
Delaware Register of Regulations

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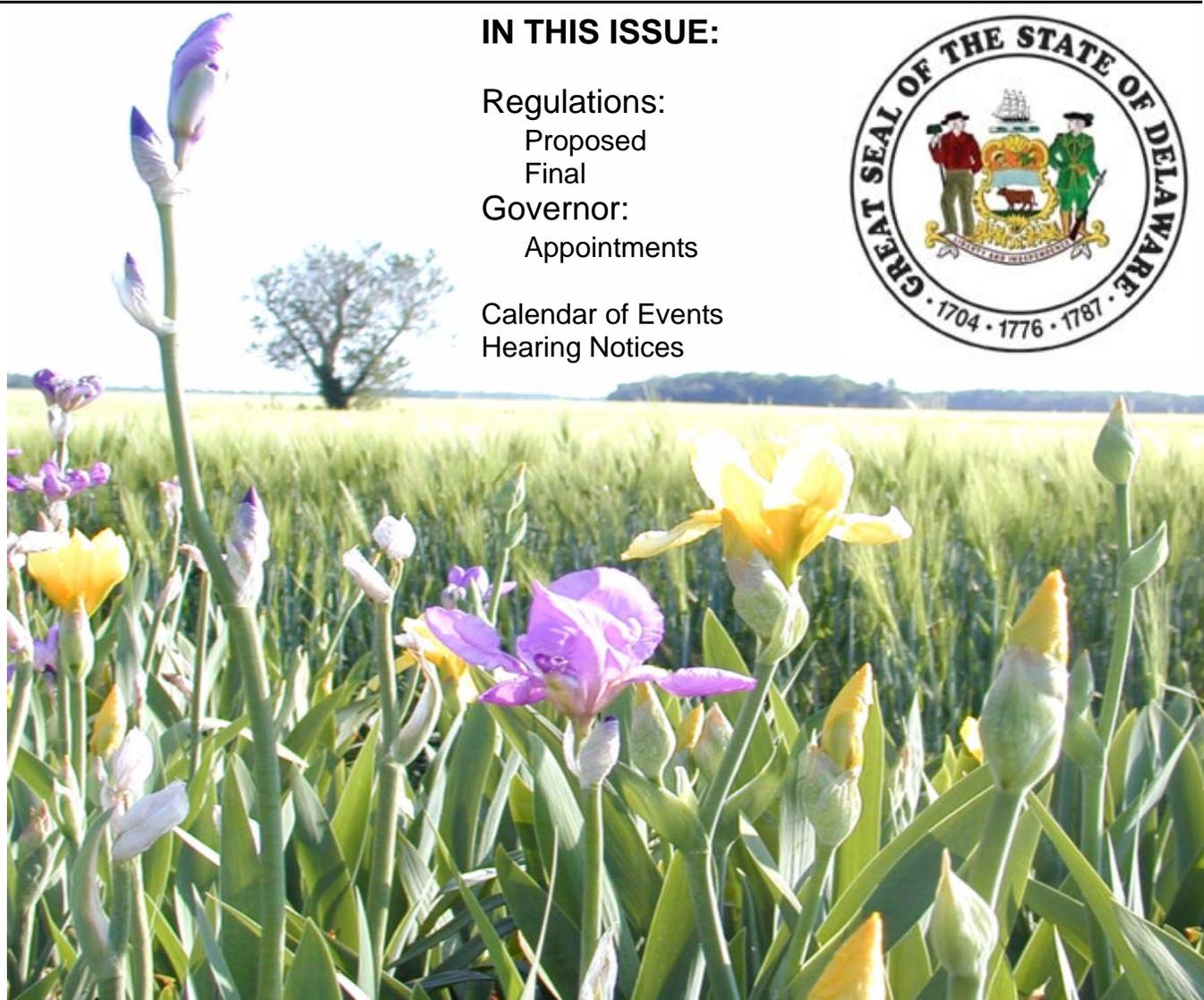
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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 15, 2008.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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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*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 16	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF 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 Rules 6 and 8. The Commission will hold a public hearing on the proposed rule changes on July 8, 2008. 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 June 1, 2008.

The proposed changes are for the purpose of updating Rules 6 and 8 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 A copy is also available for inspection at the Racing Commission office.

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

6.0 Types of Races

6.1 Types of Races Permitted

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

- 6.1.1 Overnight events which include:
 - 6.1.1.1 Conditioned races;
 - 6.1.1.2 Claiming races;
 - 6.1.1.3 Preferred, invitational, handicap, open or free-for-all races;
- 6.1.2 Added money events which include:

PROPOSED REGULATIONS

- 6.1.2.1 Stakes;
- ~~6.1.2.2~~ ~~Futurities;~~
- 6.1.2.3~~2~~ Early closing events; and
- 6.1.2.4~~3~~ Late closing events
- 6.1.3 Match races
- 6.1.4 Qualifying Races (See Rule 7.0 -- "Rules of the Race")
- 6.1.5 Delaware-owned or bred races as specified in 3 **Del.C.** §10032
- 6.2 Overnight Events
 - 6.2.1 General Provisions
 - 6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, or a combination thereof.
 - 6.2.1.2 Condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained therein.
 - 6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.
 - 6.2.1.4 Substitute races may be provided for each race program and shall be so designated on condition sheets. A substitute race may be used when a regularly scheduled race fails to fill.
 - 6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:
 - 6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.
 - 6.2.1.5.2 Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex may be determined by the racing secretary.
 - 6.2.1.5.3 However, where necessary to fill a card, not more than three races per day may be divided into not more than three divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.
 - 6.2.2 Conditions
 - 6.2.2.1 Conditions may be based only on:
 - 6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;
 - 6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;
 - 6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;
 - 6.2.2.1.4 sex;
 - 6.2.2.1.5 number of starts during a specified period of time;
 - 6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;
 - 6.2.2.1.7 horse's race condition in a specified number of previous races or during a specified period of time;
 - 6.2.2.1.8 claiming price in a horse's last one to three previous races;
 - 6.2.2.1.9 Delaware-owned or bred races as specified in 3 **Del.C.** §10032;
 - or
 - 6.2.2.1.10 any one or more combinations of the qualifications herein listed.
 - 6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not

supersede date preference as provided in the rules. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.

6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the Association, the one more favorable to the declarer shall govern.

6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.

6.2.2.6 Records, time bars shall not be used as a condition of eligibility.

6.2.2.7 Horses must be eligible when declarations close subject to the provision that:

6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;

6.2.2.7.2 Age allowances and eligibility shall be according to the age of the horse on the date the race is contested.

6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.

6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.

6.2.2.9 In overnight events, on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse. At least eight feet per horse must be provided the starters in the front tier.

6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

6.3 Claiming Races

6.3.1 General Provisions

6.3.1.1 Claiming Procedure and Determination of Claiming Price. The trainer or authorized agent entering a horse in a claiming race warrants that he has authorization from the registered owner(s) to enter said horse in a claiming race for the designated amount. In the event of a claim, the owner(s) or authorized agent shall submit a signed registration to the Presiding Judge prior to receiving proceeds from the claim and the registration shall be immediately forwarded to the U.S.T.A. registrar for transfer.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. Mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his option by noon of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse may be allowed access to the grounds of the Association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid for a 30 day period from the date of issuance. These certificates may be applied for at the office designated by the Association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his own horse or a horse trained or driven by him or cause such horse to be claimed directly or indirectly for his own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful

claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

6.3.2.8 No one shall claim more than one horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, on deposit with the Association at the time the completed claim form is deposited. The deposit shall be in cash or may be in a certified check at the discretion of the Association. The Association may require that a certified check clear the bank upon which it was drawn and funds transferred to the Association's account prior to the credit being "established."

6.3.3.2 The claimant shall provide all information required on the claim form provided by the ~~Association~~ Commission, including any and all testing requests.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the Association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least ~~fifteen (15)~~ thirty (30) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, ~~the current license status of the claimant and whether credit in the required amount has been established.~~

6.3.3.5 It shall be the responsibility of the Association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The Association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The Association's auditor, or his agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse,

whether it be alive or dead, or sound or unsound, or injured during or after the race. ~~If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.~~

6.3.3.13 A post-race test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race sample is collected. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication, or if a blood sample exhibits a positive response to Darbepoietin (DPO), ~~the~~ Erythropoietin (EPO) in itself, or through an antibody test. The claimed horse may be entered to race while results are pending, but not be permitted to race until the approved laboratory chemist notifies the DHRC on his findings in the samples taken from the horse.

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation of these rules.

6.3.3.15 No horse claimed out of a claiming race shall be eligible to start in any race in the name or interest of the prior owner for 30 days, nor shall such horse remain in the same stable or under the care or management of the prior owner or trainer, or anyone connected therewith unless reclaimed out of another claiming race. Further, such claimed horse shall only be eligible to enter in races in the state of Delaware for a period of 60 days following the date of the claim, unless released in writing by an authorized representative of the Association.

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration has been received by the racing secretary for transfer to the new owner and the Presiding Judge has signed a release notice of horse claimed and application for transfer form.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 24 hours following notification to the claimant of the positive test by the judges;

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his possession.

6.4 Added Money Events

6.4.1 General Provisions

6.4.1.1 For the purpose of this rule, added money events include stakes, ~~futures~~, early closing events and late closing events.

6.4.1.2 All sponsors and presenters of added money events must comply with the rules and must submit to the Commission the conditions and other information pertaining to such events.

6.4.1.3 Any conditions contrary to the provisions of any of these rules are prohibited.

6.4.2 Conditions

Conditions for added money events must specify:

6.4.2.1 which horses are eligible to be nominated;

6.4.2.2 the amount to be added to the purse by the sponsor or presenter, should the amount be known at the time;

6.4.2.3 the dates and amounts of nomination, sustaining and starting payments;

6.4.2.4 whether the event will be raced in divisions or conducted in elimination heats, and;

6.4.2.5 the distribution of the purse, in percent, to the money winners in each heat or dash, and the distribution should the number of starters be less than the number of premiums advertised; and

6.4.2.6 whether also eligible horses may be carded prior to the running heats or legs of added money events.

6.4.3 Requirements of Sponsors/Presenters

6.4.3.1 Sponsors or presenters of stakes, futurities or early closing events shall provide a list of nominations to each nominator or owner and to the Associations concerned within sixty (60) days after the date on which nominations close, other than for nominations payable prior to January 1st of a horse's two-year-old year.

~~6.4.3.2 In the case of nominations for futurities payable during the foaling year, such lists must be forwarded out prior to October 15th of that year and, in the case of nominations payable in the yearling year, such lists must be forwarded out not later than September 1 of that year.~~

6.4.3.2 Sponsors or presenters of stakes, futurities or early closing events shall also provide a list of horses remaining eligible to each owner of an eligible within 45 days after the date on which sustaining payments are payable. All lists shall include a resume of the current financial status of the event.

6.4.3.3 The Commission may require the sponsor or presenter to file with the Commission a surety bond in the amount of the fund to ensure faithful performance of the conditions, including a guarantee that the event will be raced as advertised and all funds will be segregated and all premiums paid. Commission consent must be obtained to transfer or change the date of the event, or to alter the conditions. In any instance where a sponsor or presenter furnishes the Commission with substantial evidence of financial responsibility satisfactory to the Commission, such evidence may be accepted in lieu of a surety bond.

6.4.4 Nominations, Fees and Purses

6.4.4.1 All nominations to added money events must be made in accordance with the conditions.

6.4.4.2 Dates for added money event nominations payments are:

6.4.4.2.1 Stakes: The date for closing of nominations on yearlings shall be May 15th. The date for closing of nominations to all other stakes shall fall on the fifteenth day of a month.

~~6.4.4.2.2 Futurity: The date for closing of nominations shall be July 15th of the year of foaling.~~

6.4.4.2.3 Early Closing Events: The date for closing of nominations shall fall on the first or fifteenth day of a month. Nominations on two-year-olds shall not be taken prior to February 15th.

6.4.4.2.4 Late Closing Events: The date for closing of nominations shall be at the discretion of the sponsor or presenter.

6.4.4.3 Dates for added money event sustaining payments are:

6.4.4.3.1 Stakes and Futurities: Sustaining payments shall fall on the fifteenth day of a month. No stake or futurity sustaining fee shall become due prior to (Month) 15th of the year in which the horses nominated become two years of age.

6.4.4.3.2 Early and Late Closing Events: Sustaining payments shall fall on the first or fifteenth day of a month.

6.4.4.4 The starting fee shall become due when a horse is properly declared to

start and shall be payable in accordance with the conditions of the added money event. Once a horse has been properly declared to start, the starting fee shall be forfeited, whether or not the horse starts. Should payment not be made thirty (30) minutes before the post time of the event, the horse may be scratched and the payment shall become a liability of the owner who shall, together with the horse or horses, be suspended until payment is made in full, providing the Association notifies the Commission within thirty (30) days after the starting date.

6.4.4.5 Failure to make any payment required by the conditions constitutes an automatic withdrawal from the event.

6.4.4.6 Conditions that will eliminate horses nominated to an event, or add horses that have not been nominated to an event by reason of performance of such horses at an earlier meeting, are invalid. Early and late closing events shall have not more than two also eligible conditions.

6.4.4.7 The date and place where early and late closing events will be raced must be announced before nominations are taken. The date and place where stakes and futurities will be raced must be announced as soon as determined but, in any event, such announcement must be made no later than March 30th of the year in which the event is to be raced.

6.4.4.8 Deductions may not be made from nomination, sustaining and starting payments or from the advertised purse for clerical or any other expenses.

6.4.4.9 Every nomination shall constitute an agreement by the person making the nomination and the horse shall be subject to these rules. All disputes and questions arising out of such nomination shall be submitted to the Commission, whose decision shall be final.

6.4.4.10 Nominations and sustaining payments must be received by the sponsor or presenter not later than the hour of closing, except those made by mail must bear a postmark placed thereon not later than the hour of closing. In the event the hour of closing falls on a Saturday, Sunday or legal holiday, the hour of closing shall be extended to the same hour of the next business day. The hour of closing shall be midnight of the due date.

6.4.4.11 If conditions require a minimum number of nominations and the event does not fill, the Commission and each nominator shall be notified within twenty (20) days of the closing of nominations and a refund of nomination fees shall accompany such notice to nominators.

6.4.4.12 If conditions for early or late closing events allow transfer for change of gait, such transfer shall be to the lowest class the horse is eligible to at the adopted gait, eligibility to be determined at the time of closing nominations. The race to which the transfer may be made must be the one nearest the date of the event originally nominated to. Two-year-olds, three-year-olds, or four-year-olds, nominated in classes for their age, may only transfer to classes for the same age group at the adopted gait to the race nearest the date of the event they were originally nominated to, and entry fees to be adjusted.

6.4.4.13 A nominator is required to guarantee the identity and eligibility of nominations, and if this information is given incorrectly he or she may be fined, suspended, or expelled and the horse declared ineligible. If any purse money was obtained by an ineligible horse, the monies shall be forfeited and redistributed among those justly entitled to the same.

6.4.4.14 Early or late closing events must be contested if six or more betting interests are declared to start. If less horses are declared to start than required, the race may be declared off, in which case the total of nominations, sustaining and starting payments received shall be divided equally to the horses declared to start. Such distribution shall not be credited as purse winnings.

6.4.4.15 Stakes or futurities must be contested if one or more horses are declared to start. In the event only one horse, or only horses in the same interest start, it constitutes a walk-over. In the event no declarations are made, the total of nomination and sustaining payments shall be divided equally to the horses remaining eligible after payment to the last sustaining payment, but such distribution shall not be credited as purse winnings.

6.4.4.16 Associations shall provide stable space for each horse on the day of the race.

6.4.4.17 The maximum size of fields permitted in any added money event shall be

no more than one trailer unless otherwise approved by the Commission.

6.4.4.18 An Association may elect to go with less than the number of trailers specified in subdivision 17 above.

6.4.4.19 In the event more horses are declared to start than allowed in one field, the race will be conducted in divisions or eliminations, as specified in the conditions.

6.4.4.20 In early closing races, late closing races and overnight races requiring entry fees, all monies paid in by the nominators in excess of 85 percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the minimum purse. If the race is split and raced in divisions, the provisions of subdivision 21 below shall apply. Provided further that where overnight races are split and raced in eliminations rather than divisions, all starting fees payable under the provisions of this rule shall be added to the advertised purse.

6.4.4.21 Where a race other than a stake or futurity is divided, each division must race for at least 75 percent of the advertised purse.

6.4.4.22 The number of horses allowed to qualify for the final heat of an event conducted in elimination heats shall not exceed the maximum number permitted to start in accordance with the rules. In any elimination dash where there are horses unable to finish due to an accident and there are fewer horses finishing than would normally qualify for the final, the additional horses qualifying for the final shall be drawn by lot from among those unoffending horses not finishing.

6.4.4.23 The judges' decisions in arriving at the official order of finish of elimination heats on the same program shall be final and irrevocable and not subject to appeal or protest.

6.4.4.24 Unless the conditions for the added money event provide otherwise the judges shall draw by lot the post positions for the final heat in elimination events, i.e. they shall draw positions to determine which of the two elimination heat winners shall have the pole, and which the second position; which of the two horses that were second shall start in the third position, and which in the fourth, etc.

~~6.4.4.25 In a two in three race, a horse must win two heats to win a race and there shall be 10 percent set aside for the race winner. Unless conditions state otherwise, the purse shall be divided and awarded according to the finish in each of the first two or three heats, as the case may be. If the number of advertised premiums exceeds the number of finishers, the excess premiums shall go to the winner of the heat. The fourth heat, when required, shall be raced for 10 percent of the purse set aside for the race winner. In the event there are three separate heat or dash winners and they alone come back in order to determine the race winner, they will take post positions according to the order of their finish in the previous heat. In a two year old race, if there are two heat winners and they have made a dead heat in the third heat, the race shall be declared finished and the one standing best in the summary shall be awarded the 10 percent. If the two heat winners make a dead heat and stand the same in the summary, the 10 percent shall be divided equally among them.~~

(Break in Continuity of Sections)

- 1 DE Reg. 503 (1/1/97)**
- 2 DE Reg. 1241 (1/1/99)**
- 2 DE Reg. 1765 (4/1/99)**
- 3 DE Reg. 432 (9/1/99)**
- 3 DE Reg 1520 (5/1/00)**
- 4 DE Reg. 1123 (1/1/01)**
- 4 DE Reg 1652 (4/1/01)**
- 5 DE Reg. 1691 (3/1/02)**
- 6 DE Reg. 862 (1/1/03)**
- 7 DE Reg. 1512 (5/1/04)**
- 11 DE Reg. 308 (09/01/07)**
- 11 DE Reg. 1050 (02/01/08)**

*(Break in Continuity of Sections)***8.0 Veterinary Practices, Equine Health Medication***(Break in Continuity of Sections)***8.4 Testing****8.4.1 Reporting to the Test Barn**

8.4.1.1 Horses shall be selected for pre- and/or post-racing testing according to

the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Horses selected for testing shall be taken to the testing area to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or for cause testing may be required by the Commission, at any time on any horse that has been entered to race at a Commission licensed Association.

8.4.1.3 Unless otherwise directed by the Board of Judges or the Chief DHRC Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn or testing area.

8.4.1.4 Trainers shall fully comply with the instructions of the Commission, which may include, but not be limited to the following: Trainers shall present their horse(s) for testing at the specified time and place mandated by the Commission. Testing procedures may be performed on the grounds of any Commission licensed Association, at the trainer's training facility, or any other location under Commission jurisdiction. Failure to comply shall result in the horse(s) being scratched, and shall be considered a violation equivalent to a Class 1 positive.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer or groom of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission Veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4 Sample Containers/Receptacles.

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood sample receptacles will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission Veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission Veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission Veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

~~8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.~~

8.4.3.5.87 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.98 Two (2) blood samples shall be collected in sample receptacles approved by the Commission, one for the "primary" and one for the "secondary" sample.

8.4.3.5.409 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

8.4.3.5.409.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the

sample and the preservation of the alleged illegal substance.

8.4.3.5.409.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.4110 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.4110.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.4110.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.4110.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.4211 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.4312 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

- 1 DE Reg. 505 (11/01/97)
- 1 DE Reg. 923 (1/1/98)
- 3 DE Reg 1520 (5/1/00)
- 4 DE Reg. 6 (7/1/00)
- 4 DE Reg 336 (8/1/00)
- 5 DE Reg. 832 (10/1/01)
- 5 DE Reg. 1691 (3/1/02)
- 6 DE Reg. 862 (1/1/03)
- 7 DE Reg. 1512 (5/1/04)
- 8 DE Reg. 329 (8/1/04)
- 8 DE Reg. 698 (11/01/04)
- 8 DE Reg. 1108 (02/01/05)
- 9 DE Reg. 1066 (01/01/06)
- 9 DE Reg. 1367 (03/01/06)
- 9 DE Reg. 1951 (06/01/06)
- 10 DE Reg. 980 (12/01/06)
- 10 DE Reg. 1424 (03/01/06)
- 11 DE Reg. 1050 (02/01/08)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at:**

<http://regulations.delaware.gov/AdminCode/title3/500/501/index.shtml#TopOfPage>

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 4815(b)(3)(c)(3) (3 Del.C. §4815(b)(3)(c)(3))
3 DE Admin. Code 1001

PUBLIC NOTICE

The Delaware Thoroughbred Racing Commission in accordance with 3 Del.C. §10103(c) has proposed changes to its rules and regulations. The proposal amends Section 13 of the rules and regulations to address Claiming Races by amending existing Rule 13.1.1, and adding Rule 13.20.

A public hearing will be held on June 24, 2008 at 10:00 a.m. in the first floor conference room of the Horsemen's Office at Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be at the public hearing.

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

13.0 Claiming Races

13.1 Owners Entitled:

13.1.1 In claiming races, any horse, unless declared ineligible under Rule 13.20, is subject to claim for its entered price by any Owner in good standing, who has horses stabled on the Licensee's grounds, and who has started a horse at the race meeting at which the claim is made.

13.1.2 An Owner may claim out of the race in which he first starts a horse. Owners shipping in from other stable areas who have a horse claimed shall be allowed one claim to replace the horse lost via claiming.

13.1.3 A new Owner, i.e., an individual, partnership, corporation or any other authorized racing interest who has not held an Owner's license in any racing jurisdiction during the prior year, is eligible to claim by obtaining an "Open Claiming License" from the Commission.

13.1.4 In order to obtain an open claiming license and file an open claim, an individual must comply with the following procedures:

13.1.4.1 Depositing an amount no less than the minimum claiming price of the intended claim at that meet with the Horsemen's Bookkeeper. Such amount shall remain on account until a claim is in fact made. In the event of withdrawal of such fund, any license issued hereunder shall be automatically revoked and terminated.

13.1.4.2 Securing an Owner or authorized racing interest license by the Commission. Such license will be conditioned upon the making of a claim and shall be revoked if no such claim is, in fact, made within thirty (30) racing days after issuance or if the deposit above required is withdrawn prior to completion of a claim.

13.1.4.3 Naming a Trainer licensed by the Commission who will represent him once said claim is made.

13.2 Claim by Agent:

13.2.1 A claim may be made by an authorized agent, but an agent may claim only for the account of those for whom he is authorized and registered as agent and the name of the authorized agent, as well as the name of the Owner for whom the claim is being made, shall appear on the claim slip.

13.3 Claiming Own Horse Prohibited:

13.3.1 No person shall claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account. No claimed horse shall remain in the same stable or under the care or management of the Owner or Trainer from whom claimed.

13.4 Limits on claims:

13.4.1 No person shall claim more than one horse from any one race. No authorized agent, although representing several Owners, shall submit more than one claim for any race. When a stable consists of horses owned by more than one person, trained by the same Trainer, not more than one claim may be entered on behalf of such stable in any one race. An Owner who races in a partnership may not claim except in the interest of the partnership, unless he has also started a horse in his own individual interest. An owner who races in a partnership may claim in his or her individual interest if the individual has started a horse in the partnership. The individual must also have an account with the horsemen's bookkeeper that is separate from the partnership account.

13.5 Twenty Day Prohibition -- Sale of Claimed Horse:

13.5.1 A claimed horse shall not run for twenty days after being claimed in a race in which the determining eligibility price is less than twenty-five percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the twenty-first calendar day following the claim. This provision shall not apply to starter handicaps, allowance and starter allowance races.

13.6 Thirty Day Prohibition -- Sale of Claimed Horse:

13.6.1 No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to anyone within thirty (30) days after the day it was claimed, except in another claiming race. No claimed horse shall race elsewhere until sixty (60) calendar days after the date on which it was claimed or until after the close of the meeting at which it was claimed, whichever comes first. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter elsewhere whenever necessary so the horse may start on the 61st calendar day following the claim. The Stewards shall have the authority to waive this rule upon application, so as to allow a claimed horse to race in a stakes race. The Stewards may also permit a horse claimed in a steeplechase or hurdle race to race elsewhere in a steeplechase or hurdle race after the close of the steeplechase program, if such a program ends before the close of the meeting at which it is claimed.

Revised: 7/16/86

13.7 Form of Claim:

13.7.1 Each claim shall be made in writing on a form and in an envelope supplied by Licensee. Both form and envelope must be filled out completely and must be accurate in every detail.

13.8 Procedure for Claim:

13.8.1 Claims must be deposited in the claim box at least ten (10) minutes before post time of the race from which the claim is being made. No money or its equivalent shall be put in the claim box. For a claim to be valid, the claimant must have, at the time of filing the claim, a credit balance in his account with the Horsemen's Bookkeeper of not less than the amount of the claim.

13.8.2 Officials and employees of the association shall not provide any information as to filing of claims until after the race has been run except as is necessary for processing of the claim.

Revised: 8/15/95

13.9 Stewards' Duties:

13.9.1 The Stewards, or their designated representatives, shall open the claim envelopes for each race as soon as the horses leave the paddock en route to the post. They shall thereafter check with the Horsemen's Bookkeeper to ascertain whether the proper credit balance has been established with the Licensee and with the Racing Secretary as to whether the claimant has claiming privileges at Licensee's meeting.

13.10 Conflicting claims:

13.10.1 If more than one valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the Stewards or their designated representative.

13.11 Delivery of Claimed Horse:

13.11.1 Any horse that has been claimed shall, after the race has been run, be taken to the paddock for delivery to the claimant, who must present written authorization for the claim from the Racing Secretary. No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race and, until delivery is made, the horse in question shall be disqualified from further racing.

13.12 Nature and Effect of a Claim:

13.12.1 Claims are irrevocable except as otherwise provided for in these Rules. Title to a claimed horse shall be vested in the successful claimant from the time the said horse is a starter and said claimant shall then become the Owner of the horse, whether it be alive or dead, sound or unsound, or injured, during the

race or after it. A claimed horse shall run in the interest of and for the account of the Owner from whom claimed.

13.12.2 A post-race test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race sample is collected. Any claimed horse not otherwise selected for testing by the stewards shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these Rules. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance, an illegal level of a permitted medication, or if a blood sample exhibits a positive response to the Erythropoietin (EPO) antibody test.

13.13 Prohibited Practices:

13.13.1 No person shall offer or enter into an agreement to claim or not to claim or to attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt, by intimidation, to prevent anyone from running a horse in any claiming race. No Owner or Trainer shall make an agreement with another Owner or Trainer for the protection of each other's horses in a claiming race.

13.13.2 A person shall not claim a horse in which the person has a financial or beneficial interest as on owner or trainer.

13.13.3 A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

13.13.4 A person shall not claim a horse or enter into any agreement to have a horse claimed on behalf of an ineligible person.

13.14 Invalidation of Claim:

13.14.1 Claims which are not made in keeping with the Rules shall be void. The Stewards may, at any time in their discretion, require any person filing a claim to furnish an affidavit in writing that he is claiming in accordance with these Rules. The Stewards shall be the judges of the validity of the claim and, if they feel that a "starter" was nominated for the purpose of making its Owner eligible to claim, they may invalidate the claim.

13.15 Necessity to Record Lien:

13.15.1 Any person holding a lien of any kind against a horse entered in a claiming race must record the same with the Racing Secretary and/or Horsemen's Bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be conclusively assumed, for claiming purposes, that none exists.

13.16 Claiming Privileges -- Eliminated Stable:

13.16.1 If a person's stable shall be eliminated with thirty (30) racing days or less remaining in the current racing season, and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting. Should a stable at a meeting be eliminated by sale or removal from the grounds, the right to claim is void. After claiming a horse under the conditions of this Rule, the Owner shall be required to reinstate his eligibility to claim pursuant to these Rules before being eligible to make another claim.

13.17 Claim Embraces Horse's Prior Engagements:

13.17.1 The engagements of a claimed horse pass automatically with the horse to the claimant.

13.18 Caveat Emptor:

13.18.1 Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

13.19 Racing Claimed Horse: Repealed

13.20 Option to Declare Horse Ineligible to be Claimed:

13.20.1 At the time of entry into a claiming race, the owner may opt to declare a horse ineligible to be claimed provided that the horse has been laid-off and has not started for a minimum of 180 days since its last race and is entered for a claiming price equal to or greater than the claiming price of the horses last start.

1 DE Reg. 713 (12/1/97)

2 DE Reg. 373 (9/1/98)

2 DE Reg. 2043 (5/1/99)

5 DE Reg. 849 (10/1/01)
5 DE Reg. 1710 (3/1/02)
6 DE Reg. 1205 (3/1/03)
7 DE Reg. 316 (9/1/03)
7 DE Reg. 1540 (5/1/04)
11 DE Reg. 1373 (04/01/08)

***Please Note:** As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at:

<http://regulations.delaware.gov/AdminCode/title3/1000/1001/index.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 103

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

103 Accountability for Schools, Districts and the State

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State to provide the processes for non charter schools and charter schools to restructure for purposes of the federal Elementary and Secondary Education Act of 1965 (currently reauthorized as the No Child Left Behind Act). A non charter school that wishes to restructure into a charter school must follow the process for a new charter application and a charter school that wishes to restructure shall follow the processes in place and be considered a major modification to the existing charter.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Thursday, July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will continue to ensure that 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 addresses accountability not health and safety issues.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve 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 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 remain 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 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 regulation? There is no 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 additional cost to the State and to the local school boards for compliance with the regulation.

103 Accountability for Schools, Districts and the State

(Break in Continuity of Sections)

7.0 Schools or Districts that are classified as Under Improvement

7.1 Accountability sanctions for schools that are classified as Under Improvement:

7.1.1 Under Improvement Year 1, a school shall review and modify its current School Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall provide supplemental services to students according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.

7.1.2 Under Improvement Year 2, a school shall continue to review and modify the School Improvement Plan as needed. A school designated as Title I shall offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.

7.1.3 Under Improvement Year 3, a school shall continue with the activities as per 7.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements. The district or school shall provide the corrective action plan to the Department for approval.

7.1.4 Under Improvement Year 4, a school shall continue with the activities as per 7.1.3. In addition, the district or school shall develop a plan for restructuring as outlined by federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the school's performance and shall consult with the State Board of Education prior to making comment for approval or non approval of the plan.

7.1.4.1 Any non charter school that plans to restructure into a charter school shall be considered a new charter applicant and be subject to the provisions, procedures and timelines as outlined in 14 Del.C. Chapter 5 and 14 DE Admin. Code 275.

7.1.4.2 A charter school, whether authorized by a local school district or the Department, that plans to restructure for purposes of the federal ESEA shall consider such restructuring as a major modification and be subject to the provisions, procedures, and timelines as outlined in 14 Del.C. Chapter 5 and 14 DE Admin. Code 275.

7.1.5 Under Improvement Year 5, a school shall continue with the activities as per 7.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.

PROPOSED REGULATIONS

- 7.1.5.1 Any non charter school that has been approved by the Department to restructure into a charter school shall implement the restructuring plan as approved and shall be subject to the provisions, procedures and timelines as outlined in 14 Del.C. Chapter 5 and 14 DE Admin. Code 275.
- 7.1.5.2 A charter school, whether authorized by a local school district or the Department, that has been approved by the Department to restructure shall implement the restructuring plan as approved and shall be subject to the provisions, procedures, and timelines as outlined in 14 Del.C. Chapter 5 and 14 DE Admin. Code 275.
- 7.2 Accountability sanctions for districts that are classified as Under Improvement:
- 7.2.1 Under Improvement Year 1, a district shall develop and implement a District Improvement Plan.
- 7.2.2 Under Improvement Year 2, a district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.
- 7.2.3 Under Improvement Year 3, a district shall continue with the activities outlined in 7.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to making comment for approval or non approval of the plan.
- 7.2.4 Under Improvement Year 4, a district shall continue with the activities as outlined in 7.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

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

<http://regulations.delaware.gov/register/june2008/proposed/11 DE Reg 1536 06-01-08.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1270 (14 Del.C. §1270)
14 DE Admin. Code 110

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

110 Teachers and Specialists Appraisal Process

A. Type of Regulatory Action Required

Repeal Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 110 Teachers and Specialists Appraisal Process. This regulation is replaced by 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 DE Admin. Code 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The new Delaware Performance Appraisal System (DPAS II) has been phased in over the past two years and shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year. This regulation is no longer needed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Thursday, July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
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 regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).
10. What is the cost to the State and to the local school boards of compliance with the regulation? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

~~110 Teachers and Specialists Appraisal Process~~**~~1.0 Teacher and Specialist Appraisal Process Effective September 1, 1990~~**

- ~~1.1 Tenured teachers and specialists (Certificated professional employees who have completed three (3) years of service in the State, two (2) years of which shall have been in the employ of the same board,) shall receive a minimum of three (3) formative conferences and reports and a performance appraisal and conference within a two (2) year appraisal cycle. A district can opt to shorten the length of the appraisal cycle for tenured teachers and specialists to one (1) year provided the performance appraisal is supported by a minimum of two (2) formative conferences and reports. Nontenured teachers and specialists shall receive a minimum of three (3)~~

~~formative conferences and reports and a performance appraisal and conference each year.~~

~~1.2 The formative phase of the appraisal system shall consist of a preobservation conference, data collection and formative conferences and reports.~~

~~1.3 The following six (6) categories of criteria shall be the basis upon which, as a minimum, the performance of teachers and specialists shall be appraised:~~

~~1.3.1 Instructional Planning and Planning and Preparation~~

~~1.3.2 Organization and management of classroom and organization and management~~

~~1.3.3 Instructional Strategies and Strategies and Techniques~~

~~1.3.4 Teacher and Student Interaction and Specialist and Student and Staff Interaction~~

~~1.3.5 Evaluation of Student Performance and Monitoring and Evaluating performance~~

~~1.3.6 Related Responsibilities~~

~~1.4 The performance appraisal shall be the evaluation component and will complete the appraisal cycle. The ratings for the performance appraisal shall be as follows:~~

~~1.4.1 Exemplary: Performance in a category indicates that the teacher and specialist could serve as a model for other teachers and specialists.~~

~~1.4.2 Effective: Performance in a category consistently meets district expectations.~~

~~1.4.3 Needs Improvement: Performance in a category is not consistently effective.~~

~~1.4.4 Unsatisfactory: Performance in a category is not effective and jeopardizes continued employment.~~

~~1.5 An Individual Improvement Plan shall be developed when an individual's performance in any category has been appraised as Needs Improvement or Unsatisfactory on a Performance Appraisal.~~

~~1.6 Appraisers and teachers and specialists shall sign all appraisal instruments indicating that the documents have been reviewed and discussed. A teacher and specialist may submit additional information.~~

~~1.7 Local school districts shall follow the procedures and use forms developed by the Department of Education for the Teacher and Specialist Appraisal Process.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1270 (14 Del.C. §1270)
14 DE Admin. Code 112

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

112 Addendum to Teachers and Specialists Appraisal Process

A. Type of Regulatory Action Required

Repeal Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 112 Addendum to Teachers and Specialists Appraisal Process. This regulation is replaced by 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 DE Admin. Code 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The new Delaware Performance Appraisal System (DPAS II) has been phased in over the past two years and shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year. This regulation is no longer needed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Thursday, July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

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 regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

10. What is the cost to the State and to the local school boards of compliance with the regulation? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

~~112 Addendum to Teachers and Specialists Appraisal Process~~**~~4.0 Addendum to Teachers and Specialists Appraisal Process~~**

~~Beginning June 1, 1996 the following changes outlined in this addendum shall continue in effect until the Delaware Performance Appraisal System can be thoroughly reviewed and appropriate revisions made to assure alignment with the vision of teaching and learning represented in the Delaware Content Standards for Students and the Delaware Standards for Teachers.~~

~~4.1 Tenured teachers or specialists who transfer within the State of Delaware and become non-tenured in the new district or within the current district to a new assignment or building shall receive a minimum of~~

~~one formative conference and report each of two years and a performance appraisal and conference at the end of a two-year cycle using current policy forms.~~

~~1.2 Tenured teachers or specialists shall receive a minimum of one formative conference and report each of two years and a performance appraisal and conference at the end of a two-year cycle using the short narrative instrument.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1270 (14 Del.C. §1270)
14 DE Admin. Code 115

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

115 School Level Administrator Appraisal Process

A. Type of Regulatory Action Required

Repeal Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 115 School Level Administrator Appraisal Process. This regulation is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The new Delaware Performance Appraisal System (DPAS II) has been phased in over the past two years and shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year. This regulation is no longer needed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Thursday, July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

7. Will the decision making authority and accountability for addressing the subject to be regulated be

placed in the same entity? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

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 regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

10. What is the cost to the State and to the local school boards of compliance with the regulation? The regulation is being repealed and is replaced by 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

~~115 School Level Administrator Appraisal Process~~

~~1.0 School Level Administrator Appraisal Process Effective August 1, 1990~~

~~1.1 Within a two (2) year appraisal cycle, the appraisal system includes a minimum of three (3) formative conferences/reports and a summative appraisal and conference. However, a district can opt to shorten the length of the appraisal cycle to one (1) year provided the summative appraisal is supported by a minimum of one (1) formative conference and report.~~

~~1.2 The formative phase of the appraisal system shall consist of a precycle conference, data collection and formative conferences/reports.~~

~~1.3 The following eight (8) categories of criteria shall be the basis upon which, as a minimum, the performance of school level administrators is appraised.~~

~~1.3.1 Mission and Objectives, the administrator's role in establishing the direction for the school.~~

~~1.3.2 Instructional School Program, the development, implementation and evaluation of programs.~~

~~1.3.3 Student Performance and Behavior, the administrator's role in setting and promoting positive expectations for student achievement and behavior.~~

~~1.3.4 Supervision, the administrator's role in monitoring, assessment, and helping to improve the performance of staff assigned to his/her school.~~

~~1.3.5 Building Management, the administrator's assigned managerial role.~~

~~1.3.6 Problem Solving and Decision Making, the administrator's ability to reach, communicate and implement logical conclusions and quality decisions.~~

~~1.3.7 Interpersonal Relations, the administrator's ability to recognize and deal with the needs, concerns and problems of others.~~

~~1.3.8 School and Community Relations, the administrator's role in creating positive relationships among the school, students, parents, and community.~~

~~1.4 The summative phase of the appraisal system shall be the evaluation component and will complete the appraisal cycle. The ratings for the summative phase shall be as follows:~~

~~1.4.1 Exemplary: Performance in a category indicates that the school level administrator could serve as a model for other school level administrators.~~

~~1.4.2 Effective: Performance in a category consistently meets district expectations.~~

~~1.4.3 Needs Improvement: Performance in a category is not consistently effective.~~

~~1.4.4 Unsatisfactory: Performance in a category is not effective and jeopardizes continued employment.~~

~~1.5 An Individual Improvement Plan shall be developed when a school level administrator's performance in any category has been appraised as Needs Improvement or Unsatisfactory on a Summative Appraisal.~~

~~1.6 Appraisers and school level administrators shall sign all appraisal instruments indicating that the documents have been reviewed and discussed.~~

2.0 ~~Written Plan Describing the Appraisal System~~

~~Each school district shall have a written plan describing its appraisal system for school level administrators. The district plan may include a statement of assurance adopting the state system, or a district defined appraisal system.~~

~~2.1 School districts adopting the state system shall follow the procedures and use forms developed by the Department of Education for appraising administrator performance.~~

~~2.2 School districts electing to use an alternative administrative appraisal system shall include the following information:~~

~~2.2.1 Length of the appraisal cycle.~~

~~2.2.2 The number of formative conferences and reports that will be conducted.~~

~~2.2.3 Method of data collection for the formative phase.~~

~~2.2.4 How the criteria (1) Mission/Objectives, (2) Instructional/School Programs, (3) Student Performance and Behavior, (4) Supervision, (5) Building Management, (6) Problem Solving and Decision Making, (7) Interpersonal Relations, and (8) School and Community Relations will be addressed.~~

~~2.2.5 The performance ratings and definitions that will be used.~~

~~2.2.6 The process for promoting growth and improvement.~~

~~2.2.7 Copies of district policies, regulations, forms, and procedures relating to the alternative appraisal process.~~

~~2.3 The plan shall be submitted to the Department of Education for review and approval prior to September 1, 1990. Any changes or revisions to the approved district plan shall be submitted to the Department of Education for approval prior to implementation.~~

~~7-DE-Reg-1180 (3/1/04)~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 258

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

258 Federal Programs General Complaint Procedures*

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 258 Federal Programs General Complaint Procedures. The amended regulation reflects the addition of a limitation on the time by which a complaint may be filed and provides a numbering change in cross referencing other parts of Administrative Code. The amended regulation also explicated identifies a charter schools as a Local Education Agency for purposes of this regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Thursday, July 3, 2008 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 amended regulation help improve student achievement as measured against state achievement standards? The amended regulation continues to address the federal programs complaints process not the specifics of student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation continues to address the federal programs complaint process and this process is related to

assuring an equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the federal programs complaint process not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to address the federal programs complaint process which provides protection if a student's rights or services under federal legislation listed in the regulation is not fulfilled.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not alter the 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 alter the 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 remain 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 will remain 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 regulation? The federal laws have changed and the references must be corrected in the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to the State and local school boards remains the same.

258 Federal Programs General Complaint Procedures*

1.0 Programs Covered by the Complaint Process

This complaint process shall apply to the following programs: Title I Part A Improving Basic Programs Operated by Local Education Agencies; Title I Part B-1 Reading First; Title I Part B-2 Early Reading First; Title I Part B-3 William F. Goodling Even Start Family Literacy Program; Title I Part C Education of Migratory Children; Title I Part D Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or at Risk; Title I Part F Comprehensive School Reform; Title I Part G Advanced Placement; Title II Part A Teacher and Principal Training and Recruiting Fund, Grants to States; Title II Part A-5-2151(B) School Leadership; Title II Part D 1 and 2 Enhancing Education Through Technology; Title III Language Instruction for Limited English Proficient and Immigrant Students; Title IV Part A Safe and Drug Free Schools and Communities; Title IV Part B 21st Century Community Learning Centers; Title V Part A Innovative Programs and Title V Part B-1 Public Charter Schools.

2 DE Reg. 217 (8/1/98)

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

2.0 Right to File a Complaint

An organization or an individual may file a complaint regarding an alleged violation of Federal Program Statutes or regulations by the Delaware Department of Education or the Local Education Agency. For purposes of this regulation, a Local Education Agency shall also include charter schools. A written and signed complaint shall be filed with the Delaware Department of Education.

2.1 The complaint shall include a statement specifying the alleged violation by the State Education Agency or a Local Education Agency. Such statement shall include facts and documentation of the alleged violation.

- 2.2 The Delaware Department of Education shall investigate the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty (60) working days of the receipt of the complaint. An extension of the time limit may be made by the Delaware Department of Education only if exceptional circumstances exist with respect to a particular complaint.
- 2.3 The Delaware Department of Education may conduct an independent onsite investigation of the complaint, if it is determined that an on site investigation is necessary.
- 2.4 The complaint shall allege a violation that occurred not more than one (1) year prior to the date that the complaint is received.

2 DE Reg. 217 (8/1/98)

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

3.0 Complaint Made to the Local Education Agency

An organization or an individual is encouraged to file a written, signed complaint with the Local Education Agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the Local Education Agency of a Federal statute or regulation that applies to the Local Education Agency's program.

- 3.1 The complaint shall include a statement specifying the alleged violation by the Local Education Agency. Such statement shall include facts and documentation of the alleged violation.
- 3.2 The superintendent or the agency head of the Local Education Agency shall investigate the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within sixty (60) working days of the receipt of the complaint.
- 3.3 An appeal of the Local Education Agency decision may be made by the complainant to the Delaware Department of Education. The appeal shall be in writing and signed by the individual or by an individual representative of the organization making the appeal. The Delaware Department of Education shall resolve ~~address~~ the appeal in the same manner as a complaint, as indicated in 2.0.

2 DE Reg. 217 (8/1/98)

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

4.0 Review of Final Decision by the U.S. Department of Education

Any party to the complaint has the right to request that the Secretary, U. S. Department of Education, review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary, U. S. Department of Education, shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

2 DE Reg. 217 (8/1/98)

5.0 Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:

Secretary of Education
Delaware Department of Education
401 Federal Street
Suite 2
Dover, Delaware 19901-3639

*IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect disabled students with disabilities. See 14 **DE Admin. Code 925, Children with Disabilities 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies.**

2 DE Reg. 217 (8/1/98)

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 275

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

275 Charter Schools

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 275 Charter Schools to require a charter school that plans to restructure pursuant to the federal Elementary and Secondary Education Act of 1965 (currently reauthorized as the No Child Left Behind Act) to submit such plan as a major modification, to clarify definitions, and to provide guidance on what can be considered part of the record as it relates to decisions made by the Secretary and State Board for charter applications, renewals, major modifications, and formal review of a charter.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Thursday, July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation continues to require charter schools to focus on the improvement of student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation continues to require charter schools 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 require charter schools 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 require charter schools 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 continues to preserve the necessary authority and flexibility of decision making at the charter 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 unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school level.

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

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 and not an impediment to the implementation of other state education policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are not additional costs the charter schools for compliance with the amended regulation.

275 Charter Schools

1.0 Purpose and Effect

- 1.1 The purpose of these regulations is to provide rules to govern the implementation of 14 Del.C. Ch. 5 (hereafter, the "Charter School Law").
- 1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.
- 1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff ~~and~~ administrators and boards of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.
- 1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by, or transferred to the Department with the consent of the State Board.

6 DE Reg. 274 (9/1/02)

2.0 Definitions

- 2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

"Accountability Committee": Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

"Applicant": A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the renewal or modification of such a charter, as the context indicates.

"Audit": An informal financial, programmatic, or compliance audit of a charter school.

"Charter Holder": The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

"Charter School": A non home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to the Department with the approval of the State Board for the personal physical attendance of all students.

"DSTP": The Delaware Student Testing Program or successor statewide assessment program established at 14 Del.C. §151, et.seq., and, as the context requires, the assessments administered pursuant to the program.

"Department": The Delaware Department of Education.

"First Instructional Day": The first day a Charter School is open with students in attendance.

"Formal Review": The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school's operations and educational programs.

"Founding Board of Directors": The ~~duly-elected~~ Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

"Parent": The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. "Parent" also includes individuals authorized to act as Relative Caregivers under the provisions of 14 Del.C. §202(e)(2).

"Performance Review": Reserved

"Renewal": The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for ~~three~~ four years.

"Secretary": The Secretary of the Delaware Department of Education.

"State Board": The Delaware State Board of Education.

6 DE Reg. 274 (9/1/02)

7 DE Reg. 928 (1/1/04)**3.0 Application Process**

- 3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the ~~second September 1st~~ first day of school of the second school year thereafter.
- 3.2 All applications, whether for an original charter, a modification of a charter or the Renewal of a charter, shall be made on forms approved by the Department.
- 3.3 The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.
- 3.4 An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered. Incomplete applications, or applications received after the deadline, will not be considered.
- 3.5 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.
- 3.6 An application is not complete unless all of the following requirements are met:
 - 3.6.1 All questions on the application form are answered.
 - 3.6.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.
- 3.7 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications.
- 3.8 Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.
- 3.9 The State Board of Education may designate one or more of its members to sit as nonvoting members of the Accountability Committee.
- 3.10 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter ~~or the Renewal, the renewal~~ of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. In the case of the renewal or formal review of a charter, the record may also include performance documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, audits, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.

6 DE Reg. 274 (9/1/02)**4.0 Standards and Criteria for Granting Charter**

- 4.1 Applicant Qualifications
 - 4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:
 - 4.1.1.1 Research based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

- 4.1.1.2 Business management, including but not limited to accounting and finance.
- 4.1.1.3 Personnel management.
- 4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.
- 4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.
- 4.1.1.6 School operations, including but not limited to facilities management.
- 4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.
- 4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:
 - 4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day, further provided a single individual shall not represent both the certified teacher and parent role on the board;
 - 4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.
 - 4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School's business.
- 4.2 Student Performance
 - 4.2.1 Minimum Requirements
 - 4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program or any success statewide assessment program.
 - 4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.
 - 4.2.1.3 The Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet or exceed the statewide average student performance of students in the same grades for each year of test administration, unless the student population meets the criteria established in Section 4.2.2.

6 DE Reg. 274 (9/1/02)

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

9 DE Reg. 1752 (5/1/06)

(Break in Continuity of Sections)

9.0 Modifications of Charters

- 9.1 A charter holder may apply to the Department for a modification of the charter following the granting of the charter.
- 9.2 The application shall be submitted on a form approved by the Department and shall specify the exact modification requested and describe the need for the modification.
- 9.3 The standards for deciding a modification application shall be as provided in Section 4.0 of these regulations for the original grant of the charter.
- 9.4 The following are considered applications for a new charter and shall not be processed or considered as a modification application:

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- 9.4.1 An application to collectively change the mission, goals for student performance and educational program of the charter school; or
- 9.4.2 An application, at any time before the First Instructional Day, to offer educational services at a site other than the site approved as part of the school's charter, when the charter has previously been amended to change the school's site; or
- 9.4.3 An application to replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter holder at any time before the First Instructional Day.
- 9.5 An application for a major or minor charter modification may not be filed while a school's charter is on formal review, except where the Secretary determines that the requested modification is unrelated to the reason the school's charter has been placed on formal review or where the modification addresses the reason the school was placed on formal review provided the modification is filed before the preliminary report is approved by the Accountability Committee.
- 9.6 A charter shall not be modified to permit a charter school's first instructional day to occur later than the third September 15th after the date the charter is originally granted. In the event that the first instructional day does not occur by that date, the charter shall be deemed forfeited and the authority to open and operate a charter school expired. Further, no charter shall be modified to permit a charter school to obtain a certificate of occupancy, either temporary or final, for all or any part of the premises to be occupied by the school, later than June 15 immediately preceding the authorized opening date of the school.
- 9.7 An increase or decrease of up to 5% in a charter school's current authorized enrollment shall not be considered a modification of the school's charter. Any modification application to increase or decrease a charter school's current authorized enrollment by more than 5% must be filed between November 1st and December 31st and, if approved, shall be effective the following school year.
- 9.8 Major modifications.
- 9.8.1 A major modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which would:
- 9.8.1.1 Replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter school at anytime on or after the First Instructional Day; or
- 9.8.1.2 Alter enrollment preferences; or
- 9.8.1.3 Result in an increase or decrease in the school's total authorized enrollment of more than 15%, provided further the major modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or
- 9.8.1.4 Alter grade configurations; or
- 9.8.1.5 At any time after the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, except where such change is the unavoidable result of a loss by fire or other "casualty" as that term is defined in *Black's Law Dictionary*; or
- 9.8.1.6 At any time before the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, provided that the charter has not previously been amended to change the school's site; or
- 9.8.1.7 Alter any two of the following: the school's mission, goals for student performance, or educational program; or
- 9.8.1.8 Alter the charter school's performance agreement with the Department; or
- 9.8.1.9 Alter the charter school's charter to satisfy the provisions of "restructuring" as prescribed in the federal Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof.
- 9.9 Minor modifications.

- 9.9.1 A minor modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which is not a major modification. Minor modifications include, but are not limited to:
- 9.9.1.1 Changes to the name of either the charter school or charter holder; or
 - 9.9.1.2 The first extension of any deadline imposed on the charter school or charter holder by thirty (30) working days or less (or by 15 calendar days in the case of the First Instructional Day); or
 - 9.9.1.3 Changes in the standards or assessments used to judge student performance (other than the State standards or the assessments administered pursuant to the DSTP); or
 - 9.9.1.4 In the case of a charter school which is open with students in attendance, offering educational services at a site other than, or in addition to, the site approved as part of the school's charter, when use of the approved site has unavoidably been lost by reason of fire or other casualty as that term is defined in *Black's Law Dictionary*; or
 - 9.9.1.5 Changes to alter not more than one of the following: the school's mission, goals for student performance, or educational program; or
 - 9.9.1.6 An increase or decrease in the school's total authorized enrollment of more than 5%, but not more than 15%, provided further the minor modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or
 - 9.9.1.7 Alter, expand or enhance existing or planned school facilities or structures, including any plan to use temporary or modular structures, provided that the applicant demonstrates that the school will maintain the health and safety of the students and staff and remain economically viable as provided in 4.4 above; or
 - 9.9.1.8 Any change in the school's agreement with an educational management organization other than as set forth in 9.4.3 and 9.8.1.1 above; or
 - 9.9.1.9 A change to the current authorized number of hours, either daily or annually, devoted to actual school sessions. Regardless of any proposed change, the school shall maintain the minimum instructional hours required by 14 **Delaware Code**; or
 - 9.9.1.10 A change in the terms of the current site facilities arrangements including, but not limited to, a lease to a purchase or a purchase to a lease arrangement; or
- 9.9.2 The Secretary may decide the minor modification application based on the supporting documents supplied with the application unless the Secretary finds that additional information is needed from the applicant.
- 9.9.3 The Secretary may refer a minor modification request to the Accountability Committee for review if the Secretary determines, in her/his sole discretion, that such review would be helpful in her/his consideration of the application. If the Secretary refers a minor modification application to the Accountability Committee, she/he may decide the application based on any report from the Committee and the supporting documents related to the application. The applicant for a minor modification shall be notified if the minor modification request has been forwarded to the Accountability Committee. The applicant may be asked to provide additional supporting documentation.
- 9.9.4 The Secretary may deny a minor modification request if the supporting documentation is incomplete or insufficient provided the applicant has been advised additional information was needed
- 9.9.5 Upon receiving an application for a minor modification, the Secretary shall notify the State Board of the application and her/his decision on whether to refer the application to the Accountability Committee.
- 9.9.6 The meeting and hearing process provided for in Section 511(h), (i) and (j) of the Charter School Law shall not apply to a minor modification application even where the Secretary refers the application to the Accountability Committee.

9.9.7 Decisions for minor modifications to a charter shall be decided by the Secretary, with the concurrence of the State Board of Education, within 30 working days from the date the application was filed, unless the timeline is waived by the Secretary and the applicant.

6 DE Reg. 274 (9/1/02)

9 DE Reg. 387 (09/01/05)

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

[http://regulations.delaware.gov/register/june2008/proposed/11 DE Reg 1547 06-01-08.htm](http://regulations.delaware.gov/register/june2008/proposed/11%20DE%20Reg%201547%2006-01-08.htm)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 Del.C. §122(b)(6))
14 DE Admin. Code 502

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

502 Alignment of Local School District Curricula to the State Content Standards

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 502 Alignment of Local School District Curricula to the State Content Standards to include the process by which school districts shall demonstrate the Career and Technical Education content areas (Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences) are aligned to the state content standards.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The purpose of the alignment project is to insure that the curriculum in all of the school districts is aligned with the state content standards which should assist in improving student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The alignment project should help to ensure that 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 addresses alignment of curriculum with the state content standards not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses alignment of curriculum with the state content standards not students legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve 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 include reporting requirements concerning curriculum alignment to the state content standards.

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 remain 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 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 regulation? There is no 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 may be some cost to the local school districts in staff time and or consultants as they align their curriculum with the state content standards.

502 Alignment of Local School District Curricula to the State Content Standards

1.0 Purpose

- 1.1 The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501.

2.0 Definitions

“Alignment Index” means a co relational measure of alignment between the Survey of Enacted Curriculum in a specific content area and the state standards used for comparison. The Wisconsin Center for Educational Research automatically calculates and reports the alignment index to schools and districts that use the surveys.

“Content Map” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

“Department” means the Delaware Department of Education.

“Grade Level Expectations” means the documents created and officially released by the Delaware Department of Education for English language arts, mathematics, science, and social studies which detail student learning objectives in each content area for kindergarten through grade twelve.

“Scope and Sequence” means a curriculum plan, usually in chart form, with a range of instructional objectives and skills organized according to the successive levels at which they are taught.

“Statewide Recommended Curriculum Frameworks” means the Delaware Recommended Curriculum documents comprised of Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website.

“Survey of Enacted Curriculum (SEC)” means the alignment survey sponsored by the Council of Chief State School Officers and the Wisconsin Center for Education Research. The SEC is a teacher survey tool based on scientifically based research which yields detailed information about the alignment of classroom instruction to state academic standards and state assessments. The survey is available for English language arts, mathematics, and science at the present time. A survey for social studies is in development. An analysis of results by grade level, school and district is completed by the Wisconsin Center for Educational Research with formal reports provided to the participating schools and districts.

“Tile Chart” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

“Unit Summative Assessment” means a performance measure of skills and knowledge mastered by students at the end of a unit as a result of classroom instruction. Examples of unit assessment measures include but are not limited to teacher constructed unit tests and commercially published measures such as those provided by curriculum publishers.

3.0 Alignment Requirement

- 3.1 All school districts shall provide evidence to the Department that their school district curricula are aligned with the State Content Standards. ~~As of 2006~~ State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences. Content standards as developed by the Department in the future shall also be included under this section.

4.0 Use of the Statewide Recommended Curricula Frameworks

- 4.1 School districts shall utilize the Statewide Recommended Curricula Frameworks including the State Content Standards, Content Area Clarifications and Grade Level Expectations as guides to the development or revision of their local curricula, syllabi, and Scope and Sequence in the content areas listed in 3.0.

5.0 Documentation of Curriculum Alignment

- 5.1 Evidence of curriculum alignment to the State Content Standards shall be submitted to the Department no later than twelve (12) months following the official release by the Department of the Statewide Recommended Curriculum Frameworks in each content area.
- 5.2 Documentation of alignment of school district curriculum to the State Content Standards shall be submitted through evidence provided by the school districts on forms as developed and required by the Department.
- 5.3 Evidence of curriculum alignment submitted by school districts shall be subject to Department review during on site monitoring visits.

6.0 Criteria for the Evaluation of the Alignment

- 6.1 School districts shall be required to submit evidence of local curriculum alignment for English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, and Physical Education content areas for each grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 from at least two of the permissible categories of evidence in 6.1.1 through 6.1.5. **One** of the two categories shall be the evidence described in 6.1.1. The second required category and any additional submitted evidence shall be selected by the district from categories 6.1.2 through 6.1.5. The school district may choose to vary the choice of the second category of evidence by grade cluster level. School districts shall be required to submit evidence of local curriculum alignment for Career and Technical Education content areas (Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences) from the permissible category of evidence in 6.1.6. Evidence of alignment to each standard in a given content area shall be submitted.
- 6.1.1 Category 1 is a narrative describing the local curriculum alignment evidence and the extent to which it addresses all student subgroups. For English language arts, mathematics, science and social studies, a required element of this narrative shall be an analysis of school district disaggregated student performance data on state assessments over the most recent three year period of available state assessment data.
- 6.1.2 Category 2 is the Grade level result (all teachers in at least one grade per grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 of the Survey of Enacted Curriculum for the content area under consideration. The SEC results shall demonstrate an Alignment Index of .50 or higher, and include a graphic summary including either a Tile Chart or Content Maps.
- 6.1.3 Category 3 is three (3) units of study from a specific grade cluster, accompanied by the corresponding summative unit assessment and scoring rubric, and matrix table detailing applicable content standards, grade level expectations and course expectations for all students served in the grade cluster.
- 6.1.4 Category 4 is an external formal curriculum alignment report detailing a review of local instruction and documentation of standards alignment. The district is required to submit three (3) sample units

and three (3) corresponding unit summative assessments, and a narrative detailing how all students served in the grade cluster receive standards aligned instruction. The district is required to submit the curriculum audit contractor's credentials.

6.1.5 Category 5 is a formative assessment benchmarking system with grade cluster Scope and Sequence, including three sample units from the grade cluster. The district is required to submit (1) a narrative detailing evidence of alignment of formative student assessment or assessments to the State Content Standards and (2) sample assessment items in the content area.

6.1.6 Category 6 is curriculum alignment evidence specific to Career and Technical Education content areas. Evidence for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences shall be submitted as required through Title 14, Section 525 for Career and Technical Education.

6.2 Required documentation for specific student subpopulations

6.2.1 As part of its submitted evidence, the district shall make detailed comments on the extent to which any modification or enhancement of the instructional program for specific subgroups such as students with disabilities, gifted students, English language learners or any other special population of students is aligned to the State Content Standards in the content area where there have been modifications or enhancements.

7.0 Participation of Building Level Staff

7.1 All school districts shall describe and document to the Department the method and the level of involvement in the alignment process by their building administrators, teachers and specialists.

8.0 Subsequent Review of Alignment

8.1 Each district shall resubmit evidence of alignment with the State Content Standards on forms developed and required by the Department between three and five years from the initial approval and on a recurring cycle of three to five years as determined by the Department. Further provided, the district shall be required to present evidence of curriculum alignment if there are major changes to a content area in the approved curricula. The district shall only be required to submit evidence of curriculum alignment in the affected content area.

10 DE Reg. 344 (08/01/06)

10 DE Reg. 1583 (04/01/07)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 605

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

605 Student Rights and Responsibilities

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 605 Student Rights and Responsibilities. The amendments clarify that district and charter school student rights and responsibilities policy(s) must be based on the most current version or reauthorization of Delaware Code, Delaware Administrative Code, federal legislation such as, but not limited to, Individuals with Disabilities Education Act (IDEA), Civil Rights Act, Elementary and Secondary Education Act (ESEA), and the Code of Federal Regulations Title IX.

Persons wishing to present their views regarding this matter may do so in writing by the close of business

on or before Thursday, July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses students' rights and responsibilities which can have an impact on school climate and student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation continues to ensure that all students have the same information about their rights and responsibilities.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation continues to assure that students' health and safety are adequately protected as found in the information on their rights and responsibilities.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all students' legal rights are protected as found in the information on their rights and responsibilities.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation continues to give the districts and charter schools the authority and flexibility to develop their own rights and responsibilities policies in compliance with federal and state laws.

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 clarifies how the policy(s) will be distributed.

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 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 continues to 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 regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation does require a change in how the student rights and responsibilities policies are distributed, but change should not affect costs.

605 Student Rights and Responsibilities**1.0 Required Policy**

- 1.1 All local school districts and charter schools shall have their own policies on student rights and responsibilities. ~~and shall distribute and explain these policies to every student at the beginning of every school year and whenever a student enrolls or re-enrolls in the school during the school year. These policies shall be based on the Department of Education document Guidelines for the Development of District Policies on Student Rights and Responsibilities, as may be from time to time revised by the Department of Education, and on Department of Education regulations, Possession, Use or Distribution of Drugs and Alcohol, and Compliance with the Gun Free Schools Act. These policies shall be based on the most current version or reauthorization of Delaware Code, Delaware Administrative Code, federal legislation such as, but not limited to, Individuals with Disabilities Education Act (IDEA), Civil Rights Act, Elementary and Secondary Education Act (ESEA), and the Code of Federal Regulations Title IX~~

2.0 Distribution of Student Rights and Responsibilities Policy

- 2.1 Each local school district and charter school shall distribute and explain these policies to every student at the beginning of each school year.
- 2.2 Each district and charter school shall distribute and explain these policies to each student enrolling or re enrolling during the school year.
- 2.3 Each district and charter school shall post the policies on student rights and responsibilities on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this policy(s) can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request.

3.0 Reporting Requirements and Timelines

- 3.1 Each local school district and charter school shall have an electronic copy of its current student rights and responsibilities policy(s) on file with the Department of Education.
- 3.2 Each local school district and charter school shall provide an electronic copy of any student rights and responsibilities policy(s) to the Department within ninety (90) days of such 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** 615

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

615 School Attendance

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 615 School Attendance. The amended regulation clarifies how the School Attendance policy will be distributed and provided to the Department of Education as well as the Reporting Requirements and Timelines.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school attendance which does have an impact on student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses attendance not equity issues.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses attendance not specific health and safety issues.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses notification issues concerning attendance policies which helps to ensure that the 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 will preserve 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 require some additional notification of students concerning attendance policies.

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 remain 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 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 regulation? The regulation is necessary to assure all students have a clear understanding of school attendance policies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be some minimal cost to the school districts for additional copies of the documents used to disseminate information on student attendance policies.

615 School Attendance

1.0 Required Attendance Policy

- 1.1 ~~Each school district shall have an attendance policy that is in accordance with the requirements of the Delaware Code and which defines and describes the district's rules concerning attendance for students K to 12. Each district shall distribute and explain these policies to every student at the beginning of each school year. In addition, each district shall distribute and explain these policies to each student enrolling or re-enrolling during the school year.~~

2 DE Reg. 685 (10/1/98)

7 DE Reg. 619 (11/1/03)

2.0 Distribution of Attendance Policy

- 2.1 Each district shall distribute and explain these policies to every student at the beginning of each school year.
- 2.2 Each district shall distribute and explain these policies to each student enrolling or re enrolling during the school year.
- 2.3 Each district shall post the attendance policy on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request.

3.0 Reporting Requirements and Timelines

- 3.1 Each public school district shall have an electronic copy of its current attendance policy on file with the Department of Education.
- 3.2 Each public school district shall provide an electronic copy of any attendance policy within ninety (90) days of such 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 881

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver****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 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver. The amended regulations will require each district to post the policy on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request. The policy would need to reflect the procedures for the release of a student to a person other than the parent, guardian, or Relative Caregiver in an emergency care situation and for a student who has reached the age of majority (18th birthday).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation provides more guidance on how students are released to persons and does not specifically address state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation provides more guidance on how students are released to persons and does not specifically address ensuring students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This amended regulation continues to attempt to protect children from being sent home from school with unauthorized persons.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation attempts to protect the rights of both the child and the individual picking up the child at school.

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 will 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 to be regulated will remain 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 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 regulation? The regulation is

designed to assist in protecting the safety of school children.

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 local school boards of compliance with the regulation.

881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver

1.0 Required Policy

- 1.1 Each local school district shall have a policy which outlines the procedures for releasing students from schools to persons other than their parent, guardian or Relative Caregiver.
- 1.2 The policy shall, at a minimum, include a procedure for allowing the release of a student to a person other than their parent, guardian or Relative Caregiver in the event of an emergency care situation.
- 1.3 The policy shall, at a minimum, include the procedures and instances in which a student who has reached his/her 18th birthday may release him/herself from school.

2 DE Reg. 778 (11/1/98)

7 DE Reg. 504 (10/1/03)

2.0 Distribution of Student Release Policy

- 2.1 Each district shall post the student release policy on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request.

3.0 Reporting Requirements and Timelines

- 3.1 Each public school district school shall have an electronic copy of its current student release policy on file with the Department of Education.
- 3.2 Each public school district shall provide an electronic copy of any student release policy within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

PROFESSIONAL STANDARDS BOARD

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

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

1531 Middle Level English Language Arts Teacher

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the 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 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary English Language Arts to teach Middle Level English Language Arts, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level English Language Arts Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business

on Wednesday July 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1531 Middle Level English Language Arts Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Middle Level English Language Arts Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary English Language Arts Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.

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

2.0 Definitions

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

3.0 Standard Certificate

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

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

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

11 DE Reg. 750 (12/01/07)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1532

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**1532 Middle Level Mathematics Teacher****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the 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** 1532 Middle Level Mathematics Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary Mathematics to teach Middle Level Mathematics, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level Mathematics Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday July 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or

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

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

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

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

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

1532 Middle Level Mathematics Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Mathematics Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary Mathematics Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.

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

2.0 Definitions

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

3.0 Standard Certificate

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

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

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

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

10 DE Reg. 100 (07/01/06)

11 DE Reg. 752 (12/01/07)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1533

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

1533 Middle Level Science Teacher

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the 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 1533 Middle Level Science Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary Science to teach Middle Level Science, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level Science Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday July 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

language arts and social studies.

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

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

1533 Middle Level Science Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Science Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Middle Level Science Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.

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

2.0 Definitions

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

3.0 Standard Certificate

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

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

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

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

8 DE Reg. 1139 (2/1/05)

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

11 DE Reg. 753 (12/01/07)

PROFESSIONAL STANDARDS BOARD

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

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

1534 Middle Level Social Studies Teacher

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the 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** 1534 Middle Level Social Studies Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary Social Studies to teach Middle Level Social Studies, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level Social

Studies Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday July 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1534 Middle Level Social Studies Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Social Studies Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Middle Level Social Studies Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this certification.

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

2.0 Definitions

2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any

subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

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

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

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

11 DE Reg. 754 (12/01/07)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 **Del.C.** §122(b)(6))
14 **DE Admin. Code** 1552

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

1552 Career and Technical Specialist

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the 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 **DE Admin. Code** 1552 Career and Technical Specialist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Career and Technical Specialist regulation is being amended to reflect the expiration date. This regulation sets forth the requirements for a Career and Technical Specialist.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday July 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or

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

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

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

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

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

1552 Career and Technical Specialist

1.0 Content

This regulation shall apply to the issuance of a Standard Certificate for a Career and Technical Specialist in a specialized career and technical education program, pursuant to 14 **Del.C.** §1220.

6 DE Reg. 523 (10/1/02)

2.0 Standard Certificate

The following shall be required for the Standard Certificate for a Career and Technical Specialist.

2.1 Bachelor's degree from an accredited college; and

2.2 Licensure and Certification in a secondary content area.; and

2.3 Professional Education, which consists of 15 credit hours, as set forth herein, which may be satisfied by providing evidence of having fulfilled the requirement through alternative course work.

2.3.1 Six (6) credit hours consisting of Methods of Teaching Career and Technical Education or Methods and Materials and Approaches to Career Technical Education and History and Philosophy and Foundation and Organization of Career Technical Education; and

2.3.2 Nine (9) credit hours in professional education may be fulfilled by selecting from among the following: Leadership for Career and Technical Educators; Career Technical Lab Safety, Organization, and Management; Student Testing and Assessment in Career Technical Education; Assessment of Career Technical Education Program, Issues in Career Technical Education; Practices and Problems in Integrating Academic and Career Technical Education; Career Technical Occupation Analysis Needs Assessment; Career Technical Student Organizations and Activities; Modern Technology in Career Technical Education; Career Technical Education, Community and Industry Relations; Guidance, Placement and Follow up in Career Technical Education Career Technical Education for Special Education Students, and

2.4 Two years of successful, full time employment, within the last five (5) years, in an occupation directly related to the specialty area for which the applicant is being employed, or

2.5 Two years of full time, post secondary teaching experience within the last five (5) years, in the specific area in which the applicant is to be employed, or

2.6 A minimum of 15 credit hours, at least 6 of which must have been completed within the last three (3) years, of relevant course work in the specialty area for which approval is sought.

3.0 Effective Date

This regulation shall expire June 30, 2010.

6 DE Reg. 523 (10/1/02)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 Del.C. §122(b)(6))
14 DE Admin. Code 1561

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**1561 Bilingual Teacher****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the 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 1561 Bilingual Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order set requisite performance levels in oral and written proficiency in English and the target language, and to provide additional avenues for content knowledge attainment if a Praxis II examination is not applicable and available. This regulation sets forth the requirements for a Bilingual Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday July 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

Del.C. requires that we promulgate this regulation.

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

1561 Bilingual Teacher

1-0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Bilingual Teacher K to 12.

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

~~10-DE Reg. 693 (10/01/06)~~

2-0 Definitions

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

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

“Department” means the Delaware Department of Education.

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

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

“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating 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 provided approved by the employing school district or charter school.

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

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

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

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

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

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

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

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

“Valid and Current License or Certificate from Another State” means a current full or

~~permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

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

~~10-DE-Reg-693 (10/01/06)~~

~~3.0 Standard Certificate~~

~~The Department shall issue a Standard Certificate as a Bilingual Teacher K to 12 to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:~~

~~3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:~~

~~3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~

~~3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Bilingual Education; or~~

~~3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~

~~3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after September 11, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~

~~3.1.5 Demonstrating oral and written proficiency in English and the target language of the bilingual program, and satisfactory completion of fifteen (15) graduate or undergraduate credits in ESL or Bilingual education, as more specifically set forth in 3.1.5.1 through 3.1.5.5. With approval of a Committee comprised of the candidate's principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits.~~

~~3.1.5.1 Methods of Teaching English as a Second Language;~~

~~3.1.5.2 Second language Acquisition;~~

~~3.1.5.3 Teaching Literacy for English Language Learners;~~

~~3.1.5.4 Second Language Testing;~~

~~3.1.5.5 Structure of the English Language; and~~

~~3.2 For applicants applying after December 31, 2005, where a PRAXIS™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination. Where no PRAXIS™ II test is available, nationally recognized equivalent tests, such as the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing proficient test, may be substituted. For tests of languages using a Roman alphabet, candidates are required to achieve an Advanced Low level of the oral skills and an Advanced Low level on the writing skills based on the ACTFL Proficiency Guidelines. For tests of languages using a non Roman alphabet, an Advanced Low Level on the oral skills and an Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines are required, or~~

~~3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Bilingual Education;~~

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

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

4.0 Multiple Certificates

~~Educators may hold certificates in more than one area.~~

5.0 Application Requirements

~~An applicant for a Standard Certificate shall submit:~~

~~5.1 Official transcripts; and~~

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

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

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

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

6.0 Application Procedures for License Holders

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

~~10-DE Reg. 693 (10/01/06)~~

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

8.0 Validity of a Standard Certificate

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

9.0 Secretary of Education Review

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

~~10-DE Reg. 693 (10/01/06)~~

~~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 Bilingual Teacher. This certification is required for grades K to 12.

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

2.0 Definitions

- 2.1 The definitions set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- “Nationally recognized equivalent examination” means a standardized test which measures knowledge in a specific content area that is nationally recognized as having at a minimum the same rigor and reliability as a Praxis II examination.
- “Passing score” means a minimum score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.

3.0 Standard Certificate

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

4.0 Additional Requirements

An educator must also have met the following:

- 4.1 Demonstrated oral and written proficiency in English and the target language of the bilingual program by having completed the following:
- 4.1.1 Achieved a passing score on an oral proficiency examination in English; and
- 4.1.2 Achieved a passing score on a written proficiency examination in English; and
- 4.1.3 Achieved a passing score on an oral proficiency examination in the target language of the bilingual program; and
- 4.1.4 Achieved a passing score on a written proficiency examination in the target language of the bilingual program; and
- 4.1.5 The written proficiency and oral proficiency examinations required may be a Praxis II examination if applicable and available or as specified in section 4.2.
- 4.2 If an examination of content knowledge such as Praxis II is not applicable and available for the Standard Certificate requested, an educator must also meet the following:
- 4.2.1 Where no PRAXIS II examination is applicable and available, nationally recognized equivalent examinations may be substituted. The applicant shall achieve a passing score on the examination as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.
- 4.2.2 For the purposes of this regulation, the following test shall be accepted as a nationally recognized equivalent examination: the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing proficient test.
- 4.2.2.1 For purposes of this regulation the following shall be considered a passing score:
- 4.2.2.1.1 For tests of languages using a Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low level of the oral skills and an Advanced Low level on the writing skills based on the ACTFL Proficiency Guidelines.
- 4.2.2.1.2 For tests of languages using a non Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low Level on the oral skills and an Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines.

- 4.3 If the educator is applying for their first Standard certificate pursuant to 14 DE Admin Code 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 DE Admin Code 3.1.5.1 that must be satisfactory completed for this standard certificate must at a minimum include the following areas:
- 4.3.1 Methods of Teaching English as a Second Language (3 credits):
 - 4.3.2 Second Language Acquisition (3 credits):
 - 4.3.3 Teaching Literacy for English Language Learners (3 credits):
 - 4.3.4 Second Language Testing (3 credits):
 - 4.3.5 Structure of the English Language (3 credits).
- 4.4 If the educator is applying for their second standard Certificate pursuant to 14 DE Admin Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of:
- 4.4.1 Methods of Teaching English as a Second Language (3 credits):
 - 4.4.2 Second Language Acquisition (3 credits):
 - 4.4.3 Teaching Literacy for English Language Learners (3 credits):
 - 4.4.4 Second Language Testing (3 credits):
 - 4.4.5 Structure of the English Language (3 credits).

10 DE Reg. 693 (10/01/06)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1562

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

1562 English to Speakers of Other Languages (ESOL) Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1562 English to Speakers of Other Languages (ESOL) Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to provide additional avenues for content knowledge attainment if a Praxis II examination is not applicable and available. This regulation sets forth the requirements for an English to Speakers of Other Languages (ESOL) Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday July 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or

education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

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

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

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

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

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

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

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

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

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

1562 English to Speakers of Other Languages (ESOL) Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for English to Speakers of Other Languages Teachers K to 12.

7-DE-Reg-775 (12/01/03)

2.0 Definitions

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

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

“Department” means the Delaware Department of Education.

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

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

“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating 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.

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

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

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

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

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

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

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

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

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

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

~~10-DE Reg. 995 (12/01/06)~~

3-0 Standard Certificate

The Department shall issue a Standard Certificate as an English to Speakers of Other Languages Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

3-1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3-1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3-1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in English to Speakers of Other Languages; or

3-1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3-1.4 Holding a bachelor’s degree from a regionally accredited college or university in any content area and for applicants applying after September 11, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3-1.4.1 Demonstrating oral and written proficiency in English and satisfactory completion of fifteen (15) graduate or undergraduate credits, as more specifically set forth in 3-1.4.1.1 through 3-1.4.1.5. With approval of a committee comprised of the candidate’s principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE

~~representative, other verifiable professional experience may be substituted for no more than nine (9) of the required credits.~~

- ~~3.1.4.1.1 Methods of Teaching English as a Second Language;~~
- ~~3.1.4.1.2 Second Language Acquisition;~~
- ~~3.1.4.1.3 Teaching Literacy for English Language Learners;~~
- ~~3.1.4.1.4 Second Language Testing;~~
- ~~3.1.4.1.5 Structure of the English Language; and~~

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

~~3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state in English to Speakers of Other Languages;~~

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

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

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

~~10-DE-Reg-995 (12/01/06)~~

~~4.0 Multiple Certificates~~

~~Educators may hold certificates in more than one area.~~

~~5-DE-Reg-1904 (04/01/02)~~

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

~~10-DE-Reg-995 (12/01/06)~~

~~5.0 Application Requirements~~

~~An applicant for a Standard Certificate shall submit:~~

~~5.1 Official transcripts; and~~

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

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

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

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

~~10-DE-Reg-995 (12/01/06)~~

~~6.0 Application Procedures for License Holders~~

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

~~10-DE-Reg-995 (12/01/06)~~

~~7.0 Effect of Regulation~~

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited~~

~~Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~40 DE Reg. 995 (12/01/06)~~

~~8.0 Validity of a Standard Certificate~~

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

~~40 DE Reg. 995 (12/01/06)~~

~~9.0 Secretary of Education Review~~

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

~~40 DE Reg. 995 (12/01/06)~~

~~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 English to Speakers of Other Languages (ESOL) Teacher. This certification is required for grades K to 12.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
"Nationally recognized equivalent examination" means a standardized test which measures knowledge in a specific content area that is nationally recognized as having at a minimum the same rigor and reliability as a Praxis II examination.
"Passing score" means a minimum score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.

3.0 Standard Certificate

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

4.0 Additional Requirements

An educator must also have met the following:

PROPOSED REGULATIONS

- 4.1 Demonstrated oral and written proficiency in English by having completed the following:
- 4.1.1 Achieved a passing score on an oral proficiency examination in English; and
 - 4.1.2 Achieved a passing score on a written proficiency examination in English; and
 - 4.1.3 The written proficiency and oral proficiency examinations required may be a Praxis II examination if applicable and available or as specified in section 4.2.
- 4.2 If an examination of content knowledge such as Praxis II is not applicable and available for the Standard Certificate requested, an educator must also meet the following:
- 4.2.1 Where no PRAXIS II examination is applicable and available, nationally recognized equivalent examinations may be substituted. The applicant shall achieve a passing score on the examination as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.
 - 4.2.2 For the purposes of this regulation, the following test shall be accepted as a nationally recognized equivalent examination: the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing proficient test.
 - 4.2.2.1 For purposes of this regulation the following shall be considered a passing score:
 - 4.2.2.1.1 For tests of English, candidates are required to achieve as a minimum score an Advanced Low level of the oral skills and an Advanced Low level on the writing skills based on the ACTFL Proficiency Guidelines.
- 4.3 If the educator is applying for their first Standard certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 DE Admin. Code 3.1.5.1 that must be satisfactory completed for this standard certificate must at a minimum include the following areas:
- 4.3.1 Methods of Teaching English as a Second Language (3 credits);
 - 4.3.2 Second Language Acquisition (3 credits);
 - 4.3.3 Teaching Literacy for English Language Learners (3 credits);
 - 4.3.4 Second Language Testing (3 credits);
 - 4.3.5 Structure of the English Language (3 credits).
- 4.4 If the educator is applying for their second standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of:
- 4.4.1 Methods of Teaching English as a Second Language (3 credits);
 - 4.4.2 Second Language Acquisition (3 credits);
 - 4.4.3 Teaching Literacy for English Language Learners (3 credits);
 - 4.4.4 Second Language Testing (3 credits);
 - 4.4.5 Structure of the English Language (3 credits).

10 DE Reg. 995 (12/01/06)

Renumbered effective 6/1/07 - see Conversion Table

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Long Term Care – Treatment of Income and Resources of Couples

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

rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, applying couple computation rules.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by June 30, 2008.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, applying couple computation rules.

Statutory Authority

- Social Security Act 1611(e)(3);
- 42 CFR §435.602(a)(4); *Financial Responsibility of Relatives and Other Individuals*; and,
- State Medicaid Manual, *Treatment of Couples in Medical Institutions*.

Summary of Proposal

DSSM 20810, ~~*Treatment of Couples in Medical Institutions*~~ *Treatment of Income and Resources of Couples*: First, the rule title has been renamed to reflect the revised content of the rule. Second, the language has been clarified to better describe how income and resources are counted when determining and redetermining long-term care Medicaid eligibility for legally married couples. The changes clarify how the couple income and resource standards should be applied. Current policy does not address how to treat the income and resources of the couple for the first six (6) months of institutionalization.

DMMA PROPOSED REGULATION #08-18

REVISION:

~~20810 Treatment of Couples in Medical Institutions~~

~~A legally married husband and wife who have continuously shared a room in a hospital, nursing home, skilled nursing facility or intermediate care facility for a period of at least 6 months, may be considered a Couples Case and the Couples Case income and resource limits would apply to them. Should a married couple be determined a Couples Case, then spousal rules will not apply. The decision to treat a married couple as a Couples Case or as 2 individuals should be based on the couple's best interests in regard to the income and resource limits. See DSSM 20100.2.2 and 20300.~~

20810 Treatment of Income and Resources of Couples

This policy applies to all legally married couples when determining and redetermining Long Term Care Medicaid eligibility for both husband and wife.

Treatment of Home and Community Based Services (HCBS) Couples

The income and resource standards for a HCBS couple will be applicable if:

- Both are requesting HCBS AND reside at the same address; OR
- One is currently receiving HCBS and the spouse is requesting HCBS AND they reside at the same address.

Treatment of Couples Residing in an Institution

The income and resource standards for couples residing in an institution will be applicable if:

- Both are requesting institutional services AND they will be residing in the same facility:
OR
- One is currently receiving institutional services and the spouse is requesting institutional services at the same facility.

After a husband and wife have resided in the same nursing facility for 6 months they have the option of being budgeted as a couple or as two individuals. This decision should be based on the couple's best interests in regard to the income and resource limits.

See DSSM 20100.2.2 (income standards) and 20300 (resource standards).

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE**Title XIX, Medicaid State Plan - Medicaid Integrity Program**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by June 30, 2008.

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 AMENDMENT

The proposed amends the Title XIX Medicaid State Plan to document compliance with Section 6034 of the Deficit Reduction Act of 2005 (DRA). Section 6034 requires States to comply with all of the provisions of section 1902(a)(69) of the Social Security Act (the Act) entitled, "State Requirement to Cooperate with Integrity Program Efforts."

Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006, Section 6034

Background

Section 6034 of the DRA established the Medicaid Integrity Program in section 1936 of the Act and identified certain of the Centers for Medicare and Medicaid Services' (CMS) responsibilities for carrying out the activities of the program, including contracting with entities that will audit provider claims and identify overpayments, and providing effective support and assistance to the States to combat provider fraud and abuse. This provision also established section 1902(a)(69) of the Act entitled, "State Requirement to Cooperate with Integrity Program Efforts." Section 1902(a)(69) of the Act requires that the Medicaid State plan "provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the

Medicaid Integrity Program established under section 1936.” The provisions of section 1902(a)(69) of the Act must be implemented immediately.

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

Summary of Proposed Amendment

The proposed rule would amend the Medicaid state plan to assure programmatic compliance with such requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936 of the Social Security Act.

DMMA PROPOSED REGULATION #08-21

NEW:

79y

State/Territory: DELAWARE

Citation
1902(a)(69) of
the Act,
P.L. 109-171
(Section 6034)

4.43

Cooperation with Medicaid Integrity Program Efforts.
The Medicaid agency assures it complies with such requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936 of the Act.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Fair Hearing Practice and Procedures

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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing Practice and Procedures.

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 June 30, 2008.

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

SUMMARY OF PROPOSAL

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) related to Fair Hearing Practice and Procedures, specifically to clarify jurisdiction for hearings over Medicaid program waiver services.

Statutory Authority

- 42 CFR Part 431 Subpart E, *Fair Hearings for Applicants and Recipients*

Summary of Proposal

1) DSSM 5304.2, *Nursing Facility Discharge Notice Hearings*: This rule text is deleted from the Division of Social Services Manual as the Division of Long-Term Care Residents Protection (DLTCRP) now has jurisdiction over these types of hearings. Reference is made to DLTCRP's Patient's Bill of Rights, Appendix A of Regulation No. 3201, *Nursing Home Regulations for Skilled Care* and Regulation No. 3205, *Nursing Home Regulations for Intermediate Care*.

2) DSSM 5304.5, *Jurisdiction for Hearings over Medicaid Program Services*: This new rule clarifies that the Division of Social Services (DSS) has jurisdiction over fair hearings involving Medicaid program waiver services.

DSS PROPOSED REGULATIONS #08-19 REVISIONS:

~~5304.2 Nursing Facility Discharge Notice Hearings~~

~~Consistent with 42 CFR 438.202 and 438.204 (a)(1), a person who has received a notice of intent to discharge or transfer a person from his/her residential nursing facility may take an appeal of the decision to the Division of Social Services. RESERVED~~

(Break in Continuity of Sections)

5304.5 Jurisdiction for Hearings over Medicaid Program Services

The Delaware Medicaid Program operates Medicaid waiver projects offering home and community-based services (HCBS). These projects include waivers for the mentally retarded for the elderly and disabled, for persons with acquired immune deficiency syndrome and other HIV-related diseases, for persons with acquired brain injuries, for residential services under an Assisted Living waiver, and for other types of conditions that require special services. (See DSSM 20700 et seq.)

The Division of Social Services ("DSS") has jurisdiction for hearings over disputes involving these services. The delivery of these services is managed by other Divisions within the Department of Health and Social Services ("DHSS") including the Division of Services for Aging and Adults with Physical Disabilities ("DSAAPD"), the Division of Developmental Disabilities Services ("DDDS") and the Division of Medicaid and Medical Assistance ("DMMA"). For these hearings, the Division taking the action in dispute will prepare the §5312 hearing summary and defend the action at the hearing.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 2741; 21 Delaware Code, Section 2118 (18 **Del.C.** §§314 & 2741; 21 **Del.C.** §2118)
18 **DE Admin. Code** 301

PUBLIC NOTICE

301 Audited Financial Reports [Formerly Regulation 50]

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 301 relating to audited financial reports and financial statements of insurance companies. The docket number for this proposed amendment is 810.

The purpose of the proposed amendment to regulation 301 is to update the existing financial report and audit requirements by enacting the Model Regulation, as modified to conform to statutory law. The text of the proposed amendment is reproduced in the June 2008 edition of the Delaware *Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/>

[departments/documents/ProposedRegs/ProposedRegs.shtml](#).

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday July 7, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

1.0 Authority

1.1 This Regulation is promulgated and adopted pursuant to ~~18 Del.C. §§314, 322(a), 324 and 526, and 29 Del.C. §10117.~~

2.0 Purpose and Scope

2.1 The purpose of this Regulation is to improve the Delaware Insurance Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition.

2.2 Every insurer (as defined in Section 3.0) shall be subject to this regulation. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of such calendar year shall be exempt from this Regulation for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities except those insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

2.3 Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirements of audited financial reports that has been found by the Commissioner to be substantially similar to the requirements herein, are exempt from this regulation if:

2.3.1 A copy of the Audited Financial Report, Report on Significant Deficiencies in Internal Controls, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Sections 4, 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance).

2.3.2 A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Section 10.

2.4 This regulation shall not prohibit, preclude or in any way limit the Commissioner ordering and/or conducting and/or performing examinations of insurers under the rules and regulations of the Delaware Insurance Department and the practices and procedures of the Delaware Insurance Department.

3.0 Definitions

"Audited financial report" means and includes those items specified in Section 5.0 of this rule.

"Accountant" or **"Independent Certified Public Accountant"** means an independent certified public accountant or accounting firm in good standing with the American Institute of CPAs and in all states in which he, she or they are licensed to practice; for Canadian and British companies, it means a Canadian chartered or British chartered accountant.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

"Insurer" means a licensed insurer as defined in Title 18 ~~Del.C.~~ Ch.5 or authorized insurer as defined in Title 18 ~~Del.C.~~, Ch.19.

4.0 Filing and Extensions for Filing of Annual Audited Financial Reports

All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer. Extensions of the June 1 filing date may be granted by the Commissioner for thirty day periods upon a showing by the insurer and its independent certified public accountant

of the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

5.0 Contents of Annual Audited Financial Report

5.1 The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile

5.2 The annual Audited Financial Report shall include the following:

5.2.1 Report of independent certified public accountant.

5.2.2 Balance sheet reporting admitted assets, liabilities, capital and surplus.

5.2.3 Statement of operations.

5.2.4 Statement of cash flows.

5.2.5 Statement of changes in capital and surplus.

5.2.6 Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 18 **Del.C.** §526 with a written description of the nature of these differences.

5.2.7 The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

6.0 Designation of Independent Certified Public Accountant

6.1 Each insurer required by this regulation to file an annual audited financial report must within sixty (60) days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm (generally referred to in this rule as the "accountant") retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

6.2 The insurer shall obtain a letter from the accountant, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the Insurance Code and the rules and regulations of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Department, specifying such exceptions as he or she may believe appropriate.

6.3 If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall within five (5) business days notify the Department of this event.

6.3.1 The insurer shall also furnish the Commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion.

6.3.2 The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.

6.3.3 Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

~~6.3.4 The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Commissioner together with its own.~~

7.0 Qualifications of Independent Certified Public Accountant

~~7.1 The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant if the person or firm:~~

~~7.1.1 Is not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or~~

~~7.1.2 Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as *indemnification*) with respect to the audit of the insurer.~~

~~7.2 Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code.~~

~~7.3 A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under 18 ~~Del.C.~~ Ch. 59, the mediation or arbitration provisions shall operate at the option of the statutory successor.~~

~~7.4 The time during which an accountant may serve shall be subject to the following provisions:~~

~~7.4.1 No partner or other person responsible for rendering a report may act in that capacity for more than seven (7) consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:~~

~~7.4.1.1 Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;~~

~~7.4.1.2 Premium volume of the insurer; or~~

~~7.4.1.3 Number of jurisdictions in which the insurer transacts business.~~

~~7.5 The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:~~

~~7.5.1 Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;~~

~~7.5.2 Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or~~

~~7.5.3 Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.~~

~~7.6 The Insurance Commissioner, as provided in the Delaware Administrative Procedures Act, 29 ~~Del.C.~~ Ch. 101, and 18 ~~Del.C.~~ Ch. 3, may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.~~

8.0 Consolidated or Combined Audits

~~8.1 An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report,~~

as follows:

- 8.1.1 Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
- 8.1.2 Amounts for each insurer subject to this section shall be stated separately;
- 8.1.3 Noninsurance operations may be shown on the worksheet on a combined or individual basis;
- 8.1.4 Explanations of consolidating and eliminating entries shall be included; and
- 8.1.5 A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

9.0 Scope of Examination and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to Section 5.0 hereof shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other procedures illustrated in the *Financial Condition Examiner's Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

10.0 Notification of Adverse Financial Condition

10.1 The insurer required to furnish the annual Audited Financial Report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of the Delaware Insurance Statute as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the Commissioner within five (5) business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive such evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five (5) business days.

10.1.1 An insurer who has received a report pursuant to this paragraph shall forward a copy of the report to the Commissioner within five (5) business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner.

10.1.2 If the independent certified public accountant fails to receive such evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five (5) business days.

10.2 No independent public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with Section 10.1.

10.3 If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this regulation, becomes aware of facts which might have affected his or her report, the Department notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

11.0 Report on Significant Deficiencies in Internal Controls

In addition to the annual audited financial statements, each insurer shall furnish the Commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within sixty (60) days after the filing of the annual

audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

12.0 Accountant's Letter of Qualifications

~~12.1 The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:~~

~~12.1.1 That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code.~~

~~12.1.2 The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.~~

~~12.1.3 That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this regulation and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.~~

~~12.1.4 That the accountant consents to the requirements of Section 13.0 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's designee or appointed agent, the workpapers, as defined in Section 13.0;~~

~~12.1.5 A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and~~

~~12.1.6 A representation that the accountant is in compliance with the requirements of Section 7.0 of this regulation.~~

13.0 Definition, Availability and Maintenance of CPA Workpapers

~~13.1 Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his examination of the financial statements of an insurer and which support the accountant's opinion thereof.~~

~~13.2 Every insurer required to file an Audited Financial Report pursuant to this regulation, shall require the accountant to make available for review by Department examiners, all workpapers prepared in the conduct of the accountant's examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Insurance Department or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the Insurance Department has filed a Report on Examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.~~

~~13.3 In the conduct of the aforementioned periodic review by the Department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Department. Such reviews by the Department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.~~

14.0 Exemptions and Effective Dates

~~14.1 Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this regulation if the Commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with the Delaware Administrative Procedures Act, 29 ~~Del.C.~~ Ch. 101, and 18 ~~Del.C.~~ Ch. 3.~~

~~14.2 Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 1994 and each year thereafter unless the Commissioner permits otherwise.~~

~~14.3 Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualify as independent may meet the following schedule for compliance unless the Commissioner permits otherwise.~~

~~14.3.1 As of December 31, 1994, file with the Commissioner:~~

~~14.3.1.1 Report of independent certified public accountant;~~

~~14.3.1.2 Audited balance sheet;~~

~~14.3.1.3 Notes to audited balance sheet.~~

~~14.3.2 For the year ending December 31, 1994 and each year thereafter, such insurers shall file with the Commissioner all reports required by this regulation.~~

~~14.4 Foreign insurers shall comply with this regulation for the year ending December 31, 1994 and each year thereafter, unless the Commissioner permits otherwise.~~

~~15.0 Canadian and British Companies~~

~~15.1 In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered accountant.~~

~~15.2 For such insurers, the letter required in Section 6.0 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to Section 4.0 and shall affirm that the opinion expressed is in conformity with such requirements.~~

~~16.0 Severability Provision~~

~~16.1 If any section or portion of a section of this regulation or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of such provision to other persons or circumstances shall not be affected thereby.~~

~~17.0 Effective Date~~

~~This regulation became effective July 29, 1987. The first amendment became effective on September 12, 1994. This second amendment shall become effective on October 12, 2004.~~

1.0 Authority

This regulation is promulgated and adopted pursuant to 18 **Del.C.** §§314, 322(a), 324 and 526 and 29 **Del.C.** §10117.

2.0 Purpose and Scope

2.1 The purpose of this regulation is to improve the Delaware Insurance Department's surveillance of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants. Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control over Financial Reporting.

2.2 Every insurer (as defined in Section 3.0) shall be subject to this regulation. Insurers, and their affiliates in the same group, having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this regulation for the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

2.3 Foreign or alien insurers filing the Audited Financial Report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the Commissioner to be

substantially similar to the requirements herein, are exempt from Sections 4 through 13 of this regulation if:

- 2.3.1 A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the Commissioner in accordance with the filing dates specified in Sections 4, 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada).
- 2.3.2 A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the Commissioner within the time specified in Section 10.
- 2.4 Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the Report in this state provided the other state has substantially similar reporting requirements and the Report is filed with the Commissioner of the other state within the time specified.
- 2.5 This regulation shall not prohibit, preclude or in any way limit the Commissioner of Insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the Delaware Department of Insurance and the practices and procedures of the Delaware Department of Insurance.

3.0 Definitions

"Accountant" or "Independent Certified Public Accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

An "Affiliate" of, or person "Affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Audit Committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. Refer to Section 14.1.5 for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

"Audited Financial Report" means and includes those items specified in Section 5 of this regulation.

"Group of Insurers" means those licensed insurers included in the reporting requirements of 18 Del.C. Ch. 50 or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

"Independent Board Member" has the same meaning as described in Section 14.1.3.

"Insurer" means a licensed insurer as defined in 18 Del.C. Ch. 5 of the Delaware insurance law or an authorized insurer as defined in 18 Del.C. Ch. 19 of the Delaware insurance law.

"Internal Control Over Financial Reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in Sections 5.2.2 through 5.2.7 of this regulation and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in Sections 5.2.2 through 5.2.7 of this regulation and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in Sections 5.2.2 through 5.2.7 of this regulation.

“SEC” means the United States Securities and Exchange Commission.

“Section 404” means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC’s rules and regulations promulgated therein.

“Section 404 Report” means management’s report on “internal control over financial reporting” as defined by the SEC and the related attestation report of the independent certified public accountant as described above.

“SOX Compliant Entity” means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the Internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

4.0 General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment

- 4.1 All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.
- 4.2 Extensions of the June 1 filing date may be granted by the Commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.
- 4.3 If an extension is granted in accordance with the provisions in Section 4.2, a similar extension of thirty (30) days is granted to the filing of Management’s Report of Internal Control over Financial Reporting.
- 4.4 Every insurer required to file an annual audited financial report pursuant to this regulation shall designate a group of individuals as constituting its audit committee, as defined in Section 3. The audit committee of an entity that controls an insurer may be deemed to be the insurer’s audit committee for purposes of this regulation at the election of the controlling person.

5.0 Contents of Annual Audited Financial Report

- 5.1 The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile.
- 5.2 The annual audited financial report shall include the following:
- 5.2.1 Report of independent certified public accountant.
- 5.2.2 Balance sheet reporting admitted assets, liabilities, capital and surplus.
- 5.2.3 Statement of operations.
- 5.2.4 Statement of cash flow.
- 5.2.5 Statement of changes in capital and surplus.

- 5.2.6 Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 18 **Del.C.** §526 with a written description of the nature of these differences.
- 5.2.7 The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted).

6.0 **Designation of Independent Certified Public Accountant**

- 6.1 Each insurer required by this regulation to file an annual audited financial report must within sixty (60) days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained independent certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.
- 6.2 The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as he or she may believe appropriate.
- 6.3 If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five (5) business days notify the Commissioner of this event. The insurer shall also furnish the Commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the Commissioner together with its own.

7.0 **Qualifications of Independent Certified Public Accountant**

- 7.1 The Commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:
- 7.1.1 Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
- 7.1.2 Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as *indemnification*) with respect to the audit of the insurer.

PROPOSED REGULATIONS

- 7.2 Except as otherwise provided in this regulation, the Commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware State Board of Accountancy, or similar code.
- 7.3 A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under 18 **Del.C.** Ch. 59, the mediation or arbitration provisions shall operate at the option of the statutory successor.
- 7.4 The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The Commissioner may consider the following factors in determining if the relief should be granted:
- 7.4.1 Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
- 7.4.2 Premium volume of the insurer; or
- 7.4.3 Number of jurisdictions in which the insurer transacts business.
- 7.5 The insurer shall file, with its annual statement filing, the approval for relief from Section 7.4 with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.
- 7.6 The Commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by, a natural person who:
- 7.6.1 Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;
- 7.6.2 Has been found to have violated the insurance laws or regulations of this state with respect to any previous reports submitted under this regulation; or
- 7.6.3 Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.
- 7.7 The Commissioner of Insurance may, as provided in 18 **Del.C.** §323, hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.
- 7.8 The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:
- 7.8.1 Bookkeeping or other services related to the accounting records or financial statements of the insurer;
- 7.8.2 Financial information systems design and implementation;
- 7.8.3 Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- 7.8.4 Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an

actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

- 7.8.4.1 Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
- 7.8.4.2 The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and
- 7.8.4.3 The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;
- 7.8.5 Internal audit outsourcing services;
- 7.8.6 Management functions or human resources;
- 7.8.7 Broker or dealer, investment adviser, or investment banking services;
- 7.8.8 Legal services or expert services unrelated to the audit; or
- 7.8.9 Any other services that the commissioner determines, by regulation, are impermissible.
- 7.9 In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.
- 7.10 Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from Section 7.8. The insurer shall file with the Commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Commissioner finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.
- 7.11 A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in Section 7.8 or that do not conflict with Section 7.9, only if the activity is approved in advance by the audit committee, in accordance with Section 7.12.
- 7.12 All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be pre-approved by the audit committee. The pre-approval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX compliant Entity or:
 - 7.12.1 The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;
 - 7.12.2 The services were not recognized by the insurer at the time of the engagement to be non-audit services; and
 - 7.12.3 The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.
- 7.13 The Audit committee may delegate to one or more designated members of the audit committee the authority to grant the pre-approvals required by Section 7.12. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.
- 7.14 The Commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make

application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

- 7.14.1 The insurer shall file, with its annual statement filing, the approval for relief from Section 7.13 with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

8.0 Consolidated or Combined Audits

- 8.1 An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:
- 8.1.1 Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
- 8.1.2 Amounts for each insurer subject to this section shall be stated separately;
- 8.1.3 Noninsurance operations may be shown on the worksheet on a combined or individual basis;
- 8.1.4 Explanations of consolidating and eliminating entries shall be included; and
- 8.1.5 A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

9.0 Scope of Audit and Report of Independent Certified Public Accountant

- 9.1 Financial statements furnished pursuant to Section 5 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to Section 16, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

10.0 Notification of Adverse Financial Condition

- 10.1 The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Delaware insurance code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

- 10.2 No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with Section 10.1.
- 10.3 If the accountant, subsequent to the date of the audited financial report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, the commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

11.0 Communication of Internal Control Related Matters Noted in an Audit

- 11.1 In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, *Communication of Internal Control Related Matters Noted in an Audit*, or its replacement) as of December 31 immediately preceding (so as to coincide with the Audited financial report discussed in Section 4.1 in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.
- 11.2 The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

12.0 Accountant's Letter of Qualifications

- 12.1 The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:
- 12.1.1 That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Delaware State Board of Accountancy, or similar code.
- 12.1.2 The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;
- 12.1.3 That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this regulation and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;
- 12.1.4 That the accountant consents to the requirements of Section 13.0 of this regulation and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the work papers, as defined in Section 13.0;
- 12.1.5 A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and
- 12.1.6 A representation that the accountant is in compliance with the requirements of Section 7.0 of this regulation.

13.0 Definition, Availability and Maintenance of Independent Certified Public Accountants' Workpapers

- 13.1 Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and

representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

13.2 Every insurer required to file an audited financial report pursuant to this regulation shall require the accountant to make available for review by insurance department examiners all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance department has filed a report on examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.

13.3 In the conduct of the aforementioned periodic review by the insurance department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

14.0 Requirements for Audit Committees

14.1 This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

14.1.1 The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this regulation. Each accountant shall report directly to the audit committee.

14.1.2 Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to Section 14.1.3 and Section 3.

14.1.3 In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

14.1.4 If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

14.1.5 To exercise the election of the controlling person to designate the audit committee for purposes of this regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

14.1.6 The audit committee shall require the accountant that performs for an insurer any audit required by this regulation to timely report to the audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:

14.1.6.1 All significant accounting policies and material permitted practices;

14.1.6.2 All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications

of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

14.1.6.3 Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

14.1.7 If an insurer is a member of an insurance holding company system, the reports required by Section 14.1.6 may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

14.1.8 The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
<u>\$0 - \$300,000,000</u>	<u>Over \$300,000,000 - \$500,000,000</u>	<u>Over \$500,000,000</u>
<u>No minimum requirements. See also Notes A and B.</u>	<u>Majority (50% or more) of members shall be independent. See also Notes A and B.</u>	<u>Supermajority of members (75% or more) shall be independent. See also Note A.</u>

Note A: The Commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committee with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

14.1.9 An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the commissioner for a waiver from the Section 14.0 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from Section 14 with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

15.0 Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

15.1 No director or officer of an insurer shall, directly or indirectly:

15.1.1 Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or

15.1.2 Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this regulation.

15.2 No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this regulation if that person knew or should have

known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

15.3 For purposes of Subsection 15.2 of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant;

15.3.1 To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

15.3.2 Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

15.3.3 Not to withdraw an issued report; or

15.3.4 Not to communicate matters to an insurer's audit committee.

16.0 Management's Report of Internal Control over Financial Reporting

16.1 Every insurer required to file an audited financial report pursuant to this regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in Section 3. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under Section 11. Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.

16.2 Notwithstanding the premium threshold in Section 16.1, the commissioner may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition.

16.3 An insurer or a Group of insurers that is

16.3.1 directly subject to Section 404;

16.3.2 a part of a holding company system whose parent is directly subject to Section 404;

16.3.3 not directly subject to Section 404 but is a SOX Compliant Entity; or

16.3.4 a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity may file its or its parent's Section 404 Report and an addendum in satisfaction of this Section 16 requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Sections 5.2.2 through 5.2.7 of this regulation) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Sections 5.2.2 through 5.2.7 of this regulation) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (i) a Section 16 report, or (ii) the Section 404 Report and a Section 16 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

16.4 Management's Report of Internal Control over Financial Reporting shall include:

16.4.1 A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

16.4.2 A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether

its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles:

- 16.4.3 A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;
- 16.4.4 A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
- 16.4.5 Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;
- 16.4.6 A statement regarding the inherent limitations of internal control systems; and
- 16.4.7 Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).
- 16.5 Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Section 16.4 above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.
 - 16.5.1 Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.
 - 16.5.2 Management's Report on Internal Control over Financial Reporting, required by Section 16.1, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

17.0 Exemptions and Effective Dates

- 17.1 Upon written application of any insurer, the Commissioner may grant an exemption from compliance with any and all provisions of this regulation if the commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the Delaware Department of Insurance pertaining to administrative hearing procedures.
- 17.2 Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 2008 and each year thereafter unless the Commissioner permits otherwise.
- 17.3 Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualifies as independent may meet the following schedule for compliance unless the Commissioner permits otherwise.
 - 17.3.1 As of December 31, 2008, file with the Commissioner an audited financial report.
 - 17.3.2 For the year ending December 31, 2009 and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this regulation.
- 17.4 Foreign insurers shall comply with this regulation for the year ending December 31, 2008 and each year thereafter, unless the Commissioner permits otherwise.
- 17.5 The requirements of Section 7.4 shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

The requirements of Section 14 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements

due to changes in premium shall have one (1) year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

The requirements of Section 16 and other modified sections, except for Section 14 covered above, are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

18.0 Canadian and British Companies

18.1 In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

For such insurers, the letter required in Section 6.2 shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to Section 4 and shall affirm that the opinion expressed is in conformity with those requirements.

19.0 Severability Provision

19.1 If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Chapters 40, 60, 66 and 72 (7 Del.C., Chs. 40, 60, 66 & 72)

7 DE Admin. Code 7403

REGISTER NOTICE SAN #2002- 06

1. TITLE OF THE REGULATION:

7403 Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a public hearing to gather comments on the proposed Pollution Control Strategy for the Inland Bays including the proposed **Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds**. The proposed Strategy includes both voluntary and regulatory actions which need to be implemented in order to achieve the nitrogen and phosphorus load reductions required by the Total Maximum Daily Loads for these watersheds. The proposed regulations would impact multiple sources of nutrients including point sources, stormwater, and onsite wastewater treatment and disposal systems. These regulations replace the previously proposed regulations that appeared in the May 1, 2007 *Delaware Register of Regulations*.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

Following the adoption of the proposed Regulations, various programs to reduce nutrient pollutant loadings will be implemented.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

The authority to develop this Pollution Control Strategy and the associated Regulations is provided by Title 7 of the **Delaware Code**, Chapters 40, 60, 66, and 72 and in Title 29 of the **Delaware Code**, Sections 8014(5) and 8025.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None.

6. NOTICE OF PUBLIC COMMENT:

A public hearing for the proposed **Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds** will be held at 6:00 PM on Monday, June 23, at Georgetown CHEER Community Center, 20520 Sandhill Road, Georgetown, Delaware 19947.

If you do not want to attend the public hearing, you may submit written comments during the public comment period beginning with this notice and ending at 4:30 PM on Monday, June 30, 2008. Please send written comments to John Schneider, Department of Natural Resources and Environmental Control, Division of Water Resources, Watershed Assessment Section, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464; facsimile: (302) 739-6140; email: (john.schneider@state.de.us). All written comments must be received by 4:30 PM, Monday, June 30, 2008. Electronic submission is preferred.

Copies of the proposed regulations and technical support documents for these watersheds are available by mail from Maryann Pielmeier, DNREC, DWR, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464, via telephone by calling (302) 739-9939, via e-mail by contacting maryann.pielmeier@state.de.us, or from the DNREC website at the following URL: http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm

7. PREPARED BY:

John Schneider

302-739-9939

May 19, 2008

7403 Regulations Governing The Pollution Control Strategy For The Indian River, Indian River Bay, Rehoboth Bay And Little Assawoman Bay Watersheds

FORWARD

For years, various governmental and private entities have encouraged the use of voluntary practices in order to reduce nutrient loading into the Indian River, Indian River Bay, Rehoboth Bay, Little Assawoman Bay and their tributaries (the Inland Bays) such that water quality standards are achieved in support of their designated uses. While reducing pollutant loads to an extent, these attempts have not resulted in the desired outcome of controlling pollution and improving water quality. In order to achieve the Total Maximum Daily Loads (TMDLs), determined through vigorous research and modeling, the following Pollution Control Strategy regulations must be implemented.

In addition, the Department will consider the use of water quality trading to achieve point and nonpoint source load reductions. All trading proposals will be in support of the TMDL required load reductions and are subject to Department approval.

It is the policy of the Department of Natural Resources and Environmental Control to implement each component of the Pollution Control Strategy and these Regulations in a timely fashion. The Department supports review of all related ordinances, regulations and laws in order to promote consistency among all legal instruments.

PROPOSED REGULATIONS

1.0 Authority and Scope

- 1.1 These Regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control under and pursuant to the authority set forth in 7 **Del.C.** Ch. 40, 60, 66 and 72 and in 29 **Del.C.** §§8014(5) and 8025.
- 1.2 These Regulations apply to the public and private lands draining into the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay and their tributaries (collectively referred to as “the Inland Bays”).
- 1.3 Unless otherwise stated in these Regulations, the effective date of these Regulations is 60 days from the date of publication of the final Regulations.
- 1.4 Proposed major subdivision plans, site plans, concept plans, initial stage calculation sheets, requests for service level evaluation, or requests for scoping meetings which have been received by DeIDOT prior to the effective date of this regulation for a development proposal, for the purpose of securing a letter of no objection, support facilities report, entrance location, or entrance approval, are not subject to the buffer and stormwater requirements of these Regulations, Sections 4 and 5. If after 5 years from the effective date, an application for the project has not been submitted to the appropriate county or local government and substantial expenditures have not been made for the project to proceed, all stormwater and buffer provisions of these Regulations will be applicable to the project.
- 1.4.1 In instances where submissions to DELDOT are not required prior to filing an application with Sussex County or local government, projects for which applications have been submitted to the County or a municipality prior to the effective date of these Regulations are not subject to the buffer and stormwater provisions, Sections 4 and 5, of these Regulations.
- 1.4.2 For projects within the County, the effective date of Sections 4 and 5 shall be 10 calendar days after the date of publication of the final Regulations in the *Delaware Register of Regulations*. For projects on lands located within municipalities as of the date of publication of these Regulations, the effective date of Sections 4 and 5 of these Regulations shall be one year from the date of publication of the final Regulations in the *Delaware Register of Regulations*.
- 1.5 Section 6 of these Regulations will become effective 30 days from the date of publication of the final Regulations.
- 1.6 Section 7 of these Regulations will become effective 180 days from the date of publication of the final Regulations.
- 1.7 New systems, as described in Sections 8.2.1 and 8.3.1 of these Regulations, that have submitted a Site Investigation Report (SIR) and a Preliminary Groundwater Impact Assessment (PGIA) or a Site Selection and Evaluation Report (SSER) within 60 days from the date of publication of the final Regulations, are not subject to the general onsite wastewater treatment and disposal system provisions of these Regulations.
- 1.8 Section 8.4 of these Regulations shall be effective for all permit applications whose site evaluations have been submitted to the Department 60 days or more after the date of publication of the final Regulations when those sites lie within 1000 feet of the mean high water line of the Indian River, Indian River Bay, Rehoboth Bay, or Little Assawoman Bay or their tributaries, or from their associated tidal wetlands shown on Delaware's 1992 State Wetland Mapping Project Maps. The 1000 foot boundary line from these tidal wetland and water areas is depicted on the map entitled “Areas Requiring Early Implementation of PSN3” contained in Appendix B of this Regulation.
- 1.9 All complete permit applications received on or after January 1, 2015 for new and replacement systems throughout the Inland Bays Watershed shall comply with Section 8.4 of these Regulations.

2.0 Definitions

The following words and terms, when used in these Regulations, should have the following meaning unless the context clearly indicates otherwise:

“Best Management Practice (BMP)” means a system or procedure that has been determined to be an effective, practical means of preventing or reducing nonpoint source pollution. These include

conservation practices or management measures which control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment, and runoff.

“Buffer” means an existing or purposely established area of vegetation which protects water resources from pollution.

“Certified Service Provider” means an individual representative of a manufacturer/supplier who holds a Department Class E System Contractor or Class H System Inspector license, or a Class E System Contractor who is certified, through Department approved training, on the operation and maintenance of the advanced treatment unit or system, or a Class H System Inspector who has become certified through Department approved training on the operation and maintenance of the advanced treatment unit or system, or a homeowner who has obtained Department individual home service provider certification and has been through Department approved training on the operation and maintenance of their advanced treatment unit or system. The Department homeowner certification allows the homeowner to operate and maintain their advanced treatment unit or system at their primary place of residence.

“Clean Water Act (CWA)” means the Federal Water Pollution Control Act, 33 U.S.C. §§1251-1387.

“Department” means the Delaware Department of Natural Resources and Environmental Control.

“Drainfield” means a system of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities and designed to distribute effluent for oxidation and adsorption by the soil within the zone of aeration.

“End of Pipe” means the location where effluent discharges from the end of the advanced pretreatment unit before ultimately dispersing into the soil drainfield. This is the location where nitrogen and phosphorus sampling may occur in order to determine compliance with the applicable performance standard.

“High potential for phosphorus mobility” means an area where:

- the site’s soils have a Fertility Index Value (FIV) of greater than 100 for phosphorus or a soil test value of over 100 parts per million (ppm) by the Mehlich 3 soil test; and
- the groundwater phosphorus content is above 0.034 mg/l and there is an indication that groundwater is anoxic due to low dissolved oxygen or oxidation reduction potential below 200 mV; and
- the disposal area contains soils with a seasonal high water table above 27 inches.

“Indian River Watershed” means the lands that drain into the Indian River and its tributaries as illustrated by the Delaware watershed map available from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control.

“Indian River Bay Watershed” means the lands that drain into the Indian River Bay and its tributaries as illustrated by the Delaware watershed map available from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control.

“Innovative and Alternative (IA) onsite wastewater treatment and disposal systems” means anything other than a conventional onsite wastewater treatment and disposal system.

“Little Assawoman Bay Watershed” means the lands that drain into the Little Assawoman Bay and its tributaries as illustrated by the Delaware watershed map available from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control.

“Major subdivision” means a subdivision of land involving a proposed new street or the extension of an existing street.

“Mean high water (MHW)” means the point on the bank, tidal flat, beach or shore, up to which the presence or action of the water leaves a distinct mark, either by erosion, destruction of terrestrial vegetation (non-aquatic), physical markings or characteristics, and known vegetation lines, and may be further identified by tidal gauge data, or any other suitable means of delineating the mean height reached by a rising tide.

“National Pollutant Discharge Elimination System (NPDES)” means the program prescribed by the Federal Water Pollution Control Act for point sources of pollution.

PROPOSED REGULATIONS

“Nonpoint source (NPS) pollution” means pollution originating from diffuse areas having no well-defined source.

“Nutrient” means any element or compound essential as a raw mineral for organism growth and development and, for the purpose of this regulation, is limited to nitrogen and phosphorus.

“Onsite wastewater treatment and disposal system (OWTDS)” means a conventional or innovative and alternative wastewater treatment and disposal systems installed or proposed to be installed on the land of the owner or on other land to which the owner has the legal right to install the system.

“Ordinary high water mark” means, for nontidal waters, the line where the presence and action of water are continuous enough during ordinary rainfall years to leave a mark upon the soil of the bed or banks of the waterbody.

“Performance Standard Nitrogen level 1 (PSN1)” means where total nitrogen levels achieve either:

- an average annual concentration of 5 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 90% reduction in the effluent total nitrogen concentration when compared to the influent total nitrogen concentration; or
- an average annual concentration of 5 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 5 mg/l on an average annual basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Performance Standard Nitrogen level 2 (PSN2)” means where total nitrogen levels achieve either:

- an average annual concentration of 10 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- an 80% reduction in effluent total nitrogen concentration when compared to the influent total nitrogen concentration; or
- an average annual concentration of 10 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 10 mg/l on an average annual basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Performance Standard Nitrogen level 3 (PSN3)” means where total nitrogen levels achieve either:

- an average annual concentration of 20 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 50% reduction in effluent total nitrogen concentration when compared to the influent total nitrogen concentration.

“Performance Standard Phosphorus level 1 (PSP1)” means where total phosphorus levels achieve either:

- an average annual concentration of 3.9 mg/l (parts per million (ppm)) total phosphorus in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 75% reduction in effluent total phosphorous concentration when compared to the influent total phosphorus; or
- an average annual concentration of 3.9 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 3.9 mg/l on an annual average basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Performance Standard Phosphorus level 2 (PSP2)” means where total phosphorus levels achieve either:

- an average annual concentration of 7.85 mg/l (parts per million (ppm)) total phosphorus in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 50% reduction in effluent total phosphorus concentration when compared to the influent total

phosphorus concentration.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Person” means any individual, business enterprise, or business entity, including but not limited to, a trust, firm, joint stock company, partnership corporation (including government corporation), limited liability company or association, any state, municipality, commission, or political subdivision of a state, any federal agency, any interstate body, or other such entities as allowed by law.

“Point source pollution” means pollution discharged directly from a specific site such as a municipal sewage treatment plant or an industrial outfall pipe.

“Pollution Control Strategy (PCS)” means a document that specifies actions necessary to systematically achieve pollutant load reductions specified by a Total Maximum Daily Load for a given waterbody. The regulatory actions are included in these Regulations.

“Pre-engineered plan” means a design using packaged mechanical devices such as equipment of cataloged design which complies with all applicable regulations and approved by the Department, or listed by a third party testing authority for a specific application recognized and approved by the Department.

“Primary water features” means State-regulated wetlands and those waters depicted by the United States Geological Survey on the National Hydrography Dataset as perennial, and identified on maps developed by the Department and adopted as part of this Regulation in Appendix A. Such features may be adjusted in accordance with Section 9.2 of these Regulations.

“Rehoboth Bay Watershed” means the lands that drain into the Rehoboth Bay and its tributaries as illustrated by the Delaware watershed map available from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control.

“Secondary water features” means those waters depicted by the United States Geological Survey on the National Hydrography Dataset as intermittent, and those forested ditches that flow within or are directly adjacent to forested lands, and identified on maps developed by the Department and adopted as part of this Regulation in Appendix A. Such features may be adjusted in accordance with Section 9.2 of these Regulations.

“Site plan” means a drawing illustrating proposed residential planned communities, conditional uses, dwellings, multiple family dwellings, townhouses, houses of worship, hotels, motels or motor lodges, docks or piers, footbridges or walkways, business and office buildings, commercial buildings or industrial buildings, mobile home parks, campgrounds, borrow pits, or amusement places, circuses, or carnival grounds.

“State-regulated wetlands” means those wetlands depicted on maps adopted pursuant to 7 Del.C. Ch. 66 or otherwise field verified or adjusted.

“Systematically eliminate” means to require the elimination of waste loading into the affected waterbody by point sources on a firm, fixed schedule as approved by the Department. This elimination must occur within five years of the expiration of the facility’s current NPDES permit unless a longer period of time is provided for in a State or Federally enforceable Consent Order, Decree, or Administrative Order.

“Total Maximum Daily Load (TMDL)” means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint, and natural background sources and still allows attainment or maintenance of the applicable narrative and numerical water quality standards. A TMDL is the sum of the individual Waste Load Allocations (WLAs) for point sources and Load Allocations (LAs) for nonpoint sources and natural background sources of pollution. A TMDL may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a TMDL matches the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

“Treatment train” means a series of best management practices for stormwater.

“View corridor” means selective removal, pruning, and/or thinning of natural vegetation within a defined corridor in order to provide a view of a water feature.

“Watershed” means a region or area delineated by a topographical divide and draining ultimately to a particular watercourse.

3.0 Point Source Implementation

- 3.1 Permitted discharges of nutrients into the Indian River, Indian River Bay, Rehoboth Bay, Little Assawoman Bay or their tributaries under the NPDES program shall be systematically eliminated through their NPDES renewal process.
- 3.2 Subject to approval by the Department, point sources may choose to engage in water quality trading on a case-by-case basis in accordance with the following:
- 3.2.1 Trades must occur within the same watershed (Indian River, Indian River Bay, Rehoboth Bay, or Little Assawoman Bay) as the point source discharge is located.
- 3.2.2 Trades must involve a trading ratio of at least 2:1 between nonpoint sources and point sources.
- 3.2.3 The nutrient load reduction involved in the trade must constitute reductions that occur beyond the baseline or the point or nonpoint source nutrient reductions required under the TMDL and this Pollution Control Strategy.

4.0 Buffer Zone Established

This section requires riparian buffers in order to protect and improve water quality.

- 4.1 Applicability.
- 4.1.1 A buffer is only required for new major subdivisions and new activities requiring a site or major subdivision plan approval by Sussex County or other local government. For redevelopment projects, new improvements within the respective buffer shall be permitted at the existing set back or greater in accordance with applicable county or local ordinances.
- 4.1.2 This buffer provision does not apply to major subdivisions, site plans, or individual lots used for detached single family homes recorded prior to effective date of this regulation.
- 4.1.3 This buffer provision does not apply to any land or buildings deemed to be in agriculture use as prescribed in 9 DeI.C. 6902(b).
- 4.1.4 On-lot improvements requiring a site plan impacting less than 5000 square feet are excluded.
- 4.1.5 Excluded from the buffer provisions of this Regulation are permitted water-dependent facilities (maritime, recreational, educational or fisheries activities that cannot exist outside of the buffer by reason of the intrinsic nature of their operation) and the permitted installation, operation, repair or maintenance of any sanitary sewer system, stormwater facility, culvert, bridge, public utility, street, drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway improvement project or erosion-stabilization project that has received the joint approval of the appropriate federal, state and local agencies.
- 4.1.6 Isolated, stormwater and farm ponds are excluded from the buffer provisions.
- 4.2 For purposes of this Section, buffers are hereby established for primary and secondary water features.
- 4.2.1 Buffers of 100 feet are hereby established landward from State-regulated wetlands, or landward from the mean high water line of all tidal waters, whichever extends farther upland, and landward from the ordinary high water mark of all other primary water features.
- 4.2.2 Buffers of 60 feet are hereby established landward from the ordinary high water mark of all secondary water features.
- 4.3 Buffer widths may be reduced to the widths specified below when combined with the provisions outlined in Section 5 and contingent upon the creation of a development-wide nutrient management plan created by a certified nutrient consultant and implemented by a certified nutrient handler in accordance with the Regulations Governing the Nutrient Management Program.
- 4.3.1 Buffers of 50 feet are hereby established landward from State-regulated wetlands, or the mean high water line of all tidal waters, whichever extends farther upland, and from the ordinary high water mark of all other primary water features.

- 4.3.2 Buffers of 30 feet are hereby established landward from the ordinary high water mark of all secondary water features.
- 4.4 When Section 4.3 applies, the applicant shall ensure that deed restrictions and the homeowner's association bylaws include the following statement: "This development is subject to a nutrient management plan, which shall be implemented by a certified nutrient handler. The nutrient management plan is designed to reduce pollutants entering the Inland Bays. The nutrient management plan must be maintained and implemented in accordance with the Inland Bays Pollution Control Strategy and Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware." In addition, the following requirements must also be met:
- 4.4.1 The homeowner's association must retain the nutrient management plan on file and maintain records of nutrient applications. A summary of nutrient application records must be submitted to the Delaware Department of Agriculture, Nutrient Management Program on an annual basis.
- 4.4.2 The homeowner's association must sign and accept any and all responsibility for implementation of these requirements.
- 4.5 In order to protect buffers and thus water quality, no landowner or their representative shall extend lot lines into buffers.
- 4.6 Determination of the areas of State jurisdiction, including the limit of State-regulated wetlands as mapped or otherwise field adjusted, the mean high water line of tidal waters and the ordinary high water line of non-tidal waters and the upland edge of buffers will be made by the Department.
- 4.7 No person shall submit final site plans or final major subdivision plats without including buffers as defined and described in these regulations that are clearly demarcated, designated, and recorded on such plans or plats.
- 4.8 Property owner(s) shall maintain the buffer in perpetuity in accordance with these regulations. Property owners shall install boundary signs or markers or distinctive vegetation identifying the upland edge of the buffer.
- 4.9 Buffer property owners or managers shall manage buffers to maintain their water quality benefits.
- 4.10 Allowable uses within the buffer are:
- 4.10.1 Flood control structures, where permitted,
- 4.10.2 Utility rights of way/structures, where permitted,
- 4.10.3 Stormwater best management practices may be placed within the buffer, but no closer than 25 feet to the feature being buffered, provided that the buffer is in open space,
- 4.10.4 Unpaved, pervious single-track trails or footpaths no wider than 5 feet, or pervious or impervious footpaths that encompass 5% or less of the buffer area, (in instances where the trail area is greater than 5% of the buffer area, the buffer will require 1/1 mitigation on a per square foot basis), and
- 4.10.5 Road crossings, where permitted,
- 4.11 In instances where a buffer is required adjacent to a tax ditch, the maintenance right-of-way may be included as part of the buffer. Access to the ditch for maintenance purposes shall be preserved.

5.0 Sediment and Stormwater Controls

- 5.1 Sediment and stormwater runoff shall be managed for nutrient reductions where practicable.
- 5.2 When the Delaware Sediment and Stormwater Regulations require the creation of a permanent sediment and stormwater management plan, that plan shall be designed and implemented to include design criteria to further reduce nutrient contributions. Consistency will be determined at the conceptual stormwater plan process step. Compliance will be determined before approval of final site or subdivision plans.
- 5.3 Compliance with 5.2 of these Regulations shall be achieved using one of the following methods:
- 5.3.1 For properties that contain primary and/or secondary water features, establish buffers consistent with Section 4.2 of these Regulations; or

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- 5.3.2 For properties that contain primary and/or secondary water features, establish buffers consistent with Sections 4.3 and 4.4 of these Regulations in combination with any of the options listed in 5.3.3 of this Section; or
- 5.3.3 For properties that utilize a reduced width buffer or do not contain primary or secondary water features, select any of the options listed in 5.3.3.1 – 5.3.3.4 below:
- 5.3.3.1 Reduce nutrient contributions by the percentage required by the TMDL for the watershed in which the project is located, based on a comparison between the post-developed condition with and without stormwater quality management best management practices using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"; or
- 5.3.3.2 Reduce nutrient contributions so as to achieve irreducible concentrations of nutrients using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"; or
- 5.3.3.3 Reduce nutrient contributions using three practices within a treatment train using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"; or
- 5.3.3.4 Establish 30% of project parcel as forest in common open space through preservation and protection of existing forest stands or creation of new forest stands in accordance with the guidance document entitled, "Forestry Guidance for Inland Bays Pollution Control Strategies." In order to comply with the stormwater management requirements of this section, to the extent practicable, the forested area shall be an integral component of the project's stormwater management plan.
- 5.4 When Sections 5.3.1 or 5.3.2 apply, the buffer zone shall be established in accordance with Section 4 of these Regulations.

6.0 On-site Wastewater Treatment and Disposal Systems—General

- 6.1 This section of the Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds complements sections of the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. If inconsistencies exist, these Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds control.
- 6.2 All cesspools or seepage pits are prohibited within Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay watersheds and shall be replaced in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and these Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds.
- 6.3 Existing holding tanks must be operated in accordance with their permits and their conditions.
- 6.4 In instances where central sewer service will become available within five years, temporary holding tanks will only be permitted after the Department receives a letter (with an approved Certificate of Public Convenience and Necessity (CPCN) stating when central sewer will become available) from Sussex County, the appropriate municipality, or the wastewater utility.
- 6.5 Existing onsite wastewater treatment and disposal systems which are repaired or replaced and new systems on parcels recorded prior to 30 calendar days after the date of publication of these final Regulations in the Delaware Register of Regulations shall be subject to the setback requirements of these Regulations and the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. However, if it is impossible to comply with such requirements due to lot size limitations, the system shall conform to the maximum extent practicable.
- 6.6 No new drainfields on parcels recorded 30 calendar days or more after the publication of these final Regulations in the Delaware Register of Regulations may be present within 100 feet landward from State-regulated wetlands, or landward from the mean high water line of all tidal waters, whichever extends farther upland, and landward from the ordinary high water mark of all other primary water features.

- 6.7 All innovative and alternative onsite wastewater treatment and disposal systems having flows of less than or equal to 2,500 gallons per day must comply with Performance Standard Nitrogen level 3.

7.0 On-site Wastewater Treatment and Disposal System Operation, Maintenance and Inspection Program

- 7.1 An operation, maintenance and inspection program for individual onsite wastewater treatment and disposal systems (OWTDS) is hereby established for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay watersheds.
- 7.2 All properties utilizing an OWTDS that are sold or otherwise transferred to other ownership shall have their systems pumped out and inspected prior to the completion of the sale.
- 7.2.1 For transfers of a new property, the certificate of completion will fulfill the requirements of this section.
- 7.2.2 If an inspection has occurred within the previous 36 months and the property owner can provide documentation of such pump out and inspection, then such documentation will fulfill the requirements of this section.
- 7.2.3 If the owner of an individual OWTDS provides proof of a licensed operator or has an annual service contract with a certified service provider then the requirements of this section have been met.
- 7.3 Pumpouts shall be performed by a licensed Class F Liquid Waste Hauler. Inspections shall be performed by a licensed Class H System Inspector.
- 7.4 Standard inspection forms, developed by the Department, shall be used by the system inspector. The property owner shall provide the system inspector with all available pertinent information. The completed inspection report shall detail the results of the inspection. The system inspector shall provide the Department and the property owner with a written copy of the inspection report.
- 7.5 The Department will maintain a list of all licensed Class H System Inspectors and certified service providers which will be available for review.

8.0 On-site Wastewater Treatment and Disposal System Performance Standards

- 8.1 All OWTDSs in the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds are required to reduce their nutrient wastewater loads.
- 8.2 Requirements for large OWTDSs having flows greater than 20,000 gallons per day (gpd):
- 8.2.1 All new systems shall meet Performance Standard Nitrogen level 1 (PSN1).
- 8.2.2 All replacement systems shall meet Performance Standard Nitrogen level 2 (PSN2).
- 8.2.3 When the operation and maintenance permit expires for an existing system, the Department will require the system to meet Performance Standard Nitrogen level 2 (PSN2). If the Department deems that the OWTDS must be redesigned to meet PSN2, the owner or operator of the system will have up to 60 months from the permit expiration date to bring the OWTDS into compliance with the new standard.
- 8.2.4 Where the system location is identified as having high potential for phosphorus mobility, new OWTDSs shall meet a Performance Standard Phosphorus level 1 (PSP1).
- 8.2.5 When the operation and maintenance permit expires for an existing system, and the system location is identified as having high potential for phosphorus mobility, the system must comply with the Performance Standard Phosphorous level 1 (PSP1). If the Department deems that the system must be redesigned to meet PSP1, the owner or operator of the system will have up to 60 months from the permit expiration date to bring the OWTDS into compliance with the new standard.
- 8.3 Requirements for large OWTDSs having flows greater than 2,500 gpd but less than 20,000 gpd:
- 8.3.1 All new systems shall meet a Performance Standard Nitrogen level 2 (PSN2).
- 8.3.2 All replacement systems shall meet a Performance Standard Nitrogen level 3 (PSN3).
- 8.3.3 When the operation and maintenance permit expires for an existing system, the system must meet a Performance Standard Nitrogen level 3 (PSN3). If the Department deems that the large OWTDS

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must be redesigned, the owner or operator of the system will have up to 60 months from the permit expiration date to bring the OWTDS into compliance with the new standard.

8.3.4 When the operation and maintenance permit expires for an existing system and the system location is identified as having high potential for phosphorus mobility, the system must comply with the Performance Standard Phosphorous level 2 (PSP2).

8.4 Requirements for small OWTDSs having flows less than or equal to 2,500 gpd:

8.4.1 All new and replacement systems shall meet a Performance Standard Nitrogen level 3 (PSN3).

8.4.2 Department approval and use of advanced treatment units shall be in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and the Innovative and Alternative System Approval Checklist.

8.4.3 All permit applications shall be prepared in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and these Regulations.

8.4.4 To provide proper operation and maintenance of the innovative and alternative onsite wastewater treatment and disposal system, the permittee is required to adhere to Department permit conditions. These permit conditions require mandatory operation and maintenance for the life of the system by maintaining a service contract with a certified service provider.

8.4.5 In instances where central sewer will become available within five years, the requirements of Section 8.4 will be waived after the Department receives a letter (with an approved Certificate of Public Convenience and Necessity (CPCN) stating when central sewer will become available) from Sussex County, the appropriate municipality, or the wastewater utility.

8.5 Large systems will be operated and monitored in accordance with permit conditions, and the following:

8.5.1 Large systems shall be operated by a Department licensed operator. The class level of the operator required and frequencies of inspections will be in accordance with the Regulations for Licensing Operators of Wastewater Facilities.

8.5.2 Large systems shall be sampled as outlined in the permit conditions.

9.0 Enforcement, Challenges, and Waivers

9.1 Enforcement of these regulations shall be as outlined in Title 7, Chapter 60, Section 6005 of the **Delaware Code**.

9.2 Technical errors related to primary and/or secondary water feature classifications may be brought to the Department's attention by following the procedures outlined in the guidance document entitled, "Procedures for Challenging the "Map of Water Features to be Buffered in the Inland Bays Watershed." If an on-site evaluation by the Department establishes that a technical error exists in the Map of Water Features to be Buffered in the Inland Bays Watershed that has been adopted by the Department as part of this Regulation, the map containing the error may be corrected by the Department after the Department documents, in writing, the results of the on-site evaluation, and the Department gives the public notice of any proposed correction. For purposes of this subsection, the term "public notice" shall consist of having notice of the proposed correction, the name of the property owner, location of the property in issue and a description of the error, published in a daily newspaper of general circulation throughout the State and a newspaper of general circulation in the county in which the activity is proposed. Such notice shall be published at least 20 days in advance of any correction to a map by the Department. If the Department determines that it has received a meritorious objection to any proposed correction set forth in a public notice, the Department may hold a public hearing if necessary in accordance with the procedures and laws required by the State of Delaware.

9.3 Technical errors related to the location of the tidal wetlands depicted on the map entitled "Areas Requiring Early Implementation of PSN3" may be brought to the Department's attention by following the procedures outlined in Title 7, Chapter 66 of the **Delaware Code**.

9.4 Waiver requests from the stormwater management requirements of Section 5 shall be determined through the procedures outlined in the Delaware Sediment and Stormwater Regulations.

- 9.5 Waiver requests for all other sections of these Regulations shall follow these procedures. Upon the applicant's request, the Secretary may grant a waiver from the strict application of this Regulation after an opportunity for formal public notification and review.
- 9.5.1 Notice shall be provided to the public including all contiguous property owners.
- 9.5.2 A public hearing will be held if a meritorious request is received within a reasonable time as stated in the advertisement.
- 9.5.3 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the waiver request and has a reasoned statement of the waiver's probable impact.
- 9.5.4 No waiver shall be granted unless the said variance meets the following criteria:
- 9.5.4.1 The action will not result in substantial adverse effect on water quality, in general; and
- 9.5.4.2 The waiver must minimize the effects to the water quality goals of these Regulations to the greatest extent possible; and
- 9.5.4.3 A denial of the desired waiver would preclude a reasonable use of the property; and
- 9.5.4.4 The justification for the waiver is not related to a self-imposed special condition.
- 9.6 In addition to the waivers available in 9.4, the Secretary may grant hardship waivers from Sections 6.2 and 8.4 of these Regulations as outlined below.
- 9.6.1 The Secretary may consider the following factors in reviewing an application for a waiver based on hardship:
- 9.6.1.1 Advanced age or bad health of the applicant; or
- 9.6.1.2 Need of applicant to care for aged, incapacitated, or disabled relatives; or
- 9.6.1.3 Lack of funding programs and/or institutional opportunities for low and fixed income applicants.
- 9.6.2 Hardship waivers granted by the Secretary may contain but are not limited to conditions such as:
- 9.6.2.1 Permits for the life of the applicant; or
- 9.6.2.2 Limiting the number of permanent residents using the system; or
- 9.6.2.3 Use of non-nutrient reducing on-site wastewater treatment and disposal systems for a specified period of time.
- 9.6.3 Documentation of hardship must be provided before the application is referred to the Secretary for action.
- 9.6.4 Department personnel shall strive to aid and accommodate the needs of the applicants for waivers due to hardship.
- 9.7 In the event that more than one waiver from these Regulations is required, the Secretary may coordinate the review of such waivers.

10.0 Severability

Should any section, paragraph, or other part of this document be declared invalid for any reason, the remainder shall not be affected.

11.0 Other (Reserved)

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

Statutory Authority: 24 Delaware Code, Section 1806(a)(2) (24 Del.C. §1806(a)(2))

24 DE Admin. Code 1800

PUBLIC NOTICE

The Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §1806(a)(2), proposes an addition to its regulation section 1.0. Specifically, the proposed addition to **1.0 General Provisions** establishes that Exception 1 to Section 101.2 of the 2003 International Mechanical Code does not apply to Board licensees.

A public hearing is scheduled for Tuesday, July 8, 2008 at 8:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4500.

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

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

1.0 General Provisions.

1.1 Election of Officers. The Board will elect a President, Vice-President, and Secretary annually in May. In the event of a resignation, termination or departure of one of the officers, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose.

1.2 Definitions - Words and terms defined in Title 24, Section 1802 of the **Delaware Code** are applicable to these regulations. The following additional words and terms, when used within these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

“**Certificate of Good Standing**” means a certified statement of the applicant's disciplinary and complaint record as a license holder in another jurisdiction, which is sent directly from the other jurisdiction to the Board.

“**Complete application**” means the Division of Professional Regulation has received the application form, all supporting documents (including verifications of disciplinary record), and all required fees.

1.3 International Mechanical Code (IMC) – Exception 1 under Section 101.2 of the 2003 IMC does not apply to Board licensees.

11 DE Reg. 86 (07/01/07)

(Break in Continuity of Sections)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners is available at:**

[http://regulations.delaware.gov/register/june2008/proposed/11 DE Reg 1614 06-01-08.htm](http://regulations.delaware.gov/register/june2008/proposed/11%20DE%20Reg%201614%2006-01-08.htm)

DEPARTMENT OF TRANSPORTATION OFFICE OF THE SECRETARY

Statutory Authority: 29 Del.C. Chapter 100 (29 Del.C. Ch. 100)
2 DE Admin. Code 2101

PUBLIC NOTICE

2101 Freedom of Information Act (FOIA)

As authorized under 29 Del.C. Chapter 100, the Delaware Department of Transportation is seeking to adopt regulations for the processing of Freedom of Information Act requests, as detailed in this publication.

Public Comment Period

The Department will take written comments on the draft regulations from June 1, 2008 through June 30, 2008.

Questions or comments regarding this document should be directed to:

Darrel Cole
Director of Public Relations
Department of Transportation
P.O. Box 778
Dover, DE 19903
Phone: (302) 760-2080
Fax: (302) 739-2092
Email: darrel.cole@state.de.us

1.0 Purpose

The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Transportation ("the Department") pursuant to 29 Del.C. Chapter 100, the Freedom of Information Act ("FOIA"). It is the Department's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.

This regulation applies to the Department in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the Department in its normal course of business with Federal, State, or local agencies, nor to private parties (corporate or individual) with whom the Department is conducting business (permit, contractual agreement, licenses, etc.), provided the public records are germane to the business being conducted. Record requests handled under 21 Del.C. §305 are also not covered by these regulations.

A new and integral part of the FOIA regulation is a procedure outlined to address the confidential treatment of information submitted to the Department. This confidentiality procedure is a necessary part of the FOIA regulation, in that any information submitted to the Department is subject to public review unless deemed to be confidential by the Secretary in accordance with Delaware Code and the criteria and procedures established in this regulation.

It is the intent of the Department, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of Department officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides that it shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA shall be processed in the manner prescribed below.

2.0 Definitions

"Confidential information" means information determined by the Secretary to constitute a trade secret, or commercial or financial information which is of a confidential nature.

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"Department" means the Department of Transportation of the State of Delaware.

"Requestor" shall mean any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.

"Responsible Official" means:

For a Corporation: A President, Vice-President, Secretary, or Treasurer of the corporation or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

For a Partnership or Sole Proprietorship: A general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

For a Municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

"Secretary" means the Secretary of the Department of Transportation or the Secretary's designee.

"Trade Secret" means a formula, pattern, device or compilation of information which may be used to obtain competitive advantage over others.

3.0 Availability of Records

3.1 Access

3.1.1 The Department will provide reasonable access and facilities for reviewing public records during regular business hours.

3.1.2 The Department shall make all requested records available for review by requestor unless such records or portions of records are determined by the Secretary to be confidential in accordance with Section 6 of this regulation or otherwise exempted from disclosure as records deemed non-public pursuant to 29 Del.C. §10002(g).

3.1.3 The Department reserves the right to deny any request in part or in full which does not comply with the Form of Request procedures pursuant to Section 4.1 of this regulation and/or the provisions of the Freedom of Information Act, as amended.

3.2 Department Records Review

3.2.1 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public are removed.

3.2.2 Upon request, the Department will provide a log of records which may have been deemed non-public. The log will include the following information:

3.2.2.1 The document's author;

3.2.2.2 The addressee;

3.2.2.3 The date of the document;

3.2.2.4 The title of the document or a brief explanation of the document's contents; and

3.2.2.5 The statutory exemption.

3.2.3 The types of records deemed non-public are as contained in 29 Del.C. §10002(g).

3.2.4 Departmental regulations, brochures, pamphlets, informational bulletins, and other such information are not subject to this regulation.

4.0 Record Request and Response Procedures

4.1 Form of Request

4.1.1 Requests for access to records shall be made in writing to the Department's Director of Public Relations. The request shall adequately describe the records sought in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall make

reasonable effort to assist the requestor in identifying the record being sought. Responses will be coordinated between the Office of Public Relations and the Office of Legal Affairs. The request may be denied in part or in full and returned to the requestor for the following reasons:

- 4.1.1.1 The request does not adequately describe the records; or
- 4.1.1.2 The request requires the Department to perform research or to assemble information that has not been compiled; or
- 4.1.1.3 The request is overly broad. For example, a request for all email records of a state employee or department would be overly broad. The request should be limited to a particular subject, time frame, and/or recipient/sender.

4.2 Department Response to Requests

- 4.2.1 The Department shall make reasonable effort to determine within ten (10) business days after the receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.
- 4.2.2 If the Department denies a request in whole or in part, the Department shall indicate to the requestor the reasons for the denial.

4.3 Reproduction of Records

- 4.3.1 The copying of any requested public records may be performed by Department personnel and may be provided to the requestor as follows:
 - 4.3.1.1 If 25 pages or less are requested to be copied, the Department may, if time and personnel are available, make the copies at the time of the review. If personnel are not available, the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.
 - 4.3.1.2 If over 25 pages are requested to be copied the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.
 - 4.3.1.3 If over 250 pages are requested to be copied, the requestor may be required to bring in both copier and personnel to make the desired copies.
 - 4.3.1.4 Fragmentation of requests, in order to circumvent the 250 page limit, shall not be allowed.
 - 4.3.1.5 The Department shall have discretion based on circumstances involved to make decisions regarding copying.

5.0 Fees

5.1 Administrative Fees:

- 5.1.1 Charges for administrative fees include:
 - 5.1.1.1 Staff time associated with processing FOIA requests will include:
 - 5.1.1.1.1 Locating and reviewing files;
 - 5.1.1.1.2 Monitoring file reviews;
 - 5.1.1.1.3 Generating computer records (electronic or print-outs);
 - 5.1.1.1.4 Preparing logs of records deemed non-public; and
 - 5.1.1.1.5 Other work items as necessary per request.
- 5.1.2 Calculation of Administrative Charges: Administrative charges will be calculated as follows:
 - 5.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.
 - 5.1.2.2 Appointment Rescheduling/Cancellation - Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Department in preparing the

PROPOSED REGULATIONS

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

5.2 Photocopying Fees - The following are charges for photocopies of public records made by Department personnel:

5.2.1 Standard Sized, Black and White Copies

The charge for copying standard sized, black and white public records shall be \$0.25 per sheet. This charge applies to copies on the following standard paper sizes:

Table 1:

<u>8.5" x 11"</u>
<u>8.5" x 14"</u>
<u>11" x 17"</u>

5.2.2 Oversized Copies/Printouts

The charge for copying oversized public records (including, but not limited to: blueprints, engineering drawings, GIS print-outs, and maps) shall be as follows:

Table 2:

<u>18" x 22"</u>	<u>\$2.00 each</u>
<u>24" x 36"</u>	<u>\$3.50 each</u>

5.2.3 Color Copies/Printouts

The charge for standard sized, color copies or color printouts shall be \$0.25 per sheet. This charge applies to copies on the following standard paper sizes:

Table 3:

<u>8.5" x 11"</u>
<u>8.5" x 14"</u>
<u>11" x 17"</u>

5.2.4 Microfilm and/or Microfiche Printouts

Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.25 per printed page.

5.2.5 Electronically Generated Records

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

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

5.2.6 Other Copying Fees

The Department, at its discretion, may arrange to have records copied by an outside contractor if the Department does not have the resources or equipment to copy such records. In this instance, the requestor will be liable for payment of these costs.

5.3 Exemptions

5.3.1 The first \$25.00 in FOIA charges shall be waived for not-for-profit organizations working in the public interest on the condition that such organizations provide, along with their FOIA request, proof of tax-exempt status and a signed affidavit from an officer or the governing body of the organization which indicates that the requestor is authorized to request the information on behalf of the organization.

5.4 Payment

5.3.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor. The Department reserves the right to refuse to make copies for requestors who have outstanding balances.

5.3.2 The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records and/or in preparing logs of records deemed non-public.

6.0 Requests for Confidentiality

A person may request records or portions of records submitted to the Department that are confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained.

The following section sets forth procedures and criteria by which the Department will determine confidentiality of records or portions of records.

6.1 Procedure

6.1.1 In order for the Department to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Secretary at the time the record is submitted. The request shall provide substantiation (following guidelines in 29 Del.C. §10002(g)) for the allegation that the information should be treated as confidential.

The request shall contain the following information:

6.1.1.1 The measures taken to guard against undesired disclosure of the information to others;

6.1.1.2 The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

6.1.1.3 Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and

6.1.1.4 Verification that significant effort or money has been expended in developing the information.

6.1.2 The following information shall be submitted:

6.1.2.1 Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review).

The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;

6.1.2.2 Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and

6.1.2.3 Certification through a separate, notarized affidavit that the information is either trade secret, or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.

6.1.3 The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Secretary in making a determination of confidentiality pursuant to this privilege.

6.1.4 After a final determination of confidentiality has been issued by the Secretary, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if the Department determines that:

6.1.4.1 The Responsible Official notified the Department in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and

6.1.4.2 The later submission identifies with particularity the prior confidentiality determination; and

6.1.4.3 The notice to the Department met the requirements of Section 6.1.2 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

6.1.4.4 The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

6.2 Criteria

6.2.1 The Secretary may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:

6.2.1.1 Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;

6.2.1.2 The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;

6.2.1.3 No statute specifically requires disclosure of the information;

6.2.1.4 A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and

6.2.1.5 Verification that significant effort or money has been expended in developing the information.

6.3 Final Determination

The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.

6.3.1 If the Secretary determines that disclosure of the information would violate 29 Del.C. §10002(g)(2), the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify the Department in writing of such changes.

6.3.2 If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.

6.4 Defense of Secretary's Determination

6.4.1 Verification of Information

There will be instances in which the Secretary may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.

6.4.2 Information Determined Confidential

If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and the Department is sued by a requestor for disclosure of that information, the Department will:

6.4.2.1 Notify each affected party of the suit;

6.4.2.2 Call upon each affected party to furnish assistance where necessary in preparation of the Department's defense; and

6.4.2.3 Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

7.0 Effective Date of this Regulation

These regulations will become effective 11 days after being published as a final regulation. Any and all FOIA requests currently in process at the time of adoption will be subject to these regulations.

STATE BOARD OF PENSION TRUSTEES THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Statutory Authority: 29 Delaware Code, Section 8308(c)(1) (29 **Del.C.** §8308(c)(1))

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The State Board of Pension Trustees (the "Board") in accordance with 29 *Del.C.* §8308(c)(1) has proposed changes and additions to the rules and regulations relating to the administration of the Delaware Public Employees' Retirement System ("DPERS") for the following retirement plans: (1) State Employees' Pension Plan, (2) State Police Pension Plan, (3) State Judiciary Pension Plan, (4) County Municipal Employees' Pension Plan, and (5) County & Municipal Police/Firefighter Pension Plan. These proposals reflect the current practices at the Office of Pensions and additionally incorporates operational provisions required by the United States Internal Revenue Service to maintain the qualified status of DPERS' retirement plans.

A public hearing will be held before the Board at 11:00 a.m. on July 25, 2008, at the Office of Pensions located in the McArdle Building at 860 Silver Lake Boulevard, Suite 1, Dover, Delaware 19904 where members of the public can offer comments. Members of the public may receive a copy of the proposed regulation at no charge via United States Mail in writing from Terri L. Timmons, Office Manager at 860 Silver Lake Boulevard, Suite 1, Dover, Delaware 19904 or by calling her at (302) 739-4208. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Timmons at the address listed above. The final date to receive written comments is June 30, 2008.

***Please Note: Due to the size of the proposed regulations, they are not being published here. A copy of the regulations are available at:**

[http://regulations.delaware.gov/register/june2008/proposed/11 DE Reg 1621 06-01-08.htm](http://regulations.delaware.gov/register/june2008/proposed/11%20DE%20Reg%201621%2006-01-08.htm)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE**DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION**

Statutory Authority: 3 Delaware Code, Section 8708(8) (3 **Del.C.** §8708(8))
3 **DE Admin. Code** 301

ORDER**301 Food Products Inspection**

AND NOW, this 14th day of May, 2008, and in accordance with 29 **Del.C.** §10118 and for the reasons set forth herein, the Animal Health and Food Products Inspection Section of the Delaware Department of Agriculture (hereinafter "the Department") enters this Order adopting regulations.

I. Nature of the Proceedings

Pursuant to its authority under 3 **Del.C.** §8708(8), the Department proposes to amend its existing regulations concerning the inspection of meat, poultry, and egg products and for the humane slaughter of livestock so that they are equal to existing federal statutes and regulations that deal with these subject matters. By doing so the Department will bring its regulations current with modifications to 9 CFR Parts 300 through 500 since the Department last promulgated its regulations for food safety in April of 2002. The Department also proposes to incorporate by reference the U.S. Department of Agriculture's regulations dealing with the inspection of eggs and egg products and for the voluntary inspection of eggs.

The Department gave notice of its intent to adopt these proposed amended regulations and to adopt new regulations regarding egg products inspection by publication in the April 1, 2008 issue of the *Delaware Register of Regulations*. The Department solicited written comments from the public concerning these proposed amended regulations and new regulations allowing the period of time for such submissions to remain open for the thirty (30) days mandated by 29 **Del.C.** §10118(a). This is the Department's Decision and Order adopting the proposed amended regulations and new regulations.

II. Public Comment

The Department received no written comments from the public in response to the notice of intention to adopt the proposed amended regulations and new regulations.

III. Findings and Conclusions

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and new regulations and was given ample opportunity to provide the Department with comments opposing the Department's plan. Thus, the Department concludes that its consideration of the proposed amended regulations and new regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

IV. Order

NOW THEREFORE, it is hereby ordered that:

1. The proposed amendments to the Department's Food Products Inspection Regulations and new regulations concerning egg inspections are adopted in language identical to that found at Subchapters A, E, and I of Title 9 Parts 301 through 592, excluding Parts 390 and 391 of the Code of Federal Regulations which is incorporated by reference herein.

2. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10118(e).

3. The Department reserves the authority to issue such other and further orders in this matter as may be just and proper.

IT IS SO ORDERED.

BY:

Michael T. Scuse, Secretary
Delaware Department of Agriculture

Dated: May 14, 2008

301 Food Products Inspection

The Delaware Department of Agriculture, Food Products Inspection Section proposed to amend its regulations concerning the rules of practice that apply to agency enforcement actions by bringing them into the conformity with federal law. The Department proposed to define each type of enforcement action that it may take, the conditions under which it likely to take each of these actions, and the procedures it will follow in doing so.

The proposed amendments are part of the Department's ongoing effort to consolidate, streamline, and clarify the meat and poultry product inspection regulations. To that end, the Department is proposed to adopt by reference, in their entirety, the federal regulations published in the Federal Register at Volume 64, Number 228, dated November 29, 1999, amending the Code of Federal Regulations at 9 CFR Sections 304, 305, 327, 335, 381 and adding a new Part 500 which became effective January 25, 2000.

1.0 Authority

1.1 ~~[These proposed amendments to regulations governing food product inspection are promulgated pursuant to the Department's authority set forth in 3 Del.C. §8708. These proposed amendments to existing Delaware regulations as well as the adoption of new regulations governing meat, poultry, and egg products inspection and the humane slaughtering of livestock are promulgated pursuant to the Department's authority specifically set forth in Section 8708(8) of Title 3 of the Delaware Code.]~~

2.0 Purpose

2.1 ~~[The purpose of these proposed amendments to regulations is to consolidate, streamline, and clarify the meat and poultry product inspection regulations thereby insuring that Department enforcement actions are fair by identifying the situations that may lead to such actions. The purpose of these proposed regulations is to re-establish the standards and procedures for the meat, poultry, and egg product inspection programs of Delaware as well as Delaware's humane slaughtering of livestock procedures so that they shall be equal to those imposed by the Federal Meat Inspection Act, the Federal Poultry Inspection Act, the Federal Egg Products Inspection Act and the Federal Humane Methods of Slaughter Act with respect to operations occurring within the State of Delaware.]~~

3.0 Substantive Provisions

3.1 The Department incorporates by reference herein, in its entirety, the language found at page 66545 of the Federal Register at Volume 64, Number 228, beginning with the heading "Part 304 Application for Inspection; Grant of Inspection" and ending at page 66547 at the end of Section 500.8(e).

The Department adopts and incorporates by reference herein the rules, regulations, definitions and standards of the U. S. Department of Agriculture governing meat and meat products inspection, poultry products inspection, voluntary inspection of poultry, egg and egg products inspection and humane methods for slaughtering animals as they are currently written and which are found at Subchapters A, E, and I of Title 9, Parts 301 through 592, excluding Parts 390 and 391, of the Code of Federal Regulations.

5 DE Reg. 1902 (4/1/02)

THOROUGHBRED RACING COMMISSION

Section 4815(b)(3)(c)(3) (3 Del.C. §10005; 29 Del.C. §4815(b)(3)(c)(3))

3 DE Admin. Code 1001

ORDER

1001 Thoroughbred Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed rules to the Commission's Rules. Following notice and a public hearing on April 30, 2008, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed rules April 1, 2008 in the *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to amend Section 13 of the rules and regulations to address Claiming Races by amending existing Rule 13.1.1, 13.1.2, and 13.6.1.

2. The Commission received no written comments. The Commission held a public hearing on April 30, 2008 and received no public comments.

Findings of Fact and Conclusions

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

4. The Commission concludes that rules 13.1.1, 13.1.2, and 13.6.1 should be adopted to reflect current policies, practices, and procedures.

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on June 1, 2008.

IT IS SO ORDERED this 7th day of May 2008.

Bernard J. Daney, Chairman
W. Duncan Patterson, Secretary/Commissioner
Henry James Decker, Commissioner
Debbie Killeen, Commissioner
Edward Stegemeier, Commissioner

*Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1294 (11 DE Reg. 1294). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

[http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1624 06-01-08.htm](http://regulations.delaware.gov/register/june2008/final/11%20DE%20Reg%201624%2006-01-08.htm)

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 104

Regulatory Implementing Order

104 Education Profiles for Schools, Districts, and the State

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of the State Board of Education to amend 14 DE Admin. Code 104 Education Profiles for Schools, Districts, and the State to clarify that the print format of the school, district, and state profiles may vary from the web version because the print format is intended to summarize the detail contained on the website. The proposed regulation was revised to allow citizens to request the full printed version of the profile from a school, district or the state.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, April 2, 2008, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and State Council for Persons with Disabilities concerning the shortened print format and the ability for parents and citizens to compare schools and districts, and to promote accountability. The Department has made changes to the regulation to allow parents and citizens to request the full version of the education profile from the school, district, or the state. The Department is attempting to reduce the costs to the State related to the printing of the full profile, and still intends to provide meaningful data on the shortened version to allow comparisons and to promote accountability. The Department believes this change addresses the concerns of the Councils.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 104 Education Profiles for School, Districts, and the State in order to clarify that the print format of the school, district, and state profiles may vary from the web version because the print format is intended to summarize the detail contained on the website.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 104 Education Profiles for Schools, Districts, and the State. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 104 Education Profiles for Schools, Districts, and the State attached hereto as Exhibit "B" is hereby

amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 104 Education Profiles for Schools, Districts, and the State 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** 104 Education Profiles for Schools, Districts, and the State amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 104 Education Profiles for Schools, Districts, and the State 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 May 15, 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 15th day of May 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

104 Education Profiles for Schools, Districts, and the State

1.0 Education Profiles

All public schools, including charter schools, reorganized or vocational-technical school districts and the State shall issue Delaware Public Education Profiles on the state of Delaware's public school system as required by 14 **Del.C.** §124A. The profiles shall be provided in a web format as well as an abbreviated print format pursuant to 2.0 of this regulation. The profiles shall be referred to as school, district, and state Profiles respectively. Each website profile shall contain, but need not be limited to, the following information, aggregated at the appropriate level (school, district or state), unless otherwise noted:

1.1 Information on student achievement at each performance level on the state reading, writing, mathematics, science, and social studies academic assessments. Such information shall be disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.2 The most recent 2 year trend in student achievement in each of the five content areas as assessed by the DSTP, and for each grade level the assessments are administered;

1.3 The percentage of students not tested in reading/language arts and mathematics disaggregated by the student subgroups as defined in 1.9, except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.4 Information that provides a comparison between the actual achievement levels of each student subgroup meeting proficiency and those that have not met proficiency, as defined in 14 **DE Admin. Code** 103 and

the state's annual measurable objectives for each such group of students in the reading and language arts and mathematics academic assessments;

1.5 Aggregate information of the percent proficient on the combined scores of the science and social studies academic assessments for elementary and middle schools, used as the other indicator to determine Annual Yearly Progress (AYP) of students in achieving the state academic standards disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.6 For secondary schools only, graduation rate is defined as the number of students enrolled in the school in the ninth grade and who graduate with a diploma four years later, excluding students who earn a GED certificate, divided by the same number plus those who have dropped out during the same four year period, disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.7 Information on the performance of the school, district, or state regarding making adequate yearly progress, including the number and names of each school identified as Under School Improvement.

1.8 Information regarding the professional qualifications of teachers in the school, district and state, the percentage of such teachers teaching with emergency or provisional credentials, and the percentage of classes in the state not taught by highly qualified teachers, in the aggregate and disaggregated by high-poverty compared to low poverty schools which means schools in the top quartile of poverty and the bottom quartile of poverty in the State;

1.9 Information pertaining to the AYP status and accountability ratings;

1.10 Information pertaining to school safety and discipline and student attendance;

1.11 Information pertaining to school district administrator to student ratios, school teacher to student ratios and other staffing ratios;

1.12 Information pertaining to pupil and staff demographics;

1.13 Information pertaining to school district revenues, expenditures, tax rates and wealth (district profile only);

1.14 Information pertaining to school curricular offerings (school profile only);

1.15 Information pertaining to parent and community involvement in the school and school district;

1.16 Examples of exemplary programs, successful teaching, school climate or disciplinary strategies and other developments (only in school profile); and

1.17 Other items from time to time that may be required by the federal Elementary and Secondary Education Act.

7 DE Reg. 65 (7/1/03)

2.0 Publishing of Profiles

~~The profiles will be published, subject to an annual appropriation in the annual state budget act, at the expense of the state. School and districts specific data shall be submitted, in the format requested, to the Department in the time frame delineated in the Data Acquisition Calendar. The State shall have the profiles available on the Department of Education website no later than August 15, 2003 and on or before August 1 of each subsequent year.~~

The State shall have the profiles available on the Department of Education website on or before August 1st of each year. In addition, subject to an annual appropriation in the annual state budget act, the [school and district] profiles shall be published in a print format as determined by the Department that does not exceed four pages. The print format is intended to summarize the detail contained on the website. [Notwithstanding the above, the school or district shall provide the full printed copy of the education profile to a citizen upon request.]

7 DE Reg. 65 (7/1/03)

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 3110 (14 **Del.C.** §122(b), §3310)
14 **DE Admin. Code** 923

Regulatory Implementing Order

923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. The amendments include a delay of Response to Intervention (RtI) implementation for elementary mathematics and reading and mathematics in secondary schools, clarifies the screening tool utilization, allows for greater flexibility for implementing interventions, and allows schools to use the same procedures for identifying students with disabilities for Tier 2 interventions as students without disabilities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday March 5, 2008, in the form hereto attached as Exhibit "A". In addition there was a notice for a public hearing to be held on April 1, 2008 at the John W. Collette Education Building. Written comments were received from one of the school districts and one member of the public. During the public hearing fourteen individuals made comments. The primary focus of the comments was the implementation and training for Response to Intervention (RtI). In response the Department of Education will provide timelines and schedules for implementation to address the concerns of the district and members of the public. A copy of the timeline and schedule will be provided to all districts and charter schools and may be obtained by contacting Dr. Lori Duerr at the Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies in order to delay of Response to Intervention (RtI) implementation for elementary mathematics and reading and mathematics in secondary schools, clarifies the screening tool utilization, allows for greater flexibility for implementing interventions, and allows schools to use the same procedures for identifying students with disabilities for Tier 2 interventions as students without disabilities.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies 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** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies 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 May 15, 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 15th day of May 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

***Please note that no changes were made to the regulation as originally proposed and published in the March 2008 issue of the *Register* at page 1102 (11 DE Reg. 1102). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1628 06-01-08.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 3110 (14 **Del.C.** §122(b), §3310)
14 **DE Admin. Code** 925

Regulatory Implementing Order

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized 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 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. The amendments include a delay of Response to Intervention (RtI) implementation for elementary mathematics and reading and mathematics in secondary schools; clarifies the screening tool utilization; allows for greater flexibility for implementing interventions; and allows schools to use the same procedures for identifying students with disabilities for Tier 2 interventions as students without disabilities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday March 5, 2008, in the form hereto attached as Exhibit "A". In addition there was a notice for a public hearing to be held on April 1, 2008 at the John W. Collette Education Building. Written comments were received from one of the school districts and one member of the public. During the public hearing fourteen individuals made comments. The comments received focused on the implementation and training for Response to Intervention (RtI). In response the Department of Education will provide timelines and schedules for implementation to address the concerns of the district and members of the public. A copy of the timeline and schedule will be provided to all districts and charter schools and may be obtained by contacting Dr. Lori Duerr at the Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901. In addition, minor edits were made for clarity and for grammar.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in order to delay of Response to Intervention (RtI) implementation for elementary mathematics and reading and mathematics in secondary schools; clarifies the screening tool utilization; allows for greater flexibility for implementing interventions; and allows schools to use the same procedures for identifying students with disabilities for Tier 2 interventions as students without disabilities.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized 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** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized 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** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized 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 May 15, 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 15th day of May 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

(Break in Continuity of Sections)

6.11 Eligibility Criteria for Learning Disability:

6.11.1 Elimination of discrepancy model: As of the effective date of this section, public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the learning disability category.

6.11.2 Existence of a learning disability: As of the effective date of this section, and subject to the requirements of 6.11.3, public agencies shall use the standards and procedures in 7.0 through 11.0

to determine whether a child is eligible for special education and related services under the learning disability category.

6.11.3 Phase in of response to intervention procedures:

6.11.3.1 Elementary school children: No later than the beginning of the 2008- 2009 school year, public agencies shall use the standards and procedures in 7.0 through 12.0, including the response to intervention process, to determine whether a child in elementary school (as elementary school is defined by the public agency) is eligible for special education and related services under the learning disability category **[in reading]**. In the case of mathematics, implementation shall be on a timeline and schedule as defined by the DOE.

6.11.3.2 Other students: ~~No later than the beginning of the 2009-2010 school year,~~ Public agencies shall use the standards and procedures in 7.0 to 12.0, including the response to intervention process for other students on a timeline and schedule as defined by DOE, to determine whether a student is eligible for special education and related services under the learning disability category.

6.11.4 Use of response to intervention procedures for 2007-2008: During the 2007-2008 school year, public agencies are permitted to use the response to intervention procedures in 12.0 to determine whether a child is eligible for special education and related services as a result of a learning disability. Local education agencies implementing response to intervention procedures during the 2007-2008 school year may do so in all or some of its schools, and at all or some grade levels.

6.11.5 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

6.12 Eligibility Criteria for Mental Disability: Eligibility Criteria for Mental Disability: In order for the IEP team to determine eligibility for special education services under the Mental Disability category, the following is required:

6.12.1 A level of intellectual functioning, as indicated below:

6.12.1.1 Educable Mental Disability: IQ 50 to 70 +/to 5 points;

6.12.1.2 Trainable Mental Disability: IQ 35 to 50 +/to 5 points;

6.12.1.3 Severe Mental Disability: IQ below 35; and Significant limitations in two or more areas of adaptive behavior, including communication, self care, home and school living, social and interpersonal, community use, self direction and coping, health and safety, functional academics, leisure, play and work.

6.12.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.

6.12.3 Additional requirements for eligibility for Educable Mental Disability: In addition to the other requirements of 6.12, eligibility for special education services under the Educable Mental Disability category shall require written documentation that the child's response to scientific, research based intervention was assessed in accordance with 12.0.

6.12.3.1 This requirement shall apply no later than the beginning of the 2008-2009 school year for children in elementary school (as elementary school is defined by the public agency), ~~and no later than the beginning of the 2009-2010 school year for all other children.~~ In the case of mathematics for elementary school and all other students, implementation shall be on a timeline and schedule~~(d)~~ as defined by the DOE.

6.12.3.2 During the 2007-2008 school year, public agencies are permitted, but not required, to assess the child's response to scientific, research based intervention in determining a child's eligibility for special education services under the Educable Mental Disability category.

6.12.4 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

(Break in Continuity of Sections)

12.10 ~~If 80% or more of children in a classroom score below 20% of students~~ **[in a classroom]** are not meeting benchmark on any instructional screening, a school-based team, including a building level administrator, shall meet to consider the need for additional classroom supports and strategies.

12.11 Consistent with 1.0 through 5.0, a parent of a child may initiate a request for an initial evaluation at any time, including during the RTI process. The public agency may grant or decline the request. If the public

agency declines to conduct the initial evaluation, it must provide written notice consistent with 14 **DE Admin. Code** 926.3.0. If the public agency agrees to conduct an initial evaluation, the evaluation shall be completed, and an eligibility determination made, within the timeframe established in 2.3. However, a child may be determined ineligible for services under the learning disability or educable mentally disabled categories where there are insufficient data to demonstrate that the child was provided appropriate instruction in the regular education setting, or where there is insufficient data-based documentation of repeated assessments of achievement. If a child is determined ineligible for special education services on these grounds, the child may be referred back to an ~~IST~~ instructional support team to gather the required documentation and data by completing the RTI process. Eligibility for special education services may then be reconsidered at the request of the parent or a member of the ~~IST~~ instructional support team.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 **Del.C.** §3110)

11 DE Reg. 184 (08/01/07)

(Break in Continuity of Sections)

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

[http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1629 06-01-08.htm](http://regulations.delaware.gov/register/june2008/final/11%20DE%20Reg%201629%2006-01-08.htm)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303 (14 **Del.C.** §§122(b) & 303)
14 **DE Admin. Code** 1006

Regulatory Implementing Order

1006 Delaware Interscholastic Athletic Association (DIAA)

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** 1006 Delaware Interscholastic Athletic Association (DIAA). The amendments include a new definitions sections; increase in membership dues to address rising insurance costs; added a due date of October 1st; increase in fines; an addition of a late fee for dues that have not been paid by January 1st; and added clarifications such as indicating "calendar days" rather than simply "days."

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, March 5, 2008, in the form hereto attached as Exhibit "A". The public comment period was extended to April 30, 2008. On May 8, 2008, the DIAA Board again considered the proposed regulation changes along with any comments received. A comment from the State Board was received that related to the terminology used by a charter school to reflect the principal or headmaster. Definitions were added to address this issue. On May 8, 2008, the DIAA Board voted to approve the proposed regulations with the addition of the two clarifying definitions.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) in order to include a new definitions section, increase membership dues to address rising insurance costs, and add a due date of October 1st for membership dues. Other changes include; increase in fines, an addition of a late fee for dues that have not been paid by January 1st, and added clarifications such as indicating "calendar days" rather than simply "days." Language has been added to recognize the different administrative heads of school.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) 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** 1006 Delaware Interscholastic Athletic Association (DIAA) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) 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 May 15, 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 15th day of May 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

1006 Delaware Interscholastic Athletic Association (DIAA)**1.0 Organization Name, and Purpose, and Definitions**

1.1 The organization shall be known as the Delaware Interscholastic Athletic Association (DIAA) and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's Rules and Regulations governing the conduct of interscholastic athletics.

1.2 Definitions

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

["Administrative Head of School" means the chief or head individual in charge of the school traditionally referred to or generally known as the principal.]

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 Del.C. Chapter 3.

"Department" means the Delaware Department of Education.

"Guardian or Legal Guardian" means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and shall be created

by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

“Individualized Education Program” or “IEP” means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

“Legally in attendance” means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

“Member school” means a full or associate member school of the DIAA.

“Principal” or “Headmaster” means the Administrative Head of School and includes but is not limited to Head of School, Administrator, Executive Director, or Charter Head.]

“School day(s)” shall mean actual school attendance days during the regular academic school year including a partial day that children are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

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

(Break in Continuity of Sections)

9.2 Eligibility Rule Waiver Request

9.2.1 Unless specifically defined in the eligibility rule in question, “hardship” means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the DIAA Board and in accordance with the following procedures:

9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student to the involved member school’s principal, headmaster or their designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student or the administrator, or both, for granting the waiver.

9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the **[Principle Principal]** or Headmaster indicating whether the school supports the waiver request.

9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The DIAA Board, however, may take into consideration the school’s position on the waiver request when rendering its decision.

9.2.2.2 To aid the DIAA Board in making an informed decision, the waiver request shall include the student’s:

9.2.2.2.1 Official transcripts from the sixth grade through the current school year and semester grades for the current school year;

9.2.2.2.2 Attendance records for the last two (2) years;

9.2.2.2.3 A letter from the Principal or Headmaster either supporting or not supporting the waiver request;

9.2.2.2.4 Medical records (if applicable);

9.2.2.2.5 Legal documentation (if applicable);

9.2.2.2.6 IEP’s (if applicable); and

9.2.2.2.7 Any documentation or evidence to substantiate a hardship or extenuating circumstance exists.

9.2.3 An appearance by the student and his or her parent, guardian or Relative Caregiver before the DIAA Board is mandatory on requests for an eligibility waiver. An appearance by a school representative is strongly encouraged.

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

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1632 06-01-08.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303 (14 **Del.C.** §§122(b) & 303)
14 **DE Admin. Code** 1007

Regulatory Implementing Order

1007 DIAA Sportsmanship

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** 1007 DIAA Sportsmanship. The amendments include a new definitions section; increase in fines; and added clarifications such as inserting language to recognize the different administrative heads of school.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, March 5, 2008, in the form hereto attached as Exhibit "A". The public comment period was extended to April 30, 2008. On May 8, 2008, the DIAA Board again considered the proposed regulation changes along with any comments received. A comment from the State Board was received that related to the terminology used by a charter school to reflect the principal or headmaster. Definitions were added to address this issue. On May 8, 2008 the DIAA Board voted to approve the proposed regulations with the addition of the two clarifying definitions.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship in order to include a definition section for clarification, increase in fines, and inserting language to recognize the different administrative heads of school.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1007 DIAA Sportsmanship attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1007 DIAA Sportsmanship 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** 1007 DIAA Sportsmanship amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1007 DIAA Sportsmanship 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 May 15, 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 15th day of May 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President
 Mary B. Graham, Esquire
 Barbara Rutt
 Dr. Terry M. Whittaker

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

1007 DIAA Sportsmanship

1.0 **Definitions and Sportsmanship**1.1 Definitions

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

["Administrative Head of School" means the chief or head individual in charge of the school traditionally referred to or generally known as the principal.]

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Chapter 3.

"Department" means the Delaware Department of Education.

"Guardian or Legal Guardian" means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Individualized Education Program" or "IEP" means a written statement for a child with a disability as defined in 14 **DE Admin. Code** 922.

"Legally in attendance" means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

"Member school" means a full or associate member school of the DIAA.

["Principal" or "Headmaster" means the Administrative Head of School and includes but is not limited to Head of School, Administrator, Executive Director, or Charter Head.]

"School day(s)" shall mean actual school attendance days during the regular academic school year including a partial day that children are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

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

1.2 Sportsmanship

1.2.1 Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

4-4 1.2.1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

4-2 1.2.1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

4-3 1.2.1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

4-4 1.2.1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning

sportsmanship prior to the start of each athletic contest.

~~4.5~~ 1.2.1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

~~4.5.1~~ 1.2.1.5.1 The School Administrator and Athletic Director shall:

~~4.5.1.1~~ 1.2.1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.

~~4.5.1.2~~ 1.2.1.5.1.2 Review the Sportsmanship Rule with all athletic staff.

~~4.5.1.3~~ 1.2.1.5.1.3 Insist upon strict compliance with all DIAA rules and regulations.

~~4.5.1.4~~ 1.2.1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

~~4.5.1.5~~ 1.2.1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

~~4.5.1.6~~ 1.2.1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

~~4.5.1.7~~ 1.2.1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.

~~4.5.2~~ 1.2.1.5.2 The Coach shall:

~~4.5.2.1~~ 1.2.1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.

~~4.5.2.2~~ 1.2.1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well being of the individual players and that the most important values of competition are derived from playing the game fairly.

~~4.5.2.3~~ 1.2.1.5.2.3 Be a modest winner and a gracious loser.

~~4.5.2.4~~ 1.2.1.5.2.4 Maintain self control at all times and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels.

~~4.5.2.5~~ 1.2.1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.

~~4.5.2.6~~ 1.2.1.5.2.6 Pay close attention to the physical well being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.

~~4.5.2.7~~ 1.2.1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.

~~4.5.2.8~~ 1.2.1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.

~~4.5.2.9~~ 1.2.1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.

~~4.5.2.10~~ 1.2.1.5.2.10 Properly supervise the athletes under his/her immediate care.

~~4.5.3~~ 1.2.1.5.3 The Participant (athletes and cheerleaders) shall:

~~4.5.3.1~~ 1.2.1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of your school and community.

~~4.5.3.2~~ 1.2.1.5.3.2 Be courteous to the visiting team. Your opponents wish to excel as much as you do. Respect their efforts.

~~4.5.3.3~~ 1.2.1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.

~~4.5.3.4~~ 1.2.1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.

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- game and the standards of eligibility. ~~4.5.3.5~~ 1.2.1.5.3.5 Understand and observe the playing rules of the
- the officials and accept their decisions without complaint. ~~4.5.3.6~~ 1.2.1.5.3.6 Respect the integrity and ~~judgement~~ judgment of
- not violate the trust entailed in being a guest. ~~4.5.3.7~~ 1.2.1.5.3.7 Respect the facilities of the host school and do
- ~~4.5.4~~ 1.2.1.5.4 The Official shall:
- thoroughly trained to administer them. ~~4.5.4.1~~ 1.2.1.5.4.1 Know the rules and interpretations and be
- or comments that will embarrass the players or coaches. ~~4.5.4.2~~ 1.2.1.5.4.2 Maintain self control in all situations.
- good official will not attempt to compensate later for an unpopular decision. ~~4.5.4.3~~ 1.2.1.5.4.3 When enforcing the rules, do not make gestures
- team, player, or game situation with those not immediately concerned. ~~4.5.4.4~~ 1.2.1.5.4.4 Be impartial and fair, yet firm, in all decisions. A
- of the players, coaches, and spectators in promoting good sportsmanship. ~~4.5.4.5~~ 1.2.1.5.4.5 Refrain from commenting upon or discussing a
- ~~4.5.5~~ 1.2.1.5.5 The Spectator shall:
- definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman ~~4.5.5.1~~ 1.2.1.5.5.1 Realize that he/she represents the school just as
- and to encourage through his/her behavior the practice of good sportsmanship by others. ~~4.5.5.2~~ 1.2.1.5.5.2 Recognize that good sportsmanship is more
- important than victory by approving and applauding good team play, individual skill, and outstanding examples of ~~4.5.5.2.1~~ 1.2.1.5.5.2.1 Profanity, vulgarity, obscene gestures,
- which shall not be tolerated: ~~4.5.5.2.2~~ 1.2.1.5.5.2.2 Throwing objects.
- abusive language, or derogatory remarks. ~~4.5.5.2.3~~ 1.2.1.5.5.2.3 Going onto the playing surface and
- interrupting a contest. ~~4.5.5.2.4~~ 1.2.1.5.5.2.4 Use of alcohol or other controlled
- substances. ~~4.5.5.3~~ 1.2.1.5.5.3 Respect the judgement and integrity of the
- officials, recognizing that their decisions are based upon game conditions as they observe them. ~~4.5.5.4~~ 1.2.1.5.5.4 Treat visiting teams and officials as guests
- extending to them every courtesy. ~~4.5.5.5~~ 1.2.1.5.5.5 Be modest in victory and gracious in defeat.

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

[http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1635 06-01-08.htm](http://regulations.delaware.gov/register/june2008/final/11%20DE%20Reg%201635%2006-01-08.htm)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303 (14 **Del.C.** §§122(b) & 303)
14 **DE Admin. Code** 1008

Regulatory Implementing Order

1008 DIAA Junior High and Middle School Interscholastic Athletics

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** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The amendments include a new definitions section; increase in fines; additions and clarifications to the circumstances when a student must have a physician's note to resume participation after an injury; change to the out-of season coaching rule and the period of time a coach is able to coach over the summer; increased the maximum value of recognition awards given by schools including booster clubs from \$150.00 to \$250.00; adds language to clarify the standards and process for the application of a new officials' association; and adds clarifications that a student must be legally in attendance on the school day to participate in athletics, and a student must have a medical physical in order to try out as well as practice, scrimmage, and compete, and adds language to recognize the different administrative heads of school.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, March 5, 2008, in the form hereto attached as Exhibit "A". The public comment period was extended to April 30, 2008. On May 8, 2008, the DIAA Board again considered the proposed regulation changes along with any comments received. Comments were received regarding changes to the 8th grade eligibility; however, there were no formal amendments made to this provision. The eligibility for 8th grade does not change. A comment from the State Board was received that related to the terminology used by a charter school to reflect the principal or headmaster. Definitions were added to address this issue. On May 8, 2008, the DIAA Board voted to approve the proposed regulations with the addition of the two clarifying definitions.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics in order to include a new definitions section, additions and clarifications to the circumstances when a student must have a physician's note to resume participation after an injury; change to the out-of season coaching rule and the period of time a coach is able to coach over the summer. The amended regulation also includes an increase in fines and an increase to the maximum value of recognition awards given by schools including booster clubs from \$150.00 to \$250.00. Language has been added to clarify the standards and process for the application of a new officials association. Clarifications has been added that a student must be legally in attendance on the school day to participate in athletics, and a student must have a medical physical in order to try out as well as practice, scrimmage, and compete. Language has been added to recognize the different administrative heads of school.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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** 1008 DIAA Junior High and Middle School Interscholastic Athletics amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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 May 15, 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 15th day of May 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

1008 DIAA Junior High and Middle School Interscholastic Athletics

1.0 **National Federation of State High Schools, Conferences, Contracts, and Equivalency Rules and Definitions**

1.1 National Federation of High School Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS).

The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed of public and nonpublic schools. When established they must submit its proposed membership and its constitution and bylaws to the DIAA Board of Directors and must be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the conference must be compatible with all provisions of the DIAA Regulations; interpretations and rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and nonmember or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a ~~\$15.00~~ \$50.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.4 ~~Equivalent~~ Equivalency Rules

1.4.1 A full member school shall not participate in a scrimmage or contest with an instate school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage is defined as: an informal competition between schools in which officials are not compensated, a score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or nonmember school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an ~~in~~ in ~~state~~ in school that is not a member in good standing of DIAA unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with college students. This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a ~~\$100.00~~ \$500.00 fine.

1.5 Definitions

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

["Administrative Head of School" means the chief or head individual in charge of the school traditionally referred to or generally known as the principal.]

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 Del.C. Chapter 3.

"Department" means the Delaware Department of Education.

"Guardian or Legal Guardian" means an individual who legally has responsibility for the care

and management of the student during the student's minority. The relationship is a legal one and shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Individualized Education Program" or "IEP" means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

"Legally in attendance" means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

"Member school" means a full or associate member school of the DIAA.

["Principal" or "Headmaster" means the Administrative Head of School and includes but is not limited to Head of School, Administrator, Executive Director, or Charter Head.]

"School day(s)" means actual school attendance days during the regular academic school year including a partial day that students are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

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

(Break in Continuity of Sections)

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

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1639 06-01-08.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303 (14 Del.C. §§122(b) & 303)
14 DE Admin. Code 1009

REGULATORY IMPLEMENTING ORDER

1009 DIAA High School Interscholastic Athletics

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 1009 DIAA Senior High School Interscholastic Athletics. The amendments include a new definitions section; increase in fines; additions and clarifications to the circumstances when a student must have a physician's note to resume participation after an injury; changes the out-of season coaching rule and the period of time a coach is able to coach over the summer; increases the maximum value of recognition awards given by schools including booster clubs from \$150.00 to \$250.00; adds language to clarify the standards and process for the application of a new officials' association; expands the prohibition of splitting teams between different competitions on the same day to all sports and adds a one time per season exception per team; changes outdated language related to shared-time students to reflect current practice with all day vocational schools and clarifies that a student may only represent the school where the student is receiving the majority of academic credits including core academic credits; revised the current transfer rule to reflect changes in eligibility standards for transfers occurring after the first day of school of the 2008-09 school year, and added clarifications such as that a student must be legally in attendance on the school day to participate in athletics, a student must have a medical physical in order to try out as well as practice, scrimmage, and compete, and inserting language to recognize the different administrative heads of school.

Prior to the publication of the proposed rule changes in the *Register of Regulations*, DIAA sent the regulations and proposals for consideration and comment to the DIAA Rules and Regulation Committee in the summer of 2007. The DIAA Executive Director and the Rules and Regulation Committee worked with the member schools and other associations and solicited input and comment on the proposed changes and participated in the process through meetings with administrators. Based on comments and concerns raised by the member schools, the Rules and Regulations Committee made changes to the draft rule changes including the transfer rule. In

January 2008, the proposed regulations and changes were shared with all member schools at DIAA's annual meeting. The athletic directors and administrators present at the meeting provided input regarding the proposed changes. Later the same day, the DIAA Board met to consider the proposed regulation changes and comments of the membership. After considering the comments, the DIAA Board made changes to the proposed rule changes and approved the rule changes. In order to give member schools additional time to comment on the proposed rule changes, the DIAA placed the proposed changes on the agenda of their February meeting. At the February meeting, after considering the comments, the DIAA Board made additional changes and voted to approve the draft rule changes and forward them to the Secretary for approval of the SBE for publication in the *Register of Regulations*.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, March 5, 2008, in the form hereto attached as Exhibit "A". The public comment period was extended to April 30, 2008. On May 8, 2008, the DIAA Board again considered the proposed regulation changes along with any comments received. There were 17 comments received from the public. The comments were related primarily to the proposed changes in the transfer rule provision with 6 comments supporting the proposed change and 11 in opposition to the change. In addition a comment from the State Board was received that related to the terminology used by a charter school to reflect the principal or headmaster. Definitions were added to address this issue. The DIAA Board reviewed the comments and considered in person public comment prior to approving the regulations. The DIAA Board considered the lengthy process undertaken in adopting the final regulations and considered that many of concerns raised by the public comments were already considered by the Board in that process. The DIAA Board noted that the majority of their member schools support the proposed changes to the transfer rule and although there are some member schools that do not agree with the change and there is some opposition to the current revision of the transfer rule, the DIAA Board found that the proposed rule is in the best interest of interscholastic athletics and education. On May 8, 2008, the DIAA Board voted to approve as final the proposed regulations with the addition of the two clarifying definitions.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA Senior High School Interscholastic Athletics in order to clarify the items stated in the summary above. The Secretary finds that the DIAA Board has undertaken a lengthy process and considered all the comments received. Language has been added to recognize the different administrative heads of school.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA Senior High School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1009 DIAA Senior High School Interscholastic Athletics attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1009 DIAA Senior High School Interscholastic Athletics 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** 1009 DIAA Senior High School Interscholastic Athletics amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA Senior High School Interscholastic Athletics 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 May 15, 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 15th day of May 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of May 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President

Mary B. Graham, Esquire

Jorge L. Melendez

Barbara Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

1009 DIAA ~~Senior~~ High School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts, ~~and~~ Equivalency Rules, and Definitions

1.1 National Federation of High School Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS).

The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United

States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed

of public and nonpublic schools. When established, they must submit their conferences' proposed membership and its constitution and bylaws to the DIAA Board of Directors and be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the

conferences must be compatible with all provisions of the DIAA Regulations; interpretations and with the rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or

conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master

contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and nonmember or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive

Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a ~~\$15.00~~ \$50.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the

Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing

schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated

staff member of the home school of the earlier varsity contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.3.4.1 If a game is not played because an out of state opponent qualifies for its state championship series and the date of the playoff game conflicts with the date of the regular season game, a forfeit shall not be awarded.

1.4 Equivalency Rules

1.4.1 A full member school shall not participate in a scrimmage or contest with an in state school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage shall be defined in as: an informal competition between schools in which the officials are not compensated, a score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or non member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an associate or non member school of another state association unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with post graduate students or college students. This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a ~~\$100.00~~ \$500.00 fine. 1.5 Definitions

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

["Administrative Head of School" means the chief or head individual in charge of the school traditionally referred to or generally known as the principal.]

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 Del.C. Chapter 3.

"Department" means the Delaware Department of Education.

"Guardian or Legal Guardian" means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Individualized Education Program" or "IEP" means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

"Legally in attendance" means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

"Member School" means a full or associate member school of the DIAA.

["Principal" or "Headmaster" means the Administrative Head of School and includes but is not limited to Head of School, Administrator, Executive Director, or Charter Head.]

"School day(s)" shall mean actual school attendance days during the regular academic school year including a partial day that students are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

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

***Please Note:** As the rest of the sections were not amended since the proposal in the March 2008 issue, they are not being published here. A copy of the final regulation is available at <http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1642 06-01-08.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 2901 (14 **Del.C.** §2901)
14 **DE Admin. Code** 1543

Regulatory Implementing Order

1543 Secondary Science 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 regulation **DE Admin. Code** 1543 Secondary Science Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended **DE Admin. Code** 1533 Middle Level Science Teacher. This regulation sets forth the requirements for a Secondary Science Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Friday February 29, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written 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 Adopt 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** 1543 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF MAY, 2008

Kathleen Thomas, Chair

Cathy Cathcart

Joanne Christian

Marilyn Dollard

Sandra Falatek

Karen Gordon

Barbara Grogg

Leslie Holden

Lori Hudson

Dorothy McQuaid

Mary Mirabeau

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 15TH DAY OF MAY, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President

Mary B. Graham, Esquire

Jorge L. Melendez

Barbara Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

1543 Secondary Science 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 Secondary Science Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8[, and may be used in lieu of the Middle Level Science Teacher certification in grades 6 to 8.] Certificates issued include Biology, Chemistry, Earth Science, Integrated Science, Physical Science, and Physics.

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

2.0 Definitions

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

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

“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area. A major or its equivalent for eligibility for a Standard Certificate for Physical Science includes physics, chemistry, astronomy, space science, engineering, or a related field. A major or its equivalent in any science discipline or related field is acceptable for eligibility for a Standard Certificate for Integrated Science.

3.0 Standard Certificate

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

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

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

6 DE Reg. 319 (9/1/02)

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

8 DE Reg. 1138 (2/1/05)

10 DE Reg. 100 (07/01/06)

11 DE Reg. 1181 (03/01/08)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1550

Regulatory Implementing Order

1550 AgriScience Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation **DE Admin. Code** 1550 Agriculture Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. The amended regulation title will read 1550 AgriScience Teacher. This regulation sets forth the requirements for an AgriScience Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* on April 2, 2008 and the *Delaware State News* on April 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** 1550 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF MAY, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF MAY, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

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

*Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1299 (11 DE Reg. 1299). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

http://regulations.delaware.gov/register/june2008/final/11_DE_Reg_1648_06-01-08.htm

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1551

Regulatory Implementing Order

1551 Business Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1551 Business Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Business Education Teacher.

Notice of the proposed amendment of the regulation was published in the News Journal on April 2, 2008 and the Delaware State News on April 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** 1551 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF MAY, 2008

Kathleen Thomas, Chair
 Joanne Christian
 Sandra Falatek
 Barbara Grogg
 Lori Hudson
 Mary Mirabeau
 Gretchen Pikus
 Michael Thomas

Cathy Cathcart
 Marilyn Dollard
 Karen Gordon
 Leslie Holden
 Dorothy McQuaid
 Wendy Murray
 Karen Schilling-Ross
 Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF MAY, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
 Mary B. Graham, Esquire
 Barbara Rutt
 Dr. Terry M. Whittaker

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

1551 Business Education Teacher

1.0 **Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Business Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 **Definitions**

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

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

["Major in Business" means a major in business administration or management, or a related field, including, but not limited to, accounting, economics, finance or marketing.]

3.0 **Standard Certificate**

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

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

10 DE Reg. 100 (07/01/06)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1554

Regulatory Implementing Order

1554 Family and Consumer Sciences Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1554 Family and Consumer Sciences Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Family and Consumer Sciences Teacher.

Notice of the proposed amendment of the regulation was published in the News Journal on April 2, 2008 and the Delaware State News on April 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** 1554 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF MAY, 2008

Kathleen Thomas, Chair
 Joanne Christian
 Sandra Falatek
 Barbara Grogg
 Lori Hudson
 Mary Mirabeau
 Gretchen Pikus
 Michael Thomas

Cathy Cathcart
 Marilyn Dollard
 Karen Gordon
 Leslie Holden
 Dorothy McQuaid
 Wendy Murray
 Karen Schilling-Ross
 Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF MAY, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
 Mary B. Graham, Esquire
 Barbara Rutt
 Dr. Terry M. Whittaker

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

*Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1307 (11 DE Reg. 1307). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1651 06-01-08.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1555

Regulatory Implementing Order

1555 Marketing Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1555 Marketing Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Marketing Education Teacher.

Notice of the proposed amendment of the regulation was published in the News Journal on April 2, 2008 and the Delaware State News on April 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** 1555 of the Administrative Code of Regulations of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF MAY, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF MAY, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

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

***Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1310 (11 DE Reg. 1310). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1653 06-01-08.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1557

Regulatory Implementing Order

1557 Technology Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1557 Technology Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Technology Education Teacher.

Notice of the proposed amendment of the regulation was published in the News Journal on April 2, 2008 and the Delaware State News on April 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 1557 of the Administrative Code of Regulations of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF MAY, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF MAY, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

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

1557 Technology Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Technology Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Technology Education” means a study of technology, which provides an opportunity for students to learn about the processes and knowledge related to technology that are needed to solve problems and extend human capabilities. This study includes the application of the Design Process, the Systems Model, technological resources, engineering design and Design Briefs. **[Technology Education is not a curricular area defined by the study and application of computer-based skills e.g., keyboarding, word processing, spreadsheets, data bases and/or multi-media presentations.]**

3.0 Standard Certificate

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

4.0 Additional Requirements

- 4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:
- 4.1.1 If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Technology Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.

9 DE Reg. 547 (10/1/05)

Renumbered effective 6/1/07 - see Conversion Table

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program 11003.8 Necessity of Child Care

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program, as it relates to the determination of need for child care. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the April 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, as it relates to the determination of need for child care.

Statutory Authority

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996;
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41); and,
- 45 CFR, Part 98, Subpart C, Eligibility for Services.

Summary of Proposed Change

DSSM 11003.8, Necessity of Child Care: This rule revision removes the language (and related text) that negates the need for child care if there is another responsible and capable adult in the household who could care for the child. Only parents are legally obligated to care for their child.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizen's (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows:

As background, the Child Care Subsidy Program is designed to supplement the care children receive from their parents when the parents work, parent(s) participate in an employment and training program, parent(s) have a special need requiring absence from the home, or the children need to be protected from abuse/neglect. See attached 16 **DE Admin. Code** §11002.2.

The proposed amendment expands eligibility. The current standard disallows eligibility if there is another "responsible and capable adult in the household (such as another family member)". DSS proposes to delete this limitation based on the rationale that "only parents are legally obligated to care for their child."

Parenthetically, we note that similar issues are presented in the Medicaid program when a parent seeks private duty nursing or personal assistance for a child with a disability. MCOs have historically manifested reluctance to fund such services based on a vary narrow view of parental justification and need.

FINAL REGULATIONS

The Councils endorse the proposed regulation since it favors eligibility and recognizes that parents cannot "force" other adults in a household to care for children.

Agency Response: Your participation is appreciated. Thank you for your endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the April 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, as it relates to the determination of need for child care is adopted and shall be final effective June 10, 2008.

Vincent P. Meconi, Secretary, DHSS, May 15, 2008

***Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1328 (11 DE Reg. 1328). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1657 06-01-08.htm>

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 314 and 2741 (18 **Del.C.** §§314 and 2741)
18 **DE Admin. Code** 302

ORDER

302 Captive Insurance Financial Regulation [Formerly Regulation 51]

Proposed changes to Regulation 302 relating to Captive Insurance Financial Regulation were published in the *Delaware Register of Regulations* on April 1, 2008. The comment period remained open until May 5, 2008. There was no public hearing on the proposed changes to Regulation 302. Public notice of the proposed changes to Regulation 302 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 changes for comment. The purpose of the proposed amendment is to update financial and reporting requirements of captive insurance companies to conform with the Delaware Revised Captive Insurance Act, 18 *Del. C.* Ch. 69.

Findings of Fact

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

Section 311 of the Insurance Code authorizes the promulgation of reasonable rules and regulations necessary for, or as an aid to, the administration or effectuation of any provision of the Insurance Code.

Section 6915 of the Insurance Code authorizes the promulgation of rules and regulations relating to captive insurance companies as are necessary to enable the Commissioner to carry out the provisions of the Delaware Revised Captive Insurance Act.

The revisions to Regulation 302 are reasonable and are necessary in order for the Commissioner to regulate adequately and appropriately captive insurance companies that are formed and domiciled in Delaware.

Decision and Effective Date

Based on the provisions of 18 *Del. C.* §§ 311(a) and 6915 and 29 *Del. C.* §§ 10113-10118 and the record in this docket, I hereby adopt Regulation 302 as amended and as may more fully and at large appear in the version attached hereto to be effective on June 11, 2008.

Text and Citation

The text of the proposed amendments to Regulation 302 last appeared in the Register of Regulations Vol. 11, Issue 10, pages 1329-1337.

IT IS SO ORDERED this 6th day of May 2008.

Matthew Denn
Insurance Commissioner

302 Captive Insurance Financial Regulation [Formerly Regulation 51]

(Break in Continuity of Sections)

3.0 Annual Audit.

3.1 Each company shall have an annual audit by an Independent Certified Public Accounting Firm and shall file ~~such audited financial report~~ the annual audit] with the Commissioner on or before June 30 for the year ending December 31 immediately preceding.

3.1.1 A company that elects to file its annual report on a fiscal year basis pursuant to 18 **Del.C.** §6907(c), shall submit its annual audit report to the Commissioner no later than 180 days following the close of its fiscal year.

3.1.2 A company shall not file an annual audit in which a partner or other person responsible for rendering such annual audit has acted in that capacity for more than seven (7) consecutive years. Each company filing an annual audit shall disqualify such person from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) years. A company may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

3.1.2.1 Number of partners, expertise of the partners or the number of insurance clients in the company's current independent certified public accounting firm.

3.1.2.2 Premium volume of the company; or

3.1.2.3 Any other factor.

3.2 The annual audit shall consist of the following:

3.2.1 Report of independent certified public accounting firm.

3.2.2 Balance sheet reporting assets (including, as applicable, admitted assets), liabilities, capital and surplus.

3.2.3 Statement of operations.

3.2.4 Statement of cash flows.

3.2.5 Statement of changes in capital and surplus.

3.2.6 Notes to financial statements. These notes shall be those required under generally accepted accounting principles, statutory accounting principles or international financial reporting standards, as applicable, and shall include:

- 3.2.6.1 A reconciliation of differences, if any, between the audited financial statements and the annual report required hereunder with a written description of the nature of these differences.
- 3.2.6.2 A summary of ownership and relationships of the company and all affiliated companies.
- 3.2.7 The financial statements included in the annual audit shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual report of the company filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of the end of the current fiscal year and the amounts as of the end of the immediately preceding fiscal year. However, in the first year in which a company is required to file an annual audit, the comparative data may be omitted.
- 3.3 Report on Significant Deficiencies and Material Weaknesses in Internal Controls
- 3.3.1 In addition to the annual audit, each company shall furnish the Commissioner with a written report, prepared in accordance with SAS No. 112, or any successor thereto, by the independent certified public accounting firm describing significant deficiencies and material weaknesses in the company's internal control structure noted by the independent certified public accounting firm during the audit. SAS No. 112, Communication of Internal Control Related Matters Identified in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants), requires an independent certified public accounting firm to communicate significant deficiencies and material weaknesses noted during a financial statement audit to the appropriate parties within an entity.
- 3.3.2 The company is required to provide a description of remedial actions taken or proposed to correct material weaknesses and, at the Commissioner's discretion, significant deficiencies, if such actions are not described in the independent certified public accounting firm's report.
- 3.4 Accountant's Letter
- 3.4.1 The independent certified public accounting firm shall furnish the company, for inclusion in the filing of the annual audit, a letter stating:
- 3.4.1.1 That **[he it]** is independent with respect to the company and conforms to the standards of **[his its]** profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants or applicable standards of the International Federation of Accountants or its member organizations.
- 3.4.1.2 The general background and experience of the staff engaged in the audit, and the length of time the person responsible for preparing the annual audit has served in that capacity.
- 3.4.1.3 That the independent certified public accounting firm understands that the audited annual report and its opinions thereon will be filed, in compliance with this regulation, with the Commissioner, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of the company.
- 3.4.1.4 That the independent certified public accounting firm consents to the requirements of Section 7.0 of this regulation and that the independent certified public accounting firm consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the work papers as defined in Section 7.0.
- 3.4.1.5 That the partner or person in charge of the annual audit is properly licensed by an appropriate licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants or other member organization of the International Federation of Accountants.

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

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1658 06-01-08.htm>

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322B (19 Del.C. §2322B)

ORDER

1340 Workers' Compensation

A public hearing was held on April 14, 2008 to receive public comments relating to the certification process for the Health Care Provider Application for Certification ("Certification Rules and Regulations" and "Certification Form") for adoption by the Delaware Department of Labor. The members of the Health Care Advisory Panel ("Panel") present recommend that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Vol. 11, Issue 9 (March 1, 2008).

Summary of the Evidence and Information Submitted

Exhibits Admitted:

- Exhibit 1 – *News Journal* Affidavit of publication of notice of public hearing.
- Exhibit 2 – *Delaware State News* Affidavit of publication of notice of public hearing.

No written comments or public comments made.

The Panel detected a scribe's error in the Certification Form. Since it was never the intent of the Panel to limit the Certification to only Delaware health care practitioners, the panel agreed to delete the reference to Delaware ("DE") on the Certification. The Panel voted unanimously to recommend approval of the proposed Certification Rules and Regulations and the Certification Form.

Recommended Findings of Fact with respect to the Evidence and Information

The Panel is persuaded that the proposals are consistent with administering the statutory directives in the new workers compensation law.

Recommendation

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 15th day of April, 2008.

HEALTH CARE ADVISORY PANEL

Bruce Rudin, M.D., Chair
Wayne Smith
Matthew Eppley, M.D.
Marcia DeWit, J.D.
Joseph Rhoades, Esquire
Josette Covington, M.D.
Richard Hefron

George B. Heckler, Esquire, Vice Chair
Linda Cho
Walter Powell, M.D.
Glenn Brown
Barry Baskt, D.O.
Wayne Collison

Decision and Effective Date

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel, the proposals (1) Certification Rules and Regulations and (2) Certification Form are hereby adopted and made effective **May 23, 2008**.

Text and Citation

The Certification Notice appeared in the *Register of Regulations*, Vol. 11, Issue 9 (March 1, 2008). The Certification Rules and Regulation and Certification Form are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: www.delawareworks.com.

DEPARTMENT OF LABOR

Thomas B. Sharp, Secretary of Labor

***Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1337 (11 DE Reg. 1337). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at:**

[http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1661 06-01-08.htm](http://regulations.delaware.gov/register/june2008/final/11%20DE%20Reg%201661%2006-01-08.htm)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))
7 **DE Admin. Code** 3507 and 3758

Secretary's Order No.: 2008-F-0020

**3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas
3758 Possession of V-notched Lobsters Prohibited**

Date of Issuance: May 15, 2008

Effective Date: June 11, 2008

I. Background

A public hearing was held on Thursday, April 24, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation 3507 concerning black sea bass size limits, trip limits, seasons and quotas. Also at issue in this hearing was a minor proposed amendment to Delaware Shellfish Regulation 3758, which concerns the possession of "V-notched" lobsters being prohibited. The Department's statutory basis to act on these matters can be found in 7 **Del.C.** §903, (3)(2)(a), and 7 **Del.C.** §1902, §2502. No other regulations are affected by these proposals.

The commercial black sea bass fishery in Delaware is managed by an individual quota system (ITQ) that is distributed to those fishermen meeting specific qualifying criteria for participation in either the fish pot or commercial hook and line fisheries. The current regulations do not allow the transfer of quota between individuals. However, declining quotas due to slower than anticipated stock recovery rates, as well as a lack of participation by some individuals that are assigned quotas, has created a situation where it would be advantageous to the

fishermen to transfer quota in order to fully utilize Delaware's annual commercial black sea bass quota. The Department has proposed that eligible participants in the commercial sea bass fishery be allowed to make a one-time per season transfer of their quota, either in part or in whole, to another eligible participant in either the commercial sea bass pot fishery or the commercial sea bass hook and line fishery, respectively, on forms to be supplied by the Department.

The purpose of the proposed lobster regulatory change found in Delaware Shellfish Regulation 3758 is to bring Delaware into compliance with Addendum XI to Amendment 3 of the Atlantic States Marine Fisheries Commission lobster management plan for federal waters off Delaware, specifically, in what is known as Lobster Conservation Management Area 5. Delaware is required to re-define marking requirements for female lobsters. The mark used, called a "V-notch", is presently defined in Delaware regulations as a straight-sided triangular cut without setal hairs at least 1/4 inch in depth in the right of center tail flipper. This marking technique for released female lobsters is designed so that if the lobster so marked is recaptured, it can be recognized as a mature female and released. Although these marks are required to be applied to lobsters by states north of Delaware, it is possible for marked lobsters to show up in waters off of Delaware or to be taken from ocean waters north of Delaware and returned to a Delaware port, so Delaware must be in compliance with the federal marking and retention requirements. To remain in compliance Delaware is required to re-define the V-notch to be 1/8 inch or deeper, with or without setal hairs in the notch. With the new definition in force, no one will be allowed to land in Delaware any lobster bearing a V-notch of 1/8 inch or deeper with or without setal hairs, which begin to grow into the notch.

Only two members of the public attended this hearing on April 24, 2008 to listen to the Department's discussion regarding these proposed changes to the above referenced regulations, and no formal objections were raised regarding the same. Afterwards, the Hearing Officer prepared her report regarding this matter and submitted the same to the Secretary for review and consideration. Proper notice of the hearing was provided as required by law.

II. Findings

The Department has provided sound reasoning with regard to the proposed amendments to the aforementioned regulations, as reflected in the Hearing Officer's Report of May 14, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of the proposed amendment to the existing Delaware Tidal Finfish Regulation 3507 concerning black sea bass size limits, trip limits, seasons and quotas, will allow eligible participants in the commercial sea bass fishery to make a one-time per season transfer of their quota, either in part or in whole, to another eligible participant in either the commercial sea bass pot fishery or the commercial sea bass hook and line fishery, respectively, on forms to be supplied by the Department;
7. Promulgation of the proposed amendment to Delaware Shellfish Regulation 3758 would bring Delaware into compliance with Addendum XI to Amendment 3 of the Atlantic States Marine Fisheries Commission lobster management plan for federal waters off Delaware, specifically, in what is known as Lobster Conservation Management Area 5, by re-defining V-notch marking requirements for female lobsters;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
9. The Department's proposed regulation, as published in the April 1, 2008 *Delaware Register of Regulations* and set forth in 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*; and that

FINAL REGULATIONS

10. The Department's proposed amendments to both Delaware Tidal Finfish Regulation 3507 and Delaware Shellfish Regulation 3758 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulations, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

11. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order

Based on the record developed, as reviewed in the Hearing Officer's Report dated May 14, 2008 and expressly incorporated herein, it is hereby ordered that the proposed amendments to both Delaware Tidal Finfish Regulation 3507 and Delaware Shellfish Regulation 3758 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons

The promulgation of State of Delaware Tidal Finfish Regulation No. 3507 will allow eligible participants in the commercial sea bass fishery to make a one-time per season transfer of their quota, either in part or in whole, to another eligible participant in either the commercial sea bass pot fishery or the commercial sea bass hook and line fishery, respectively, on forms to be supplied by the Department. The ability to transfer said quotas will be advantageous to eligible fishermen, given the declining quotas due to slower than anticipated stock recovery rates, as well as a lack of participation by some individuals that are assigned quotas here in Delaware, so that Delaware's annual commercial black sea bass quota can be fully utilized.

Additionally, the promulgation of State of Delaware Shellfish Regulation 3758 would bring Delaware into compliance with Addendum XI to Amendment 3 of the Atlantic States Marine Fisheries Commission lobster management plan for federal waters off Delaware, specifically, in what is known as Lobster Conservation Management Area 5, by re-defining V-notch marking requirements for female lobsters.

In developing these regulatory amendments, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** §903(e)(2)(a).

John A. Hughes, Secretary

Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1338 (11 DE Reg. 1338). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1662 06-01-08.htm>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

2700 Board of Professional Land Surveyors

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

24 **DE Admin. Code** 2700

ORDER

2700 Board of Professional Land Surveyors

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 17, 2008 at a scheduled meeting of the Delaware Board of Professional Land Surveyors ("the Board") to

receive comments regarding proposed amendments to the Board's Rules and Regulations. The proposed Rules and Regulations were published in the *Register of Regulations*, Vol. 11, Issue 9, on March 1, 2008.

Background

The Board has proposed a number of changes to its Rules and Regulations.

First, Regulation 1.0 is amended to clarify the titles and roles of the Board officers. With respect to Regulation 2.0, language pertaining "field experience" and "direct supervision" is re-written for greater clarity. Regulation 8.0 is stricken and replaced with the requirements for licensure of an applicant holding a degree from a program outside of the United States.

There are several amendments to the Regulations pertaining to continuing education. Language is stricken from Regulation 10.3.2 to clarify that courses must be taught by qualified instructors who are able to interact with the students. With respect to Regulation 10.4.2, language pertaining to a licensee's request for carryover professional development hours is stricken. Regulation 10.8 is amended to state that submissions in response to an audit must be signed and sealed with a Board approved seal. A sanction for noncompliance with continuing education requirements is added to Regulation 10.9: "The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 fine."

The Board has proposed a number of changes to Regulation 12.2 pertaining to procedures and standards. Several provisions are re-written for greater clarity. In addition, an amendment to Regulation 12.2 specifies that a plat shall be prepared when a surveyor conducts an ALTA/ACSM Land Title Survey or a Subdivision Survey. Regulation 12.2.2 is amended to state that a plat shall indicate the source of title, tax parcel number and postal address, where applicable. Regulation 12.2.3 is amended to add a statement that bearings shall be written in a clockwise direction on the plat, unless impractical. An amendment to Regulation 12.2.4 adds "firm name" to the methods whereby a monument shall be identified. Regulations 12.2.8 and 12.2.16.3 are amended to state that length and direction shall be indicated in a clockwise direction, unless impractical.

A specific reference to "Attachment A" is added to Regulation 12.4, pertaining to classification of surveys. There are several changes to the Regulations concerning mortgage inspection plans ("MIPs"). Regulation 11.2 is re-numbered and a sentence is added stating that, for mortgage and deed-related surveys in Kent and Sussex Counties, the minimum requirement is an improvement location drawing, prepared in compliance with Regulation 12.0. In addition, Regulations are added pertaining to the electronic transmittal of documents. An amendment to Regulation 13.2.5, pertaining to the Code of Ethics, states that a surveyor shall not permit the use of his or her professional seal on any work for which he or she did not have direct supervision. With respect to Regulation 16.0, concerning renewal of lapsed licenses, the following sentence is stricken: "A licensee who does not file for renewal within that period must re-apply for a new license."

Finally, Attachment B, addressing evaluation of applicant credentials, is stricken in its entirety.

The Board's authority to promulgate Rules and Regulations implementing or clarifying specific sections of Chapter 27 is set forth in 24 **Del.C.** §2706(a)(l). The proposed amendments specifically identify changes related to the practice of professional land surveyors.

Summary of the Evidence and Information Submitted

Michael Paraskewich and James Bielicki, of the Pelsa Company, submitted to the Board a letter regarding the amended Regulation 12.12. They stated their view that consumers in Kent and Sussex Counties should be given the option of having a mortgage inspection plan done. They noted that consumers in New Castle County, and in Maryland, New Jersey and Pennsylvania, are given this option.

At the April 17, 2008 hearing, there was discussion pertaining to a number of the proposed amendments. There was a suggestion of adding "the hundred and county" to the revision to Regulation 12.2.2. There was discussion as to whether it was appropriate to strike the last sentence of Regulation 16.0, addressing the renewal of lapsed licenses.

There was also discussion regarding Regulation 12.2, with respect to monumentation of minor subdivision plans.

It was suggested that the Board address, at a later time, a possible grandfather clause to Regulation 18.4, pertaining to professional seals.

Finally, amended Regulation 12.12 was addressed. Mr. Brad Temple stated that, as set forth in Regulation

12.12, for mortgage and deed related surveys, minimum local standards in Kent and Sussex Counties require an improvement location drawing. Mr. Charles Adams also stated that minimum local standards in Kent and Sussex Counties require an improvement location drawing.

While there was extensive discussion at the hearing regarding a variety of issues, after deliberation, the Board decided to address any other changes to the Rules and Regulations at a later time and to approve the proposed amendments as published.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the proposed Rules and Regulations and the evidence and information submitted.

The Board finds that adopting the amended Rules and Regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

Decision and Effective Date

The Board hereby adopts the changes to the Rules and Regulations to be effective 10 days following publication of this order in the Register of Regulations.

Text and Citation

The text of the revised Rules and Regulations remains as published in the *Register of Regulations*, Vol. 11, Issue 9, March 1, 2008.

SO ORDERED this 15th day of May, 2008.

BOARD OF PROFESSIONAL LAND SURVEYORS

Michael T. Szymanski, PLS, Chairman

R. McBride, PLS, Vice-Chairman

Stephen M. Sellers, PLS, Secretary

Victor Kennedy, Public Member

Frank Szczucka, Public Member

2700 Board of Professional Land Surveyors

(Break in Continuity of Sections)

12.0 Minimum Technical Standards for Licences

12.1 The Board is required under Sections 2701 and 2112(a)(9) to establish minimum technical standards for licensees. The purpose of these standards is to establish minimum technical criteria to govern the performance of surveys when more stringent specifications are not required by other agencies or by contract. Further, the purpose is to protect the inhabitants of this state and generally to promote the public welfare. The Board also established minimum standards for Mortgage Inspection Plans (MIPs), and other types of work, frequently performed by licensees in portions of the state.

12.2 Procedure and Standards. Whenever a surveyor conducts a boundary survey, or an improvement location survey of properties, or an ALTA/ACSM Land Title Survey, or Subdivision Survey, a plat showing the results shall be prepared, ~~and a~~ A copy of the survey shall be furnished to the client unless deemed unnecessary by the client. The plat shall conform to the following requirements and shall include the following information:

12.2.1 The plat shall be drawn on any reasonably stable and durable drawing paper, vellum or film of reproducible quality. No plat or map shall have dimensions of less than 8 ½ x 11 inches.

12.2.2 The plat shall indicate the Source of Title, Tax Parcel Number and, when applicable, the Postal Address of the subject property. The plat shall show the written scale, area and classifications of the survey. These classifications (suburban, urban, rural, and marshland) are based upon both the purposes for which the property is being used at the time the survey is performed and any proposed developments, which are disclosed by the client, in writing. This classification must be based on the criteria in Section 12.4 and the survey must meet the minimum specifications set forth in Attachment A. The scale shall be sufficient to show detail for the appropriate classification.

12.2.3 The horizontal direction of all boundary lines shall be shown in relationship to grid north, magnetic, or in lieu thereof, to true north or to such other established line or lines to which the survey is referenced. The horizontal direction of the boundary lines shall be by direct angles or bearings. A prominent north arrow shall be drawn on every sheet. The description of the bearing reference system shall be stated on the plat. Bearings shall be written in a clockwise direction unless impractical.

12.2.4 All monuments, natural and artificial (man-made), found or set, used in the survey, shall be shown and described on the survey plat. The monuments shall be noted as found or set. All monuments set shall be ferrous metal, or contain ferrous metal, not less than ½ inch in diameter and not less than 18 inches in length, except however, a corner which falls upon solid rock, concrete, or other like materials shall be marked in a permanent manner and clearly identified on the plat. Monuments shall be set at all corners of all surveys as required by these standards, with the exception of meanders such as meanders of streams, tidelands, wetlands, lakes, swamps and prescriptive road rights-of-way. Witness monuments shall be set or referenced whenever a corner monument cannot be set or is likely to be disturbed. Such witness monument shall be set as close as practical to the true corner. If only one (1) witness monument is set, it must be set on the actual boundary line or prolongation thereof. Otherwise, at least two (2) witness monuments shall be set and so noted on the plat of the survey. Monuments shall be identified, where possible, with a durable marker bearing the firm name or the surveyor's registration number and/or name.

12.2.5 The plat of a metes and boundary survey must clearly describe the commencing point and label the point of beginning for the survey.

12.2.6 Notable discrepancies between the survey and the recorded description, shall be noted, and ~~The source of information~~ title used in making the survey, shall be indicated. When an inconsistency is found, including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, the nature of the inconsistency shall be indicated on the drawing.

12.2.7 In the judgment of the surveyor, the description and location of any physical evidence found along a boundary line, including but not limited to fences, walls, buildings or monuments, shall be shown on the drawing.

12.2.8 The horizontal length (distance) and direction (bearing) of each line as determined in an actual survey process shall be shown on the drawing and indicated in a clockwise direction unless impractical.

12.2.9 ~~At least three (3) elements (including~~ The radius, arc length, and chord bearing and chord distance) of all circular curves, shall be shown.

12.2.10 Information used by the surveyor in the property description shall be clearly shown on the plat, including but not limited to, the point of beginning, course bearing, distance, monuments, etc.

12.2.11 The lot and block or tract numbers or other recorded subdivision designations, ~~including those of adjoining lots, if the survey is within a recorded subdivision of the subject property and adjoining properties shall be shown.~~ If the adjoining properties are not within a recorded subdivision, then the name and deed record of all adjoining owners shall be shown.

12.2.12 Recorded public and private rights-of-way or easements which are discovered during the title search performed by others and supplied to the surveyor or graphically shown on the recorded plat, which includes the property, or which are known or observed adjoining or crossing the land surveyed, shall be shown.

12.2.13 Location of all permanent improvements pertinent to the survey, referenced radially and perpendicular to the nearest boundary, shall be shown.

12.2.14 Visible or suspected encroachments onto or from adjoining property or abutting streets, with the extent of such encroachments, shall be shown.

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12.2.15 A plat or survey shall clearly bear the ~~Company~~ Firm Name and individual licensee's name, license number, title, "Professional Land Surveyor", ~~[contract contact]~~ address, and date of survey and original signature and board-approved seal of the licensed surveyor in responsible charge. This signature and seal is certification that the survey meets minimum requirements of the Standards for Land Surveyors as adopted by the Delaware Board.

(Break in Continuity of Sections)

ATTACHMENT A

CONDITION	MARSH	RURAL	SUBURBAN	URBAN	REMARKS AND FORMULA
Unadjusted closure (minimum)	1: 5,000	1:7,500	1:10,000	1:15,000	Loop or between monuments
Angular closure (minimum)	30" N	20" N	15" N	10" N	N = number of angles in traverse
Accuracy of distances	0.10 ft + 200 ppm	0.07 ft + 150 ppm	0.05 ft + 100 ppm	0.03 ft + 50 ppm	100 ppm = 1:10,000
Elevations for boundaries controlled by tides, contours, etc. accurate to:	+ or -.50 ft	Based on NGVD (1929) or NAVD 88			
Location on of] subject property or pertinent improvements, structures, paving, etc.	+ or - 2 ft	+ or - 1 ft	+ or - 0.1 ft	+ or - .10 ft	Any shown improvement within 75["feet]of property must use these tolerances
Positional error in map plotting not to exceed: (applies to original map only)	1/10	1/20	1/20	1/40	National Map accuracy calls for 1/50th inch
Area	0.1 acre	0.1 acre	0.001 acre	+ or - nearest square foot = less than 1 acre; 0.0001 = greater than 1 acre	Areas involving water boundary, Left to discretion of practitioner

(Break in Continuity of Sections)

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

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1664 06-01-08.htm>

DIVISION OF PROFESSIONAL REGULATION

3500 Board of Examiners of Psychologists

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1))
24 **DE Admin. Code** 3500

ORDER

3500 Board of Examiners of Psychologists

The Delaware Board of Examiners of Psychologists was established to “protect the general public . . . from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.” 24 **Del.C.** § 3501. Toward that end, the Board is required to “maintain minimum standards of licensee competency and to maintain certain standards in the delivery of services to the public.” *Id.* One way the Board meets its obligation is by developing “standards assuring professional competence.” *Id.* The Board is authorized by 24 **Del.C.** § 3506(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate its mandates. In accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3506(a)(1), the Board proposed amendments to its regulation 11.0. Specifically, the proposed modification of regulation **11.0 Professional Conduct** would require licensees to adhere to the American Psychological Association’s current Record Keeping Guidelines.

In compliance with 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 9, at page 1228 on March 1, 2008. The hearing has originally been scheduled for April 7, 2008, but was rescheduled to May 5, 2008. The rescheduling notice was published in the Delaware *Register of Regulations*, Volume 11, Issue 11, at page 1505 on May 1, 2008.

Summary of the Evidence and Information Submitted

Two written comments were received. Both comments have been marked as exhibits and are attached to the original of this order that is retained by the Division of Professional Regulation.

Exhibit 1 is a letter from Priscilla Putnam, Ph.D. on behalf of the Delaware Psychological Association’s Ethics Committee expressing support for the proposed regulatory changes. Exhibit 2 is a letter from Stephen C. DiJulio, Ph.D. expressing support for the proposed regulatory changes. No verbal comments were received at the hearing.

Findings of Fact

The Board finds that adoption of the proposed amendment is necessary to establish statewide record retention standards, except that the superfluous “to” in the first sentence should be deleted.

Decision and Effective Date

The Board hereby adopts the proposed amendment to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendment. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 5th day of May 2008, by the **Board of Examiners of Psychologists of the State of Delaware**.

Dr. Gary Johnson, President

Joan McDonough

Dr. Gordon DiRenzo, Vice President

Dr. Joseph Keyes

Dr. Martha Boston

Eleanor Allione

Hollis Anglin

Dr. Merris Hollingsworth

Andrew Slater

3500 Board of Examiners of Psychologists

(Break in Continuity of Sections)

11.0 ~~Professional Conduct~~ Record Retention

~~Psychologists and psychological assistants may be disciplined for violations of provisions of 24 Del.C. §3514. Licensees must [to] adhere to the most recent version of the American Psychological Association's Record Keeping Guidelines. The most recent version can usually be found in the APA's website www.apa.org. The record retention schedules in the Record Keeping Guidelines may be superseded by the requirements under state law or of other authorities or entities, such as the licensee's insurance carrier. The longest required retention period for any class of records should be followed. It is the licensee's responsibility to determine the proper schedule to follow.~~

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

<http://regulations.delaware.gov/register/june2008/final/11 DE Reg 1669 06-01-08.htm>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

ORDER 7377

IN THE MATTER OF THE ADOPTION OF RULES
TO IMPLEMENT THE RENEWABLE ENERGY
PORTFOLIO STANDARDS ACT,
26 DEL.C. §§ 351-363, AS APPLIED TO
RETAIL ELECTRICITY SUPPLIERS
(OPENED AUGUST 23, 2005;
REOPENED SEPTEMBER 4, 2007)

PSC REGULATION DOCKET NO. 56

AND NOW, this 17th day of April, 2008;

WHEREAS, in 2005 the General Assembly and the Governor enacted the "Renewable Energy Portfolio Standards Act," 26 Del.C. §§ 351-363 (2006 Supp.) ("the Act"). As its name suggests, the Act requires each electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales within this State. The obligation began in 2007 and the particular percentages increase each year. In 2006, exercising the authority granted under 26 Del.C. § 362 (2006 Supp.), the Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See PSC Order No. 6931 (June 6, 2006);¹ and

WHEREAS, on July 27, 2007, the General Assembly and Governor enacted significant changes to various

provisions in the Act and, in so doing, directed the Delaware Public Service Commission (the "Commission") to adopt revised rules. See 76 **Del. Laws** ch. 165 §§ 1-9 (July 24, 2007) ("chapter 165"). Such revised rules are set forth as Exhibit "B" to this Order; and

WHEREAS, for the reasons set forth above, on September 4, 2007, by PSC Order No. 7276, the Commission reopened Regulation Docket No. 56 to revise its RPS Rules and directed Staff to draft proposed rules to effect the changes made by the legislature and the Governor; and

WHEREAS, by PSC Order No. 7276 (Sept. 4, 2007), the Commission directed publication in the Delaware Register (among other places) of Staff's revised proposed RPS Rules and directed a Hearing Examiner to conduct proceedings regarding the proposed RPS rules; and

WHEREAS, after holding a duly noticed public evidentiary hearing, the Hearing Examiner has now submitted her Findings and Recommendations (Apr. 4, 2008) in which she recommends Commission approval of Staff's final proposed RPS Rules, which include certain non-substantive changes made after the initial publication in the Delaware Register; and

WHEREAS, the Commission finds that the proposed revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" changes are just and reasonable and that adoption of the Hearing Examiner's Report is in the public interest.

Now, therefore, **IT IS ORDERED**:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the April 9, 2008 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as "Attachment A".

2. That the Commission hereby adopts and approves the proposed revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" attached to the Hearing Examiner's Findings and Recommendations as "Appendix 1". The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the exact text of the Regulations attached hereto as Exhibit "B" for publication on June 1, 2008.

3. The effective date of this Order shall be the later of June 10, 2008, or ten days after the date of publication in the *Delaware Register of the Regulations* attached hereto as Exhibit "A."

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

BY ORDER OF THE COMMISSION:

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

ATTEST:

Karen J. Nickerson
Secretary

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard

1.0 Definitions

- 1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

1. The RPS Rules (attached as Exhibit "A") were formally published at 10 DE Reg. 151-157 (July 1, 2006). Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc., can choose to be exempt from the Act's requirements by pursuing an alternative regime for supporting "renewable energy" resources. See 26 **Del.C.** §§ 353(a), 363 (2006 Supp.).

"Alternative Compliance Payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar Photovoltaic [Energy Resources means solar photovoltaic] or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use:

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"PJM" or **"PJM Interconnection"** means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Renewable Energy Credit" ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" and **"Renewable Energy Portfolio Standard"** means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Solar Alternative Compliance Payment" or "SACP" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under Section 3.3.4 of this Regulation.

"Solar Renewable Energy Credit" or "SREC" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"Total Retail Sales" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.0 Purpose and Scope

2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the

electric supply portfolio of the State. The purpose of this Regulation, in support of 26 Del.C., §351 - 363, is to set forth the rules for governing the RPS.

- 2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.
- 2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:
- 2.2.1.1 submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account:
- 2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;
- 2.2.1.2 submit the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.
- 2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.
- 2.3 Any Rural Electric Cooperative that is opted-out of Commission regulation by its membership pursuant to 26 Del.C. §223 of the Delaware Code shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.
- 2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:
- 2.4.1 submit a written notice to the Delaware General Assembly;
- 2.4.2 submit a written notice to the Commission;
- 2.4.3 alert their End-Use Customers with notices inserted in two (2) consecutive electricity bills;
- 2.4.4 offer their End-Use Customers a voluntary program for purchasing renewable energy under competitive rates; and
- 2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

3.0 Administration of RPS

- 3.1 Certifying Eligible Energy Resources:
- 3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.
- 3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.
- 3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.
- 3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.

- 3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.
 - 3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) Solar Renewable Energy Credit (SREC) for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.
 - 3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.
 - 3.1.7 RECs or SRECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.
 - 3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.
 - 3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.
 - 3.1.9 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.
- 3.2 Compliance with RPS
- 3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1. Any portion of a Retail Electric Supplier's renewable energy supply portfolio for 2007, 2008 and 2009 Compliance Years that is acquired under wholesale renewable energy supply entered into pursuant to the 2005 or 2006 Delaware Standard Offer Services ("SOS") auctions shall be subject to the provisions of this Regulation as shown in Schedule 2 below that were in effect on the date of the 2005 or 2006 SOS auction.

SCHEDULE 1

<u>Compliance Year (beginning June 1st)</u>	<u>Cumulative Minimum Percentage from Solar Photovoltaics [Energy Resources]</u>	<u>Minimum Cumulative Percentage from Eligible Energy Resources^a</u>
<u>2007</u>	<u>--</u>	<u>2.0%</u>
<u>2008</u>	<u>0.011%</u>	<u>3.0%</u>
<u>2009</u>	<u>0.014%</u>	<u>4.0%</u>
<u>2010</u>	<u>0.018%</u>	<u>5.5%</u>
<u>2011</u>	<u>0.048%</u>	<u>7.0%</u>

FINAL REGULATIONS

<u>2012</u>	<u>0.099%</u>	<u>8.5%</u>
<u>2013</u>	<u>0.201%</u>	<u>10.0%</u>
<u>2014</u>	<u>0.354%</u>	<u>11.5%</u>
<u>2015</u>	<u>0.559%</u>	<u>13.0%</u>
<u>2016</u>	<u>0.803%</u>	<u>14.5%</u>
<u>2017</u>	<u>1.112%</u>	<u>16.0%</u>
<u>2018</u>	<u>1.547%</u>	<u>18.0%</u>
<u>2019</u>	<u>2.005%</u>	<u>20.0%</u>

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics.

SCHEDULE 2		
<u>Compliance Year (beginning June 1st)</u>	<u>Minimum Cumulative Percentage from Solar Photovoltaics [Energy Resources]</u>	<u>Minimum Cumulative Percentage from Eligible Energy Resources^a</u>
<u>2007</u>	<u>--</u>	<u>1.00%</u>
<u>2008</u>	<u>0.011%</u>	<u>1.50%</u>
<u>2009</u>	<u>0.014%</u>	<u>2.00%</u>
<u>2010</u>	<u>0.018%</u>	<u>5.00%</u>
<u>2011</u>	<u>0.048%</u>	<u>7.00%</u>
<u>2012</u>	<u>0.099%</u>	<u>8.50%</u>
<u>2013</u>	<u>0.201%</u>	<u>10.00%</u>
<u>2014</u>	<u>0.354%</u>	<u>11.50%</u>
<u>2015</u>	<u>0.559%</u>	<u>13.0%</u>
<u>2016</u>	<u>0.803%</u>	<u>14.5%</u>
<u>2017</u>	<u>1.112%</u>	<u>16.00%</u>
<u>2018</u>	<u>1.547%</u>	<u>18.00%</u>
<u>2019</u>	<u>2.005%</u>	<u>20.00%</u>

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs [and SRECs] equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations.¹ Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.

3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage [of SRECs] and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1 [or Schedule 2.] The Commission shall, in another proceeding, further define [how SRECs] and RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.

- 3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs [or SRECs] not required to meet this Regulation.
- 3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs [or SRECs] for the purposes of calculating compliance with the RPS.
- 3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1 [or Schedule 2], provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.
- 3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Schedule 1 or Schedule 2 of the RPS for energy derived from the following sources installed on or before December 31, 2014:
- 3.2.7.1 Customer-Sited solar photovoltaic physically located in Delaware; or
- 3.2.7.2 A fuel cell powered by Renewable Fuels.
- 3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.
- 3.2.9 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.
- 3.2.10 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule 1 [or Schedule 2]. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.
- 3.2.11 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 [and Schedule 2] and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 20%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.
- 3.2.12 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 20%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP [or SACP] for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs [and SRECs] eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.
- 3.3 Verification of Compliance with the RPS
- 3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 or Schedule 2 and the Total Retail Sales of each Retail Electricity Product.

- 3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.
- 3.3.3 SRECs or RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.
- 3.3.4 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund a SACP or ACP pursuant to the provisions of 26 Del.C. §358 or as determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 Del.C. §354 (a).
- 3.3.5 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP [or SACP], according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.
- 3.3.6 All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

4.0 Recovery of Costs

- 4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.
- 4.2 A Retail Electricity Supplier may recover any ACP [or SACP] if the payment of an ACP [or SACP] is the least cost measure to ratepayers as compared to the purchase of RECs [and SRECs] to comply with the RPS; or if there are insufficient RECs [and SRECs] available for the Retail Electricity Supplier to comply with the RPS.
- 4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

5.0 Other General Rules

- 5.1 Under Delaware's Freedom of Information Act, 29 Del.C. ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del.C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.
- 5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.
- 5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 Del.C., §205(a), §217, and §1019.

10 DE Reg. 151 (07/01/06)

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council on Pedestrian Awareness and Walkability	Mr. Anthony J. Aglio	At the Pleasure of the Governor
	Mr. Stephen G. Borleske	At the Pleasure of the Governor
	Mr. Gary L. Emory	At the Pleasure of the Governor
	Mr. John K. Rendle	At the Pleasure of the Governor
Advisory Council on Planning Coordination	Mr. Francis R. Julian	04/29/2011
Advisory Council to the Division of Develop- mental Disabilities Services	Timothy F. Brooks, Ed.D.	04/29/2011
Advisory Council to the Division of Substance Abuse and Mental Health	Ms. Carol A. Harman	04/29/2011
	Mr. George B. Meldrum, Jr.	04/29/2011
	Ms. Brenda J. Phillips	04/29/2011
	Mr. Pierre V. Stevens	04/29/2011
	Mr. Charles L. Tarver	04/29/2011
	Ms. Paula Voshell	04/29/2011
Architectural Accessibility Board	Mr. Changuk Yoon	04/29/2012
Board of Architects	Ms. Toni Bush Neal	04/18/2011
Board of Clinical Social Work Examiners	Ms. Clementine L. Allen-Frazier	02/01/2011
	Ralph F. Robinson, Jr.	02/20/2011
Board of Cosmetology and Barbering	Mr. Mark A. Rubio	02/20/2011
Board of Examiners of Private Investigators and Private Security Agencies	Mr. Kline G. Kemp, Jr.	04/25/2011
	Ms. Heather M. Shupe	04/25/2011
Board of Landscape Architecture	Mr. Ronald J. Sherman	04/18/2011
Board of Massage and Bodywork	Ms. Lora M. Bryner	04/18/2011
	Ms. Cindy S. Horsman	02/20/2011
	Ms. Dorothy D. Langston	04/18/2011
	Mr. David L. Patterson	04/18/2011
Board of Podiatry	Mr. Nathaniel Gibbs	02/20/2011
	Ms. Portia M. Hall	02/01/2011
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Mr. Russell D. Buskirk	04/18/2011
	Mr. Maynard R. Gregory	02/20/2011
	Ms. Tracy A. Hansen	01/30/2009
	James M. Walsh, Ph.D.	02/20/2011
Board of Professional Land Surveyors	Mr. John R. Murray	02/20/2011

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Professional Land Surveyors	Mr. Stephen M. Sellers	02/20/2011
Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers	Maisha D. Britt, Ph.D. Mr. George A. Christensen	04/18/2011 02/20/2011
Child Placement Review Board - Kent	Mr. Charles B. Carter Ms. Catherine Mebane Mr. Michael T. Rezac	04/29/2011 04/29/2011 04/29/2011
Child Placement Review Board - New Castle	Ms. Arlene Cronin Ms. Linda L. Hartzel Mr. William C. Miller Ms. Helen M. Rubin	02/20/2011 04/29/2011 04/29/2011 02/20/2011
Child Placement Review Board - Sussex	Mr. Raymond L. Moore, Sr. Ms. Virginia Van Sciver	04/29/2011 04/29/2011
Clean Water Advisory Council	Mr. Jeffrey M. Bross Mr. Josef A. Burger	03/19/2011 03/19/2011
Committee on Disposition of Unmarked Human	Karen Rosenberg, Ph.D.	04/29/2009
Committee on Employment of People with Disabilities	Mr. Bruce C. Crouch Ms. Chrys A. DiRienzo Mr. John W. Donahue Mr. Mark S. Feinour Mr. James Kristof Mr. Scott R. Ward	04/25/2011 04/25/2011 04/25/2011 04/25/2011 04/25/2011 04/25/2011
Community Involvement Advisory Council	Mr. William E. Pelham Mr. Marvin P. Thomas	04/29/2011 04/29/2011
Council on Archives	Audrey K. Doberstein, Ph.D. Reba R. Hollingsworth, Ph.D.	04/25/2011 04/25/2011
Council on Game and Fish	Mr. Alden Townsend	04/29/2011
Council on Housing	Mr. Russell W. Huxtable Ms. Connie H. Louder Mr. William L. Pearson Mr. John L. Walker, Sr.	03/27/2011 04/14/2011 03/27/2011 04/14/2011
Council on Manufactured Housing	Mr. Robert C. Hudson	04/25/2010
Council on Real Estate Appraisers	Mr. Christopher A. Willett	01/24/2009
Council on Recreational Fishing Funding	Mr. Ralph W. Baker Mr. Eric B. Burnley, Sr.	02/01/2011 02/01/2011

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Recreational Fishing Funding	Mr. John E. Carpenter	02/01/2011
	Mr. Floyd Morton	02/01/2011
	Mr. Ralph E. Newberry	02/01/2011
	Captain Bernard L. Pankowski	02/01/2011
	Mr. David A. Russell	02/01/2011
Council on Services for Aging and Adults with Physical Disabilities	Ms. Patsy J. Bennett-Brown	04/25/2011
	Mr. Bobby B. Brown	04/25/2011
	Ms. C. Regina Byers	04/25/2011
	Ms. Leonarda M. Castelli	04/25/2011
	Ms. Katherine S. Cowperthwait	04/25/2011
	Ms. Evelyn R. Hayes	04/25/2011
	Mr. Arthur H. Johns	04/25/2011
	Ms. Karen R. Lloyd	04/25/2011
	Ms. La Vaida J. Owens-White	04/25/2011
	Ms. Patricia J. Painter	04/25/2011
	Ms. Leila D. Perkins	04/25/2011
Ms. Mary A. Teller	04/25/2011	
Council on Social Services	Sister Jeanne F. Cashman	04/29/2011
	Mr. James A. Villarreal	04/29/2011
Deferred Compensation Council	Mr. Thomas M. Hurley	02/20/2011
	Mr. Lawrence Koenig	02/20/2011
Delaware Bicycle Council	Mr. John N. Pasquale, Jr.	04/25/2011
	Mr. Robert V. Witsil, Jr.	04/25/2011
Delaware Board of Examiners of Nursing Home Administrators	Ms. Teruko A. White	02/20/2011
Delaware Board of Nursing	Mary L. Lomax, Ed.D.	04/18/2011
Delaware Commission for Women	Mr. Brian J. Bartley	04/25/2011
	Ms. Eileen Conner	04/25/2011
	Ms. Claire DeMatteis	04/25/2011
	Ms. Rebecca L. Evaristo	04/25/2011
	Kathleen Jacobs, Ph.D.	04/25/2011
	Ms. Paula Q. King	04/25/2011
	Ms. Mary E. Sherlock	04/25/2011
	Ms. Judith A. Taggart	04/25/2011
Delaware Commission on Italian Heritage and Culture	Louis A. Arena, Ph.D.	02/28/2011
Delaware Emergency Medical Services Oversight Council	Mr. Edward M. Marecki	At the Pleasure of the Governor
Delaware Health Resources Board	Ms. Faith L. Rentz	08/30/2008

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Manufactured Home Relocation Authority	Mr. Theodore J. Lampley Mr. Derek A. Strine	06/30/2014 06/30/2014
Delaware Mentoring Council	Mr. Darryl S. Simms	At the Pleasure of the Governor
Delaware Nutrient Management Commission	Mr. Isaac N. Callaway, III Mr. Francis J. O'Neill, III	03/15/2011 03/15/2011
Delaware Sentencing Accountability Commission	Mr. Bernard V. Pepukayi	04/29/2012
Delaware Solid Waste Authority	Ms. Tonda L. Parks Mr. Theodore W. Ryan Mr. Timothy P. Sheldon	04/09/2011 04/09/2011 04/09/2011
Delaware State University Board of Trustees	Lillian M. Lowery, Ed.D. Mr. David G. Turner	08/19/2008 01/04/2012
Delaware Technical and Community College Board of Trustees	Ms. Audrey Van Luven	01/11/2010
Developmental Disabilities Council	Daniel W. Hoover, Ph.D. Ms. Deborah A. Jastrebski Ms. Barbara J. Monico Mr. Steven J. Slotkin Mr. Edwin A. Tos	04/25/2014 02/20/2014 02/20/2014 04/25/2014 04/25/2014
Downtown Dover Development Corporation	Mr. David L. Bonar	At the Pleasure of the Governor
Enhanced 911 Emergency Reporting System Service Board	The Honorable Thomas M. Jarrett Mr. James E. Turner, III	04/09/2011 04/09/2011
Governor's Commission on Community and Volunteer Service	Corporal George L. Camacho	08/24/2008
Governor's Council on Hispanic Affairs	Ms. Maria D. Cabrera Ms. Rosario Calvachi-Mateyko Ms. Cherisse S. Carlisle Ms. Magda Korn Ms. Edith M. Prado Mr. Eli Ramos Ms. Margaret E. Reyes Ms. Kayla I. Rivero-Rodriguez	04/28/2011 04/25/2011 04/28/2011 02/20/2011 04/28/2011 04/28/2011 04/28/2011 04/28/2011
Governor's Council on Lifestyles and Fitness	Ms. Kimberly J. Eroh Christopher J. Malone, Ph.D.	02/20/2010 02/20/2010

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Council on Lifestyles and Fitness	Mr. Henry B. Milligan Maryann Rapposelli, Ed.D.	02/20/2010 02/20/2010
Healthy Mother and Infant Consortium	Ms. Christy A. Vanderwende	At the Pleasure of the Governor
Human Relations Commission	Mr. James E. Gray, Jr.	04/29/2012
Industrial Accident Board	Mr. Victor R. Epolito, Jr. Ms. Mary L. McKenzie-Dantzler Ms. Alice M. Mitchell	03/19/2014 02/01/2014 03/19/2014
Interagency Coordinating Council	Ms. Elizabeth G. Andersen The Honorable Nancy W. Cook Carlos Duran, M.D. Mr. Thomas F. Kelly Ms. Michelle M. Lamers Anne Meduri Cannuli, M.D. Ms. Linda K. Nemes Mr. Bruce L. Orr Ms. Helen C. Riley Ms. Martha L. Toomey Ms. Gail B. Womble Ms. Arnetta D. Woodson Ms. Aleph A. Woolfolk	04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011
Judge of the Family Court of the State of Delaware	The Honorable Barbara D. Crowell	04/24/2020
Justice of the Peace	The Honorable Douglas P. K. Cox, Sr. Ms. Kathy S. Gravell Mr. William W. Pritchett	04/11/2014 04/13/2012 03/28/2012
Organ and Tissue Donor Awareness Board	Ms. Mary Sue Jones Ms. Jan Weinstock	04/29/2011 04/29/2011
Parks and Recreation Council	Ms. Brenda J. Bramble Ms. Deloris Donnelly	04/25/2011 02/20/2011
Pesticide Advisory Committee	Mr. John Barndt Mr. Thomas V. May Mr. Joseph J. Reardon, Sr. Mr. Jacob J. Vukich Susan Whitney King, Ph.D.	04/29/2011 04/29/2011 04/29/2011 04/29/2011 04/29/2011
Recycling Public Advisory Council	Mr. Richard A. Fleming Mr. Wallace Kremer The Honorable Robert A. Mooney	04/25/2011 04/25/2011 04/25/2011

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Board of Accountancy	Ms. Judith M. Scarborough	04/26/2011
	Mr. Michael D. Wollaston	04/26/2011
State Board of Examiners of Psychologists	Mr. Andrew C. Slater	01/08/2010
State Board of Occupational Therapy Practice	Ms. Virginia Mirro	04/18/2011
	Ms. Kimberly S. Pierson	04/18/2011
State Board of Veterinary Practice	Ms. Kimberly S. Vincent	04/18/2011
State Committee of Dietetics/Nutrition	Saundra G. Sutton, Ed.D.	04/18/2011
	Ms. Mary M. Trotter	04/18/2011
State Emergency Response Commission	Mr. Stephen Rahaim	02/20/2010
State Employees Charitable Campaign Steering Committee	Ms. Christy A. Vanderwende	At the Pleasure of the Governor
State Examining Board of Physical Therapists and Athletic Trainers	Corporal L. Britt Davis	02/20/2011
	Mr. Steven G. Kotrch	02/20/2011
	Ms. Laura A. Schmitt	04/18/2011
State Rehabilitation Council	Mr. Mark S. Feinour	04/25/2011
	Mr. Jarrod R. Lippi	04/25/2011
	Keith A. Sargent, D.O.	04/24/2011
	Ms. Melissa H. Shahan	04/25/2011
	Mr. William A. Strehle	04/25/2011
	Ms. Vickie D. Tully	04/25/2011
Violent Crimes Compensation Board	Mr. Thomas W. Castaldi	04/23/2011
Vocational Rehabilitation Advisory Council for DVI	Ms. Beverly W. Wieland	04/29/2011
Welfare Employment Committee	Ms. Carolyn A. Latchum	06/06/2009
	Ms. Donna L. Masley	06/06/2009
	Ms. Margaret G. Shivone	08/30/2008

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 Rules 6 and 8. The Commission will hold a public hearing on the proposed rule changes on July 8, 2008. 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 June 1, 2008.

The proposed changes are for the purpose of updating Rules 6 and 8 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 A copy is also available for inspection at the Racing Commission office.

THOROUGHBRED RACING COMMISSION

PUBLIC NOTICE

1001 Thoroughbred Racing Rules and Regulations

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposal amends Section 13 of the rules and regulations to address Claiming Races by amending existing Rule 13.1.1, and adding Rule 13.20.

A public hearing will be held on June 24, 2008 at 10:00 a.m. in the first floor conference room of the Horsemen's Office at Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, June 19, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

DSSM 20180 Treatment of Couples in Medical Institutions Long Term Care – Treatment of Income and Resources of Couples

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, applying couple computation rules.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by June 30, 2008.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Deficit Reduction Act of 2005 - Medicaid Integrity Program**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by June 30, 2008.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Fair Hearing Practice and Procedures**

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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing Practice and Procedures.

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 June 30, 2008.

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

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC COMMENT PERIOD****301 Audited Financial Reports [Formerly Regulation 50]**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 301 relating to audited financial reports and financial statements of insurance companies. The docket number for this proposed amendment is 810.

The purpose of the proposed amendment to regulation 301 is to update the existing financial report and

audit requirements by enacting the Model Regulation, as modified to conform to statutory law. The text of the proposed amendment is reproduced in the June 2008 edition of the Delaware *Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday July 7, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**
DIVISION OF WATER RESOURCES
REGISTER NOTICE SAN #2002- 06

TITLE OF THE REGULATION:

7403 Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware.

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a public hearing to gather comments on the proposed Pollution Control Strategy for the Inland Bays including the proposed **Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds**. The proposed Strategy includes both voluntary and regulatory actions which need to be implemented in order to achieve the nitrogen and phosphorus load reductions required by the Total Maximum Daily Loads for these watersheds. The proposed regulations would impact multiple sources of nutrients including point sources, stormwater, and onsite wastewater treatment and disposal systems. These regulations replace the previously proposed regulations that appeared in the May 1, 2007 *Delaware Register of Regulations*.

NOTICE OF PUBLIC COMMENT:

A public hearing for the proposed **Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds** will be held at 6:00 PM on Monday, June 23, at Georgetown CHEER Community Center, 20520 Sandhill Road, Georgetown, Delaware 19947.

If you do not want to attend the public hearing, you may submit written comments during the public comment period beginning with this notice and ending at 4:30 PM on Monday, June 30, 2008. Please send written comments to John Schneider, Department of Natural Resources and Environmental Control, Division of Water Resources, Watershed Assessment Section, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464; facsimile: (302) 739-6140; email: (john.schneider@state.de.us). All written comments must be received by 4:30 PM, Monday, June 30, 2008. Electronic submission is preferred.

Copies of the proposed regulations and technical support documents for these watersheds are available by mail from Maryann Pielmeier, DNREC, DWR, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464, via telephone by calling (302) 739-9939, via e-mail by contacting maryann.pielmeier@state.de.us, or from the DNREC website at the following URL: http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm

PREPARED BY:

John Schneider

302-739-9939

May 19, 2008

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION****1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners
PUBLIC NOTICE**

The Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1806(a)(2), proposes an addition to its regulation section 1.0. Specifically, the proposed addition to **1.0 General Provisions** establishes that Exception 1 to Section 101.2 of the 2003 International Mechanical Code does not apply to Board licensees.

A public hearing is scheduled for Tuesday, July 8, 2008 at 8:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4500.

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

**DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
NOTICE OF PUBLIC COMMENT PERIOD
2101 Freedom of Information Act (FOIA) Regulation**

As authorized under 29 **Del.C.** Chapter 100, the Delaware Department of Transportation is seeking to adopt regulations for the processing of Freedom of Information Act requests, as detailed in this publication.

The Department will take written comments on the draft regulations from June 1, 2008 through June 30, 2008.

Questions or comments regarding this document should be directed to:

Darrel Cole, Director of Public Relations

Department of Transportation

P.O. Box 778 /Dover, DE 19903

Phone: (302) 760-2080 and Fax: (302) 739-2092 Email: darrel.cole@state.de.us

**STATE BOARD OF PENSION TRUSTEES
THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
NOTICE OF PUBLIC HEARING AND COMMENT PERIOD**

The State Board of Pension Trustees (the "Board") in accordance with 29 **Del.C.** §8308(c)(1) has proposed changes and additions to the rules and regulations relating to the administration of the Delaware Public Employees' Retirement System ("DPERS") for the following retirement plans: (1) State Employees' Pension Plan, (2) State Police Pension Plan, (3) State Judiciary Pension Plan, (4) County Municipal Employees' Pension Plan, and (5) County & Municipal Police/Firefighter Pension Plan. These proposals reflect the current practices at the Office of Pensions and additionally incorporates operational provisions required by the United States Internal Revenue Service to maintain the qualified status of DPERS' retirement plans.

A public hearing will be held before the Board at 11:00 a.m. on July 25, 2008, at the Office of Pensions located in the McArdle Building at 860 Silver Lake Boulevard, Suite 1, Dover, Delaware 19904 where members of the public can offer comments. Members of the public may receive a copy of the proposed regulation at no charge via United States Mail in writing from Terri L. Timmons, Office Manager at 860 Silver Lake Boulevard, Suite 1, Dover, Delaware 19904 or by calling her at (302) 739-4208. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Timmons at the address listed above. The final date to receive written comments is June 30, 2008.
