>st</sup>	December 1 <sup>st</sup>
September 2 <sup>nd</sup> through October 1 <sup>st</sup>	October 1 <sup>st</sup>	January 1 <sup>st</sup>
October 2 <sup>nd</sup> through November 1 <sup>st</sup>	November 1 <sup>st</sup>	February 1 <sup>st</sup>
November 2 <sup>nd</sup> through December 1 <sup>st</sup>	December 1 <sup>st</sup>	March 1 <sup>st</sup>
December 2 <sup>nd</sup> through January 1 <sup>st</sup>	January 1 <sup>st</sup>	April 1 <sup>st</sup>

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**GOVERNOR'S EXECUTIVE ORDERS**

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER****EXECUTIVE ORDER  
NUMBER ONE HUNDRED NINE**

**RE: Amendment to Executive Order Number One Hundred One**

**WHEREAS**, the Child Poverty Task Force (the "Task Force") was created by Executive Order Number 101; and

**WHEREAS**, the Task Force is developing recommendations and a ten-year plan to reduce the number of Delaware children living in poverty; and

**WHEREAS**, it is important for the Task Force to have further time to develop recommendations and a ten-year plan,

**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:

Paragraph 5 of Executive Order Number 101, dated August 29, 2007, is hereby deleted in its entirety, and replaced with the following:

"5. The Task Force shall submit its report on "Recommendations to Reduce Child Poverty" to the Governor, Speaker of the House and President *Pro Tempore* by March 31, 2009."

**Ruth Ann Minner,  
Governor**

**ATTEST:  
Harriet Smith Windsor, Secretary of State**

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**EXECUTIVE ORDER  
NUMBER ONE HUNDRED TEN**

**RE: Initial Allocation of Additional State Private Activity Bond Volume Cap For Calendar Year 2008**

**WHEREAS**, pursuant to 29 Del.C. §5091(a) and Executive Order Number One Hundred Six, the State's private activity bond volume cap ("Volume Cap") for 2008 under §146 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

**WHEREAS**, pursuant to the recent federal legislation under the Housing and Economic Recovery Act of 2008, H.R. 3221, 110th Cong. 2008 (enacted) (the "Act"), the State has received an additional \$96,550,479 in private activity bond volume cap for 2008 (the "Additional Volume Cap") which must be allocated solely for one or more "qualified housing issues" (as defined in the Code); and

**WHEREAS**, in order to adhere to the Act's requirements that the Additional Volume Cap be allocated solely for "qualified housing issues", the State desires to allocate the Additional Volume Cap entirely to the Delaware State Housing Authority; and

**WHEREAS**, pursuant to 29 Del.C. §5091(d), the Governor has the authority, by executive order, to modify

the allocation of the State's Volume Cap as set forth in 29 Del.C. §5091(a).

NOW, THEREFORE, I, Ruth Ann Minner, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The \$96,550,479 of unallocated Additional Volume Cap for 2008 is allocated entirely to the Delaware State Housing Authority.

**Ruth Ann Minner,  
Governor**

**ATTEST:  
Harriet Smith Windsor, Secretary of State**

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**EXECUTIVE ORDER  
NUMBER ONE HUNDRED ELEVEN**

**RE: Declaring December 26, 2008 A Holiday**

**WHEREAS**, December 26, 2008 is the day after the statutory Christmas Day holiday; and

**WHEREAS**, I wish to allow State of Delaware employees an additional day this year to be with their families during the holiday season,

**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. December 26, 2008 is declared a holiday pursuant to Rule 5.1.1 of the Merit Rules of the State of Delaware.
2. Public offices of the state subject to my authority will be closed on December 26, 2008.

**Ruth Ann Minner,  
Governor**

**ATTEST:  
Harriet Smith Windsor, Secretary of State**

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

The Delaware Harness Racing Commission, pursuant to 3 *Del.C.* §10005, proposes to change its Rule 9. The Commission will hold a public hearing on the proposed rule changes on February 10, 2009. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the Register of Regulations on January 1, 2009.

The proposed changes are for the purpose of updating Rule 9 to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) A copy is also available for inspection at the Racing Commission office.

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, January 15, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4202 Control of Communicable and Other Disease Conditions**

The Department of Health and Social Services is proposing regulations which establish the regulation of Hospital Acquired Infections. 76 **Del. Laws**, c. 122, §1. creates the Hospital Infections Disclosure Act requiring hospitals and correctional facilities to report quarterly data on hospital-acquired infection rates. The law requires that the Department pass regulations to enforce compliance according to the provisions of Chapter 10, Title 16 of **Delaware Code** relating to Reporting and Disclosure of Infections.

The Health Promotion and Disease Prevention Section, Bureau of Epidemiology under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Regulations for Hospital Acquired Infections. The regulations for Hospital Acquired Infections will address National Health Safety Network participation, the clinical procedures that will be included, the requirements of the required "hospital background", the "summary information requirements", physician reporting requirements and timelines. Additionally, Appendix I State of Delaware – List of Notifiable Diseases/Conditions will be amended.

The public hearing will be held on January 29, 2009 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the January 1, 2009, edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Bureau of Epidemiology at (302) 744-4541.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by January 21, 2009. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 30, 2009 to:

Deborah Harvey, Hearing Officer  
Division of Public Health

417 Federal Street  
Dover, DE 19901  
Fax (302) 739-6659

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## DIVISION OF SOCIAL SERVICES

### PUBLIC NOTICE

#### FOOD SUPPLEMENT PROGRAM

#### 9029 Household Cooperation

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2009.

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

#### SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*.

#### Statutory Authority

- 7 CFR §273.12(c)(3), *State agency action on changes – unclear information;*
- 7 CFR §273.16 (e)(2)(iii), *Disqualification hearing procedures;*
- 7 CFR §273.16 (f)(1)(ii)(B), *Advance notification.*

#### Summary of Proposed Change

**DSSM 9029, Household Cooperation:** The United States Department of Agriculture/Food and Nutrition Service (USDA/FNS) published an administrative notice informing the Division of Social Services (DSS) that States cannot close client food supplement benefits due to non-cooperation with fraud investigators. FNS requested that DSS remove this language from state policy.

Management has already advised staff that they cannot close a food supplement case due to non-cooperation with Audit and Recovery Management Services (ARMS). If staff closes a food supplement case for non-cooperation with ARMS, it causes a negative error if reviewed by Quality Control. The worker must send the client a *Request for Contact* form and allow the client ten days to clarify or verify the information that is in question. The client must cooperate with the DSS worker in providing the information.

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**DEPARTMENT OF INSURANCE****PUBLIC NOTICE****804 Worker's Compensation Provision of Services Contracts**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance **Regulation 804** relating to **WORKERS' COMPENSATION PROVISION OF SERVICES CONTRACTS**. The docket number for the proposed regulation is 1044.

The purpose for proposing Regulation 804 is to require contracts between an employer or insurance carrier and a health care provider for the provision of services to be in writing and to be signed by all parties. The text of the proposed regulation is reproduced in the January 2009 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a hearing on this proposed regulation. Written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments are being solicited from any interested party. Written comments or other written materials concerning the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m., February 2, 2009, and should be addressed to Regulatory Specialist Mitchell G. Crane, Esquire, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****PUBLIC NOTICE****1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products****Title of the Regulation:**

Amendment to **regulation 1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**, Section 2.0 "Consumer Products" and Section 4.0 "Adhesives & Sealants".

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

Delaware is in non-attainment under the 8-hour ground-level ozone National Ambient Air Quality Standards (NAAQS) and further reduction in the emissions of volatile organic compounds (VOC), a precursor to ground-level ozone, is needed to meet the 2009 NAAQS.

As to Section 2.0, this amendment adds 23 new products and product types to the existing slate of consumer products for which VOC content has been regulated since 2001. A reduction of 220 tons per year VOC emissions is expected.

As to Section 4.0, this amendment adds a heretofore unregulated category of commercially used products including 25 adhesives, 4 adhesive primers, 5 sealants and 3 sealant primers. A 365 ton per year reduction in VOC emissions is expected.

**Notice of Public Comment:**

There will be a hearing on these proposed amendments on Wednesday, January 28, 2009 beginning at 6pm in the Priscilla Building conference room. Interested parties may submit comments in writing to Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

**Prepared By: Gene Pettingill (302) 323-4542**

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.(3) (7 Del.C. §903(e)(2)a.(3))  
7 DE Admin. Code 3504

### REGISTER NOTICE

SAN #2008-28

#### Title of the Regulation:

Amend Tidal Finfish Regulation No. **3504 Striped Bass Possession Size Limit; Exceptions**

#### Brief Synopsis of the Subject, Substance and Issues:

The current minimum size limit for striped bass (*Morone saxatilis*) taken in Delaware waters by recreational fishermen is 28-inches (TL) throughout the year. Large striped bass in excess of 28 inches tend to be females and most leave the Bay and River after spawning in the spring and often undergo extensive coastal migrations throughout the summer months. Large striped bass return in the late fall and winter. Male striped bass mature at an earlier age and often do not reach the current large minimum size limit. Tagging studies indicate male striped bass are also less migratory and often remain within the estuaries throughout the summer.

The Delaware Division of Fish and Wildlife has received approval from the Atlantic States Marine Fisheries Commission to establish a two-month season during the summer that would allow recreational anglers in Delaware Bay, Delaware River and its tributaries to land two striped bass per day between 20 and 26-inches. During this two-month period, anglers fishing within the designated areas of the River and Bay would be required to release any striped bass that were below or above the 20 to 26-inch slot limit. The slot-limit would not occur in coastal areas of Delaware. This regulation change will greatly increase the opportunity for anglers in the River and Bay to target male striped bass and keep a very desirable food fish.

#### Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:30 PM on Monday, January 26, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us). The hearing record will remain open for written or email comments until 4:30 PM January 31, 2009.

#### Prepared By:

Craig A. Shirey      302-739-9914      December 10, 2008

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