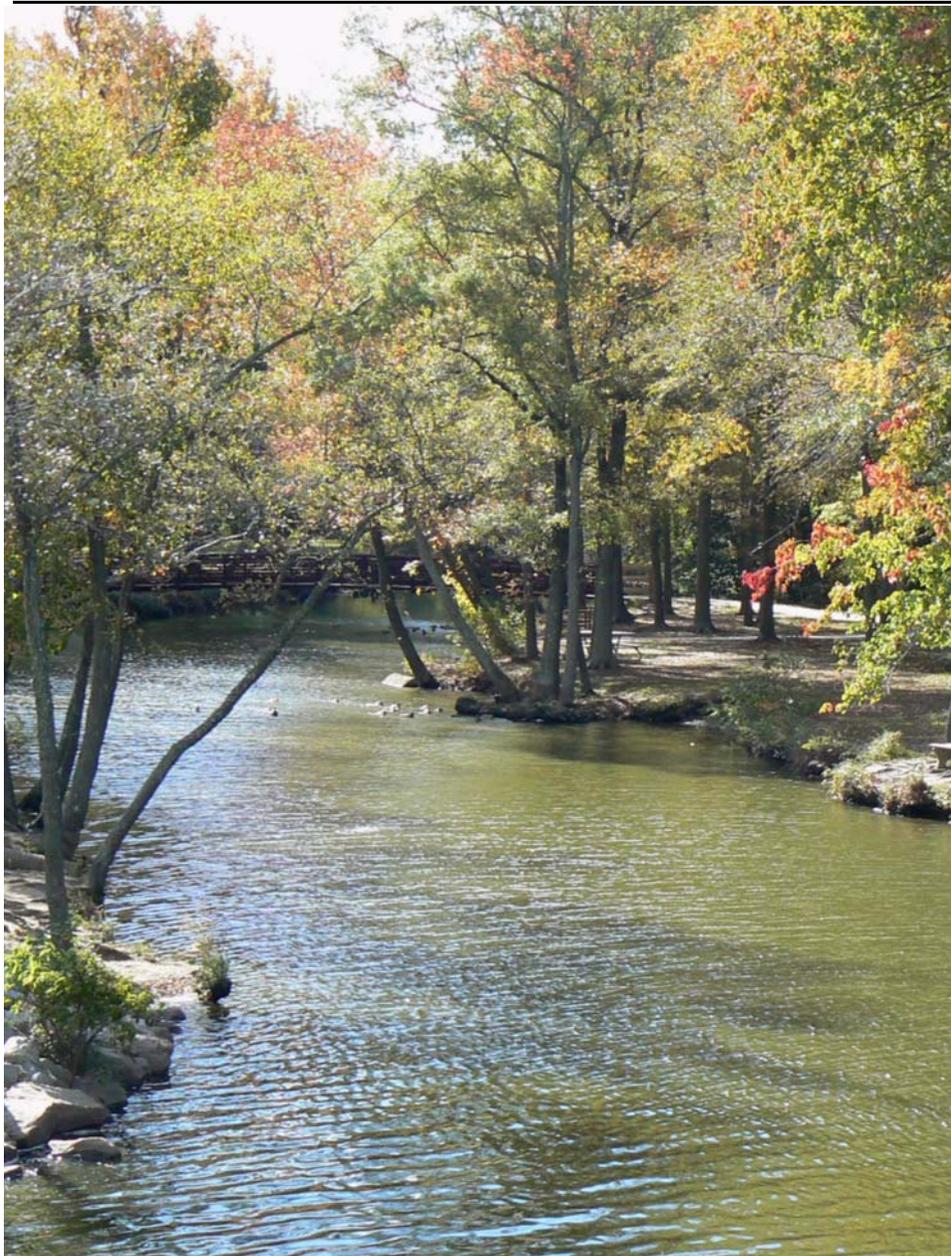

Delaware Register of Regulations

Issue Date: November 1, 2009

Volume 13 - Issue 5, Pages 550 - 697



Silver Lake, Dover, DE (photo by Vicki Schultes)

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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 October 15, 2009.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

12 **DE Reg.** 761-775 (12/01/08)

Refers to Volume 12, pages 761-775 of the *Delaware Register* issued on December 1, 2008.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION

Statutory Authority: 3 Delaware Code, Section 7202 (3 **Del.C.** §7202)

3 **DE Admin. Code** 304

304 Exotic Animal Regulations

PUBLIC NOTICE

The Delaware Department of Agriculture re-proposes these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state.

An earlier version of these regulations was considered at a public hearing on February 20, 2009 at 10:00 a.m. at the Department of Agriculture Building, Secretary's Conference Room. Public comments were received at that time leading to substantive changes. Those earlier comments led the Delaware Department of Agriculture to re-promulgate the regulations and to solicit additional public commentary. The comment period ended on August 1, 2009.

As a consequence of receiving still additional comments from the public the Delaware Department of Agriculture again proposes these regulations and solicits comments from the public. Any such comments should be submitted to the State Veterinarian, Heather Hirst, DVM at the Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before December 1, 2009. Copies of the proposed regulations are available on request.

304 Exotic Animal Regulations

1.0 Authority

These regulations are promulgated pursuant to the authority of Section 7202 of Title 3 of the **Delaware Code**.

2.0 Purpose

These regulations govern the permitting process, possession, sale, rehabilitation and exhibition of exotic animals, i.e., live wild mammals, hybrids of wild mammals, and live reptiles not native to or generally found in the State of Delaware. The State Veterinarian or her or his designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein.

3.0 Definitions

"Accurate Description of the Exotic" means the name, location, age, gender (when visible or known), markings/color, tattoo, identification tag, microchip and/ or other distinguishing characteristics of the exotic together with the name and residence of the owner or custodian.

"Adopter" means a person who becomes an owner or custodian of an exotic animal.

"Animal Attack Protocol" means a document that outlines an owner's or custodian's action plan should the exotic animal bite, injure or attack a human or animal.

"Carnivore" means a flesh-eating mammal, which possesses teeth and claws adapted for attacking and devouring prey.

"Class of Exotic" means each of the following groups constitute a separate and distinct class: Carnivore, Herbivore, Hybrid of a wild animal, Omnivore, Primate and Reptile.

"Custodian" means a person who possesses or cares for an exotic animal. A custodian has immediate charge and control of the exotic.

"Department" means the Delaware Department of Agriculture.

"DNREC" means the Delaware Department of Natural Resource and Environmental Control.

"Emergency Evacuation Plan" means a written document that outlines the actions the owner or custodian plans to implement in an emergency or ordered departure in order to provide for the exotic's welfare and the public's health and safety.

"Exhibitor" means a person who displays exotic animals to the public.

"Exotic" means a live wild mammal, hybrid of a wild mammal, and a live reptile not native to or generally found in Delaware. An exotic animal is ecologically foreign to Delaware.

"Herbivore" means a mammal that feeds exclusively on vegetable matter.

"Hybrid of a wild mammal" means a mammal whose parents are different varieties of the same species or belong to different but closely allied species, one parent being a wild mammal not native to or generally found in Delaware and the other parent being a domestic mammal native to or generally found in Delaware.

"Nuisance" means an act or the threat of an action that unreasonably interferes with the health, safety or property rights of the community at large.

"Omnivore" means an animal which eats any sort of food, both animal and vegetable in origin.

"Owner" means a person who owns an exotic animal. An owner has or holds the exotic animal as property.

"Permit Holder" means an owner or custodian of an exotic animal who holds an applicable exotic animal permit.

"Person" means an individual, partnership, corporation, trade or professional association, firm, limited liability company, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative thereof.

"Pet" means a non-exotic animal that is kept for interest, companionship and amusement and is associated with a household.

"Primate" means a mammal that belongs to the highest order of mammals including monkeys and lemurs.

"Purchaser" means a person who becomes an owner of an exotic animal by exchange of cash, goods, or animals. A "Purchaser" also means a person who becomes an owner or custodian of a non-exotic by adoption.

"Rehabilitator" means a person who restores an exotic animal to good condition by providing short term care.

"Relocate" means to move an exotic from a rehabilitator, a zoo, an agency or the Department to a new rehabilitator, a different zoo, or another agency.

"Reptile" means any cold-blooded vertebrate of the class *Reptilia* including turtles, lizards, snakes, crocodilians and tuatara.

"Seller" means a person who is engaged in the sale or trade of exotic animals for cash, goods, or animals. With the exception of a rehabilitator or a zoo, a "Seller" also means a person who offers exotics through gifting or adoption.

"Secretary" means the Secretary of the Delaware Department of Agriculture or his or her designee.

"State Veterinarian" means the State Veterinarian of the Delaware Department of Agriculture, or his or her designee.

"USDA" means the United States Department of Agriculture.

"Valid Identification" (Valid ID) means a photo identification such as a Delaware driver's license, a State of Delaware Identification card, or a Passport that includes the name and address of the purchaser of the exotic animal.

"Welfare" means that the owner or custodian provides for the health and well-being, and safeguards the physiological requirements, of the exotic animal.

"Zoo" means a park or institution accredited by the Association of Zoos and Aquariums (AZA) (or its designated successor organization) where: exotics are primarily kept in cages or enclosures for people to come and see; exotics are exhibited outside of the park to the public for educational purposes; and exotics are bred and studied by scientists.

4.0 The State Veterinarian Powers; Duties

- 4.1 The State Veterinarian is responsible for administering and enforcing these regulations. The State Veterinarian has the power to grant, deny, or revoke permits to own or have custody of exotics in this state.
- 4.2 The State Veterinarian is vested with the power to designate agencies to seize and when warranted to humanely destroy an exotic if necessary to protect the public health, safety, or welfare and to protect the health of other animals. The State Veterinarian or his/her agent can humanely destroy an exotic without first notifying the exotic animal's owner or custodian.
- 4.3 The State Veterinarian will designate a list of exotic animals that are **exempt** from the permitting requirement (regulation 6.1). The State Veterinarian will review the list and may add or delete species when suggested by the public through the rule making process and with sufficient documentation for the requested species. Pursuant to 29 **Del.C.** §10119, the State Veterinarian may change the list of exotic animals that are exempt from the permitting requirement at any time in response to current animal and human health and safety concerns.
- 4.4 The State Veterinarian will designate exotic animals in the Herbivore and Reptile Classes that are **prohibited from being bred** by Sales Permit Holders (regulation 7.5.2.10). The State Veterinarian will review the list and may add or delete species **prohibited from being bred** when suggested by the public through the rule making process and with sufficient documentation for the requested species. Pursuant to 29 **Del.C.** §10119, the State Veterinarian may change the list of exotic animals in the Herbivore and Reptile Classes that are prohibited from being bred at any time in response to current animal and human health and safety concerns.
- 4.5 The State Veterinarian is charged with preventing the introduction and spread of contagious and infectious diseases into and within the domestic animal population of the state, therefore:
 - 4.5.1 The State Veterinarian can prohibit activities by any Permit class if there is a threat to domestic animals in the state.
 - 4.5.2 The State Veterinarian can prohibit Accredited Zoo Permit and Sales Permit holders from breeding exotics if there is a threat to domestic animals in the state.

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- 4.6 The State Veterinarian or his/her agents must be allowed access to the exotics and to the premises that house exotics.
- 4.7 The State Veterinarian will not issue Individual, Exhibitor or Sales permits for gila monsters, beaded lizards or komodo dragons.

5.0 Information and Reporting requirements for exempt and permitted exotics

- 5.1 All sellers of reptiles must advise purchasers in writing that most reptiles carry *Salmonella* bacteria, which can be a source of human infection. The seller must present written information to the purchaser on sanitation measures that can decrease the transmission of *Salmonella* from captive reptiles to humans.
- 5.1.1 Failure to inform the purchaser, adopter or custodian in writing of the *Salmonella* risk posed by reptiles and to provide written sanitation measures that can decrease the transmission of *Salmonella* constitutes an offense punishable under 3 Del.C. §7203.
- 5.2 It is the duty of all governmental agencies, veterinarians, veterinary technicians, permit holders, rehabilitators, and owners or custodians of exotics to promptly report to the State Veterinarian and the Department any contagious, infectious or zoonotic disease, agent or organism infecting or carried by an exotic animal.
- 5.2.1 Failure to promptly inform the State Veterinarian and the Department of any contagious, infectious or zoonotic disease, agent or organism infecting or carried by an exotic animal constitutes an offense punishable under 3 Del.C. §7203.

6.0 Permit Exemptions: Permit Requirements: Permit Prerequisites: Waivers

- 6.1 The following exotics are **exempt** from the permitting requirement of the Department:
- 6.1.1 Mammals: Chinchillas, Degus, Ferrets, Gerbils, Guinea pigs, Hamsters, Hedgehogs, Mice, Norway rats, Possums, Rabbits and Sugar gliders.
- 6.1.2 Reptiles: Anoles, Agamas, Asian Water Dragons, Basilisks, Bearded dragons, Chameleons, Geckos, Iguanas, Skinks (except the five-lined skink), Swift lizards, and Tegus.
- 6.1.3 **Exempt** exotics are subject to the regulations 1.0, 2.0, 3.0, 4.0, 5.0, 11.4.6, 12.0, and 14.2.2.
- 6.2 Unless specifically exempt from the permitting requirement as presented in regulation 6.1, all persons who would own or have custody of an exotic animal must first obtain a permit issued by the Department. To obtain the required permit from the Department, the prospective adopter, owner or custodian of an exotic animal must:
- 6.2.1 Provide the Department with satisfactory proof that the exotic animal will be confined within two enclosures, designated herein as primary and secondary.
- 6.2.1.1 The primary enclosure shall be a pen, cage or other structure where the exotic will be kept and which must be of sturdy and escape-proof construction. The primary enclosure must be consistent in size, structure, lighting, temperature control, and ventilation according to the welfare standards prescribed in the scientific literature or in the USDA regulations for the species being enclosed. The permit applicant is required to demonstrate knowledge of enclosure and welfare standards for the species under consideration with the application.
- 6.2.1.2 The secondary enclosure must be sufficient to prevent the exotic animal from escaping from the property of the owner or custodian should it be set free or escape from its primary enclosure. The secondary enclosure must ensure there will be no physical contact between members of the public and the exotic. The secondary enclosure must prevent the exotic from escaping the premises if it is out of its primary enclosure.
- 6.2.1.3 The holder of an Accredited Zoo, Exhibitor or Rehabilitator permit issued in accordance with regulations 7.2, 7.3, and 7.4 may request in writing that the State Veterinarian consider waiving the enclosure requirements set forth in regulations 6.2.1.1 and 6.2.1.2 because the exotic animal has unique enclosure requirements.
- 6.2.1.4 Shared enclosures:

- 6.2.1.4.1 Accredited Zoo Permit holders are allowed to breed exotic animals in all classes in the State of Delaware in accordance with Regulations 4.5.2 and 11.4.2; therefore exotics permitted by the Accredited Zoo Permit may share enclosures.
- 6.2.1.4.2 Sales Permit holders:
 - 6.2.1.4.2.1 Sales Permit holders are allowed to breed exotic animals in the Herbivore and Reptile class in the State of Delaware in accordance with regulations 4.5.2, 7.5.2.10, and 11.4.5; therefore exotics in the Herbivore and Reptile classes **prohibited from being bred** must not share enclosures unless they are sterile or unable to reproduce and those exotics not included in the **prohibited from being bred** list may share enclosures.
 - 6.2.1.4.2.2 Sales Permit holders are not permitted to breed Carnivores, Hybrids of Wild Mammals, Omnivores or Primates; hence shared enclosures for these Classes of Exotics are only for sterile exotics or exotics unable to reproduce.
- 6.2.1.4.3 All other Permit Class holders are not permitted to breed exotic animals; hence shared enclosures are only for sterile exotics or exotics unable to reproduce.
- 6.2.2 Provide the Department with a copy of an emergency evacuation plan upon request.
- 6.2.3 Provide the Department with a copy of an animal attack protocol upon request.
- 6.3 To obtain the renewal of an exotic animal permit, exotic animal owners or custodians must confirm the ongoing existence of all the requirements set forth at regulation 6.2 and must, in addition, allow Department designees access to inspect the premises where exotics are located to confirm the health and humane treatment of the exotic.
- 6.4 Any existing permits issued by the Delaware Department of Agriculture will become void sixty (60) days after the effective date of these proposed regulations and must be renewed in accordance with regulations 6.3 and 9.0 at no additional cost to the owner or custodian.
- 6.5 If an exotic was previously considered by the Department to be exempt from the permitting process and does not appear in section 6.1, then a permit is required. The initial permit for the "no longer exempt" exotic must be in accordance with Regulation 8.0. If the initial permit is obtained within sixty (60) days after the effective date of these proposed regulations, there will be no additional cost for this initial permit.

7.0 Permit Classes

7.1 Individual Permit

- 7.1.1 When an exotic is kept as a pet, the owner or custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Permits granted by the Department shall become null and void when the owner or custodian transfers ownership or custodianship of the exotic to another person. The owner or custodian must obtain a separate Individual Permit for each exotic animal kept as a pet. A background check of an owner or custodian applying for an Individual Permit may be completed by the Department.
- 7.1.2 An Individual Permit is not transferable, is valid for three years, and must be renewed in accordance with regulation 9.1.
- 7.1.3 When the owner or custodian of an exotic holds an Individual Permit for that exotic and he or she transfers ownership through gifting or adoption then he or she is not considered to be a seller and is not required to have a Sales Permit.

7.2 Accredited Zoo Permit

- 7.2.1 All zoos in Delaware must obtain an Accredited Zoo Permit which is not transferable.
- 7.2.2 All zoos in Delaware must be in keeping with the Association of Zoos and Aquariums (AZA) accreditation process.
- 7.2.3 An Accredited Zoo Permit is not transferable, is valid for five (5) years and must be renewed in accordance with section 9.2.

7.3 Exhibitor Permit

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- 7.3.1 All owners or custodians (with the exception of permitted Accredited Zoos located in Delaware) that wish to present exotic animals for public viewing must obtain an Exhibitor Permit.
- 7.3.2 An Exhibitor Permit is not transferable, is valid for the calendar year in which it was issued and must be renewed in accordance with regulation 9.3.
- 7.3.3 A background check of an owner or custodian applying for an Exhibitor Permit may be completed by the Department.
- 7.3.4 Exotic Animal Exhibitors Duties:
- 7.3.4.1 Notify the Department within the sixty (60) day period prior to exhibiting exotic animals in Delaware;
- 7.3.4.2 Provide the Department with an annual inventory which includes an Accurate Description of each exotic animal to be exhibited. The inventory does not need to include **exempt** exotics (regulation 6.1). If changes to the annual inventory previously provided to the Department occur prior to exhibiting in Delaware then notify the Department by e-mail, fax or writing of the changed inventory by listing the addition or removal of each exotic animal;
- 7.3.4.3 Provide the Department with the dates of exhibition;
- 7.3.4.4 Provide the Department with a list of exhibition activities;
- 7.3.4.5 Provide the Department with a public health and safety plan, an animal attack protocol, and an animal health plan upon request;
- 7.3.4.6 Show proof of exotic animal permits or licenses from the state or states where the exhibitor is based to the Department upon request;
- 7.3.4.7 Provide valid health certificates upon request;
- 7.3.4.8 When applicable have a valid DE business license and provide proof of same upon request; and
- 7.3.4.9 Provide proof of knowledge of exotics' health, safety and proper care upon request.
- 7.4 Rehabilitator Permit
- 7.4.1 The Rehabilitator Permit must be obtained from the Department by an owner or a custodian who provides short term care and rehabilitation of exotic animals.
- 7.4.2 The applicant for the Rehabilitator Permit must provide documentation that he or she holds a Wildlife Rehabilitator Permit from DNREC.
- 7.4.3 A Rehabilitator Permit is not transferable, is valid for three years and must be renewed in accordance with regulation 9.4.
- 7.4.4 A background check of an owner or custodian applying for a Rehabilitator Permit may be completed by the Department.
- 7.4.5 Rehabilitator Permit Holder's Duties:
- 7.4.5.1 By December 31st of each calendar year the exotic animal Rehabilitator must:
- 7.4.5.1.1 Provide the Department with a yearly inventory of every exotic currently being rehabilitated. The inventory does not need to include **exempt** exotics (regulation 6.1). The inventory must include an Accurate Description of each exotic;
- 7.4.5.1.2 Request in writing permission from the State Veterinarian or his/her designee for an extension of the exotic's rehabilitation time when the exotic is carried over from the prior year's inventory;
- 7.4.5.1.3 Identify each dead, adopted or relocated exotic from the prior year's inventory and note whether exotic has been relocated in the State of Delaware or outside the State of Delaware;
- 7.4.5.1.4 Identify each exotic newly acquired during the calendar year ending on December 31st. The identification should include: an Accurate Description, a brief explanation of the reason each exotic animal was acquired or born and note whether the newly acquired exotic remains in the yearly inventory, has died, has been adopted, or has been relocated in the State of Delaware or outside the State of Delaware; and

- 7.4.5.1.5 Include the adopter's name, address and when available, telephone and e-mail.
- 7.4.5.2 Provide the Department with a public health and safety plan, an animal attack protocol, an emergency evacuation plan and an animal health, proper care and rehabilitation plan upon request.
- 7.4.5.3 Be limited to a maximum of twenty (20) exotic animals per Class of Exotic unless a written request to exceed the maximum number is approved by the State Veterinarian within sixty (60) days of exceeding the maximum.
- 7.4.5.4 The rehabilitator must require at the time of an exotic's adoption that the adopter has obtained the appropriate class of Exotic Animal Permit from the Department.
- 7.4.5.5 The rehabilitator must verify at the time of the exotic's adoption that the adopter's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.
- 7.4.5.6 Provide the adopter with written information regarding the exotic's enclosure, proper care, nutrition and welfare requirements.
- 7.4.5.7 The rehabilitator must inform the adopter that there may be county, city, local laws, rules and regulations that may govern or proscribe the possession of exotics in their area.
- 7.4.5.8 If the adopter resides outside the State of Delaware, the rehabilitator must maintain a record of the interstate transfer of ownership, including adopter's address; and the rehabilitator is responsible for notifying the appropriate state veterinarian's office or applicable state agency.
- 7.4.5.9 Keep a record of the adopter's name, address and when available, telephone and e-mail for three years.

7.4.6 Adopters of Rehabilitated Exotics; Duties: When an adopter proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to becoming an owner/custodian must be met:

- 7.4.6.1 The adopter must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of the exotic's adoption.
- 7.4.6.2 The adopter must present to the rehabilitator at the time of the exotic's adoption a Valid ID with the same name and address that are on the Exotic Animal Permit.

7.5 Sales Permit

- 7.5.1 Owners or custodians that sell exotics in Delaware or sell exotics from Delaware to locations outside of Delaware must obtain a Sales Permit from the Department for each Class of Exotic sold.
 - 7.5.1.1 A Sales Permit is not transferable, is valid for the calendar year in which it was issued and must be renewed in accordance with regulation 9.5.
 - 7.5.1.2 Accredited Zoo Permit and Rehabilitator Permit holders are not required to hold a Sales Permit.
 - 7.5.1.3 Exhibitor Permit holders engaged in the sale of exotics are required to hold a Sales Permit in accordance with regulations 7.5, 8.5, and 9.5.
 - 7.5.1.4 With the exception stated in regulation 7.1.3, Individual Permit holders engaged in the sale of exotics or the breeding of exotics in the Herbivore or Reptile class are required to hold a Sales Permit in accordance with regulations 7.5, 8.5, and 9.5.
 - 7.5.1.5 A background check of an owner or custodian applying for a Sales Permit may be completed by the Department.
 - 7.5.1.6 When applicable have a valid Delaware business license and provide proof of same upon request by the Department.
 - 7.5.1.7 Notify the Department in writing by June 30th each year of any exotic that was acquired, born or died since the prior year's (December 31st) inventory. This notification does not apply to **exempt** exotics (regulation 6.1).

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- 7.5.2 Seller's Duties- When an owner or custodian proposes to sell an exotic that requires permitting by the Department the following conditions of sale must be met:
- 7.5.2.1 The seller must require at the time of the sale that the purchaser has obtained the appropriate class of Exotic Animal Permit from the Department.
 - 7.5.2.2 The seller must verify at the time of the sale that the purchaser's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.
 - 7.5.2.3 The seller must provide the purchaser with written information regarding the exotic's enclosure and welfare requirements.
 - 7.5.2.4 The seller must notify the purchaser that there may be county, city, and local laws, rules and regulations within the State of Delaware that may proscribe or govern the possession of exotics in their area.
 - 7.5.2.5 The seller must notify the Department in writing of the purchaser's name and address, and when available, e-mail address or telephone number and an Accurate Description of the Exotic by the first of every month after the sale of an Exotic.
 - 7.5.2.6 If the purchaser resides outside the State of Delaware, the seller must maintain a record of the interstate sale, including purchaser's address, and must notify the appropriate state veterinarian's office or applicable state agency.
 - 7.5.2.7 A legible copy of the purchaser's sale record must be maintained by the seller for 3 years after the sale of the exotic animal.
 - 7.5.2.8 The seller must attest in writing that all exotic animals put up for sale are in good health at the time of sale.
 - 7.5.2.9 The seller of reptiles must be in keeping with regulation 5.1.
 - 7.5.2.10 Sales permit holders are **prohibited from breeding** the following exotics in the Herbivore and Reptile classes:
 - 7.5.2.10.1 Members of Herbivore class prohibited from breeding:
 - 7.5.2.10.1.1 Herbivores whose average adult body weight of the species is greater than thirty pounds; and
 - 7.5.2.10.1.2 All rare and endangered species.
 - 7.5.2.10.2 Members of Reptile class prohibited from breeding:
 - 7.5.2.10.2.1 All members of the Croc odilian group: Alligators, Caimans, Crocodiles, and Gharials;
 - 7.5.2.10.2.2 All members of the Tuatara group;
 - 7.5.2.10.2.3 All giant snakes when average adult body length of the species is larger than 5 feet: Anacondas, Pythons and Boas;
 - 7.5.2.10.2.4 All giant lizards: Monitors (*Varanidae*);
 - 7.5.2.10.2.5 All giant tortoises: Aldabras and Galapagos; and
 - 7.5.2.10.2.6 All rare and endangered species.
- 7.5.3 Purchaser's Duties. When a purchaser proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to purchase must be met:
- 7.5.3.1 The purchaser must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of purchase.
 - 7.5.3.2 The purchaser must present to the seller at the time of the sale a Valid ID with the same name and address that are on the Exotic Animal Permit.

8.0 Initial Permit Applications

- 8.1 Individual Permit. Initial applications must be filed with the Department prior to acquiring the exotic and prior to moving to reside in the State of Delaware with an exotic pet(s). Initial applications do not apply to **exempt** exotics (regulation 6.1). The State Veterinarian, for good causes shown, and upon written

- request of the owner/custodian may grant an extension of time to apply for an initial permit. The pre-purchase or pre-adoption fees required to obtain an Individual Permit for an exotic are non refundable.
- 8.2** Accredited Zoo Permit. Initial applications must be filed with the Department upon accreditation by the Association of Zoos and Aquariums, or its successor or association. A single Accredited Zoo Permit covers every exotic animal housed or kept at the Zoo. The Accredited Zoo Permit application must include a current copy of the Zoo's on-going accreditation document and identify an inventory of every exotic animal by Accurate Description kept at the Zoo at the time of application. The inventory does not apply to **exempt** exotics (regulation 6.1).
- 8.3** Exhibitor Permit. Initial applications must be filed with the Department prior to exhibiting exotic animals in the State of Delaware. A single Exhibitor Permit covers every exotic animal housed or kept by the exhibitor. The application must include an inventory of every exotic animal by Accurate Description kept at the time of application. The inventory does not apply to **exempt** exotics (regulation 6.1).
- 8.4** Rehabilitator Permit. Initial applications must be filed with the Department prior to rehabilitating an exotic animal. A single Rehabilitator Permit covers every exotic animal housed or kept by the rehabilitator.
- 8.5** Sales Permit. Initial applications must be filed with the Department prior to the sale of any exotic animal and in accordance with regulation 7.5. Sales Permits must be obtained for each Class of exotic sold. If an exotic animal can be placed in more than one Class, the applicant need only apply for one class per exotic animal. The yearly Sales Permit request must include an inventory of each exotic animal per Class of Exotic animal identified on the Permit Application. The inventory must identify every exotic animal by Accurate Description of the exotic stocked at the business at the time of application for the yearly Permit. This yearly inventory does not apply to **exempt** exotics (regulation 6.1).

9.0 Permit Renewal

- 9.1** Individual Permits are valid for 3 years and must be renewed by March 31st of the fourth year.
- 9.2** Accredited Zoo permits are required to be renewed every fifth year by March 31st in keeping with the AZA accreditation schedule. An updated inventory must be submitted with each permit renewal application.
- 9.3** Exhibitor Permits are required to be renewed as stipulated in regulations 9.3.1 and 9.3.2. An updated inventory must be submitted with each permit renewal application.
- 9.3.1** When an Exhibitor is based in Delaware or exhibits in Delaware on a customary basis each calendar year, then the Exhibitor Permit holder must renew by December 31st of each year.
- 9.3.2** When an Exhibitor exhibits in Delaware sporadically and not each calendar year, then the Exhibitor Permit holder must renew within sixty (60) days prior to the initial exhibition. Such permits are only valid for the calendar year in which the permit was issued.
- 9.4** Rehabilitator Permits are valid for three years and renewal must occur by March 31st of the fourth year. The renewal application must include proof of an active Wildlife Rehabilitator Permit issued by DNREC and an updated inventory.
- 9.5** Sales Permits for each class of exotic sold are required to be renewed on an annual basis and renewal must occur by December 31st of each year. An updated inventory must be submitted with each permit renewal application.

10.0 Possessing or Owning an Exotic Animal Without a Permit

- 10.1** When the Department determines that an owner or custodian of an exotic animal has not obtained the required permit, or has failed to timely renew a permit, the Department shall inform the owner or custodian by mailing a letter to the owner or custodian's last known address of the legal requirement to obtain a permit. The owner or custodian will then have ten (10) business days from the date the Department's letter was mailed to obtain the required permit. The State Veterinarian may grant additional time to obtain a permit for good cause if petitioned in writing during the ten (10) business

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days from the date the Department's letter. No permit will be issued if possession of an exotic animal is prohibited by other applicable statutes.

- 10.2 Failure to obtain a permit or to timely renew a permit are grounds for the State Veterinarian to seize and dispose of the exotic without the administrative hearing contemplated by regulation 14.2 and/or to institute criminal proceedings in accordance with 3 Del.C. §7203.

11.0 Transporting; Permit Information Changes; Transfer of Ownership; Births and Deaths

- 11.1 If an exotic is to be moved from one location to another for any reason, the exotic shall be transported in a cage or other container that will be strong enough to prevent its escape while in transport, that will protect the public from physical contact with the exotic and that meets the exotic's welfare requirements.

- 11.2 All permit holders are required to notify the Department in writing within thirty (30) business days if they change their name, permanent address or other contact information and a failure to do so constitutes an offense punishable in accordance with 3 Del.C. §7203.

11.3 Transfer of Ownership or Custodianship

11.3.1 All permit holders are required to:

11.3.1.1 Keep written records of any change of ownership or custodianship of an exotic animal.

11.3.1.2 Make these records available to the Department immediately upon request.

11.3.2 Individual Permit holders that gift or adopt out an exotic in accordance with regulation 7.1.3 must notify the Department in writing within ten (10) days of the transfer of ownership or custody.

11.3.3 Rehabilitator Permit holders must be in keeping with regulation 7.4.

11.3.4 Sales Permit holders must be in keeping with regulations 7.5 and 8.5.

11.3.5 A failure to comply with any of the duties imposed by regulation 11.3 constitutes an offense punishable in accordance with 3 Del.C. §7203.

11.4 Births and Deaths

11.4.1 Individual Permit holders must notify the Department of the birth(s) or death(s) of each exotic by the first of every month.

11.4.1.1 In the instance of unplanned birth(s) of exotic(s), the Individual Permit holder must obtain a permit for each exotic in keeping with regulations 7.1 and 8.1.

11.4.1.2 If an exotic is pregnant when purchased and gives birth then the Individual Permit holder must obtain a permit for each exotic in keeping with regulations 7.1 and 8.1.

11.4.2 Accredited Zoo Permit holders may breed exotics in keeping regulation 4.5.2.

11.4.3 Exhibitor Permit holders who are based in Delaware must notify the Department of any birth(s) or death(s) of each exotic by the first of every month.

11.4.4 Rehabilitator Permit Holders must be in keeping with regulations 7.4.5.1.3, 7.4.5.1.4 and 9.4.

11.4.5 Sales Permit holders are limited to breeding the following classes: Reptile and Herbivore and must be in keeping with regulations 4.5.2, 7.5.1.7, 7.5.2.10, 8.5, and 9.5.

11.4.6 Exotics **exempt** from permitting in accordance with regulation 6.1:

11.4.6.1 May be bred; and

11.4.6.2 Births and deaths do not need to be reported to the Department.

12.0 Nuisances Prohibited

No exotic, whether **exempt** from permitting in accordance with regulation 6.1 or requiring permitting in accordance with regulations 6.2 and 6.3 (i.e., **exempt** or not exempt), may become a nuisance. Any **exotic**, exempt or not exempt, that is an immediate threat and/or poses a risk of danger to the public may be subject to seizure and destruction in accordance with regulation 4.2 and without the administrative hearing contemplated by regulation 14.2.

13.0 Escape, Loss, and Release

When an exotic requiring permitting in accordance with these regulations escapes or is lost from its enclosures, the owner or custodian of said exotic must notify the Department and the appropriate animal control agency of the escape/loss as soon as possible but no later than three (3) days after first learning of the escape or loss. The owner or custodian of an escaped or lost exotic has a duty to offer assistance to recapture the exotic and must reimburse the Department for any expenses incurred associated with recapturing the exotic including damage to persons, animals or property. It is unlawful to release an exotic requiring permitting in accordance with these regulations. If the Department is not notified by the owner or custodian of the escape or loss within aforementioned three (3) days, the exotic shall be presumed to be released unlawfully. A failure to comply with this provision constitutes an offense punishable in accordance with 3 Del.C. §7203.

14.0 Permit Denials and Revocations; Administrative Hearings; Appeals

- 14.1 The State Veterinarian or his/her designee may deny or revoke an initial application, renewal application, or a permit for good cause. Reasons for denials or revocations may include, but are not limited to the following: a zoo losing its accreditation; an exotic animal biting, maiming, or injuring a human; an exotic animal escaping from its enclosures; release of an exotic animal; failure to require and verify that a purchaser/adopter has obtained the appropriate class of Exotic Animal Permit from the Department prior to the time of purchase/adoption of the Exotic; failure to notify the Department of the transfer or sale of any exotic animal; exotic animals being bred or reproducing by Permit class holders not permitted to breed exotics; failure to notify the Department of the birth or death of an exotic; failure to keep copies of sales records for three years; failure to perform the duties stated in these regulations; failure to promptly report any contagious, infectious, or zoonotic disease, agent or organism concerns; prior animal cruelty violations; and the applicant/permit holder fails to maintain enclosure, proper care, nutrition and welfare standards.
- 14.2 Administrative Hearing: The owner or custodian of an exotic animal may appeal from the State Veterinarian's determinations pursuant to regulation 14.1 by requesting an Administrative Hearing before the Secretary or his or her designee.
- 14.2.1 Whenever the State Veterinarian proposes to revoke a permit or deny an application for a reason other than that the exotic poses an immediate and unreasonable risk of harm to the public, the Department shall first give written notice to the permit holder or applicant of the State Veterinarian's determination. The written notice shall inform the permit holder or applicant that he or she has the right to challenge the determination and to request a hearing before the Secretary of the Department or his or her designee. A request for an administrative hearing must be made in writing and must be received by the Department within ten (10) business days of the date of the written notice to such permit holder or applicant; otherwise, the State Veterinarian's determination becomes final. The hearing shall be informal, and the technical rules of evidence shall not apply. The administrative hearing shall be scheduled by the Department as soon as practical, but in no event more than thirty (30) business days after receiving the written request for an administrative hearing.
- 14.2.2 Whenever the State Veterinarian determines that an exotic, whether **exempt** or not exempt, poses an immediate and unreasonable risk of harm to public health and safety or domestic animal health, the same exotic is subject to immediate seizure and possible destruction. In such circumstances no administrative hearing is available to the applicant/permit holder or owner/custodian to challenge the State Veterinarian's determination.
- 14.2.3 Administrative hearings shall be recorded. The Secretary or his or her designee shall render his or her decision in writing to all interested parties within sixty (60) days of the date of the administrative hearing.
- 14.3 Appeals shall be on the record to the Superior Court of the State of Delaware.

13 DE Reg. 8 (07/01/09) (Prop.)

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 609

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

609 District and School Based Intervention Services

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 609 District and School Based Intervention Services with only format changes and references to the revised Children with Disabilities regulations. This regulation is part of the five-year review cycle. The Department recognizes the on-going work of the House Resolution 22 Task Force that is reviewing laws and regulations related to school discipline. The Department intends to make revisions to this regulation based on the outcomes of this task force.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation addresses services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process which has an impact on student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation addresses services for disruptive behavior not equity issues.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation addresses disruptive student behavior which could be a safety issue.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses services for disruptive behavior not student's 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 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 board of compliance with the regulation.

609 District and School Based Intervention Services

1.0 Provision of Services

Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 **DE Admin. Code** 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

2.0 Application for Funding

- 2.1 Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.
- 2.42 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

3.0 Student Population to be Served

Services funded under this regulation may be provided to any student in grades K to 12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions in 14 **DE Admin. Code** 925.

4.0 School Based Intervention Programs

- 4.1 If a district, through its LEA Consolidated Application, provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:
- 4.42 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.
- 4.23 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.
- 4.34 When placing a student with disabilities in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the Intervention Team also meets the requirements of 14 **DE Admin. Code** 925 922 to 929.

5.0 Evaluation of Services

Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be submitted as part of the LEA Consolidated Application process and shall conform to content and format standards.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 735

Education Impact Analysis Pursuant To 14 Del.C. Section 122(D)**735 Standardized Financial Reporting****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 735 Standardized Financial Reporting to be in alignment with the additional requirements of House Substitute No. 1 to House Bill No. 119 of the 145th General Assembly. The Department solicited comments from the district business managers and charter directors and made changes based on their feedback.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation has been revised to ensure uniformity and transparency on the financial documents of districts and charter schools and does not specifically address student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation has been revised to ensure uniformity and transparency on the financial documents of districts and charter schools and does not specifically address students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation has been revised to ensure uniformity and transparency on the financial documents of districts and charter schools and does not specifically address student health or safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation has been revised to ensure uniformity and transparency on the financial documents of districts and charter schools and does not specifically address student legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation maintains 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 should 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 amended regulation does not change where decision making decisions are made.

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 not an impediment to other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The Department has asked for feedback from the business managers and charter directors and believes there is not a less burdensome method for compliance with the legislation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no specific costs identified with compliance with the regulation.

735 Standardized Financial Reporting and Transparency

1.0 Purpose

The purpose of this regulation is to outline the criteria and process for the required standardized financial reporting pursuant to 14 De I.C. § 122 (b)(11); and the uniformity and transparency in the financial recording and bookkeeping practices of the school districts and charter schools pursuant to 14 Del.C., §§1508 and 1509.

2.0 Definitions

"Charter School" shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"Delaware Educational Statistics Report" shall mean the annual reports maintained by the Delaware Department of Education related to financial and pupil information.

"Delaware Financial Management System or (DFMS)" shall mean the State of Delaware's system for managing financial transactions.

"District" shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

"PHRST" shall mean the State of Delaware's payroll system.

"State of Delaware Online Checkbook" shall mean the State of Delaware's official online checkbook. The online checkbook provides the ability to view payment information by state agency, expenditure category, or vendor. The data are updated on a quarterly basis.

3.0 Standardized Financial Report

Standardized Financial Report shall mean the summary of the District's or Charter School's financial documentation provided in a format approved by the Department of Education that includes, but is not limited to, the District's or Charter School's most current expenditure and revenue budgets. This documentation shall include encumbrances, expenditures, and remaining balances by category as prescribed in the approved format. Districts and Charter Schools shall indicate on the Standardized Financial Report whether the most current expenditure and revenue budgets are preliminary, amended or have been finalized by its approving entity.

4.0 Uniformity and Transparency in Financial Recording and Bookkeeping Practices

4.1 Each District and Charter School shall be required to use the following:

4.1.1 Delaware Financial Management System or successor thereof for all financial transaction maintained in that system;

4.1.2 PHRST for payroll purposes; and

4.1.3 All other financial reporting formats or templates as provided by the Department of Education.

4.5.0 Reporting Requirements and Timelines

4.5.1 ~~Effective February 1, 2008, e~~Each District and Charter school, no later than ~~five (5)~~ fifteen (15) working days after the most recent District or Charter School board meeting, shall post the most current Standardized Financial Report on its website. Provided further, the District or Charter School shall provide the ~~preliminary or final~~ Standardized Financial Report for the ~~current~~ past school year, no later than ~~January~~ September 1st of each year.

5.2 Each District and Charter school shall provide a link on its website to the State of Delaware Online Checkbook.

5.3 Each District and Charter school shall provide a link on its website to the Delaware Educational Statistic Report.

11 DE Reg. 918 (01/01/08)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 736

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

736 Local School District and Charter School Citizen Budget Oversight Committees

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 736 Citizen Budget Oversight Committees pursuant to the requirements of House Substitute No. 1 to House Bill No. 119 of the 145th General Assembly. The Department solicited comments from the district business managers and charter directors and made changes based on their feedback.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation establishes oversight committees for the finances of districts and charter schools. The authority and flexibility of the decision making at the local board or school levels are preserved.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation establishes oversight committees for the finances of districts or charter schools. It is not intended that unnecessary reporting or administrative requirements are imposed 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? This regulation establishes oversight committees for the finances of the district or charter school. The financial decisions making authorities do not change with this new regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation establishes oversight committees for the finances of the district or charter school and is not an impediment to the implementation of other state educational policies, in particular, those addressing achievement in the core academic subjects.

9. Is there a less burdensome method for addressing the purpose of the regulation? The Department has asked for feedback from the business managers and charter directors and believes there is not a less burdensome method for compliance with the legislation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no specific costs identified with compliance with the regulation. There may be minimum costs related to the actual meetings, notices and any reproduction of material costs.

736 Local School District and Charter School Citizen Budget Oversight Committees

1.0 Purpose

The purpose of this regulation is to outline procedures, criteria and responsibilities related to the local school district and charter school Citizen Budget Oversight Committees required pursuant to 14 Del.C. §1508. The Citizen Budget Oversight Committee is solely established to oversee the financial position of the local school district or charter school it is assigned to oversee. The local school board or charter school board shall retain all policy and decision-making authorities granted pursuant to Delaware Code.

2.0 Definitions

"Certificate of Completion" means the document provided by the Department of Education indicating the individual has attended and completed the Citizen Budget Oversight Committee training.

"Charter School" shall mean a school pursuant to 14 Del.C., Ch. 5.

"Local School District" shall mean a reorganized school district or vocational technical school district established pursuant to 14 Del.C., Ch. 10.

"Trainer" means an individual approved by the Secretary of Education to provide the Citizen Budget Oversight Committee training.

3.0 Committee Members for Local School Districts

3.1 Each Local School District shall be required to establish a Citizen Budget Oversight Committee (Committee) no later than June 1, 2010. The Committee shall have access either electronically or in hard copy format to financial documents and financial information the Local School District has in its possession and that are relevant to the financial position of the district, with redactions permitted only to protect confidential personal information regarding students or employees.

3.2 The Committee shall have at least five (5) members with representation from parents, educators and taxpayers residing in the district. In addition, where possible, the Committee shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements.

3.3 Each Local School District may establish its own policy outlining the Committee application; application deadlines; selection committee criteria; length of term (minimum 2 years); and specific responsibilities of its members subject to Department of Education approval.

3.3.1 The Local School District shall submit its policy to the Department within ninety (90) calendar days of the effective day of this regulation. The Associate Secretary for Finance and Services shall review the proposed policy and make a decision within fifteen (15) work days to approve or

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request revisions. The decision to approve or request revisions shall be based solely on whether the policy includes the following criteria:

3.3.1.1 The policy provides a public notification component for the request for Committee members;

3.3.1.2 The policy provides the District Selection Committee membership requirements;

3.3.1.3 The policy provides the public with the expectations or responsibilities of serving on such committee;

3.3.1.4 The policy provides the process for selection of a Chairperson; and

3.3.1.5 The policy provides the membership term length.

3.3.2 If the Department does not approve the submitted policy, the Department shall provide comment on revisions within fifteen (15) work days of receipt of the proposed policy. The Local School District may submit a revised policy. If the revised policy is not subsequently approved, the Local School District shall follow the Department policy. In addition, a Local School District may not resubmit a policy for approval more than one time during a fiscal year.

3.3.3 If the Local School District decides not to establish its own policy or if the policy is not approved by the Department, the Local School District shall be subject to the following process:

3.3.3.1 Use the application form as developed and approved by the Department of Education that delineates standard application language and additional information that includes, but not limited to, the following:

3.3.3.1.1 Membership pursuant to 3.2;

3.3.3.1.2 Chairperson to be selected from the membership of the committee with a majority of vote;

3.3.3.1.3 Term length of two (2) years with option to have the term extended based on the majority vote of the existing members of the Committee; however, a member may terminate his or her position upon written notice to the Chairperson; and

3.3.3.1.4 Experience and statement for reason for participation on the Committee.

3.3.3.2 Post the request for Committee members for at least fifteen (15) work days on its website and all school building main entrance doors;

3.3.3.3 Identify a District Selection Committee with at least two educators from the district, one local school board member, the district's business manager or superintendent, and one member of the local teacher's union; and

3.3.3.4 Use the selection rubric developed and approved by the Department of Education.

3.4 Notwithstanding the above, a Local School District with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets 3.2 of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. New members shall be subject to the training pursuant to 5.1.

4.0 Committee Members for Charter Schools

4.1 Each Charter shall be required to establish its first Citizen Budget Oversight Committee (Committee) no later than June 1, 2010. The Committee shall have access either electronically or in hard copy format to financial documents and financial information the Charter School has in its possession and that are relevant to the financial position of the district, with redactions permitted only to protect confidential personal information regarding students or employees.

4.2 The Committee shall have at least five (5) members with representation from educators and parents of students in the school and representation from the Department of Education. In addition, where possible, the Committee shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements.

- 4.3 Each Charter School may establish its own policy outlining the Committee application; application deadlines; selection committee criteria; length of term (minimum 2 years); and specific responsibilities of its members subject to Department of Education approval.
- 4.3.1 The Charter School shall submit its policy to the Department within ninety (90) calendar days of the effective day of this regulation. The Associate Secretary for Finance and Services shall review the proposed policy and make a decision within fifteen (15) work days to approve or request revisions. The decision to approve or request revisions shall be based solely on whether the policy includes the following criteria:
- 4.3.1.1 The policy provides a public notification component for the request for Committee members;
- 4.3.1.2 The policy provides the Charter School Selection Committee membership requirements;
- 4.3.1.3 The policy provides the public with the expectations or responsibilities of serving on such committee;
- 4.3.1.4 The policy provides the process for selection of a Chairperson; and
- 4.3.1.5 The policy provides the membership term length.
- 4.3.2 If the Department does not approve the submitted policy, the Department shall provide comment on revisions within fifteen (15) work days of receipt of the proposed policy. The Charter School may submit a revised policy. If the revised policy is not subsequently approved, the Charter School shall follow the Department policy. In addition, a Charter School may not resubmit a policy for approval more than one time during a fiscal year.
- 4.3.3 If the Charter School decides not to establish its own policy or if the policy is not approved by the Department, the Charter School shall be subject to the following process:
- 4.3.3.1 Use the application form as developed and approved by the Department of Education that delineates standard application language and additional information that includes, but not limited to, the following:
- 4.3.3.1.1 Membership pursuant to 3.2;
- 4.3.3.1.2 Chairperson to be selected from the membership of the committee with a majority of vote;
- 4.3.3.1.3 Term length of two (2) years with option to have the term extended based on the majority vote of the existing members of the Committee; however, a member may terminate his or her position upon written notice to the Chairperson; and
- 4.3.3.1.4 Experience and statement for reason for participation on the Committee.
- 4.3.3.2 Post the request for Committee members for at least fifteen (15) work days on its website and all school building main entrance doors;
- 4.3.3.3 Identify a Charter School Selection Committee with at least two educators from the school, one Charter School board member, the Charter School Principal, and one teacher within the Charter School; and
- 4.3.3.4 Use the selection rubric developed and approved by the Department of Education.
- 4.4 Notwithstanding the above, a Charter School with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets 3.2 of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. New members shall be subject to the training pursuant to 5.1.

5.0 Citizen Budget Oversight Committee Training

- 5.1 The Citizen Budget Oversight Committee Training (Training) means the educational programs developed by the Department of Education for the local school district and charter school Citizen Budget Oversight Committee members. This Training shall, at a minimum, consist of two (2) hours and cover the following topics:
- 5.1.1 Overview of education budget process and timelines;

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- 5.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;
- 5.1.3 State Financial Management System; and
- 5.1.4 Reporting requirements.

6.0 District School Board and Charter School Board Financial Responsibility Training Requirement

Each member of a Citizen Budget Oversight Committee shall attend and receive a Certificate of Completion for the Citizen Budget Oversight Committee training within one (1) year of application and subsequent appointment to a Citizen Budget Oversight Committee. Provided further, additional training may be required from time to time as determined by the Department.

7.0 Schedule of School Board Financial Training

The Department shall annually publish a list of date(s) for Training. The Training shall be conducted by a Trainer as defined in this regulation.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 851

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

851 K to 12 Comprehensive Health Education Program

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 851 K to 12 Comprehensive Health Education Program. The regulation was amended for formatting purposes and also clarification on necessary components of the district and charter school health education programs. In addition, clarifies that charter schools are subject to these program requirements.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address student achievement as measured against state achievement standards. It pertains to health education in grade levels.
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation addresses health education not equity issues.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation helps to ensure that all students' health and safety are adequately protected with instruction in the areas of health, family life, and drug-free schools. The amendment also adds training in fire safety education and evidence-based tobacco, alcohol, drug, and interpersonal violence prevention program.

4. Will the amended regulation help to ensure that all student's legal rights are respected? The amended regulation addresses comprehensive health education not student's 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 board of compliance with the regulation.

851 K to 12 Comprehensive Health Education Program

1.0 Program Requirements

- 1.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education Standards that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:
 - 1.1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level. Each charter school shall identify a person to coordinate the program for the charter school.
 - 1.1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the District Consolidated Application Planning Committee.
 - 1.1.3 The use of the state content standards for health education for grades K to 12 ~~inclusive of~~ to address the core concepts: tobacco, alcohol and other drugs, injury prevention and safety, nutrition and, physical activity, family life and sexuality, tobacco, emotional personal health and wellness, mental, personal and consumer health and community and environmental health with minimum hours of instruction as follows:
 - 1.1.3.1 In grades K to 4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug and alcohol education.
 - 1.1.3.2 In grades 5 and 6, a minimum of thirty five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education.
 - 1.1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education of which fifteen (15) hours, in each grade, must address drug and alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8,

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an additional fifteen hours of drug and alcohol education must be provided in the other grade.

- 1.1.3.4 In grades 9 to 12, one half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug and alcohol education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug and alcohol education must be provided for all students.
- 1.1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high risk behaviors.
- 1.1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through Family and Consumer Science courses.
- 1.1.6 Inclusion of research-based fire safety education in grades kindergarten through grade 6.
- 1.1.7 Inclusion of an evidence-based tobacco, alcohol, drug and interpersonal violence prevention program.
- ~~4.6 1.1.8 An annual staff development plan that describes the~~ The use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.
- 4.7 1.1.9 A description of the method(s) used to implement and evaluate the effectiveness of the program which shall be reported ~~every three years as part of the Quality Review for Ensuring School and Student Success~~ in the District/School Success Plan.

3 DE Reg. 1073 (2/1/00)

8 DE Reg. 1012 (1/1/05)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

DSSM: Food Supplement Program - Decennial Census 2010

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) related to the 2010 Decennial Census.

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 November 30, 2009.

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

SUMMARY OF PROPOSAL

The proposal amends the Division of Social Services Manual (DSSM) regarding the income disregards utilized in the income eligibility determination process. Currently, individuals eligible for the Food Supplement Program

(FSP) are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing the 2010 Decennial Census. In the past, the Census Bureau has successfully recruited program participants to help fill these vacancies, and wishes to do the same for the upcoming 2010 Census.

Statutory Authority

Section 17(b)(1) of the Food and Nutrition Act of 2008, Research, Demonstration and Evaluation

Background

The Food and Nutrition Service (FNS) has offered States the opportunity to participate in a demonstration project to exclude earned income from temporary employment in the 2010 Decennial Census. The demonstration projects are intended to help ease program administration by aligning the Supplemental Nutrition Assistance Program (SNAP) policy with Medicaid policies.

Excluding the earned income of temporary census employees assists the Census Bureau with staff recruitment and retention while allowing individuals with limited or no employment history to gain valuable work experience without a reduction in SNAP benefits. Similar demonstration projects were conducted for the 1990 and 2000 Census.

Summary of Proposal

DSSM 9059, Income Exclusions: Food and Nutrition Service (FNS) has agreed to allow the exclusion of temporary income from the United States Census Bureau for Delaware's Food Supplement Program. The rule excludes the earnings of temporary census employees from the U. S. Census Bureau for the 2010 Census Demonstration Project. The project expires September 30, 2010.

The amendments are also proposed to update the list of reservations under Part B, item #17; and, delete repetitive text under item K. Energy Assistance.

9059 Income Exclusions

[273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

- A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and includes meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows:

1. Department of Housing and Urban Development (HUD) vendor payments. Rent or mortgage payments made to landlords or mortgages by HUD are excluded.
2. Vendor payments that are reimbursements. Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household as described in DSSM 9059 (E).

(Break in Continuity Within Section)

- I. The cost of producing self-employment income (See DSSM 9074.4).

(Break in Continuity Within Section)

PROPOSED REGULATIONS

PART B - AMERICAN INDIAN OR ALASKA NATIVE

(Break in Continuity Within Section)

17. P. L. 99-146, Section 6(b), 11/11/85 - Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior are excluded from income and resources. Judgements were awarded in Docket s Numbered 18-S, 18-U, 18-C, and 18-T.

Dockets 18-S and 18-U are divided among the following reservations.

Michigan:

~~Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert, and Ontonagon Bands) Wisconsin:
Bad River Reservation
Lac du Flambeau Reservation
Lac Courte Oreilles Reservation
Sokaogon Chippewa Community
Red Cliff Reservation
St. Croix Reservation~~

Minnesota:

~~Fond du Lac Reservation
Grand Portage Reservation
Nett Lake Reservation (including Vermillion Lake and Deer Creek)
White Earth Reservation~~

Wisconsin:

- Bad River Reservation
- Lac du Flambeau Reservation
- Lac Courte Oreilles Reservation
- Sokaogon Chippewa Community
- Red Cliff Reservation
- St. Croix Reservation

Michigan:

- Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert, and Ontonagon Bands)

Minnesota:

- Fond du Lac Reservation
- Grand Portage Reservation
- Nett Lake Reservation (including Vermillion Lake and Deer Creek)
- White Earth Reservation

(Break in Continuity Within Section)

K. Energy Assistance as follows:

(a) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than Part A of Title IV of the Social Security Act, including utility reimbursements made by the Department of Housing and Urban Development and the rural Housing Service, or

(b) A one-time payment or allowance applied on an as needed basis and made under a Federal or State law for the costs of weatherizing or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down payment followed by a final payment upon completion of the work will be considered a one-time payment for the purposes of this provision.

~~Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.~~

(Break in Continuity Within Section)

S. The earnings of temporary census workers from the Bureau of Census is ~~not counted as income for food stamp purposes effective April 1, 2000 through December 31, 2000~~ excluded for the Census 2010 Demonstration Project. The project expires September 30, 2010.

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 580 11-01-09.htm>

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)
18 **DE Admin. Code** 901

901 Arbitration of Automobile and Homeowners' Insurance Claims

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 901 relating to Arbitration. The docket number for this proposed amendment is 1278.

The purpose of the proposed amendment to regulation 901 is to update the existing regulation to conform to statutory changes relative to health insurance arbitration and to provide for the payment of legal services to prevailing consumers in arbitration cases. The text of the proposed amendment is reproduced in the November 2009 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday December 7, 2009, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

901 Arbitration of Automobile and Homeowners' Insurance Claims

1.0 Purpose and Statutory Authority

- 1.1 The purpose of this Regulation is to implement 18 **Del.C.** §331, ~~Ch. 23~~, and 21 **Del.C.** §§2118 and 2118B by establishing the procedures for the arbitration of certain claims for benefits available under automobile or homeowners' policies or agreements, and/or those statutes. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 2312, and 29 **Del.C.**, Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

5 DE Reg. 1746 (3/1/02)

2.0 Insurer's Duty to Arbitrate

- 2.1 Every insurer providing coverage or benefits in this State for automobile or homeowners' insurance policies shall submit to arbitration of covered claims (as defined by 18 **Del.C.** §331 and 21 **Del.C.**

§§2118 and 2118B) by their insureds unless it is exempt from arbitration by the Insurance Commissioner.

5 DE Reg. 1746 (3/1/02)

3.0 Exemption from Arbitration

- 3.1 Insurers requesting exemption from the duty to arbitrate under a homeowners' insurance policy shall submit to the Insurance Commissioner the following:
- 3.1.1 A request for exemption from arbitration;
 - 3.1.2 Copies or description of policies or plans for which exemption is requested;
 - 3.1.3 A detailed description of its internal review or appraisal procedures;
 - 3.1.4 Copies of documents to be provided to the insured describing its internal procedures including a statement that the insurer will be bound by a decision favorable to the insured;
 - 3.1.5 A certification by an officer of the insurer with binding authority that the procedures described will be followed in all cases, that the insurer will be bound by a decision favorable to the insured and that all documents submitted are true and accurate; and
 - 3.1.6 Payment of a non-refundable fee of \$75.00.
- 3.2 The Commissioner shall exempt a homeowner insurer from arbitration under this Regulation and continue such exemption as long as the internal appraisal or review procedures submitted under section 3.1 contain the following minimum requirements:
- 3.2.1 The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall reside over the panel. However, neither the insurer's assigned adjuster nor his or her supervisor may participate on the panel nor anyone under that supervisor's control;
 - 3.2.2 The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;
 - 3.2.3 The insured is permitted to be represented by counsel;
 - 3.2.4 The insured is informed as to the right to appeal, if any, an adverse decision;
 - 3.2.5 The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision; and
 - 3.2.6 The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department.
- 3.3 The Commissioner may suspend, revoke or refuse to continue any exemption after notice and a hearing establishing violation of the above. The exemption provided above is not effective until the application has been filed, reviewed and approved by the Commissioner. The Commissioner may request reports from insurers from time to time on the above reviews.

5 DE Reg. 1746 (3/1/02)

4.0 Exclusion from Arbitration

- 4.1 The following claims shall not be subject to arbitration under this Regulation:
- 4.1.1 Claims for which there is no jurisdiction under 18 Del.C. §§331 and 21 Del.C. §§2118 and 2118B;
 - 4.1.2 Claims for which there is no policy coverage in force;
 - 4.1.3 Claims that are already pending before any court;
 - 4.1.4 Claims that arise under an insurance policy from a jurisdiction other than Delaware; or
 - 4.1.5 Claims which arise under a homeowners' policy or plan which has been exempted by the Commissioner under section 3.0.

- 4.2 The Arbitration Secretary or Panel is authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under section 4.1.1 and after notice and an opportunity to respond is provided the petitioner.

5 DE Reg. 1746 (3/1/02)

5.0 General

- 5.1 These Arbitration Rules shall be considered applicable to accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party property and PIP claims and to first party claims in other states or territories of the United States or to foreign countries as set forth in the insurance policy.
- 5.2 In arbitration proceedings and practice, the claimant who initiates the proceeding by filing a request for arbitration of a controverted claim or issue with the Insurance Commissioner shall be known as the "claimant," and the company or companies against which claim or claims is asserted shall be known as "respondent(s)."
- 5.3 Requests for arbitration with respect to homeowners' insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date an offer of settlement or denial of coverage or liability has been made by an insurer.

5 DE Reg. 1746 (3/1/02)

6.0 Notice and Manner of Service

- 6.1 Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.
- 6.2 Service of an original Petition shall be by Certified U.S. Postage and return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.
- 6.3 The parties must provide a brief statement verifying the service of all filed papers with the manner, date and address of service.

5 DE Reg. 1746 (3/1/02)

7.0 When Arbitration May Be Commenced

- 7.1 Arbitration may be commenced after the parties have attempted to resolve the matter informally and the Petitioner has provided the opposing party with all reasonably requested information in Petitioner's possession or provided the opposing party with an opportunity to obtain such information.
- 7.2 The Panel may dismiss without prejudice the matter if it finds that the Petitioner has not attempted to resolve the matter informally or has failed to provide the opposing party with reasonably requested information.

5 DE Reg. 1746 (3/1/02)

8.0 Commencement of Arbitration

- 8.1 An arbitration will commence upon the filing of a Petition and three copies, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the proper fee. The petitioner shall at the same time send a copy of the same Petition and supporting documents to the insurer or insurer's representative and a statement verifying service under section 5.0. The Arbitration Secretary may return any non-conforming Petition.
- 8.2 Within 20 business days of receipt of the Petition, the responding insurer ("Respondent") shall file a Response with three copies, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached and payment of the proper fee. The Respondent shall at the same time send a copy of the same Response and supporting documents to the Petitioner or Petitioner's representative and a statement verifying service under section 5.0. The Arbitration Secretary may return any non-conforming Response.

- 8.3 If the Respondent fails to file a Response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitration Panel for summary disposition. The Panel may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on Respondent. The Arbitration Secretary or Panel may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.
- 8.4 Upon the filing of a proper Response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitration Panel.
- 8.5 The Insurance Department will provide the approved form of Petition or Response as they may be amended from time to time. The Parties are free to produce and use their own copies of those forms.

5 DE Reg. 1746 (3/1/02)

9.0 Arbitration Panels

- 9.1 The Commissioner shall establish ~~two~~ types of Arbitration Panels. There shall be Panels established for automobile insurance claims and homeowners' insurance claims.
- 9.2 Each Panel shall consist of three members of suitable backgrounds or experience or as may be specified by statute, to be selected by the Commissioner. No member may serve on a Panel in which his employer or client is a party. Each Panel shall have a presiding member who shall be appointed by the Commissioner.
- 9.2.1 In the case of automobile claims, each Panel shall consist of at least one Delaware licensed attorney as a member and the balance of the members shall be Delaware licensed insurance adjusters and/or appraiser as defined in 18 Del.C. §1702(c)
- 9.2.2 In the case of homeowners' claim, the Panel shall consist of individuals of suitable expertise in evaluating such claims and may include Delaware licensed property appraisers or adjusters. One member of the panel shall be a Delaware licensed attorney.
- 9.2.3 ~~In the case of health insurance claims involving the certification of treatment or procedure, one member of the panel must be a licensed health care professional in the relevant area of dispute.~~
- 9.2.43 A decision by ~~the~~ a Panel requires concurrence by at least two of the Panel members. The written decision shall be signed by the panel chair and shall reflect the votes of the members.

5 DE Reg. 1746 (3/1/02)

10.0 Arbitration Hearings

- 10.1 The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business days prior to the hearing. Neither party is required to appear and may rely on the filed papers.
- 10.2 The purpose of Arbitration is an attempt to ~~effect~~ affect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter informally. Arbitration hearings shall be conducted in keeping with that goal. The arbitration hearing is not a substitute for a civil trial. In accord, the Delaware Rules of Evidence do not apply and hearings are to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Panel. If the Panel allows any brief testimony, the Panel shall allow brief cross examination or other response by the opposing party.
- 10.3 The Arbitration Panel may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside the parties' presence for information to resolve the matter.
- 10.4 The Panel is to consider the matter based on the submissions of the parties and information otherwise obtained by the Panel. The Panel shall not consider any matter not contained in the original or supplemental submissions of the parties which has not been provided the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.
- 10.5 Claims for reasonable attorney fees under ~~21 Del.C. §2118B,~~ shall only be granted by the arbitrators upon the petitioner ~~proving that the insurer acted in "bad faith."~~ prevailing without an arbitrator's

~~dissent in all cases. Bad faith is an intentional, reckless or malicious indifference to the duties owed an insured, not negligence, carelessness or inadvertence of any degree.~~

5 DE Reg. 1746 (3/1/02)

11.0 Subrogation Arbitration

- 11.1 Subrogation arbitration between or among insurers pursuant to 21 **Del.C.** §2118 is not subject to this Regulation and shall continue to be conducted through Arbitration Forums, Inc., or its successor.

5 DE Reg. 1746 (3/1/02)

12.0 Arbitration Fees

- 12.1 Each party to an arbitration shall tender and pay the following filing fees for arbitration.
- 12.1.1 \$30.00 for Automobile Insurance Claims; and
- 12.1.2 \$30.00 for Homeowners' Insurance Claims.
- 12.2 The filing fees are non-refundable and shall only be returned when a claim is determined to be excluded from arbitration. The prevailing party at arbitration is normally entitled to recover shall recover their paid filing fees as costs. ~~However, the Panel may, for cause, award the filing fee as costs as may be equitable.~~

5 DE Reg. 1746 (3/1/02)

13.0 Appeals

- 13.1 Appeals from an adverse decision of the Arbitration panel shall be taken to the Superior Court of the State of Delaware by filing a Notice of Appeal with the Arbitration Secretary.
- 13.2 The Notice of Appeal must be filed within 90 days in the case of claims for homeowners' insurance claims and within 30 days in the case of automobile insurance claims.
- 13.3 All further filings and proceedings shall be in accordance with the Superior Court Rules of Civil Procedure.

5 DE Reg. 1746 (3/1/02)

14.0 Effective Date

- 14.1 ~~This regulation, as amended, shall replace existing Regulations 10 and 10A in their entirety. This regulation shall become on March 11, 2002. Any health claims commenced under this regulation prior to the effective date of Regulation 11 shall be resolved in accordance with the provisions of 73 **Del. Laws** Ch. 96. This amended regulation shall become effective on January 11, 2010.~~

5 DE Reg. 1746 (3/1/02)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)
18 **DE Admin. Code** 1305

PUBLIC NOTICE

1305 Loss Ratio Filing Procedures for Health Insurers and Health Service Corporations for Medical and Hospital Expense-incurred Insurance Policies and Group Plans

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1305 relating to health insurers, health service corporations and managed care organizations. The docket number for this proposed amendment is 1277.

The purpose of the proposed amendment to Regulation 1305 is to create procedures and time lines for all rate filings made by insurers. The text of the proposed amendment is reproduced in the November 2009 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a 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 December 7, 2009, 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.

1305 ~~Loss Ratio~~ Rate Filing Procedures for Health Insurers and Health Service Corporations ~~for Medical and Hospital Expense-incurred Insurance Policies and Group Plans~~ and Managed Care Organizations

1.0 Authority

This regulation is promulgated and adopted pursuant to 18 **Del.C.** §~~314~~ 311, 18 **Del.C.** Ch. 25 and 29 **Del.C.** Ch. 101.

2.0 Purpose

The purpose of this regulation is to establish a format procedure for all rate filings made by insurers pursuant to 18 **Del.C.** §2506(c), ~~including therein the specific manner of calculating and certifying the loss ratio. Insurers Are Reminded That There Is at Present (1991) a \$25 per Filing Fee Imposed.~~

3.0 Scope

This regulation applies to insurers, ~~and~~ health service corporations, and managed care organizaitons, as defined under "Health Benefit Plans" in 4.0 below, that deliver or issue for delivery medical and hospital expense-incurred insurance policies and plans for which rates submitted affect ~~20 or more~~ residents of this State. The regulation applies to individual policies and plans and all group policies and plans ~~that cover 24 or fewer persons. Any insurer or health service corporation having more than one group policy or plan that affects 24 or fewer persons must make a separate filing for each group policy or plan. A single filing by an insurer or health service corporation that purports to be an aggregate representation of loss ratio information for two or more group policies or plans is precluded by this regulation.~~

4.0 Definitions

4.1 For purposes of this regulation:

"Carrier" means any entity that provides health insurance in this state. For the purposes of this chapter, carrier includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

"Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

"Collected Premium" means the amount of premium that is unadjusted to reflect any changes in the rate level (e.g. reported or actual premium).

"Commissioner" means the Insurance Commissioner of this State.

"Earned Premium" means the amount portion of the total premium for each year in the experience period on a collected basis that corresponds to the coverage provided during a given time period.

"Experience Period" means the number of years over which the adequacy of the rates presently in effect are tested.

"Health Benefit Plan" is an individual plan or group health plan that provides, or pays the cost of, medical care, including but not limited to group health plans, health insurance issuers, health maintenance organizations, managed care organizations and health service contractors, as well as any combination of them.

"Incurred Losses" means losses that are (1) paid losses, and (2) losses that are incurred but not yet reported to the insurance claimants.

"On-Level Factors" means factors that are used to correct collected premiums for each year in the experience period to the current level.

"Policy Form" means the form on which the policy is delivered or issued for delivery by the insurer.

"Protected and Reserve Incurred Losses" means losses on claims that are still open.

"Rate Level History" means the accumulation of changes in the rate level showing the overall adjustment required to bring premiums to the current level.

"Supplemental Rate Information" shall mean any manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule and any other information needed to determine the applicable premium for an individual insured and not otherwise inconsistent with the purposes of this chapter, as prescribed by rule of the Commissioner.

5.0 Contents of Rate Revision Complete Filings

5.1 Each rate revision filing which includes the following shall include be presumed a complete filing, subject to requests for time for review as the Commissioner may make:

5.1.1 General Information

5.1.1.1 Name of insurer and domiciliary state;

5.1.1.2 Policy form name and number;

5.1.1.3 ~~Name~~ Number of insured individuals or insured groups and number in group;

5.1.1.4 ~~Name of insurer's officer who is in charge of the filing;~~

5.1.1.5 ~~Amount of rate increase/decrease requested;~~

5.1.1.6 ~~Date filing was made;~~

5.1.1.7 ~~Other state(s) that have approved or disapproved the filing; and~~

5.1.1.8 ~~A~~ Written, notarized certification of insurer's officer that the filing is made pursuant to applicable laws, regulations and subject to all penalties and that the statements made in the filing are true and correct.

5.1.2 ~~Experienced Loss Ratio~~ In addition to the information listed above, the Commissioner shall identify by bulletin or circular letter additional information required to be included in a complete filing.

5.1.2.1 ~~Earned premium reported on an actual basis;~~

5.1.2.2 ~~Rate level history over the applicable period of time;~~

5.1.2.3 ~~On-level factors;~~

5.1.2.4 ~~Incurred losses on an actual basis;~~

5.1.2.5 ~~Projected and reserved incurred losses (1) projection data underlying incurred losses, and (2) reserve data underlying incurred losses; and~~

5.1.2.6 ~~Projected experience loss ratio.~~

5.1.3 ~~Expected Loss Ratio Underlying Proposed Rates~~

5.1.3.1 ~~Underwriting expenses (1) incurred commissions as a percentage of written premium, (2) general administrative expense incurred as a percentage of earned at present level premium (3) claims administration expense incurred as a percentage of actual incurred losses, (4) Delaware premium taxes, licenses and fees as a percentage of written premium, (5) underwriting profit provision expressed as a percentage of earned premium; and~~

5.1.3.2 ~~Expected loss ratio.~~

5.1.4 Investment Income

PROPOSED REGULATIONS

5.1.4.1 ~~Estimated investment earnings on unearned premium reserves and on loss reserves calculated as follows:~~

5.1.4.1.1 ~~Unearned premium reserve~~

5.1.4.1.1.1 ~~Direct earned premium for calendar year ended _____~~

5.1.4.1.1.2 ~~Mean unearned premium reserve _____~~

5.1.4.1.1.3 ~~Deduction for prepaid expenses~~

5.1.4.1.1.3.1 ~~Commission and brokerage expense _____~~

5.1.4.1.1.3.2 ~~Licenses and fees _____~~

5.1.4.1.1.3.3 ~~50% of other acquisition expense _____~~

5.1.4.1.1.3.4 ~~50% of company operating expense _____~~

5.1.4.1.1.3.5 ~~Total _____~~

5.1.4.1.1.4 ~~(2) x (3) = _____~~

5.1.4.1.1.5 ~~Net subject to investment (2) - (4) _____~~

5.1.4.1.2 ~~Delayed remission of premium (agents' balances)~~

5.1.4.1.2.1 ~~Direct earned premium (A - 1) _____~~

5.1.4.1.2.2 ~~Average agents' balance _____~~

5.1.4.1.2.3 ~~Delayed remission (1) x (2) _____~~

5.1.4.1.3 ~~Loss Reserve~~

5.1.4.1.3.1 ~~Direct earned premium _____~~

5.1.4.1.3.2 ~~Expected incurred losses excluding underwriting profit provision _____~~

5.1.4.1.3.3 ~~Expected loss reserves _____~~

5.1.4.1.4 ~~Net subject to investment~~

~~(A - 5) - (B - 3) + (C - 3) = _____~~

5.1.4.1.5 ~~Average rate of return _____~~

5.1.4.1.6 ~~Investment earnings on net subject to investment (D) x (E) = _____~~

5.1.4.1.7 ~~Average rate of return as a percent of direct earned premium (F) divided by (A - 1) _____~~

5.1.4.1.8 ~~Average rate of return as a percent of direct earned premium after federal income taxes _____~~

5.1.5 ~~Indicated rate level change reflecting investment income as a credit against underwriting profit provision.~~

6.0 Review Procedures

- 6.1 Subject to the provisions of this section, no policy form rates subject to this regulation shall be delivered or issued for delivery in this state, unless they have been filed with the Commissioner.
- 6.2 The Commissioner shall review and approve, provide notice of deficiencies or disapprove the initial filing within thirty (30) days of receipt. Any notice of deficiencies or disapproval shall be in writing and based only on the specific provisions of the applicable statutes, regulations or bulletins published by the Commissioner having the force and effect of law in this state and contained in the document created by the Commissioner pursuant to 5.0 of this section. The notice of deficiencies or disapproval shall contain sufficient detail for the filer to bring the policy form rate filing into compliance, and shall cite the specific statutes, regulations or bulletins upon which the notice of deficiencies or disapproval is based.
- 6.3 No completed filing described in this section shall be effective unless filed with the Commissioner not less than thirty (30) days prior to the proposed effective date. Such a filing shall be deemed to meet the statutory requirements unless disapproved by the Commissioner within thirty (30) days of receipt of the filing. No such filings shall be disapproved, except on the basis that the rates are inadequate, excessive or unfairly discriminatory.

- 6.4 A filer may resubmit a rate filing that corrects any deficiencies or resubmit a disapproved rate filing, and a revised certification, within thirty (30) days of its receipt of the Commissioner's notice of deficiencies or disapproval. Any filing not resubmitted within thirty (30) days of the notice of deficiencies shall be deemed withdrawn. Any disapproved rate filing form not resubmitted within thirty (30) days is disapproved.
- 6.5 At the end of the review period, the rate is deemed approved if the Commissioner has taken no action.
 - 6.5.1 The Commissioner shall review the resubmitted filing and certification, and shall approve or disapprove it within thirty (30) days. Notice of deficiencies or disapproval shall be in writing and shall provide a detailed description of the reasons for the disapproval in sufficient detail for the filer to bring the rate filing in to compliance and shall cite the specific statutes, regulation, or bulletins upon which the disapproval is based. No further extensions of time may be taken unless the filer has introduced new provisions in the resubmission, in which case the Commissioner may extend the time for review by an additional thirty (30) days. At the end of the review period, the rate filing is deemed approved if the Commissioner has taken no action.
 - 6.5.2 The Commissioner may not disapprove a resubmitted policy form rate filing for reasons other than those initially set forth in the original notice of deficiencies or disapproval sent pursuant to section 6.0.
 - 6.5.2.1 The Commissioner may disapprove a resubmitted rate filing for reasons other than those initially set forth in the original notice of deficiencies or disapproval sent pursuant to section 6.0 if:
 - 6.5.2.1.1 The filer has introduced new provisions in the resubmission.
 - 6.5.2.1.2 There has been a change in statutes, regulations or bulletins published in this state having the force and effect of law, or
 - 6.5.2.1.3 There has been reviewer error and the written disapproval fails to state a specific provision of applicable statute, regulation or bulletin published by the Commissioner having the effect of law in this state that is necessary to have the rate filing form conform to the requirements of law.

7.0 Minimum Loss Ratio Guarantee

- 7.1 In order to use the Minimum Loss Ratio Guarantee (MLRG) the company must satisfy the credibility definition:
 - 7.1.1 The annual earned premium volume in Delaware under the particular policy form must be greater than two million five hundred thousand (\$2,500,000) dollars.
 - 7.1.2 This amount will be increased each year by the greater of 6.0% and the average health care premium increase from the Annual Health Care Costs Study for Major Metropolitan Areas.
 - 7.1.3 The MLRG shall not apply to closed blocks of business.

68.0 New Policy or Plan and Rate Revision Filings

- 68.1 With respect to a new ~~form~~ rate filings and rate revision filings, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio or the end of the third year is at least as great as shown in the following table:

Renewal Clause*

Type of Coverage	OR	CR	GR	NC
Medical Expense	60 <u>5</u> %	55 <u>60</u> %	55 <u>60</u> %	50%
Loss of Income and Other	60%	55 <u>60</u> 5%	50 <u>5</u> %	45%

For individual Medicare supplement policies, the anticipated lifetime loss ratio must equal at least 65%. For group Medicare supplement policies, the anticipated loss ratio must equal at least 75%.

9.0 Minimum Loss Ratio Guarantee Option

- 9.1 Notwithstanding the other provisions of this Regulation, premium rates may be used upon filing with the Commissioner of a minimum loss ratio guarantee. An insurer may not elect to use the filing procedure in this section for a rate filing that does not contain the minimum loss ratio guarantee. If an insurer elects to use the filing procedure in this subsection for a rate filing, the insurer shall not use a filing of premium rates that does not provide a minimum loss ratio guarantee for that policy form or forms.
- 9.2 The minimum loss ratio shall be in writing and shall contain at least the following:
- 9.2.1 An actuarial memorandum specifying the expected loss ratio that complies with the standards as set forth in this subsection;
- 9.2.2 Detailed experience information concerning the rate filing;
- 9.2.3 A step-by-step description of the process used to develop the experience loss ratio, including demonstration with supporting data from the original policy rate filing;
- 9.2.4 A guarantee of a specific lifetime minimum loss ratio, that shall be greater than or equal to the loss ratio in 8.0;
- 9.2.5 A guarantee that the actual Delaware loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the minimum loss ratio standards referred to in 9.2.4 of this paragraph, adjusted for duration; and
- 9.2.6 A guarantee that the actual Delaware lifetime loss ratio shall meet or exceed the minimum loss ratio standards referred to in 9.2.4 of this paragraph.
- 9.3 The insurer shall refund or credit premiums in the amount necessary to bring the actual loss ratio up to the guaranteed minimum loss ratio.
- 9.4 A Delaware policyholder affected by the guaranteed minimum loss ratio shall receive a portion of the premium refund or credit relative to the premium paid by the policyholder. The refund or credit shall be made to all Delaware policyholders insured under the applicable policy form during the year at issue if the refund or credit would equal ten dollars (\$10) or more per policy. The refund or credit shall include statutory interest until the date of payment. Payment shall be made not later than one hundred eighty (180) days after the end of the year at issue.
- 9.5 Premium refunds of less than ten dollars (\$10) per insured shall be aggregated by the insurer and deposited into the State Treasury.
- 9.6 A guarantee that the actual Delaware loss ratio results for the year at issue will be independently audited at the request of the Commissioner.
- 9.7 Notwithstanding the provisions of this subsection, an insurer may amend the rate filing forms used before the effective date of this regulation to provide for a minimum loss ratio guarantee allowed under this subsection for policies issued, delivered, or renewed on or after the effective date of this regulation.

10.0 Rates for Large Groups

- 10.1 Rates for groups of more than 50 persons (hereinafter "large groups") shall be made in accordance with 18 Del.C. Ch 25.
- 10.2 Each carrier issuing a policy to a large group shall establish and maintain a complete record of the rates employed, rate manuals, classification plans and all related materials needed for the carrier to determine the rate developed for the policy.
- 10.3 The carrier's records shall be maintained in a manner that readily allows examination as the Insurance Commissioner may require.

711.0 Effective Date of Regulation

This regulation shall become effective on ~~May 30, 1994~~ January 11, 2010.

DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(5) (11 Del.C., §8404(a)(5))

801 Regulations of the Delaware Council on Police Training

PUBLIC NOTICE

The Council on Police Training (COPT), pursuant to 11 Del.C. §8404(a)(14) and 29 Del.C. §10115 of the Administrative Procedures Act, gives notice that it shall hold a public hearing on November 23, 2009 at 9:00 a.m., in the second floor conference room of the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The COPT will receive written comments or oral testimony from interested persons regarding amendments to the following COPT Regulations: 3.0 (Minimum Standards for Initial Employment); 5.0 (Minimum Standards for Training); 8.0 (Re-activation Requirements of Police Officers); 11.0 (Firearms Training); and 25.0 (Substance Abuse Screen), and to adopt a new Regulation 26.0 (Electronic Control Device (ECD) Training). The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be directed to Captain Ralph H. Davis, III, Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE 19903-0430.

Any person wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903 or write to the above address.

801 Regulations of the Delaware Council on Police Training

(Break in Continuity of Sections)

3.0 Minimum Standards for Initial Employment

- 3.1 The applicant shall complete an application, the format of which has been approved by the Council. (See Section IV. Forms)
- 3.2 The applicant shall be a citizen of the United States.
- 3.3 The applicant shall have reached his/her 18th birthday as a seasonal officer and his/her 21st birthday as a full time officer.
- 3.4 A licensed physician shall examine the applicant, at the expense of the employing agency, to determine that he/she is physically fit for normal police duties. The following shall be met,
 - 3.4.1 The applicant shall be free from any major impediment of the senses.
 - 3.4.2 The applicant shall be examined by a licensed ophthalmologist or optometrist and shall possess acuity of vision of not more than 20/200 ~~correctable~~ corrected to 20/20 in each eye. ~~with soft contact lenses~~. The applicant shall have the ability to distinguish between the colors of red, green, and amber; and shall have no pathology of the eyes. Applicant shall also possess acceptable depth perception.
 - 3.4.3 The applicant shall possess normal hearing in both ears per current standards.
 - 3.4.4 The applicant shall have no communicable diseases.

PROPOSED REGULATIONS

- 3.4.5 The applicant shall have no physical deformities, which would be detrimental to proper performance of police duties.
- 3.4.6 The applicant must pass a drug-screening test prior to appointment or attendance at an approved police basic training Academy. ~~The standards for such drug screening shall be adopted by the agency seeking to employ the applicant; at a minimum, these standards must provide for confirmatory testing in the event of an initial positive finding. The cost of the drug screening test will be absorbed by the employing agency.~~ Urine tests will be conducted for the following drugs:
- 3.4.6.1 Amphetamines (speed, uppers, meth)
 - 3.4.6.2 Barbiturate (barbs, downers)
 - 3.4.6.3 Benzodiazepines (tranquilizers, Valium)
 - 3.4.6.4 Cannabidiol (THC, pot marijuana)
 - 3.4.6.5 Cocaine (crack, snow)
 - 3.4.6.6 Methaqualone (quaaludes, ludes)
 - 3.4.6.7 Opiates (heroin, smack, morphine)
 - 3.4.6.8 Phencyclidine (PCP)
 - 3.4.6.9 Designer Drugs (ecstasy)

(Break in Continuity of Sections)

4.0 Notification of Employment Status

- 4.1 The Council required that the Administrator be notified by the Chief of Police, in writing, within 5 days of the employment or termination of any police officer under his/her command. (See Section IV. Forms)

5.0 Minimum Standards For Training

5.1 Police Basic Training Course

- 5.1.1 In order for training to be accepted by Council on Police Training the training must be instructed by Certified Instructors as set forth in II-12.
- 5.1.1.1 Each applicant for the position of police officer in the State of Delaware must satisfactorily complete the Police Basic Training Course as prescribed in 11 **Delaware Code** §8405(a) (Amended 07/08/93) prior to being given or accepting an appointment as a police officer.
 - 5.1.1.2 The Council on Police Training has certified six agencies as approved police basic training academies. Those agencies are: The Delaware State Police; New Castle County Police; Wilmington Department of Police; Newark Police Department; Dover Police Department; and Delaware River and Bay Authority Police Department.
 - 5.1.1.3 ~~As a condition of maintaining their status as an approved police basic training academy during the training period for applicants for certification as police officers, each school must conduct a minimum of one random drug screening test on each such applicant. The cost of conducting one test for drug samples pursuant to this section for each applicant undergoing training, including confirmatory testing in the event of an initial positive finding, shall be paid by the Council. The drug screening must be conducted according to standards adopted by the agency conducting the school; these standards must include confirmatory testing as described above.~~
 - 5.1.1.43 Any arrest for criminal and/or traffic offense, the Council on Police Training should be notified within 5 days.
 - 5.1.1.54 Person must meet PT standards of the academy to which they will be attending.

5.2 Waiver of Equivalent Training – RECIPROCITY

- 5.2.1 The Council on Police Training may waive the requirement of attending an approved Delaware Police Training Academy for those officers seeking Delaware certification of training after having

completed equivalent training out-of-state, and having met all training considered indigenous to Delaware.

- 5.2.2 The Chief of Police of the municipality seeking waiver of training obtained in Delaware must submit to Council an application for Exemption from Mandatory Training. (See Section IV. Forms)
 - 5.2.3 The application must be completed in its entirety and submitted to the Administrator prior to appointment by the requesting agency. The officer must enclose a copy of the certificate of training from the police academy, which provided police basic training. The officer must also enclose a copy of the curriculum from that academy which must include: description of courses taught; hours assigned to each course; and, a brief synopsis of the material taught in each course.
 - 5.2.4 The Administrator will examine the equivalent training records and make a comparison with the Delaware Mandatory Requirements. Any areas not meeting Delaware Standards will be required, prior to submission of the waiver application to Council for consideration
 - 5.2.5 If an applicant has completed an out-of-state Academy but ~~was not employed as a police officer for 5 years immediately following graduation, then a applicant must attend a Delaware~~ has not worked full time in law enforcement during the five years immediately prior to the date of application, that Applicant must attend an approved Academy in its entirety. If the Council should determine that the out-of-state training was in the main, deficient, it may deny the waiver in its totality and require attendance at an approved Delaware police training academy.
 - 5.2.6 If an applicant, upon review of their training, needs to take more than 40% ~~or 200 hours~~ of the minimum number of hours of training in the state of Delaware, then they must attend a Delaware approved Academy in its entirety.
- 5.3 Annual required training to maintain certification
- 5.3.1 Each police officer, certified by the Council, will be required to complete 16 hours of in-service career related training annually.
 - 5.3.2 In addition to the above 16 hours, the officer must also recertify in C.P.R., AED, and First Responders recertification as noted in Section II-16

(Break in Continuity of Sections)

8.0 Re-activation Requirements of Police Officers

8.1 Inactive Status

- 8.1.1 Whenever a police officer required to be certified by the Council on Police Training retires, resigns, or otherwise voluntarily or involuntarily leaves his or her employing law enforcement agency, the chief of the employing agency shall advise the Administrator of the separation in writing within five (5) business days of the separation and identify the circumstances of the separation.
- 8.1.2 Upon receiving notice of a police officer's separation from law enforcement employment, the Administrator shall place that individual on inactive status in which status he or she is not authorized to exercise the powers of a police officer until such time as he or she meets the requirements for re-activation.
- 8.1.3 The Administrator may re-activate the individual's certification upon written application from the individual that he or she has accepted another full-time police position with a law enforcement agency whose training is regulated by the COPT and provided that the individual is not the subject of a de-certification proceeding pursuant to 29 **Delaware Code** §8404(4) and the individual meets all other criteria for re-activation which the Council has adopted in Regulation 8.2

8.2 Re-activation Requirements

- 8.2.1 If not employed on a permanent basis for a period of less than 12 months, an individual must complete all in-service requirements mandated by the Council pursuant to 11 **Del.C.** Section 8404(a)(5) prior to recommencing employment.
- 8.2.2 If not employed on a permanent basis for a period of greater than 12 months but less than 36 months, an individual must satisfy all minimum standards for initial employment established by the

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- Council. ~~These include, but are not limited to, the following~~ An officer must satisfy the following minimum standards:
- 8.2.2.1 Medical background including:
 - 8.2.2.1.1 Medical history / physical examination form
 - 8.2.2.1.2 Physicians affidavit
 - 8.2.2.1.3 Weight chart
 - 8.2.2.1.4 Substance abuse screen
 - 8.2.2.2 The results of a validated psychiatric / psychological test and interview, indicating competency to perform law enforcement duties.
 - 8.2.2.3 Current criminal history record check, including fingerprints obtained from the State Bureau of Investigations.
 - 8.2.2.4 Background investigation. Standardized form (IV-14) which consists of a minimum checklist.
 - 8.2.2.5 All training requirements prescribed by the Council, including, but not limited to First Responder and Firearms recertification.
 - 8.2.2.6 Firearms training.
- 8.2.3 If not employed on a permanent basis for a period of greater than 36 months but less than 60 months, an individual must satisfy all minimum standards for initial employment established by the Council. ~~These include, but are not limited to, the following~~ An officer must satisfy the following minimum standards:
- 8.2.3.1 Medical background including:
 - 8.2.3.1.1 Medical history / physical examination form
 - 8.2.3.1.2 Physicians affidavit
 - 8.2.3.1.3 Weight chart
 - 8.2.3.1.4 Substance abuse screen
 - 8.2.3.2 The results of a validated psychiatric / psychological test and interview, indicating competency to perform law enforcement duties.
 - 8.2.3.3 Current criminal history record check, including fingerprints obtained from the State Bureau of Investigation.
 - 8.2.3.4 Background investigation. Standardized form (IV-14) which consists of a minimum checklist.
 - 8.2.3.5 First Responder recertification
 - 8.2.3.6 Complete a Firearms basic certification course.
 - 8.2.3.7 Complete an academy basic criminal procedures, criminal law and traffic law course.
 - 8.2.3.8 Complete any other academic requirement imposed by the Delaware State Police, Director of Training, following a review of the individual's training records.
- 8.2.4 If not employed on a permanent basis for a period of greater than 60 months, an individual must satisfy all requirements imposed by the Director of the Delaware State Police Training Division following a review of the individual's training history and after approval by the Council.

11 DE Reg. 180 (08/01/07)

(Break in Continuity of Sections)

11.0 Firearms Training

- 11.1 Firearms training defined: Weapons training conducted at a facility and by an instructor certified to teach such subjects by the Council on Police Training.
- 11.2 Duration and curriculum: The curriculum will include classroom lectures on use of force, safety, nomenclature, care of weapons, police combat tactics and marksmanship. Range instruction emphasizes the practical application of police weapons related to actual combat conditions. The range

officer of the involved training facility will attest to the qualifications of the respective officer. The officer must qualify with his departmental issued weapon. The officer must attain ~~75%~~ 80% of the possible score.

- 11.3 Depending on the number of persons being trained, and considering the amount of experience, or lack of experience the training population has with firearms, the training period will vary in time, but will consist of at least but not limited to 5 days.
- 11.4 Non-Qualification: Should an officer initially fail to qualify, that person would be permitted one (1) additional opportunity to attain certification. Scheduling for the additional attempt will be conducted at the convenience of the firearms officer. Under no circumstances, will an officer be permitted to carry a firearm on duty unless certified as per the requirements of Section 8404 of the Council on Police Training.
- 11.5 As authorized by 8404(a)(5): In order to retain certification, all police officers in the State of Delaware must receive recertification in firearms proficiency annually. The recertification must be conducted by a Council on Police Training certified firearms instructor.
- 11.6 A minimum of three (3) re-qualification shoots per year, scheduled on at least two (2) separate days, with at least 90 days between scheduled shoots required. Of these three, the re will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.
- 11.7 Each training session shall consist of one minimum standards re-qualification course. An additional 50 rounds shall be fired for proficiency training. This is a total of 100 rounds per shoot as a minimum.
- 11.8 The Chief of Police shall forward to the Administrator, documentation of annual firearms recertification for each officer under his/her command within 90 days of the anniversary date of initial firearms certification. (See Section IV. Forms)
- 11.9 All training ammunition shall be comparable to issued service ammunition in performance specification. Service ammunition shall be collected annually and replaced with new. The collected ammunition may be used for training. All shooting is to be completed with authorized/issued weapons and equipment.

(Break in Continuity of Sections)

25.0 Substance Abuse Screen

25.1 Requirements

- 25.1.1 All applicants for police officers, who come under the requirements of the Mandatory Training Act (Title 11, Section 8401-8410) and as part of their pre-employment screening, will be required to submit to and successfully pass a pre-employment drug test.
- ~~25.1.2 A random drug test will be conducted, by and at, the discretion of the Academy staff sometime during their mandatory training period.~~
- ~~25.1.3 Urine tests will be conducted for the following:~~
 - ~~25.1.3.1 Amphetamines (speed, uppers, meth)~~
 - ~~25.1.3.2 Barbiturates (barbs, downers)~~
 - ~~25.1.3.3 Benzodiazepines (tranquilizers, valium)~~
 - ~~25.1.3.4 Cannabidiol (THC, pot, marijuana)~~
 - ~~25.1.3.5 Cocaine (crack, snow)~~
 - ~~25.1.3.6 Methaqualone (Quaaludes, ludes)~~
 - ~~25.1.3.7 Opiates (heroin, smack, morphine)~~
 - ~~25.1.3.8 Phencyclidine (PCP)~~
 - ~~25.1.3.9 Designer Drugs (Ecstasy)~~
 - ~~25.1.3.10 Steroids~~

25.2 How Costs will be Absorbed

- ~~25.2.1 Initial pre-employment test costs will be absorbed by the employing agency.~~

~~25.2.2 Random test costs will be absorbed by the Council on Police Training.~~

~~25.3 Testing Locations~~

~~25.3.1 As approved by the Council or Administrator.~~

~~25.4 Policy Procedures~~

~~25.4.1 A positive test at the pre-employment stage will mean the applicant has not met minimum qualifications (requirements) as established by the Council on Police Training, under Title 11, Section 8404(a)(1), of the **Delaware Code**, therefore a applicant would not be eligible for employment.~~

~~25.4.2 A positive test during the training period will result in immediate dismissal from the participating academy and notification to the employing agency.~~

~~25.4.3.2 A positive test will be considered valid when confirmed by a second test procedure performed on the original sample.~~

~~25.4.4 Any additional disciplinary action will be the responsibility of the employing agency.~~

~~25.4.5.3 If a particular drug listed above is included in a prescription that has been prescribed by a physician and the test results in a positive reading then the following will be applied.~~

~~25.4.5.3.1 A formal letter will be obtained through the licensed physician that prescribed the drug, stating the reason(s) why that particular drug was prescribed. The physician must also state if the drug will affect someone from performing the duties of a police officer and if the particular person the medication is prescribed to is fit for duty.~~

26.0 Electronic Control Device (ECD) Training

26.1 Electronic Control Device defined: A weapon which uses propelled wires or fixed contact points to conduct energy to a subject, thereby affecting the sensory and motor nervous systems of the body.

26.2 Electronic Control Device training: Training conducted by a certified instructor holding the qualifications to provide training related to the use and deployment of Electronic Control Devices.

26.3 Duration and Curriculum: The curriculum will include classroom lectures on the use of force, safety, nomenclature, potential hazards, medical concerns, care of subjects following ECD activation, care of the ECD, and scenario based application. At a minimum, the following training requirements will be fulfilled before an officer may use or deploy an ECD:

26.3.1 Complete a minimum of six (6) hours of instruction under the guidance of an instructor certified to provide instruction in the use and deployment of the specific ECD.

26.3.2 Pass a written examination which tests the student's knowledge regarding the use and deployment of the specific ECD with a score of 80% or higher.

26.3.3 Pass a functional test and demonstrate ability to hit a target two (2) times within a ten (10) second time period from a distance of eight (8) to twelve (12) feet using a laser sight. A student who does not demonstrate this ability should participate in aiming drills and then be permitted another attempt to pass the functional test.

26.4 Annual recertification is recommended by the Council, however, the decision to recertify and the frequency of recertification will be left to the discretion of the chief of each police department deploying an ECD.

10 DE Reg. 341 (08/01/06)

11 DE Reg. 176 (08/01/07)

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 593 11-01-09.htm>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

100 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)
10 DE Admin. Code 101, 103 and 104

PUBLIC NOTICE

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Gaming Control Board will seek public comments on the issue of whether its current Rule 3.11, Rule 4.3 and Rule 4.6 in 10 DE Admin. Code 101, and Rule 3.1.6 and Rule 6.1 in 10 DE Admin. Code 103, and Rule 2.2 in 10 DE Admin. Code 104 should be amended. Proposed Rule 3.11 would make it clear that when bingo is conducted at a carnival, festival or similar occasion which lasts for several days, it will be considered a single event. Proposed Rule 4.3 relates to the age at which persons may play bingo and the age at which they may assist in conducting the game. Proposed Rule 4.6 adjusts the limit for cookie jar bingo games. Proposed Rule 3.1.6 conforms to recent legislation in deleting the former prohibition against paying workers at charitable gaming events. Proposed Rule 6.3 makes it clear that the limit on the amount of money which may be lost in one day under recent legislation applies to each licensed event, and a new limit does not apply after midnight at a single event. Proposed Rule 2.2 is designed to make it clear that a parent entity and its auxiliary may conduct a total of up to five (5) Texas Hold 'Em tournaments in one year in combination and the limit does not apply to each separately. The current rules contain language which is now inconsistent with Delaware law.

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

C. Summary of Proposal

1. Currently, Regulation 101, subsection 4.3 states that persons under the age of 18 may not play bingo if the prize to be awarded is money. A statute now states that no one under the age of 18 may participate in a game of bingo at all. The Board wishes to amend its rule to state that no one under 18 may play in any bingo game, and to make the rule conform to the statute.

2. Currently, Regulation 101, subsection 4.6 states that cookie jar bingo games may not exceed \$500. Recent legislation changed the statute setting such limit to now provide that the amount involved in a cookie jar bingo game shall be set by the Board. The Board wishes to set the limit at this time at \$1,000.

3. Currently, Regulation 103, subsection 3.1.6 states that payment of workers is prohibited. This is no longer true because of a change in the governing statute.

4. Recently enacted legislation provides that in charitable gambling other than bingo, there shall be no limit on the amount a person may bet or win, except that no person may lose more than \$150 in a single day. Since charitable gambling events can be played until 1:00 a.m., the Board wishes to make it clear that this limit applies to each licensed event and a person who has lost \$150 during an event shall not be permitted to gamble again after midnight. The Board proposes to adopt a new subsection (6.3) in Regulation 103 to make this clarification.

5. Recently enacted legislation allows a sponsoring organization to hold up to five Texas Hold 'Em tournaments per year. A sponsoring organization is the organization which comes within section 170 of the United States Revenue Code under the Delaware State Constitution. Therefore, a sponsoring organization and its auxiliary cannot each hold five tournaments a year.

101 Regulations Governing Bingo*(Break in Continuity of Sections)***3.0 Bingo Licenses**

- 3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licenses within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.
- 3.2 The Board may issue a license only after it determines that:
 - 3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.
 - 3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.
 - 3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.
 - 3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.
 - 3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.
- 3.3 The license shall be issued. The original thereof shall be transmitted to the applicant.
- 3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.
- 3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.
- 3.6 No license shall be effective for a period of more than one year from the date it was issued.
- 3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.
- 3.8 No licenses shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.
- 3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

3.11 When bingo is conducted in conjunction with a carnival, festival, or similar event scheduled for more than one day, the game may be played up to every night of the event and shall be considered a single event for purposes of the rule allowing one event per week for those licensed after July 10, 1998 or ten events per month for those licensed before July 10, 1998.

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

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

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

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

4.0 Conduct of Bingo

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 4.3 No person under the age of eighteen (18) ~~shall be permitted~~ may participate in any bingo game, ~~the prize for which is money.~~ No person under the age of 18 shall be permitted to participate in any instant bingo game. ~~No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo.~~ Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and except that persons no younger than persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 No prize in an amount or value greater than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,250. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed ~~\$500~~ \$1,000 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.

- 4.7 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any give n week.
- 4.8 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.
- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.
- 4.10 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.
- 4.11 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.
- 4.12 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.
- 4.13 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.
- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.14.1 one unspecified horizontal row;
 - 4.14.2 one unspecified vertical row;
 - 4.14.3 one unspecified full diagonal row;
 - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
 - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
 - 4.14.6 The entire card;
 - 4.14.7 Four corners;
 - 4.14.8 Eight spaces surrounding the free space.
- 4.15 Within the limits contained in 28 **Del.C.** §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.
- 4.16 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.
- 4.17 No licensee shall conduct more than forty (40) games on a single occasion.
- 4.18 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.
- 4.19 Within the limits contained in 28 **Del.C.** §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
- 4.20 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.

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- 4.21 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
- 4.22 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
- 4.23 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.
- 4.24 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.25 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

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

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

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

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

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

(Break in Continuity of Sections)

103 Regulations Governing Charitable Gambling Other Than Raffles

(Break in Continuity of Sections)

3.0 Conduct of Games

3.1 Workers.

- 3.1.1 Member in Charge. Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Sponsoring Organization for at least two (2) years. The member-in-charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he is in charge, including the preparation of any financial reports required by law or these regulations. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of these Regulations, and the terms of the license.
- 3.1.2 List of Workers. A Sponsoring Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.
- 3.1.3 Bona Fide Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Sponsoring Organization only when he or she:
- 3.1.3.1 Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and,

- 3.1.3.2 Has held full and regular membership status in the Sponsoring Organization for a period of not less than three (3) consecutive months prior to the subject Function; and,
 - 3.1.3.3 Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Sponsoring Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and,
 - 3.1.3.4 Has met all other conditions required by the Sponsoring Organization for membership and in all respects is a member in good standing at the time of the subject Function; and,
 - 3.1.3.5 Has met all of the standards set out above respecting his or her own organization, and he or she is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Sponsoring Organization, or to which his or her own Sponsoring Organization is auxiliary; and,
 - 3.1.3.6 Has met all of the standards set out above respecting his or her own organization, and this organization has prior to July 6, 19 84, assisted the Sponsoring Organization to conduct charitable gambling; and,
 - 3.1.3.7 Has met all of the standards set out above respecting his or her own Sponsoring Organization, and this organization is assisting another similar Sponsoring Organization (i.e. fire company assisting another fire company; fraternal society assisting another fraternal society; charitable, religious or veterans organization assisting another charitable, religious, or veterans organization) to conduct charitable gambling.
- 3.1.4 Identification Required. The member-in-charge and those assisting him in any capacity shall possess and display identification.
- 3.1.5 Officer Responsible for Gross Receipts. The Sponsoring Organization shall duly designate an officer of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all Gross Receipts. Such officer's name shall appear on the list required under §3.03(1)(b) and such officer shall be a person other than the person designated member-in-charge pursuant to §3.03(1)(a).
- 3.1.6 ~~Payment of Workers Prohibited.~~ No unreasonable commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function. Organizations may contract with third party vendors to conduct or assist in conducting the Function, and may agree to pay reasonable compensation to the vendor. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be or more signs prohibiting tipping shall be prominently displayed in each playing area. ~~No person shall solicit or receive any gift or donation or other consideration directly or indirectly on the premises during the conduct of a Function.~~ Nothing in this subsection prohibits any person from sharing food and beverages made available at the functions, or the collection of bar tips for the benefit of the Sponsoring Organization.

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

(Break in Continuity of Sections)

6.0 Operation of Games

- 6.1 House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers consistent with these regulations which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit anyone involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon

request, to any law enforcement officer or agent of the Board. The maximum wager and a no tipping sign shall be displayed at the location of each game, so as to be conspicuous to those persons participating in said games. The rules for the individual games should be available on the premises for review upon request.

- 6.2 Monitoring of Poker Tables. An association which has obtained the proper license or permit to conduct poker shall assign one monitor during the playing of poker.
- 6.3 In charitable gambling other than bingo and Texas Hold 'Em, there shall be no limit on the amount a person may bet or win, except that no person may lose more than \$150 in a single day or event. This limit applies to the entire event approved to begin on a certain day. If an event continues past midnight, no new limit shall apply. Any person who has lost \$150 during the event shall not be permitted to gamble again after midnight.

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

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

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

(Break in Continuity of Sections)

104 Regulations Governing Texas Hold'em Poker

1.0 Reports After the Function

- 1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

2.0 Limitation of Texas Hold'em Tournaments

- 2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least 70 days apart" in 28 **Del.C.** §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than 70 days from the date of their immediately prior tournament.
- 2.2 A sponsoring organization and any auxiliary seeking to hold a tournament with the sponsoring organization's approval may hold up to a total of five tournaments per year. It is not permissible for a sponsoring organization to hold up to five tournaments and for an auxiliary to also hold up to five tournaments per year.

12 DE Reg. 357 (9/01/08)

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

(Break in Continuity of Sections)

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 599 11-01-09.htm>

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))
24 DE Admin. Code 2000

PUBLIC NOTICE

2000 Board of Occupational Therapy Practice

Pursuant to 24 Del.C. §2006(a)(1), the Board of Occupational Therapy Practice has proposed revisions to its rules and regulations.

A public hearing will be held on January 6, 2010 at 4:45 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes a new Rule 4.0, which addresses licensee competence to administer various treatment modalities. Pursuant to this amendment, at the request of the Board or a member of the public, a licensee will be required to provide documentation of training or education to demonstrate competence.

In addition, Rule 1.3.3 is amended to clarify the parameters of an occupational therapist's supervision of an occupational therapy assistant. Provisions are added pertaining to submission of applications for licensure. A new Rule 3.1.2.4 gives the Board authority to conduct hearings and impose sanctions regarding licensees' failure to comply with the Board's continuing education requirements.

Finally, the Board proposes minor typographical revisions and re-numbering of the rules to accommodate the addition of new rules.

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

2000 Board of Occupational Therapy Practice

1.0 Supervision/consultation Requirements for Occupational Therapy Assistants

1.1 **"Occupational therapy assistant"** shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 Del.C. §2002(4).

"Under the supervision of an occupational therapist" means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

The phrase, "Under the supervision of an occupational therapist," as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

- 1.1.1 Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;
- 1.1.2 In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.
- 1.1.3 Case management;
- 1.1.4 Determining program termination;
- 1.1.5 Providing information, instruction and assistance as needed;
- 1.1.6 Observing the occupational therapy assistant periodically; and

- 1.1.7 Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant's performance and discussion of that appraisal with the assistant.
The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.
- 1.2 Supervision for Occupational Therapy Assistants is defined as follows:
- 1.2.1 Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.
- 1.2.2 Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.
- 1.2.3 General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.
- 1.3 Minimum supervision requirements:
- 1.3.1 Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.
Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.
- 1.3.2 Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.
- 1.3.3 An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time on any given day.
- 1.3.4 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.
- 1.3.5 Effective July 1, 2009, the supervising occupational therapist shall submit to the Board a completed Verification of Occupational Therapy Assistant Supervision for completion on the commencement of supervision.
- 1.3.6 Effective July 1, 2009, the supervising occupational therapist shall immediately advise the Board in writing when he or she is no longer supervising an occupational therapy assistant and shall provide the Board with an updated Verification of Occupational Therapy Assistant Supervision form.
- 1.3.7 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.
- 1.3.8 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.
- 1.3.9 A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Rule 1.0 of these rules and regulations.

2 DE Reg. 2040 (5/1/99)

12 DE Reg. 1232 (03/01/09)

2.0 Licensure Procedures:

- 2.1 To apply for an initial license, including relicensure after expiration, an applicant shall submit to the Board:
- 2.1.1 A completed notarized application on the form approved by the Board;
 - 2.1.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;
 - 2.1.2.1 If the date of application for licensure is more than three years following the successful completion of the NBCOT exam, the applicant shall submit proof of twenty (20) hours of continuing education in the two years preceding the application in accordance with Rule 5.0 of these rules and regulations.
 - 2.1.3 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;
 - 2.1.4 Fee payable to the State of Delaware.
- 2.2 To apply for a reciprocal license, in addition to the requirements listed in 24 Del.C. §2011, an applicant shall submit the following to the Board:
- 2.2.1 A completed notarized application on the form approved by the Board;
 - 2.2.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;
 - 2.2.3 Letter of ~~verification~~ good standing from any state in which the applicant is or has been licensed (~~the applicants is are~~ responsible for forwarding ~~the~~ blank verification form to all states where they are now or ever have been licensed);
 - 2.2.4 Fee payable to the State of Delaware.
- 2.3 Only completed application forms will be accepted. Any information submitted to the Board is subject to verification.
- ~~2.34~~ To apply for renewal, an applicant shall submit:
- ~~2.34.1~~ A completed renewal application on the form approved by the Board. ~~Beginning in 2006,~~ license renewal may be accomplished online at www.dpr.delaware.gov;
 - ~~2.34.2~~ Renewal fee payable to the State of Delaware.
 - ~~2.4.3~~ Evidence of completion of the required continuing education.
- ~~2.45~~ To apply for inactive status:
A licensee may, upon written request to the Board, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State.
- ~~2.56~~ To apply for reactivation of an inactive license, a licensee shall submit:
- ~~2.56.1~~ A letter requesting reactivation;
 - ~~2.56.2~~ A completed application for renewal
 - ~~2.56.3~~ Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule ~~5-0~~ 3.0 of these rules and regulations;
 - ~~2.56.4~~ Fee payable to the State of Delaware.
- ~~2.67~~ To apply for reinstatement of an expired license, an applicant shall submit (within three (3) years of the expiration date):
- ~~2.67.1~~ A completed application for renewal;
 - ~~2.67.2~~ Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 3.0 of these rules and regulations;
 - ~~2.67.3~~ Licensure and late fee payable to the State of Delaware.
- 6 DE Reg. 1331 (4/1/03)**
9 DE Reg. 1768 (5/1/06)
11 DE Reg. 926 (01/01/08)

3.0 Continuing Education**3.1 Continuing Education Content Hours**

3.1.1 Continuing education (CE) is required for license renewal and shall be completed by July 31st of each ~~renewal~~ even numbered year.

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

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

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

3.1.2 Random audits will be performed by the Board to ensure compliance with the CE requirement.

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

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

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

3.1.2.4 The Board shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Board determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in the rules and regulations shall constitute a violation of 24 Del.C. §2015(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 Del.C. §2017.

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

3.1.3.1 *21 months up to and including 24 months remaining in the licensing cycle requires 20 hours

3.1.3.2 *16 months up to and including 20 months remaining in the licensing cycle requires 15 hours

3.1.3.3 *11 months up to and including 15 months remaining in the licensing cycle requires 10 hours

3.1.3.4 *10 months or less remaining in the licensing cycle - exempt

3.2 Definition of Acceptable Continuing Education Credits:

3.2.1 Activities must be earned in two (2) or more of the ~~six (6)~~ seven (7) categories for continuing education beginning in ~~section~~ Rule 3.3.

3.3 Continuing Education Content:

3.3.1 Activities must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.

3.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity ~~at least six weeks~~ before it is scheduled. The Board pre-approves continuing education activities sponsored or approved by AOTA or offered by AOTA-approved providers as long as the content is not within the

exclusion in Rule ~~5.5.1~~ 3.5.1.1 for courses covering documentation for reimbursement or other business matters.

(Break in Continuity of Sections)

4.0 Competence to Administer Treatment Modalities

Upon the request of the Board, or a member of the public, the licensee shall produce documentation demonstrating his or her competence to administer a particular treatment modality. Competence may be shown by documented professional education, such as continuing education, in-service training or accredited higher education programs. Determination of competence is at the discretion of the Board.

45.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 45.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 45.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 45.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 45.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 45.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 4.8 of this section.
- 45.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 45.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 45.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her

designate a t s uch in tervals as required by th e chairperson o f the participating Board or th at chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable w hen such reports are made in good faith and without malice.

- 45.6.3 Consent of the regulated professional, in accordance with applicable law, to the r elease of any treatment information from anyone within the approved treatment program.
- 45.6.4 Agreement by the regulated professional to b e personally responsible for all costs a nd charges associated w ith th e Voluntary T reatment Option an d treatment pr ogram(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional R egulation in its serv ices on behalf of th e Board in ad dition to the administrative costs associated with the Voluntary Treatment Option.
- 45.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program sh all be reported to th e par ticipating Board's ch airperson or his/her design ate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 45.6.6 Compliance by th e regulated professional with a ny terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 45.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 45.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 45.9 If practice is restricted, th e re gulated p rofessional ma y apply fo r unrestricted lice nsure upon completion of the program.
- 45.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall d isqualify th e regulated p rofessional fro m th e pr ovisions of th e Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 45.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 45.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

56.0 Crimes substantially related to practice of occupational therapy

- 56.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the pr actice of occ upational th erapy in th e S tate o f Delaware witho ut regard to the place of conviction:
- 56.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 **Del.C.** §1717
- 56.1.2 Aggravated menacing. 11 **Del.C.** §602(b)
- 56.1.3 Reckless endangering. 11 **Del.C.** §604.

- 56.1.4 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605
- 56.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606
- 56.1.6 Assault in the second degree. 11 **Del.C.** §612
- 56.1.7 Assault in the first degree. 11 **Del.C.** §613
- 56.1.8 Felony abuse of a sports official. 11 **Del.C.** §614
- 56.1.9 Assault by abuse of neglect. 11 **Del.C.** §615
- 56.1.10 Felony Terroristic threatening. 11 **Del.C.** §621
- 56.1.11 Unlawful administering drugs. 11 **Del.C.** §625
- 56.1.12 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626
- 56.1.13 Vehicular assault in the first degree. 11 **Del.C.** §629
- 56.1.14 Criminally negligent homicide. 11 **Del.C.** §631
- 56.1.15 Manslaughter. 11 **Del.C.** §632
- 56.1.16 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- 56.1.17 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- 56.1.18 Murder in the second degree. 11 **Del.C.** §635
- 56.1.19 Murder in the first degree. 11 **Del.C.** §636
- 56.1.20 Sexual harassment. 11 **Del.C.** §763
- 56.1.21 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 56.1.22 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
- 56.1.23 Rape in the fourth degree. 11 **Del.C.** §770
- 56.1.24 Rape in the third degree. 11 **Del.C.** §771
- 56.1.25 Rape in the second degree. 11 **Del.C.** §772
- 56.1.26 Rape in the first degree. 11 **Del.C.** §773
- 56.1.27 Sexual extortion. 11 **Del.C.** §776
- 56.1.28 Bestiality. 11 **Del.C.** §777
- 56.1.29 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 56.1.30 Dangerous crime against a child. 11 **Del.C.** §779
- 56.1.31 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
- 56.1.32 Kidnapping in the second degree. 11 **Del.C.** §783
- 56.1.33 Kidnapping in the first degree. 11 **Del.C.** §783A
- 56.1.34 Acts constituting coercion. 11 **Del.C.** §791
- 56.1.35 Burglary in the second degree. 11 **Del.C.** §825
- 56.1.36 Burglary in the first degree. 11 **Del.C.** §826
- 56.1.37 Robbery in the second degree. 11 **Del.C.** §831
- 56.1.38 Robbery in the first degree. 11 **Del.C.** §832
- 56.1.39 Carjacking in the second degree. 11 **Del.C.** §835
- 56.1.40 Carjacking in the first degree. 11 **Del.C.** §836
- 56.1.41 Extortion. 11 **Del.C.** §846
- 56.1.42 Identity theft. 11 **Del.C.** §854
- 56.1.43 Felony forgery. 11 **Del.C.** §861
- 56.1.44 Falsifying business records. 11 **Del.C.** §871
- 56.1.45 Felony unlawful use of a credit card. 11 **Del.C.** §903
- 56.1.46 Insurance fraud. 11 **Del.C.** §913
- 56.1.47 Health care fraud. 11 **Del.C.** §913A
- 56.1.48 Dealing in children. 11 **Del.C.** §1100

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- 56.1.49 Endangering the welfare of a child. 11 **Del.C.** §1102
- 56.1.50 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105
- 56.1.51 Unlawfully dealing with a child. 11 **Del.C.** §1106
- 56.1.52 Sexual exploitation of a child. 11 **Del.C.** §1108
- 56.1.53 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 56.1.54 Possession of child pornography. 11 **Del.C.** §1111
- 56.1.55 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 56.1.56 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 56.1.57 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240
- 56.1.58 Felony abetting the violation of driver's license restrictions. 11 **Del.C.** §1249
- 56.1.59 Felony offenses against law enforcement animals. 11 **Del.C.** §1250
- 56.1.60 Felony hate crimes. 11 **Del.C.** §1304
- 56.1.61 Felony stalking. 11 **Del.C.** §1312A
- 56.1.62 Felony cruelty to animals. 11 **Del.C.** §1325
- 56.1.63 Felony maintaining a dangerous animal. 11 **Del.C.** §1327(a)
- 56.1.64 Felony violation of privacy. 11 **Del.C.** §1335(a)
- 56.1.65 Adulteration. 11 **Del.C.** §1339
- 56.1.66 Promoting prostitution in the second degree. 11 **Del.C.** §1352
- 56.1.67 Promoting prostitution in the first degree. 11 **Del.C.** §1353
- 56.1.68 Obscenity. 11 **Del.C.** §1361
- 56.1.69 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 56.1.70 Felony unlawful dealing with a dangerous weapon. 11 **Del.C.** §1445(a)
- 56.1.71 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- 56.1.72 Possession of a firearm during a commission of a felony. 11 **Del.C.** §1447A
- 56.1.73 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 56.1.74 Felony Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457
- 56.1.75 Duty to report child abuse or neglect. 16 **Del.C.** §903
- 56.1.76 Abuse, neglect, mistreatment or financial exploitation of residents or patients in a nursing or similar facility. 16 **Del.C.** §1136
- 56.1.77 Felony falsification or destruction of records related to maintenance medical treatment. 16 **Del.C.** §2513
- 56.1.78 Manufacture, delivery or possession with intent to deliver schedule I or II narcotic drugs. 16 **Del.C.** §4751
- 56.1.79 Manufacture, delivery or possession with intent to deliver Schedule I, II, III, IV, or V non-narcotic drugs. 16 **Del.C.** §4752
- 56.1.80 Unlawful delivery or noncontrolled substances. 16 **Del.C.** §4752A.
- 56.1.81 Possession, consumption, or use of controlled substances. 16 **Del.C.** §4753.
- 56.1.82 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A
- 56.1.83 Possession, consumption, or use of non-narcotic controlled substances classified in Schedule I, II, III, IV, or V. 16 **Del.C.** § 4754
- 56.1.84 Crimes related to controlled substances. 16 **Del.C.** §4756
- 56.1.85 Distribution of controlled substances to persons under 21 years of age. 16 **Del.C.** §4761
- 56.1.86 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
- 56.1.87 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768

56.1.88 Felony obtaining benefit under false representation. 31 Del.C. §1003

56.1.89 Felony falsification of reports, statements, or documents. 31 Del.C. §1004

56.1.90 Kickback schemes and solicitation. 31 Del.C. §1005

56.1.91 Conversion of benefit payment. 31 Del.C. §1006

56.1.92 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 Del.C. §3913

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

8 DE Reg. 1449 (04/01/05)

9 DE Reg. 587 (10/01/05)

12 DE Reg. 1232 (03/01/09)

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 606 11-01-09.htm>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

26 DE Admin. Code 3001

IN THE MATTER OF THE ADOPTION OF RULES AND	
PROCEDURES TO IMPLEMENT THE PROVISIONS OF	
26 DEL. C. CH. 10 RELATING TO THE CREATION OF A	
COMPETITIVE MARKET FOR RETAIL ELECTRIC	PSC REGULATION DOCKET NO. 49
SUPPLY SERVICE (OPENED APRIL 27, 1999;	
RE-OPENED JANUARY 7, 2003; RE-OPENED AUGUST	
21, 2007; RE-OPENED SEPTEMBER 22, 2009	

ORDER NO. 7652

This 22nd day of September, 2009, the Commission determines and Orders the following:

WHEREAS, the Commission has promulgated regulations entitled *Regulations Governing Service Supplied by Electrical Corporations*. See 26 DE Admin. Code 3001, et seq. (the "Regulations");¹ and

WHEREAS, included in the Regulations are certain rules pertaining to "net energy metering" (the "Net Energy Metering Rules"); and

WHEREAS, Senate Bill No. 85 ("SB85"), enacted into law on July 9, 2009, amended 26 Del.C. §1014 to: eliminate a customer's forfeiture of excess electric generation and allow customers to request payments from an electrical supplier for the value of excess generation; allow customers to retain ownership of "renewable energy credits;" create a new provision for farm customers with respect to net energy metering; and increase the cap on customer net energy metering generation from 1% to 5% of an electric utility's aggregated customer monthly peak demand for a given calendar year; and

1. The Regulations have been amended several times since their original passage in 1999. See PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), and 7435 (Sept. 2, 2008).

WHEREAS, the amendments to Section 1014 effected by SB85 require certain amendments to the Net Energy Metering Rules; and

WHEREAS Senate Bill 153 ("SB 153"), enacted into law on September 21, 2009, also amended 26 *Del. C.* §§1001 and 1014 to include provisions for the inclusion of "vehicle to grid," or "V2G", resources in statutory provisions pertaining to net energy metering; and

WHEREAS, Commission Staff has proposed revisions to the Regulations that both effect the changes required by SB85 and SB153, as well as make certain other clarifications to the existing Regulations not related to those bills;

NOW THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That this docket is reopened to consider further revisions to the Commission's *Rules for Certification and Regulation of Electric Corporations*, adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised from time to time (the "Regulations"). The proposed revisions are required by the recent amendments to Sections 1001 and 1014 of Title 26. A copy of the redlined version of the Regulations, showing proposed revisions, is appended as Exhibit "A" to this Order and a clean copy is appended hereto as Exhibit "B."

2. That, pursuant to 29 *Del.C.* §§10113 and 10115, the Acting Secretary shall transmit to the Registrar of Regulations for publication in the November 2009 Delaware Register of Regulations a copy of this Order; a copy of the redlined version of the Regulations (Exhibit "A"); a clean copy of the proposed amended regulations (Exhibit "B"); and a copy of a notice attached hereto as Exhibit "C." In addition, the Acting Secretary shall cause the notice attached as Exhibit "B" to be published in The News Journal and the Delaware State News newspapers on or before September 30, 2009. The Acting Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Acting Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

3. That, pursuant to 29 *Del.C.* §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before December 1, 2009. Pursuant to 29 *Del. C.* § 10117, the Commission will conduct a public hearing on the proposed revisions to the Regulations on December 8, 2009, beginning at 1:00 p.m. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 *Del.C.* §502 and 29 *Del.C.* §10116. Depending on what, if any, comments are received to the proposed revisions to the Regulations, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

5. That Joseph C. Handlon, Deputy Attorney General, is designated Staff Counsel for this matter.

6. That, pursuant to 26 *Del.C.* §§114 and 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provisions of 26 *Del.C.* §114(b)(1).

7. 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:

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Jeffrey J. Clark, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Katie Rochester, Acting Secretary

**NOTICE OF PROPOSED RULE-MAKING TO AMEND "NET ENERGY METERING" PROVISIONS OF
ELECTRIC SUPPLIER RULES**

**TO: ALL RETAIL ELECTRIC SUPPLIERS IN DELAWARE, ALL DELAWARE RETAIL ELECTRIC
CUSTOMERS WHO GENERATE ELECTRICITY AND OTHER INTERESTED PERSONS**

Since 1999, Commission-jurisdictional electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators (powered by renewable resources) to "net meter" their electric production and consumption. See *Rules for Certification and Regulation of Electric Corporations*, adopted by PSC Order No. 5 207 (Aug. 31, 1999) and revised from time to time (the "Regulations").

In July and September 2009, certain sections of Title 26 pertaining to net energy metering and vehicle-to-grid ("V2G") resources were enacted into law. The V2G provisions include certain electric vehicles qualifying as "Grid-Integrated Electric Vehicles" in net energy metering. The other changes enacted by the recent legislation: eliminate a customer's forfeiture of excess electric generation and allow customers to request payments from an electrical supplier for the value of excess generation; allow customers to retain ownership of "renewable energy credits;" create a new provision for farm customers with respect to net energy metering; and increase the cap on customer net energy metering generation from 1% to 5% of an electric utility's aggregated customer monthly peak demand for a given calendar year.

To implement these statutory changes, the Commission now proposes changes to the "net metering" section and other sections of the Regulations. You can review the proposed amendments at the Commission's office in Dover at the address below (and obtain copies for \$0.25 per page), or visit the Commission's website located at <http://dep.sc.delaware.gov>, under PSC Order No. 7652 (Sept. 22, 2009). You can also review PSC Order No. 7652 and the proposed amendments in the November 2009 issue of the Delaware Register of Regulations, available at <http://regulations.delaware.gov/services/register.shtml>.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed revisions to the Regulations. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **December 1, 2009**. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 49

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

The Commission Hearing will consider the revisions to the Regulations at its regularly scheduled meeting on **Tuesday, December 8, 2009** at 1:00 p.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed revisions to the Regulations on the basis of any evidence and information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 **Del.C.** §§362 and 1014(d).

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to

john.farber@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

3001 Regulations Governing Service Supplied by Electrical Corporations

Effective: August 31, 1999

1.0 Definitions

"Affiliated Interest" means:

1. Any person or entity who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the Applicant;
2. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in 1 above; or
3. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by the Applicant.

"Aggregator" means any person or entity who contracts with an electric distribution company, electric supplier or PJM Interconnection (or its successor) to provide energy services, which facilitate battery storage systems for Grid-Integrated Electric Vehicles and related technologies.

"Ancillary Services" means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the system.

"Annualized Billing Period" - a period of 12 consecutive monthly billing periods. A Customer's first Annualized Billing Period begins on the first day of the first full monthly billing period after which the Customer-Generator Facility is interconnected with the EDC and is generating electricity. A customer may elect to change the end of the Annualized Billing Period on a time in order to better utilize excess generation.

"Applicant" means an entity or person seeking to obtain an Electric Supplier Certificate.

"Broker" means an entity or person that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to Retail Electric Customers.

"Commission" means the Delaware Public Service Commission

"Cramming" means the practice of charging Customers for services that they have not ordered or have been sold in a deceptive manner such that the customer is not reasonably aware of the nature or price of the service for which he or she is being charged.

"Customer" or "Retail Electric Customer" - a purchaser of electricity for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, who purchases and supplies electricity to the occupants of such building or facility.

"Customer-Generator Facility" means equipment used by a Customer to generate, manage, and monitor electricity. A Customer-Generator Facility, which typically includes an electric generator and/or an equipment package, shall:

- Satisfy all of the requirements of Section 8.2 General Provisions of this Rule;
- Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
- Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

"Delaware Electric Cooperative, Inc." or **"Cooperative"** or **"DEC"** or its successor(s).

"Delmarva Power & Light Company" or **"Delmarva"** or **"DP&L"** or its successor(s).

"Distribution Services" means those services, including metering, relating to the delivery of electricity to a Retail Electric Customer through Distribution Facilities.

"Distribution Facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to Retail Electric Customers, up through and including the point of physical connection with electric facilities owned by the Retail Electric Customer.

PROPOSED REGULATIONS

“Electric Distribution Company” or **“EDC”** means a public utility owning and/or operating Transmission and/or Distribution Facilities in Delaware.

“Electric Supplier” means an entity or person certified by the Commission, including municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999), Broker, Marketer or other entity (including public utilities and their affiliates, e.g., Delmarva), that sells electricity to Retail Electric Customers, utilizing the Transmission and Distribution Facilities of an Electric Distribution Company.

“Electric Supplier Certificate” or **“ESC”** means a certificate granted by the Commission to Electric Suppliers that have fulfilled the Commission’s certification requirements.

“Electric Supply Service” means the provision of electricity or electric generation service.

“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 energy technologies that employ solar radiation to produce electricity;
- 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 7 **DE Admin. Code 106, Environmental Standards for Eligible Energy Resources**);
- 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 7 **DE Admin. Code 106, Environmental Standards for Eligible Energy Resources**);
- 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.

“FERC” means the Federal Energy Regulatory Commission.

“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 electric energy.

“Grid-Integrated Electric Vehicle” means a battery-run motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software

that allow for the external control of battery charging and discharging by an electric distribution company, electric supplier, PJM Interconnection, or an aggregator.

"Marketer" means an entity or person that purchases and takes title to electricity for sale to Retail Electric customers.

"Net Metering" (or "Net Energy Metering") means a service to a Customer whereby electric energy generated by the Customer, through a Customer-Generator Facility and delivered to the local distribution facilities of an Electric Supplier, may be used to offset electric energy provided by the Electric Supplier to the Customer.

"PJM Interconnection, LLC" or **"PJM"** means the Regional Transmission Organization ("RTO") that is responsible for wholesale energy markets and the interstate transmission of energy throughout a multi-state area, or its successor organization.

"Residential Customer" means a Retail Electric Customer eligible to take Residential services under the Delmarva Power or the Delaware Electric Cooperative's tariff, currently on file with the Commission.

"Renewable Energy Credit" or **"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 Delaware Public Service Commission Regulation Docket No. 56. 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 Energy Portfolio Standard" or **"RPS"** refers to the Rules and Procedures to Implement the Renewable Energy Portfolio Standard, Delaware Public Service Commission Regulation Docket No. 56.

"Slamming" means the unauthorized enrollment of a customer without the customer's permission or the unauthorized transfer of a customer to another Electric Supplier.

"Small Commercial Customer" means a Retail Electric Customer taking service under DP&L's tariff, currently on file with the Commission, Service Classification "Small General Service-Non Demand Rate" or the Cooperative's tariff, currently on file with the Commission, Service Classification "General Service." However, for the purposes of these Rules, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for Electric Supply Service shall be exempt from the definition of a Small Commercial Customer.

"Standard Offer Service" or **"SOS"** means the provision of Electric Supply Service after the Transition Period by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier.

"Standard Offer Service Supplier" or **"SOSS"** means an Electric Supplier that provides Standard Offer Service to Customers within an Electric Distribution Company's service territory after the Transition Period.

"State" means The State of Delaware.

"Telemarketing" means any unsolicited telephone calls initiated by, or on behalf of, an Electric Supplier to a Customer in order to market Electric Supply Service.

"Transition Period" means the period of time described in 26 Del.C. §1004, which: begins October 1, 1999 and ends May 1, 2006 for Delmarva's customers; and begins April 1, 2000 and ends March 31, 2005 for all Cooperative customers.

"Transmission Facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to Customers (including any Customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the Customer.

"Transmission Services" means the delivery of electricity from supply sources through Transmission Facilities.

*(Break in Continuity of Sections)***8.0 Net Energy Metering****8.1 Definitions**

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

"Annualized Period" means a period of 12 consecutive monthly billing periods ending at the discretion of the Customer, either December 31st or July 31st of each year or the nearest billing cycle. A Customer generator's first Annualized Period begins on the first day of the first full monthly billing period after which the Customer generator's facility is interconnected and is generating electricity.

"Avoided Cost of Wholesale Power" means the annual average locational marginal price ("LMP") of energy in the applicable energy supplier's transmission zone. This cost (including the method of calculation) can be obtained through the Electric Supplier's tariff as approved by the Commission.

"Customer generator" means a residential, commercial, or industrial Customer that generates electricity on the Customer's side of the meter.

"Customer generator Facility" means the equipment used by a Customer generator to generate, manage, and monitor electricity. A Customer generator facility typically includes an electric generator and/or an equipment package, as defined herein (also referred to as the "generating facility" or "generator").

"NEG" means Net Excess Generation.

"Net Metering" means a system of metering electricity in which the Electric Supplier credits a Customer generator at the full applicable retail rate by classification for each kilowatt-hour produced by a renewable energy system installed on the Customer generator's side of the electric revenue meter, up to the total amount of electricity used by that Customer during an Annualized Period. At the end of the Annualized Period, any remaining credits are to be credited to the Green Energy Fund at a rate equal to the Electric Supplier's Avoided Cost of Wholesale Power.

8.21 General Provisions

8.1.4 Each Electric Supplier providing Electric Supply Service to Residential and Non-Residential Customers shall offer these Retail Electric Customers the option of net energy metering Net Metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.21.1 The Retail Electric Customer owns or and operates the electric generation facility; with a capacity that:

8.2.1.21.1 Will not exceed 25 kW per DP&L meter for Residential Customers;

8.1.1.2.1.3 Will not exceed 2 MW per DP&L meter for Non Residential Customers;

8.1.1.3 Will not exceed 100 kW per DP&L meter for farm customers, as those customers are described in Title 3, section 902(3); provided, however, that the Delaware Energy Office may grant exceptions to this limitation in accordance with Title 26, section 1014(d)(1)b;

8.21.1.4 Is intended primarily to offset all or part of the Customer's own electricity requirements;

8.21.1.5 Uses as its primary source of fuel: solar, wind, hydro, a fuel cell powered by renewable fuels, or gas from the anaerobic digestion of organic material;

8.21.1.6 Is interconnected and operated in parallel with a n Electric Supplier's transmission and distribution facilities; and

8.21.1.7 Is not used by the Retail Electric Customer to supply electricity to property other than the Customer's premises.

8.32 Net metering ~~is the interconnection with Distribution Facilities~~ shall be accomplished through a single meter at the Electric sSupplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.

8.32.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the ~~net-metering~~ Customer, at the expense of the Electric Supplier, and the

additional metering shall be used only to provide the information necessary to accurately bill or credit the Customer pursuant to Sections 8.3 and/ or 8.4 of this Rule, or to collect system performance information on the eligible technology for research purposes.

8.32.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

8.2.3 If the existing electrical meter of a Customer is incapable of measuring the flow of electricity in two directions through no fault of the customer, the Electric Supplier shall be responsible for all expenses involved in purchasing and installing such a meter.

8.43 ~~If, during any billing period, a Retail Electric Customer's facility generates~~ Customer-Generator Facility produces more energy than that consumed by the Customer, the Electric Supplier will credit the Customer in kilowatt hours (kWh's), valued at an amount per kilowatt hour: ~~(1) kWh equal to the sum of delivery service charges and supply service charges for Residential Customers but does not include the monthly Customer charge; and (2) the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non-Residential Customers for any excess production of their generating facility that exceeds the Customer's on-site consumption of kWh in a billing period.~~

8.43.1 ~~Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used or until the end of the annualized billing period.~~

8.4.2 ~~Any unused credits at the end of the 12-month period shall be forfeited to the Electric Supplier at the Electric Supplier's Avoided Cost of Wholesale Power for use solely to augment existing funding for the Green Energy Fund.~~

8.3.2 At the end of the Annualized Billing Period, a Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges based on a weighted average of the first block of the summer (June through September) and winter Supply Service Charges (October through May) in effect at the end of the Customer's Annualized Billing Period and the preceding 11 billing periods, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. If such payment would be less than \$25.00, the Electric Supplier may credit the Customer's account through monthly billing.

8.43.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.

8.43.4 ~~The Customer-generator shall retain ownership of Renewable Energy Credits ("REC") RECs associated with electric energy produced and consumed by the Customer-generator. The RECs associated with NEG convey to the purchasing Electric Supplier.~~

8.43.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not ~~Net-Metering~~ would be charged. Electric Suppliers shall not charge a ~~Net-Metering~~ Customer any stand-by fees or similar charges.

8.43.6 ~~If a Net-Metering Customer terminates its service with the electric provider (or switches electric providers), the electric provider~~ Electric Distribution Company or changes Electric Supplier, the Electric Supplier terminating service shall treat the end of service period as if it were the end of the Annualized Billing Period for any excess kWh credits at the electric provider's Avoided Cost of Wholesale Power.

8.43.7 ~~If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds 4 percent (4%) of the capacity necessary to meet the electric utility's~~ Electric Supplier's aggregated Customer monthly peak demand for a particular calendar year, the electric utility Electric Supplier may elect not to provide Net-Metering services to any additional Customers-generators.

- ~~8.54~~ Any requirements necessary to permit inter-connected operations between the ~~Retail Electric-Customer's generating facility~~ Customer-Generator Facility and the Electric Supplier, and the cost associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's (~~IREC~~) Model Interconnection Rules and best practices identified by the U.S. Department of Energy.
- 8.65 Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the ~~annualized billing period. The~~ end of the calendar year. Such reports shall include the following information from the ~~prior compliance~~ previous calendar year:
- 8.65.1 The total number of ~~Customer-g~~Generator ~~f~~Facilities;
- 8.65.2 The total estimated rated generating capacity of its net-metered Customer-generators;
- 8.65.3 The total estimated net kilowatt-hours received from Customer-generators; and
- 8.65.4 The total estimated amount of energy produced by Customer-generators, using a methodology approved by the Commission.
- 8.76 The Commission shall periodically review the impact of net-metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.
- 8.7 A retail electric customer having on its premises one or more grid Grid-Integrated Electric Vehicles shall be credited in kilowatt-hours (kWh) for energy discharged to the grid from the Grid-Integrated Electric Vehicle's battery at the same kWh rate that customer pays to charge the battery from the grid, as determined in Section 8.3 of this Rule. Excess kWh credits shall be handled in the same manner as Net Metering as described in Section 8.3 of this Rule. To qualify under this section of the Rule, the Grid-Integrated Electric Vehicle must meet the requirements in Sections 8.1.1.1., 8.1.1.2, and 8.1.1.6 of this Rule. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in Sections 8.3, 8.4, and 8.5 of this Rule.
- 8.8 The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with Section 8.7 of this Rule. Such tariffs may include rate and credit structures that vary from those set forth in Section 8.7 of this Rule, as long as alternative rate and credit structures are not inconsistent with the development of Grid-Integrated Electric Vehicles.

12 DE Reg. 518 (10/01/08)

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 614 11-01-09.htm>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3008

IN THE MATTER OF THE ADOPTION OF RULES AND	
PROCEDURES TO IMPLEMENT THE RENEWABLE	
ENERGY PORTFOLIO STANDARDS ACT, 26 DEL.C.	
26 DEL.C. §§351-363, AS APPLIED TO RETAIL	PSC REGULATION DOCKET NO. 56
ELECTRICITY SUPPLIERS (OPENED AUGUST 23, 2005;	
REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; AND	
SEPTEMBER 22, 2009	

ORDER NO. 7653

AND NOW, this 22nd day of September, 2009:

WHEREAS, in 2005 the General Assembly and the Governor enacted the “Renewable Energy Portfolio Standards Act,” 26 **Del.C.** §§351-364 (2006 Supp.) (the “RPS Act”), which required each electric supplier, beginning in 2007, to annually accumulate a portfolio of “renewable energy credits” equivalent to a specified percentage of its retail electric supply sales in Delaware; and

WHEREAS 26 **Del.C.** §360(b) provides that unused renewable energy credits shall exist for three years from the date of their creation; and

WHEREAS, in 2006, the Commission promulgated “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (the “RPS Rules”). See Order No. 6931 (June 6, 2006);¹ and

WHEREAS the Commission has revised its RPS Rules from time to time to reflect amendments to the RPS Act. See PSC Order No. 7377 (Apr. 17, 2008); PSC Order No. 7494 (Dec. 16, 2008); and

WHEREAS, on July 8, 2009, the Governor of the State of Delaware signed into law Senate Bill No. 173, as amended by Senate Bill No. 1 (77 *Del. Laws ch. 131*) (July 8, 2009) (“SB 173”), which mostly updated and clarified certain provisions of the Delaware Energy Act pertaining to Delaware’s Sustainable Energy Utility (the “SEU”); and

WHEREAS, SB 173 also amended Section 360 of the RPS Act by adding a subsection that tolls the three-year limit on the existence of renewable energy credits and solar renewable energy credits during any period that those credits are held by the SEU. See 26 **Del.C.** §360(c); and

WHEREAS, the Commission now proposes to update the RPS Rules to add a provision that reflects SB 173’s change to Section 360 referenced above and to add a definition of the SEU (attached as Exhibit “A” hereto is a copy of the RPS Rules with the proposed additions in black-line format); and

WHEREAS the Commission believes that the proposed revised regulations should be published in the *Delaware Register of Regulations* to provide public notice of the rulemaking to develop final regulations;

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

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** § 362 and 29 **Del.C.** § 10115, the Commission proposes to revise its “Rules and Procedures to Implement the Renewable Energy Portfolio Standard,” originally adopted by PSC Order No. 6931 (June 6, 2006) and published at 10 **DE Reg.** 151-57 (the “RPS Rules”). A copy of the RPS Rules in their current form as approved by the Commission in PSC Order No. 7494 (Dec. 16, 2008) is appended as Exhibit “B” to this Order. The proposed revised RPS Rules are attached to this Order as Exhibit “A”.

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Acting Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order, along with copies of the proposed and current RPS Rules (Exhibits “A” and “B”, respectively).

3. That the Acting Secretary shall cause the Notice of Proposed Rule-Making, attached as Exhibit “C” to be published in the *Delaware Register of Regulations*. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in The News Journal and the Delaware State News newspapers on **October 28, 2009**. The Acting Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Acting Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d)

1. The RPS Rules (attached as Exhibit “B”) 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 RPS Act’s requirements by pursuing an alternative regime for supporting “renewable energy” resources. See 26 *Del. C.* §§ 353(a), 363.

all certificated electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before December 1, 2009. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the RPS Rules on December 8, 2009 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** § 502 and 29 **Del.C.** §10116. Depending on what, if any, comments are received to the proposed revisions to the Regulations, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

6. That Joseph C. Handlon, Esquire, Deputy Attorney General, is designated Staff Counsel for this matter.

7. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provisions of 26 **Del.C.** § 114(b)(1).

8. 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:

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Jeffrey J. Clark, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Katie Rochester, Acting Secretary

NOTICE OF PROPOSED RULE-MAKING AMENDING "RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD"

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, ELECTRIC GENERATORS USING RENEWABLE RESOURCES, AND OTHER INTERESTED PERSONS

Under the "Renewable Energy Portfolio Standards Act," 26 *Del.C.* §§351-364 (2006 Supp.) (the "RPS Act"), each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Public Service Commission ("PSC") adopted "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"). See 10 DE Reg. 151-157 (July 1, 2006). The RPS Rules have been amended twice in the interim to conform to subsequent amendments to the RPS Act.

On July 8, 2009, the Governor of the State of Delaware signed into law Senate Bill No. 173 as amended by Senate Bill No. 1 (77 Del. Laws ch. 131) (July 8, 2009) ("Senate Bill 173"), which updated and clarified certain provisions of the Delaware Energy Act pertaining to Delaware's Sustainable Energy Utility (the "SEU") and amended Section 360 of the RPS Act by adding a subsection, that tolls the three-year limit on the existence of renewable energy credits and solar renewable energy credits during any period that those credits are held by the SEU.

The PSC now proposes to revise the RPS Rules to incorporate, and assure consistency with, the statutory changes made by Senate Bill 173.

You can review PSC Order No. 7653 (Sept. 22, 2009) (the "Order") and the proposed revised RPS Rules in the November 2009 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised RPS Rules at the PSC's Internet website located at <http://dep.sc.delaware.gov>. If you wish to obtain written copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before December 1, 2009. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 56

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

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on December 8, 2009 at 1:00 P.M. at the PSC's office at the address set forth above.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications). Inquiries may be sent to the PSC by Internet e-mail addressed to "pamela.knotts@state.de.us."

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

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:

(Break in Continuity Within Section)

"Sustainable Energy Utility" ("SEU") is the nonprofit entity according to the provisions of 29 Del. C. § 8059 that develops and coordinates programs for energy end-users in Delaware for the purpose of promoting the sustainable use of energy in Delaware.

(Break in Continuity Within Sections)

3.0 Administration of RPS

(Break in Continuity Within Section)

- 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

PROPOSED REGULATIONS

- 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 The three (3) year period referred to in 3.3.3 shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in 29 Del.C. § 8059.
- 3.3.4~~5~~ 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~~6~~ 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~~7~~ All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.
- 11 DE Reg. 1670 (06/01/08)
12 DE Reg. 1110 (02/01/09)

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 622 11-01-09.htm>

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code Sections 131, 146 and 508; Chapters 1 and 5
(17 Del.C. §§131, 146, 508)
2 DE Admin. Code 2309

PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Statutory Authority

- 17 Delaware Code Chapter 1, Section 131
- 17 Delaware Code Chapter 1, Section 146
- 17 Delaware Code Chapter 5, Section 508

Background

The Delaware Department of Transportation through its Planning Division has developed proposed revisions to its regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets. This proposed revision to the Standards and Regulations for Subdivision Streets and State Highway Access is the first revision to the regulations that were enacted in December of 2007.

These regulations define the requirements which apply to:

- New subdivisions and land development
- Changed or expanded subdivisions and land development
- Any new access to a State-maintained road
- Modifications to an existing access
- Assessment of the impacts of traffic
- Off-site improvements

Attached to this announcement is a summary of the proposed changes to the regulations. In addition, proposed deletions are shown as ~~stricken through text~~ and proposed new language is shown as underlined text.

A public workshop will be held regarding these proposals on November 19, 2009 at the DeIDOT Administration Building in the Farmington/Felton Room from 4:00 pm until 7:00 pm.

The Department will take written comments on the proposed changes to the Regulations from November 1, 2009 through December 17, 2009.

Any requests for copies of the Regulations, or any questions or comments regarding amendments to these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning
Delaware Department of Transportation
PO Box 778
Dover, DE 19903
(302) 760-2122 (telephone)
(302) 739-2251 (fax)
theodore.bishop@state.de.us

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Chapter 1

- Requires all applications to be sent to the Subdivision Engineer instead of the local District.
- Removes paying the NPDES fee to DeIDOT, applicants will pay fee to DNREC.

Chapter 2

2.2.5

- DeIDOT can require a new TIS if conditions change in the study area. A revised TIS, a new TIS or an operational analysis may be required prior to issuing an Letter of No Objection.

2.3.2

- Area Wide Study fee changes from \$5/trip to \$10/trip. Payment of the fee in lieu of doing the TIS shifts from developer's option to DeIDOT's option.

2.5.1

- Scoping Meeting Information Form – describes all of the information to be submitted to DeIDOT.
 - Scoping Meeting describes the scope confirmation letter is only valid for 12 months or until conditions change.

2.9.11.6

- Level of Service Analysis – Method of calculation peak hour factors is changed.
- Guidance is provided on calculation of heavy vehicle percentages specified.
- Default Base Saturation Flow Rates – specified by location.
- DeIDOT will prepare Scoping Letters.
- Option B is a new process that has DeIDOT performing the TIS using out consultant instead of the Applicant preparing the TIS.

Chapter 3

3.4.1.1

- Defines minimum projected 10 year volumes as 20% greater than the existing volumes plus the site traffic.

Chapter 4

- Reduces the review time for plans from 45 working day to 30 working days.

Chapter 5

- Change various minor details on design standards.
- Turn lane warrant charts are dependent on 10 year projected volume instead of current ADT.
- Changes reference to the MUTCD to the Delaware MUTCD.

Chapter 6

- Changes the security amount for entrances back to 150% from the old manual.
- Changes when the entrance construction should start.
- Change security amount on subdivision streets from 10% to 100%.

Chapter 7

- Deleted Entrance Apron Detail, Figure 7-4.

Appendix C

- Updated the Initial Stage and Construction Stage Fee Forms.
- Created an Area Wide Study Fee Calculation Form.

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 626 11-01-09.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.

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6603 (16 Del.C. §6603)
1 DE Admin. Code 700

ORDER

Nature of the Proceedings

The State Fire Prevention Commission ("the Commission") held a properly noticed, public hearing on August 18, 2009 to receive comment on proposed additions, revisions, deletions, modifications and reservations to the Commission Regulations. Pursuant to 29 Del.C. § 10115, notice of the proposed amendments to the rules and regulations was published on July 1, 2009, in the *Delaware Register of Regulations*, Volume 13, Issue 12. In addition, the hearing notice was published in 2 newspapers of general circulation. The Commission deliberated on the public comment at its next regularly noticed and scheduled meeting on September 15, 2009.

Summary of the Evidence

1. The Commission received one written comment from Ron Gahagan, Assistant General Counsel, Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., suggesting multiple revisions to Chapter 1 under Section 704 of the proposed regulations related to Reduced Ignition Propensity Cigarettes. The submission included a marked up copy of the regulations with Mr. Gahagan's proposed changes. Mr. Gahagan's written submission was admitted as Commission **Public Hearing Exhibit 1**.

2. The Commission received a brief overview of the proposed updates to the Regulations from Fire Marshal Grover P. Ingle. The proposed amendments stem from the three (3) year review cycle. The summary of the proposed recommendations for 2009 is as follows:

Part I

- Chapter 2: New Definitions and recommended changes from the High Rise Committee.
- Chapter 4: Revision on Limitations of Plan Review approvals and permits.
- ANNEX A: Recommendation to adopt the most recent editions of NFPA Codes and Standards that are presently adopted by the Regulation.
- ANNEX B: Recommendations to update the proper section and paragraph numbers from the adopted NFPA Codes and Standards that are presently amended by the Regulation, including NFPA 1; which is being moved from Annex C to Annex B.

Part II

- Chapter 3, 4, and 5: Proposed recommendations to the High Rise and Large Area building Chapters as proposed by the High Rise Committee.

Part III

- Chapter 3: Proposed recommendation to allow the use of reflective paint or reflective tape on hydrants.
- Chapters 4, 5, 6, 7: Proposed recommendation to allow a company, business, or person(s) exempt from Workers' Compensation laws of the State (19 **Del.C.** Ch. 23 – Workers' Compensation) be licensed by providing written documentation to the Office of the State Fire Marshal stating the exemption.
- Chapter 5 and 7: Proposed recommendation to reflect the requirement in 16 **Del.C.** §6603(c) – to have a NICET – Level II – Inspection and Testing of Water-based Systems certification to be licensed to do testing and inspection on water based fire protection systems.

Part IV

- Chapter 1: Proposed Regulations addressing Fire Safe Cigarettes.

Part V

- Chapter 1: Proposed recommendations to the Gated Communities section.
- Chapter 5: Two public proposals submitted to revise the Fire Lane requirements.

Appendix E

- Defines the meaning of “apartment complex”

3. Gil Moniz offered public comment in support of accepting the Fire Marshal's recommendation to adopt the 2008 electrical code.

4. Ron Gahagan, Assistant General Counsel, Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., offered public comment consistent with his written submission regarding proposed changes to Chapter 1 under Section 704 of the proposed regulations related to Reduced Ignition Propensity Cigarettes.

5. Michael Morton, a statistician with Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., offered public comment recommending that the Commission not put a specific testing and sampling protocol in the regulations.

6. Ed Osienski offered public comment on behalf of Local 669 in regard to the NICET II qualifications. Mr. Osienski stated that he represents 110 sprinkler installers in the State of Delaware. He would like to have seen the law worded differently to give employers more time for testing periods. The current compliance date was July 1, 2009. Mr. Osienski stated that he understood that issue would require a change to the law.

Findings of Fact

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

1. There was no public comment presented at the public hearing in opposition to any of the proposed regulations with the exception of the implementation of regulations governing Reduced Ignition Propensity Cigarettes, Chapter 1 under Section 704.

2. The Commission has no authority to extend by regulation the effective date for the NICET II requirements that became effective on July 1, 2009.

3. In written correspondence, and at the hearing, Ron Gahagan raised a number of suggestions to clarify the regulations governing Reduced Ignition Propensity Cigarettes as proposed in Chapter 1 under Section 704. The Commission also received statistical information from Mr. Morton as to why it should not establish testing and sampling protocols.

4. The Commission finds that the issues raised by Mr. Gahagan and Mr. Morton on behalf of Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., should be referred back to the Fire Marshal for further review using his expertise in the subject matter before implementing Reduced Ignition Propensity Cigarettes regulations. As a result, the Commission determined to delete the proposed regulations in Chapter 1 under Section 704 at this time. The Commission will reserve section and consider republishing Reduced Ignition Propensity Cigarette regulations at another public hearing to be held at a future date.

The Law

The State Fire Prevention Commission's rulemaking authority is provided by 16 **Del.C.** 6603 State Fire Commission Promulgation of Regulations:

“(a) The State Fire Prevention Commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion...”

Decision and Effective Date

The Commission hereby adopts the amendments to the regulations to be effective 10 days following publication of this Order in the *Register of Regulations*. The Commission relies upon its expertise in this area and the evidence presented in the testimony and documents submitted.

Text and Citation

The Commission hereby adopts the Regulations as published in *Register of Regulations*, Vol. 13, Issue 12, July 1, 2009 with the alterations to Section 704 noted in this Order. A copy of the Regulations as adopted is attached to this Order as Exhibit A.

IT IS SO ORDERED this 20th day of October 2009.

STATE FIRE PREVENTION COMMISSION

Marvin C. Sharp, Chairman

Bob Ricker, Vice-Chairman

Willard (Bill) Betts

Ron Marvel

Kenneth H. McMahon

Douglas S. Murray, Sr.

David J. Roberts

Delaware State Fire Prevention Regulations Summary of Proposed Recommendations for 2009

701 Administration and Enforcement

- Chapter 2: New Definitions and recommended changes from the High Rise Committee.
- Chapter 4: Revision on Limitations of Plan Review approvals and permits.
- ANNEX A: Recommendation to adopt the most recent editions of NFPA Codes and Standards that are presently adopted by the Regulation.
- ANNEX B: Recommendations to update the proper section and paragraph numbers from the adopted NFPA Codes and Standards that are presently amended by the Regulation, including NFPA 1; which is being moved from Annex C to Annex B.

702 Fire Protection in Building Construction

- Chapter 3, 4, and 5: Proposed recommendations to the High Rise and Large Area building Chapters as proposed by the High Rise Committee.

703 Installation, Operation, Maintenance, Testing and Sales of Signalling Systems, Fire Protection Systems and Fire Extinguishers

- Chapter 3: Proposed recommendation to allow the use of reflective paint or reflective tape on hydrants.
- Chapters 4, 5, 6, 7: Proposed recommendation to allow a company, business, or person(s) exempt from Workers' Compensation laws of the State (19 **Del.C.** Chp. 23 - Workers' Compensation) be licensed by providing written documentation to the Office of the State Fire Marshal stating the exemption.
- Chapter 5 and 7: Proposed recommendation to reflect the requirement in 16 **Del.C.** §6603(c) - to have a NICET - Level II - Inspection and Testing of Water-based Systems certification to be licensed to do testing and inspection on water based fire protection systems.

704 Hazardous Processes and Operations

- Chapter 1: Proposed Regulations addressing Fire Safe Cigarettes.

705 General Fire Safety

- Chapter 5: Two public proposals submitted to revise the Fire Lane requirements.

Appendix E

- Defines the meaning of "apartment complex"

704 Hazardous Processes and Operations

Chapter 1 ~~Fumigation or Thermal Insecticidal Fogging~~ [Standard for] Reduced Ignition Propensity Cigarettes

~~This Chapter Has Been Reserved.~~ **[This Chapter Has Been Reserved.]**

~~1.0~~ **General**

~~1.1~~ **Scope**

~~1.1.1 This Chapter implements regulations for the Reduced Ignition Propensity Cigarettes Law under 16 Del. C. Ch. 71A. Reduced Ignition Propensity Cigarettes.~~

~~1.2~~ **Purpose**

~~1.2.1 The purpose of this regulation is to promulgate regulations as necessary to implement and administer 16 Del. C. Ch. 71A Reduced Ignition Propensity Cigarettes, and;~~

~~1.2.2 To promulgate regulations to conduct random inspections of wholesale dealers, agents, and retail dealers to ensure that only cigarettes complying with 16 Del. C. Ch. 71A are sold in the State.~~

1.3 Application

~~1.3.1 This regulation shall apply to those operating in the State of Delaware in manufacturing, wholesaling, and/or retail sales of cigarettes.~~

~~1.3.2 This regulation does not apply to cigarettes purchased outside of the State of Delaware that are not offered for sale in the State.~~

2.0 Definitions

~~2.1 The definitions found in this Chapter shall be in addition to the definitions found in other sections of these Regulations and shall be inclusive for this Chapter only.~~

~~“Agent” Any person authorized by the State to purchase and affix tax stamps on packages of cigarettes.~~

~~“Cigarette”~~

- ~~• Any roll for smoking whether made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material other than leaf tobacco; or~~
- ~~• Any roll for smoking wrapped in any substance containing tobacco which, because of its appearance the type of tobacco used in the filler or its packaging and labeling, is likely to be offered, or purchased by, consumers as a cigarette as described in paragraph (2)a. of this section above.~~

~~“Manufacturer”~~

- ~~• Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer; OR~~
- ~~• The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or~~
- ~~• Any entity that becomes a successor of an entity described in paragraph (a) or (b) of this section.~~

~~“Quality Control” and “Quality Assurance Program” The laboratory procedures implemented to ensure that operator bias systematic and non systematic methodological errors and equipment related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in 16 Del. C. § 7117(a)(6) for all test trials used to certify cigarettes in accordance with this Regulation and 16 Del. C. Ch. 71A.~~

~~“Repeatability” The range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.~~

~~“Retail Dealer” Any person other than a manufacturer or wholesale dealer engaged in selling cigarettes or tobacco products.~~

~~“Sale” In addition to its usual meaning, any sale, transfer, exchange, theft, barter, gift or offer for sale and distribution, in any manner or by any means whatsoever.~~

~~“Sell” To sell or to offer or agree to do the same.~~

~~“State Fire Marshal” The Delaware State Fire Marshal or the State Fire Marshal's deputies.~~

~~“Wholesale Dealer” Any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains 1 or more cigarette or tobacco product vending machines in, a t or up on premises owned or occupied by any other person.~~

3.0 Fundamental Requirements

- 3.1 Every cigarette brand style sold in the State of Delaware must comply with the Reduced Ignition Propensity Cigarettes law under 16 Del. C. Ch. 71A.
- 3.2 Every cigarette offered for sale in the State of Delaware must exhibit package markings indicating that the cigarette has been tested and certified under the requirements of the Reduced Ignition Propensity Cigarettes Law. (16 Del. C. Ch. 71A)
- 3.3 Every cigarette brand style must be certified by the State Fire Marshal prior to being offered for sale in Delaware.
- 3.3.1 Every cigarette brand style must be recertified by the State Fire Marshal every three years from the last date that the cigarette brand style was approved.

4.0 Testing Method and Performance Standard

- 4.1 Cigarettes offered for sale in the State must comply with the testing method and performance standard defined in 16 Del. C. §7117.
- 4.1.1 No cigarette may be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless such cigarettes have been tested in accordance with the test method and meet performance standard specified in 16 Del. C. §7117.
- 4.2 The Office of the State Fire Marshal will certify and register cigarette brand styles that are permitted to be sold or offered for sale in the State of Delaware after reviewing and approving the cigarette manufacturer's submission as outlined in 16 Del. C. §7118.
- 4.3 The Office of the State Fire Marshal will maintain a directory of cigarette brand styles that are permitted to be sold or offered for sale in the State.

5.0 Package Markings

- 5.1 All packages containing reduced ignition propensity cigarettes shall be marked indicating that the cigarettes have been certified by the manufacturer in compliance of 16 Del. C. Ch. 71A.
- 5.1.1 Prior to certification of any cigarette, a manufacturer shall present its proposed marking to the State Fire Marshal for approval.
- 5.1.2 Upon receipt of the request, the State Fire Marshal or State Fire Marshal designee shall approve or disapprove the marking offered.
- 5.2 Manufacturers requesting their markings to be approved must submit an exemplar to the Office of the State Fire Marshal for each brand style.

6.0 Enforcement

- 6.1 The Office of the State Fire Marshal is responsible to administer and manage the Reduced Ignition Propensity Cigarettes Program.
- 6.2 Enforcement of the Reduced Ignition Propensity Cigarettes program will be coordinated through the Office of the State Fire Marshal.

7.0 Penalties

- 7.1 The State Fire Marshal shall assess all civil penalties as outlined in 16 Del. C. Ch. 71A.
- 7.2 All civil penalties will be paid within 30 days of assessment.

8.0 Inspections

- 8.1 The Office of the State Fire Marshal will conduct random inspections of wholesale and retail businesses engaged in the selling of cigarettes in the State of Delaware to ensure compliance with this Chapter.

- ~~8.2 Random selections of cigarettes in random locations throughout the State that sell or offer for sale cigarettes will be purchased and sent to a third party independent testing facility selected by the State Fire Marshal.~~
- ~~8.2.1 A total of 80 specific cigarettes from one cigarette brand style will be collected from various locations in the State selling or offering for sale that specific cigarette brand style.~~
- ~~8.2.2 A total of 40 specific cigarettes from one cigarette brand style will be tested by an independent accredited testing facility selected by the State Fire Marshal.~~
- ~~8.2.3 The remaining 40 specific cigarettes from one cigarette brand style will be held with the Office of the State Fire Marshal.~~
- ~~8.3 Any cigarette brand style that fails the compliance test will be retested from the remaining 40 specific cigarettes being held by the Office of the State Fire Marshal.~~
- ~~8.3.1 The manufacturer shall be notified by the Office of the State Fire Marshal of the initial compliance test failure.~~
- ~~8.4 Any cigarette brand style that fails the second confirmation test will be decertified by the Office of the State Fire Marshal.~~
- ~~8.4.1 The manufacturer shall be notified by the Office of the State Fire Marshal of the second failed test. The manufacturer will have no less than or no more than thirty calendar days to appeal the test results from the second test only. The manufacturer may not appeal the results of the first test.~~
- ~~8.4.2 The State Fire Marshal shall seek an injunction from the Attorney General's office for the removal of the decertified cigarette brand style from retail businesses selling or offering for sale the noncompliant cigarette brand style.~~
- ~~8.5 The Office of the State Fire Marshal will confiscate all noncompliant cigarettes being sold or offered for sale in the State.~~
- 9.0 Certification Renewal**
- ~~9.1 Every cigarette brand style must be certified by the State Fire Marshal every three years after the initial certification date on file with the Office of the State Fire Marshal.~~
- ~~9.2 Certification tests conducted by the manufacturer or manufacturer's representative must have been successfully completed no more than one year prior to the certification renewal date of the specific cigarette brand style.~~
- ~~9.2.1 Certification test data will not be accepted if the test completion date is greater than one year.~~
- ~~9.3 A registration fee of \$250 USD is required for each cigarette brand style certification.~~
- ~~9.3.1 Only domestic checks or money orders made payable to the State of Delaware will be accepted.~~
- 10.0 Statute**
- ~~10.1 No regulation promulgated in this Chapter is intended to supersede the requirements of 16 Del.C. Ch. 71A.]~~

*Please note that no other changes were made to the regulation as originally proposed and published in the July 2009 issue of the *Register* at page 7 (13 DE Reg. 7). Therefore, the final regulation is not being republished. A copy of the entire final regulation is available at

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 629 11-01-09.htm>

FINAL REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 260

REGULATORY IMPLEMENTING ORDER

260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to readopt 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Food Programs of the United States Department of Agriculture CACFP/USDA without changes. This regulation is part of the five-year review cycle. The regulation is in place pursuant to the Child Nutrition and WIC Reauthorization Act of 2004, a reauthorization of the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 2, 2009, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to readopt 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture as part of the five-year review cycle.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to readopt 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture attached hereto as *Exhibit "B"* is hereby readopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture hereby readopted 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** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture readopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture 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 October 12, 2009. 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 12th day of October 2009.

DEPARTMENT OF EDUCATION
Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 12th day of October 2009

260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

*Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 345 (13 DE Reg. 345). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 636 11-01-09.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 705

REGULATORY IMPLEMENTING ORDER

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States to add a citation to the non regulatory note and to revise to the appropriate formatting. This regulation was reviewed pursuant to the five year review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 2, 2009, in the form hereto attached as Exhibit "A". The Department did not receive comments on the amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States in order to add a citation to the non regulatory note and to revise to the appropriate formatting. This regulation was reviewed pursuant to the five year review cycle.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States 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** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States 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 October 12, 2009. 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 12th day of October 2009.

DEPARTMENT OF EDUCATION
Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 12th day of October 2009

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

1.0 Leave for Training or Special Duty

- 1.1 Any permanent and full time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the **Delaware Code**, on a prorated basis in any calendar year.
- 1.1.1 Such training or special duty leave shall not be deducted from their annual leave or in any other way result in loss of privileges or compensation to said employee.
- 1.1.2 Any permanent or full time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.

(Non regulatory Note: See 29 **Del.C.** §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 **Del.C.** §1327 Leave of Absence for Person in Military Service)

3 DE Reg. 631 (11/1/99)

8 DE Reg. 700 (11/1/04)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 706

REGULATORY IMPLEMENTING ORDER

706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States to revise the formatting. There are no substantive changes to this regulation. This regulation was reviewed pursuant to the five-year review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 2, 2009, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States in order to revise the formatting. There are no substantive changes to this regulation. This regulation was reviewed pursuant to the five-year review cycle.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States 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** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States 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 October 12, 2009. 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 12th day of October 2009.
DEPARTMENT OF EDUCATION

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

Approved this 12th day of October 2009

706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States

1.0 Credit for Experience

- 1.1 Credit for Experience for full time active duty service, not in excess of six (6) years in the armed services of the United States, shall be granted provided the individual became a teacher, principal, superintendent, or other employee in a Delaware public school:
- 1.1.1 Within five (5) years after completion of a tour of duty; or
- 1.1.2 Within five (5) years after completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of the individual's tour of duty.

2.0 Instruction

Any instruction in Military Science given during years of enlistment shall be included in the six (6) years in the armed services of the United States.

3.0 Calculation of Service Time

- 3.1 Credit for service in the armed forces of the United States shall be calculated as follows:
- 3.1.1 One year of experience shall be allowed for each creditable year of full time active duty service.
- 3.1.2 In the case of a teacher, principal, superintendent or other administrative employee a combined total of ninety one (91) days of service and employment in any of these positions during any one school year will count as a year of experience.
- 3.1.3 No more than one (1) year of experience may be credited for any one (1) calendar year.

(Non regulatory Note: See 14 Del.C. §1312(a) and §1327 Leave of Absence for Persons in Military Service).

3 DE Reg. 631 (11/1/99)

8 DE Reg. 701 (11/1/04)

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 718

REGULATORY IMPLEMENTING ORDER

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs. There is a minor formatting change for additional clarity and an amendment that requires medical information on employees to be maintained in accordance with any Health Insurance Portability and Accountability (HIPAA) requirements and separated from the individual's personnel file.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 2, 2009, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs in order to change the format for additional clarity and an amendment that requires medical information on employees to be maintained in accordance with any Health Insurance Portability and Accountability (HIPAA) requirements and separated from the individual's personnel file.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative 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** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative 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 October 12, 2009. 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 12th day of October 2009.

DEPARTMENT OF EDUCATION
Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 12th day of October 2009

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

1.0 Required Physician's Certification

At initial employment, all employees of school districts, charter schools and alternative programs shall provide a physician's certification that he or she is free (a) from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and (b) free from any medical condition which cannot be remedied through reasonable accommodations. The

physician's certification, along with any other medical information, shall be retained in an individual's file kept in accordance with any Health Insurance Portability and Accountability Act of 1996 (HIP AA) requirement and separate from the individual's personnel file.

Non regulatory note: See 14 **Admin. Code** 805 The School Health Tuberculosis Control Program for TB screening and testing. Also, see 21 **Del.C.** §2708 and 14 **DE Admin. Code** 1105 for requirements for school bus drivers.

3 DE Reg. 526 (10/1/99)

8 DE Reg. 702 (11/1/04)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1507

REGULATORY IMPLEMENTING ORDER

1507 Alternative Routes to Teacher Licensure and Certification Program

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** 1507 Alternative Routes to Teacher Licensure and Certification Program. With changes by the General Assembly in 14 **Del.C.** §1260 during the spring of 2009, it was imperative to amend the regulation to reflect current language in Code.

Notice of the proposed amendment of the regulation was published in the *News Journal* on Friday September 4, 2009 and in the *Delaware State News* on Tuesday September 1, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. Comments were received from both the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The comments were taken under consideration and non-substantive changes were made in the amended regulation.

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** 1507 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD
THE 1st DAY OF OCTOBER, 2009**

Kathleen Thomas, Chair	Michael Casson
Joanne Christian	Samtra Devard
Marilyn Dollard	Karen Gordon
Cristy Greaves	Lori Hudson
David Kohan	Jill Lewandowski
Wendy Murray	Gretchen Pikus
Whitney Price	Karen Schilling-Ross
Shelley Rouser	Juanita Wilson

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 20th DAY OF OCTOBER, 2009**STATE BOARD OF EDUCATION**

Teri Quinn Gray Ph.D., President
Jorge Melendez, Vice President
G. Patrick Heffernan
Barbara Rutt
Dennis J. Savage
Terry Whittaker Ed.D.
James Wilson Ed.D.

1507 Alternative Routes to Teacher Licensure and Certification Program**1.0 Content**

This regulation shall apply to the Alternative Routes for Teacher Licensure and Certification Program, pursuant to 14 **Del.C.** §§1260 through 1264.

2.0 Definitions

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

“Coherent Major” means a major in an area appropriate to the instructional field.

“Department” means the Delaware Department of Education.

“Educator” means a person licensed and certified by the State under Chapter 12 of 14 Del.C. 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 and approved by the State Board, ~~but~~ For purposes of 14 Del.C. Chapter 12, the term 'educator' does not include substitute teachers.

“Emergency Certificate” means ~~a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area~~ a temporary credential issued pursuant to 14 DE Admin. Code 1506 Emergency Certificate.

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

“Examination of General Knowledge” means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing, such as PRAXIS™ I, which for the purposes of this regulation, means the State Basic Skills Test.

“Initial License” means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

“Major or Its Equivalent” means no fewer than thirty (30) credit hours in a content area.

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

“Standard Certificate” means a credential issued to verify 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.

“Teach For America” means the nationally established program consisting of recent college graduates and professionals of all academic majors and career interests who commit to a minimum of two (2) consecutive years of classroom teaching in either a low-income urban or rural public school.

“Teacher Residency Program” means a teacher preparation program meeting the minimum criteria of this regulation and approved pursuant to this regulation and any Department regulation. Such a program is typically sponsored by a regionally accredited college or university in partnership with one or more State Education Agencies and /or an established Organization/Foundation, where the participant is paired with a mentor and veteran teacher in a classroom for their initial school year experience.

3.0 Alternative Routes to Teacher Licensure and Certification

3.1 Qualified Candidates meeting all conditions and seeking participation in ~~the~~ an Alternative Routes to Teacher Licensure and Certification program shall be issued an Initial License of no more than three (3) years duration conditioned on continued enrollment in ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program and an Emergency Certificate or certificates of no more than three years duration.

3.2 Candidates ~~must~~ shall meet the following minimum qualifications:

3.2.1 Successfully completed one of the following education requirements:

- 3.2.1.1 Hold a bachelor's degree from a regionally accredited college or university in a coherent major, or its equivalent, [which shall be no less than thirty (30) credit hours] in appropriate to the instructional field they desire to will teach; or
- 3.2.1.2 Hold a Bachelor's Degree from a regionally accredited college or university in any content area and are enrolled in the Teach For America program and have completed all pre-service requirements for such program; or
- 3.2.1.3 Hold a Bachelor's Degree from a regionally accredited college or university in any content area and are enrolled in an approved teacher residency program and have completed all pre-service requirements for such program; and
- 3.3 Pass an examination of general knowledge, such as PRAXIS™ I, or provide an acceptable alternative to the PRAXIS™ I test scores, as set forth in 14 DE Admin. 1510, within the period of time from the date of hire to the end of the next consecutive fiscal year; and
- 3.4 Obtain acceptance into an approved alternative routes to licensure and certification program.
 - 3.4.1 Notwithstanding any other provisions to the contrary, candidates enrolled in the Teach For America program shall not be limited to teaching in areas identified as critical curricular areas.
 - 3.4.2 Notwithstanding any other provisions to the contrary, candidates enrolled in an approved teacher residency program shall not be limited to teaching in areas identified as critical curricular areas; and
- 3.5 Demonstrate the prescribed knowledge and skills for a particular content area by completing the following:
 - 3.5.1 Pass an examination of content knowledge, such as PRAXIS™ II, in the instructional field they desire to teach, if applicable and available, within the period of time from the date of hire to the end of the next fiscal year.
 - 3.5.2 Notwithstanding any other provisions to the contrary, candidates enrolled in the Teach For America program shall, where applicable and available, have achieved a passing score on an examination of content knowledge, such as Praxis II, for the area in which such candidate will be teaching, prior to taking full responsibility for teaching a classroom; or
 - 3.5.3 Notwithstanding any other provisions to the contrary, candidates enrolled in a teacher residency program shall, where applicable and available, have achieved a passing score on an examination of content knowledge, such as Praxis II, for the area in which such candidate will be teaching, prior to taking full responsibility for teaching a classroom; and
- 3.6 Obtain an acceptable health clearance and an acceptable criminal background check clearance; and
- 3.7 Obtain a teaching position by one of the following:
 - 3.7.1 Obtain and accept an offer of employment in a position that requires licensure and certification; or
 - 3.7.2 In the case of a teacher residency program, obtain and accept an offer for a position that if paid would require licensure and certification.

4.0 Components of the Program

- 4.1 The ~~An~~ Alternative Routes for Teacher Licensure and Certification Program shall consist of be approved by the Secretary of Education and meet the following minimum criteria:
- 4.2 Incorporate one of the following prerequisite options:
 - 4.2.1 A summer institute of [approximately no less than one hundred and twenty (120)] instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and child or adolescent development.

- 4.2.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching; or
- 4.2.2 A teacher entering a Delaware public school through the Teach For America program shall complete the two hundred (200) hours of pre-service training provided by Teach for America; or
- 4.2.3 A teacher entering a Delaware public school through a teacher residency program shall complete a minimum of one hundred and twenty (120) hours of pre-service training provided by the approved teacher residency program; and
- 4.3 A Require a one year, full time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.
- 4.4 Require Seminars on teaching that provide Alternative Routes to Licensure and Certification teachers with approximately 200 instructional (clock) hours or equivalent professional development during the first year of their teaching assignment and during an intensive seminar the following summer. Content shall include curriculum, student development and learning, and the classroom and the school, as required in 14 Del.C. §1261.
- 4.5 Receive any required approvals under the Department's regulation 14 DE Admin. Code 290 Approval of Educator Preparation Programs.

5.0 Mentoring Support

Mentoring support shall be carried out in accordance with 14 **DE Admin. Code** 1503. No mentor shall participate in any way in decisions which might have a bearing on the licensure, certification or employment of teachers participating in ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program.

6.0 Supervision and Evaluation

Teachers enrolled in ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program shall be observed and formally evaluated by a certified evaluator using the state approved evaluation system at least once during the first ten (10) weeks in the classroom, and a minimum of two (2) additional times within the next twenty (20) weeks. Evaluations shall be no more than two (2) months apart.

7.0 Recommendation for Licensure and Certification

Upon completion of ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program, the certified evaluator shall prepare a summative evaluation report for the teacher participating in the Program. The evaluation report shall include a recommendation as to whether or not a license shall be issued. The evaluation report and license recommendation shall be submitted to the Department. A copy of the evaluation report and license recommendation should be issued to the candidate twenty (20) days before submission to the Department.

8.0 Issuance of License

If the evaluation report recommends approval of the candidate for licensure, provided the candidate is otherwise qualified, the Department shall issue an Initial License valid for the balance of the three (3) year term, if the participant has completed the Program in less than three (3) years, or a Continuing License, if the three (3) year term of the Initial License has expired, and shall issue the appropriate Standard Certificate or Certificates.

Candidates who receive a recommendation of 'disapproved' shall not be issued an Initial License and Standard Certificate by the Department, and may not continue in ~~the~~ an Alternative Routes for Licensure and Certification Program.

9.0 Recommendation of “Disapproved”

Candidates who receive a recommendation of “disapproved” may petition the Department for approval of additional opportunities to participate in the an Alternative Routes for Teacher Licensure and Certification Program. Within fifteen (15) days of receipt of the evaluation report and the certification recommendation, a candidate disagreeing with the recommendation may submit to the evaluator written materials documenting the reasons that the candidate believes a license should be awarded. The evaluator shall forward all documentation submitted by the candidate, along with the evaluation report and recommendation concerning licensure and certification to the Secretary of Education. The Secretary or his or her designee shall review the evaluation report, the licensure and certification recommendation, and any documentation supplied by the candidate and make a determination with respect to licensure and certification.

10.0 Right to a Hearing

A teacher participating in the an Alternative Routes for Teacher Licensure and Certification Program who is denied a license and certificate may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

11.0 Program Evaluation

Those responsible for Alternative Routes to Certification Programs approved by the Standards Board and the State Board shall develop a program evaluation process. The focus of the program evaluation ~~must~~ shall be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

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

12.0 ~~Other~~ Approval of Alternative Routes Programs

The Secretary may approve for implementation ~~other~~ Alternative Routes to Teacher Licensure and Certification Programs, provided the programs meet the minimum criteria set forth in this regulation and in any applicable laws.

7 DE Reg. 161 (8/01/03)

9 DE Reg. 971 (12/01/05)

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 1512

REGULATORY IMPLEMENTING ORDER**1512 Issuance and Renewal of Advanced License****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** 1512 Issuance and Renewal of Advanced License. Upon review, the Board has amended a few sections of the regulation for clarity and accuracy, and to meet current formatting.

Notice of the proposed amendment of the regulation was published in the *News Journal* on Friday September 4, 2009 and in the *Delaware State News* on Tuesday September 1, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. Comments were received from both the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. It was determined that the proposed change was not necessary.

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** 1512 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD

THE 1st DAY OF OCTOBER, 2009

Kathleen Thomas, Chair	Michael Casson
Joanne Christian	Samtra Devard
Marilyn Dollard	Karen Gordon
Cristy Greaves	Lori Hudson
David Kohan	Jill Lewandowski
Wendy Murray	Gretchen Pikus
Whitney Price	Karen Schilling-Ross
Shelley Rouser	Juanita Wilson

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 20th DAY OF OCTOBER, 2009

STATE BOARD OF EDUCATION

Teri Quinn Gray Ph.D., President
 Jorge Melendez, Vice President
 G. Patrick Heffernan
 Barbara Rutt
 Dennis J. Savage

Terry Whittaker Ed.D.
James Wilson Ed.D.

1512 Issuance and Renewal of Advanced License

1.0 Content

This regulation shall apply to the issuance and renewal of an Advanced License for educators, pursuant to 14 **Del.C.** §1213 and §1214.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Educator" means ~~an employee paid under 14 Del.C. §1305~~ a person licensed and certified by the State under 14 Del.C. Chapter 12, 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 and approved by the State Board. For purposes of 14 Del.C. Chapter 12, the term 'educator' does not include substitute teachers.

"Exigent Circumstances" ~~means an anticipated circumstance or circumstances beyond the educator's control, including, but not limited to serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service. The expiration of an educator's license before the end of the school year shall be considered an exigent circumstance, however the educator's license may only be extended to the end of that current school year.~~

"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 or otherwise.

"Maintenance of Proficiency" means evidence of valid renewal of National Board for Professional Teaching Standards certification.

"National Board Certified Teacher" means an educator who holds National Board for Professional Teaching Standards certification.

"National Board Certification" means certification of an educator by the National Board for Professional Teaching Standards.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §104 Chapter 12.

"State" means State of Delaware.

3.0 Advanced License

- 3.1 In accordance with 14 **Del.C.** §1213, the Department, upon receipt of the list of successful candidates provided annually by the National Board for Professional Teaching Standards, shall issue an Advanced License to any educator who receives National Board for Professional Teaching Standards certification. An Advanced License is valid for up to 10 years unless extended pursuant to 14 **Del.C.** §1216 or revoked for cause, as defined in 14 **Del.C.** §1218.
- 3.2 The Department shall issue, upon application, an Advanced License to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification.
- 3.3 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

~~3.2.1 "Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.~~

4.0 RESERVED (For Equivalent Program)

5.0 Renewal of Advanced License

- 5.1 In accordance with 14 **Del.C.** §1214, the Department shall renew an Advanced License, valid for an additional 10 years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.
- 5.2 The Department shall renew an Advanced License upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.
- 5.3 An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board ~~will~~ shall be issued a Continuing License.

6.0 Extension for Exigent Circumstances

The Department may extend an Advanced License for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

7.0 Leave of Absence

An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the Advanced License.

8.0 Criminal Conviction History

An applicant shall disclose his or her criminal conviction history upon application for an Advanced License, the renewal of an Advanced License, or upon the issuance of a Continuing License pursuant to section 5.2. Failure to disclose a criminal conviction history is grounds for denial or revocation of an advanced license or a Continuing License and criminal prosecution as specified in 14 **Del.C.** §1219.

6 DE Reg. 77 (7/1/02)

7 DE Reg. 956 (1/1/04)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1590

REGULATORY IMPLEMENTING ORDER

1590 Delaware Administrator Standards

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1590 Delaware Administrator Standards. The regulation concerns the nationally recognized standards that describe leadership

behaviors and skills established for Delaware school leaders, and serves as the foundation for the preparation and appraisal of school leaders.

Notice of the proposed amendment of the regulation was published in the *News Journal* on Friday September 4, 2009 and in the *Delaware State News* on Tuesday September 1, 2009 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** 1590 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 1st DAY OF OCTOBER, 2009

Kathleen Thomas, Chair	Michael Casson
Joanne Christian	Samtra Devard
Marilyn Dollard	Karen Gordon
Cristy Greaves	Lori Hudson
David Kohan	Jill Lewandowski
Wendy Murray	Gretchen Pikus
Whitney Price	Karen Schilling-Ross
Shelley Rouser	Juanita Wilson

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 20th DAY OF OCTOBER, 2009

STATE BOARD OF EDUCATION

Teri Quinn Gray Ph.D., President

Jorge Melendez, Vice President
G. Patrick Heffernan
Barbara Rutt
Dennis J. Savage
Terry Whittaker Ed.D.
James Wilson Ed.D.

1590 Delaware Administrator Standards

*Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 362 (13 DE Reg. 362). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 650 11-01-09.htm>

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

Statutory Authority: 31 Delaware Code, Ch. 5, §512 (31 **Del.C.**, Ch. 5, §512)

ORDER

Diamond State Health Plan 1115 Demonstration Waiver

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to renew the Diamond State Health Plan 1115 Demonstration Waiver. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to renew Delaware's Section 115 demonstration waiver, entitled "Diamond State Health Plan" for an additional three years.

Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*

Background

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to an additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

The current demonstration project #11-W-0063/4 is scheduled to expire on December 31, 2009. In order to continue the significant progress towards achieving the DSHP's goals, Delaware is preparing a request to extend the DSHP for an additional three years from **January 1, 2010 through December 31, 2012**.

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) plans to request federal approval for a three-year extension of its 1115 Demonstration Waiver Project, entitled "Diamond State Health Plan". As such, DMMA is announcing a thirty-day comment period on this request for extension. The application to renew documents how the State has met its goals of improving access to services, expanding coverage to additional populations and substantially improving quality of care for eligible individuals enrolled in the Diamond State Health Plan (DSHP). The State intends to submit the waiver renewal with no changes to the DSHP during the renewal period.

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

Fiscal Impact Statement

This waiver renewal maintains cost neutrality for each year in the three-year renewal period covering January 1, 2010 through December 31, 2012. A function of this waiver is to assure that coverage of the expanded population will be budget neutral. In other words, the cost of covering this population, as well as the Medicaid eligible population, will be no more than if the DHSS had continued covering only its Medicaid population under the traditional fee-for-service program.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following endorsement.

SCPD endorses the proposal since this is essentially a "housekeeping" measure, and other states are actually "cutting back" on Medicaid programs not constrained by federal stimulus funds.

Agency Response: DMMA thanks the Council for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to renew the Diamond State Health Plan 1115 Demonstration Waiver through December 31, 2012 is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 370 (13 DE Reg. 370). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 652 11-01-09.htm>

FINAL REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Medicaid for Workers with Disabilities

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) related to the Medicaid for Workers with Disabilities Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Division of Social Services Manual (DSSM) to update the rules that describe the eligibility criteria for participation in the Medicaid for Workers with Disabilities (MWD) Program.

Statutory Authority

- 1902(a)(10)(A)(ii)(XV) of the Social Security Act, Working disabled individuals who buy into Medicaid under TWWIIA (Ticket to Work and Work Incentives Improvement Act of 1999) Basic Coverage Group; and,
- 1916(g) of the Social Security Act, Premiums - Working Disabled Individuals.

Summary of Proposed Amendment

- **DSSM 17900**, Medicaid for Workers with Disabilities provides a general description of the Medicaid for Workers with Disabilities (MWD) program. This revision changes the eligibility effective date from October 1, 2008 to October 1, 2009.
- **DSSM 17908**, Unearned Income Exclusion updates what income is considered as well as what is excluded. Unearned income is excluded up to \$956.00 per month for the individual.
- **DSSM 17911**, Financial Eligibility Determination updates the description of the income tests used to determine financial eligibility.
- **[DSSM 17912**, Retroactive Eligibility provides that eligibility cannot be retroactive prior to October 1, 2009.]

Fiscal Impact Statement

The projected estimate for Fiscal Year (FY) 2010 cost is \$1.4 million total funds.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below.

First, DMMA proposes to revise the implementation date for the program. It was originally expected to become operational in June, 2008. The final regulation adopted last Fall deferred the implementation date to October 1,

2008. See 12 **DE Reg.** 446, 450 (October 1, 2008). The summary of the latest proposal notes that budget constraints have delayed implementation until October 1, 2009. Given the budget, some delay in implementation is understandable.

Second, the Councils had promoted adoption of a more liberal unearned income limit last Fall. In response, DMMA changed the monthly earned income cap from \$800 to \$904 subject to annual increases based on the Social Security Administration Cost of Living Adjustment (COLA). See 12 **DE Reg.** 446, 452 (October 1, 2008). DMMA now proposes to raise the cap to \$956 in recognition of the 2009 COLA increase. This favors applicants. The COLA is not expected to change in 2011.

SCPD endorses the proposed regulations since they favor applicants or are ostensibly justified by uncertainties about the FY 10 budget.

Agency Response: DMMA thanks the Council for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the implementation of the Medicaid for Workers with Disabilities Program is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #09-38

REVISIONS:

17900 Medicaid for Workers with Disabilities

The Ticket to Work and Work Incentives Improvement Act of 1999 established an optional categorically needy eligibility group under Section 1902(a)(10)(A)(ii)(XV) of the Social Security Act. This eligibility group provides Medicaid coverage to certain employed individuals with disabilities. The rules in this section set forth the eligibility requirements under this group entitled Medicaid for Workers with Disabilities (MWD). The effective date for MWD is October 1, ~~2008~~ 2009.

12 DE Reg. 446 (10/01/08)

(Break in Continuity of Sections)

17908 Unearned Income Exclusion

Unearned income is excluded up to ~~\$904.00~~ 956.00 per month for the individual. There is no ~~\$904.00~~ 956.00 per month unearned income exclusion for a spouse who is not applying for MWD. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

(Break in Continuity of Sections)

17911 Financial Eligibility Determination

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds ~~\$904.00~~ 956.00, the individual is ineligible. This unearned income limit will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

17912 Retroactive Eligibility

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive prior to October 1, ~~2008~~ 2009.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Reimbursement Methodology for Inpatient Hospital Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA). The Department's proceedings to amend the Title XIX Medicaid State Plan to revise the inpatient hospital outlier reimbursement methodology for were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to revise the hospital outlier reimbursement methodology.

Statutory Authority

- 42 CFR §440.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates;
- 42 CFR §447, Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services

Summary of Proposed Amendment

The proposed amendment is intended to revise the calculation of high cost outlier payments. Currently, high cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Effective October 1, 2009, the proposal changes the threshold to four times the hospital operating rate per discharge. The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

The proposal will result in reduced spending of \$4.9 million in total funds.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. DMMA has considered the comments and responds as follows:

The current standards authorize a compensation "add on" for "high cost outliers" whose cost of discharge exceeds the threshold of 3 times the hospital operating cost per discharge. The "add on" is 79% of the difference between the outlier threshold and the total cost of the case.

The revision would authorize a compensation "add on" for those whose cost of discharge exceeds the threshold of 4 times the hospital operating cost per discharge. The "add on" would also be reduced to 70% of the difference between the outlier threshold and the total cost of the case. The combined effect of the revision would be to reduce compensation for every expensive Medicaid patient who may tend to be persons with severe disabilities.

St. Francis Hospital has presented testimony in legislative hearings confirming its precarious financial circumstances. Other hospitals may also be under financial stress. The proposed regulation would ostensibly reduce Medicaid reimbursement for "deep end" beneficiaries (who may tend to be persons with severe disabilities) which could adversely affect patient care. For example, the reduction in compensation provides an incentive to hospitals to discharge earlier in the recovery process and/or exercise any discretion involving treatment in favor of "bare-bones" or minimally adequate services. For these reasons, SCPD has reservations with the proposed regulation.

Agency Response: DMMA believes the revised outlier methodology will not adversely impact the quality of care to our Medicaid beneficiaries. We thank the Council for their comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the inpatient hospital outlier reimbursement methodology for is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #09-40
REVISIONS:**

ATTACHMENT 4.19-A

PAGE 3

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL CARE
(Continued)**

Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing
(Continued)

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97.

Effective for admission dates on or after April 1, 2009, payment rates for inpatient hospital care will be adjusted to the rates that were in effect on December 31, 2008. Future rate adjustments will be suspended until further notice.

Other Related Inpatient Reimbursement Policies

Outliers - High cost outliers will be identified when the cost of the discharge exceeds the threshold of ~~three~~ four times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus ~~79~~ 70 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

Effective January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

6 DE Reg. 885 (1/1/03)

9 DE Reg. 783 (11/01/05)

13 DE Reg. 259 (8/1/09)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Reimbursement Methodology for Medicaid Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA). The Department's proceedings to amend the Title XIX Medicaid State Plan to revise the reimbursement methodology for pharmaceutical services and renal dialysis facility services were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The purpose and effect of this proposal is to amend the Title XIX Medicaid State Plan to revise the reimbursement methodology for certain provider services.

Statutory Authority

- 42 CFR §440, Subpart A, *Definitions*;
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*; and,
- 42 CFR §447, *Payments for Services*.

Background

In accordance with 42 CFR §447.205 and Section 1902(a)(13)(A) of the Social Security Act, Delaware Health and Social Services (DHSS), Division of Medicaid and Medicaid Assistance (DMMA) is required to give public notice of any significant proposed change in its methods and standards for setting payment rates for services.

Summary of Proposed Amendments

Effective July 1, 2009, DHSS/DMMA amends the applicable provisions of the Title XIX Medicaid State Plan governing the reimbursement methodology for certain services. In accordance with 42 CFR §440.205, public notice was published before the proposed effective date of the change on June 29, 2009 and June 30, 2009 in the two newspapers of widest circulation in the State, the *News Journal* (New Castle County, Kent County, Sussex County) and, the *Delaware State News* (Kent County).

The following significant changes are proposed:

1) Reimbursement Methodology for Pharmaceutical Services

Effective for dates of service on and after July 1, 2009 and subject to payment at fee for service rates, DHSS, DMMA will implement a new reimbursement methodology for pharmaceutical services.

Community Pharmacies:

Effective for dates of service July 1, 2009 and after, claims for drug ingredient costs reimbursed based on a percentage of the Average Wholesale Price (AWP) shall be reimbursed at AWP minus 15%. DMMA adjusted reimbursement to AWP minus 16% effective April 1, 2009. This change was one component of a comprehensive package of provider rate adjustments. DMMA asserts that the April 1, 2009 rate is sufficient and supported by available data. However, DMMA is proposing to increase the rate to AWP minus 15% in response to comments received. Medicaid State Plan Attachment 4.19-b, Page 14 has been amended to reflect this change.

[Due to a negotiated settlement, effective for dates of service October 14, 2009 and after, claims for drug ingredient costs reimbursed based on a percentage of the Average Wholesale Price (AWP) shall be reimbursed at AWP minus 14.5%. Attachment 4.19-B, Page 14 has been amended to reflect this change at DMMA Final Order Regulation #09-41b.]

2) Reimbursement Methodology for Renal Dialysis Facility Services

Effective for dates of service on and after July 1, 2009 for "fee for service" claims, DHSS, DMMA will apply the payment methodology for renal dialysis facility services as follows:

Renal Dialysis Facility Services:

Effective for dates of service on and after July 1, 2009, renal dialysis facilities shall be paid using the lesser of the facility's usual and customary (U & C) charges or 100% of the Medicare rate. Currently, DMMA pays providers based on their U & C charges for each procedure and different providers can charge different rates for the same service. The purpose of this methodology is to promote predictability of payments, equity and consistency of those payments among providers while maintaining access to quality care. The Centers for Medicare and Medicaid Services (CMS) may issue and require a Medicaid state plan preprint page to capture and implement the reimbursement methodology for Renal Dialysis Facility Services.

The provisions of this amendment are contingent upon approval of CMS.

Fiscal Impact Statement**1) Community Pharmacies:**

The change will result in an increase in annual aggregate expenditures (state and federal funds) of approximately \$980,000 for Medicaid and \$39,000 for the non-Medicaid programs for the 12 month period after implementation over what the projected expenditures would have been based on the reimbursement methodology that was in effect immediately prior to July 1, 2009. The reimbursement methodology that was in place for the period April 1,

2009 - June 30, 2009 was expected to generate savings of \$2.3 million which will now be reduced as specified above.

2) Renal Dialysis Facility Services:

The change will result in a decrease in annual aggregate expenditures (state and federal funds) of approximately \$460,000 for the 12 month period after implementation.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. DMMA has considered each comment and responds as follows.

Renal Dialysis Reimbursement

Pursuant to the changes adopted in August, renal dialysis centers were to be reimbursed at 85% of charges [12 **DE Reg.** 1483 (June 1, 2009)]. However, in adopting its final regulation, DMMA noted that it intended to revise the rate effective July 1, 2009 to the "lesser of the facilities" usual and customary (U & C) rate charges or 100% of the Medicare rate." See commentary at 13 **DE Reg.** 259, 262 (August 1, 2009). DMMA is now following up by formally proposing this change based on the following rationale:

Currently, DMMA pays providers based on their U&C charges for each procedure and different providers can charge different rates for the same service. The purpose of this methodology is to promote predictability of payments, equity and consistency of those payments among providers while maintaining access to quality care.

SCPD endorses this approach.

Pharmacy Reimbursement

In June, DMMA proposed a 2% reduction in reimbursement rates for community pharmacy and non-traditional pharmacy drug acquisition costs, i.e., from the average wholesale price (AWP) minus 14% and 16%, to AWP minus 16% and 18% respectively. The dispensing rate of \$3.65 remained unchanged. See 12 **DE Reg.** 1481, 1489 (June 1, 2009). This proposal led to a proposed withdrawal of Walgreens as a Delaware Medicaid provider and litigation against DMMA. See attached articles. DMMA then reached a compromise with Walgreens. See attached August 11, 2009 News Journal article and commentary at 13 **DE Reg.** 259, 262 (August 1, 2009). The compromise is to reduce community pharmacy rates to AWP minus 15% effective July 1, 2009. This change is now reflected in the September proposed regulation. See 13 **DE Reg.** 375, 375-376 (September 1, 2009).

SCPD endorses this compromise which reduces Medicaid costs while maintaining access to Walgreens by Medicaid beneficiaries. The August 11 article recites that Walgreens has traditionally served approximately half of the State's Medicaid population.

Agency Response: DMMA thanks the Council for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the reimbursement methodologies for pharmaceutical services at AWP Minus 15% effective July 1, 2009 and AWP minus 14.5% effective October 14, 2009 and renal dialysis facility services is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #09-41a

REVISION:

State/Territory DELAWARE

Reimbursement for Pharmaceuticals:

Overview

The Delaware Medical Assistance (DMAP) program will reimburse pharmaceuticals using the lower of

- The usual and customary charge to the general public for the product,
- The Estimated Acquisition Cost (EAC) which is defined for both brand name and generic drugs as follows:
 - For Traditional Pharmacies: AWP minus ~~16%~~ 15% plus dispensing fee per prescription, effective for dates of service on or after ~~April~~ July 1, 2009
 - **[For Traditional Pharmacies: AWP minus ~~16%~~ 14.5% plus dispensing fee per prescription, effective for dates of service on or after ~~July 1~~ October 14, 2009]**
 - For Non-Traditional Pharmacies: AWP minus 18% plus dispensing fee per prescription, effective for dates of service on or after April 1, 2009
- A State-specific maximum allowable cost (DMAC) and, in some cases, the Federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, Public Health Service covered entities, selected disproportionate share hospitals and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than an estimated acquisition cost (EAC) plus a professional dispensing fee. The EAC must be supported by invoice and payment documentation.

Dispensing Fee:

The dispensing fee rate is \$3.65. There is one dispensing fee per 30-day period unless the class of drugs is routinely prescribed for a limited number of days.

Definitions:

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement:

- for generics available from three (3) or more approved sources, or
- when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated, or
- if a single provider agrees to a special price.

Any willing provider can dispense the product.

13 DE Reg. 259 (8/1/09)

DIVISION OF SOCIAL SERVICES

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

ORDER

2001.1 Redetermination: Eligibility Review Periods

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding redeterminations. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The purpose of the proposed change is to align current case processing policy with Delaware's Temporary Assistance for Needy Families (TANF) State Plan and the Food Supplement Program (FSP) recertification period.

Statutory Authority

- Social Security Act §402, Eligible States; State Plan
- 31 **Del.C.** §509, Continuing Eligibility
- Delaware TANF State Plan, Redeterminations

Summary of Proposed Change

DSSM 2001.1, Redetermination: Eligibility Review Periods: The proposed regulation increases the maximum redetermination period for General Assistance (GA) and TANF cash assistance from 11 months to 12 months.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend redetermination policy in the Division of Social Services Manual (DSSM) to align current case processing policy with Delaware's Temporary Assistance for Needy Families (TANF) State Plan and the Food Supplement Program (FSP) recertification period.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #09-42

REVISION:

2001.1 Redetermination: Eligibility Review Periods

Eligibility periods means the period of time within which a family ~~shall be~~ is eligible to receive benefits. At the expiration of each eligibility period cash assistance benefits end. Further eligibility ~~will be~~ is established based upon a newly completed application, an interview and verification of information. Under no circumstance will benefits continue beyond the end of an eligibility period without a new determination of eligibility. The first month of the eligibility period ~~will be~~ is the first month for which the household is eligible to participate.

A redetermination is due when the eligibility period is expiring. The recipient ~~is required to~~ must complete a new DSS application for mand ~~either appear for an interview in person or have a mail in application with a telephone an~~ interview. The interview may be in person or over the phone. When the client says he/she cannot get a requested document, the worker will assist ~~the client~~ him/her in obtaining an acceptable verification ~~to establish~~

~~continuing eligibility. At that point, a new review period is given for eligible families. A redetermination is complete when all eligibility factors are examined and a decision regarding eligibility is reached. The worker sets a new review period for eligible families.~~

The eligibility review periods for cash assistance cases will ~~normally be set at not exceed 6 12 months. But if there is~~ are also Food Stamps to review, the cash assistance eligibility period will be adjusted to come due at the same time as the Food Stamp review ~~so that the family does not experience any undue hardship in the review process. That means, the cash assistance redetermination will be done at the same time as the open Food Stamp case because the eligibility period for the cash assistance case will be adjusted to the same date as the open Food Stamps certification period.~~ Benefit recertification.

If there ~~was no previously is~~ no open Food Stamp Benefit case but there ~~was is~~ is an open cash assistance group, the eligibility period of the new cash assistance group ~~would have been~~ is adjusted to come due at the same time as the existing cash assistance group.

~~Therefore, the eligibility review period will be at 6 months or when the Food Stamps assistance groups are due for review but no later than 11 months.~~

DIVISION OF SOCIAL SERVICES

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

ORDER

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding resources. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The purpose of the proposed change is to increase the resource limit for Delaware's Temporary Assistance for Needy Families (TANF) program from \$1,000 to \$10,000. Exclude from the resource limit, value of automobiles owned by members of TANF and General Assistance (GA) households.

Statutory Authority

- Social Security Act §402, Eligible States; State Plan
- 31 Del.C §503, Eligibility for assistance; amount; method of payment
- Delaware TANF State Plan, Definition of Needy Families

Summary of Proposed Change

DSSM 4002.2, Available Resources; **DSSM 4002.5**, Excluded Resources; and, **DSSM 4002.6**, Disposal of Real Property: The proposed regulations: 1) widens the availability of the TANF and GA program to a larger number of low income families in Delaware; 2) allows TANF participants to accumulate assets thus improving their ability to maintain self-sufficiency at times of financial crisis/hardship and to decrease the likelihood of returning to

the TANF program; and, 3) reduces the administrative burden of researching and verifying automobile ownership and calculating automobile equity value.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

First, DSS proposes to significantly increase the countable resource cap for the TANF program from \$1,000 to \$10,000. The rationale is to allow "TANF participants to accumulate assets thus improving their ability to maintain self-sufficiency at times of financial crisis/hardship and to decrease the likelihood of returning to the TANF program". At 379. This rationale for expanding resource limits is consistent with SCPD December 19, 2008 commentary on Food Supplement Program regulations published at 12 **DE Reg.** 744 (December 1, 2008). In commenting on proposed expanded resource standards for the Food Supplement Program, the Council attached a publication containing the following rationale for expanding resource caps:

On a bipartisan basis, policymakers agree that asset development is important to helping low-income Americans transition out of poverty. Accumulating assets allows low-income individuals to mitigate material hardships during periods of unemployment or illness, suffer less of a decline in their living standard during retirement, or make investments in their own education or housing that increase their financial stability.

Second, DSS proposes to disregard the value of automobiles owned by members of the assistance household for both the TANF and GA programs. This is in contrast to the current standards which only exclude a percentage of the equity value of 1 automobile.

SCPD endorses the proposed regulations subject to the following two caveats.

A. If not well defined elsewhere in its regulations, DSS should consider adding a definition of "automobile". For example, is a truck or motorcycle included within the scope of an "automobile" for purposes of the resource regulation?

B. DSS is deleting the following sentence: "Farm vehicles that are used to produce income are excluded from consideration as a resource." DSS should consider retaining this sentence. A tractor, backhoe, or other vehicle used in farming may not be considered an "automobile". Therefore, it would be preferable to maintain the separate exclusion.

Agency Response: As suggested, DSS will add a definition of automobiles at DSSM 4002.5. We believe this new definition addresses your concern that the term "automobile" could be construed to exclude trucks or motorcycles and that vehicles used in farming and other income producing ventures which were previously excluded from the resource limit should remain excluded.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to financial responsibility regarding available and excluded resources is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #09-43

REVISIONS:

4002.2 Available Resources

Any income or resource which a client actually has on hand and for immediate use is an available resource. Examples are, cash on hand, checking accounts, any form of savings or bank accounts, State and Federal Income Tax Refunds.

Savings:

The special Education and Business Investment Accounts are not counted as available resources unless withdrawals are made for non-approved purposes. See DSSM 4002.5 #14.

A family budget group is not eligible for ~~cash assistance~~ General Assistance if its available resources exceed \$1,000.00.

A family budget group is not eligible for TANF if its available resources exceed \$10,000.00.

Available resources must be documented in the case record.

(Break in Continuity of Sections)

4002.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed ~~\$1,000.00~~ \$10,000.00 for TANF cases or \$1,000.00 for General Assistance cases. Resources excluded from the ~~\$1,000.00~~ resource limitation are:

1. The home which is the usual residence of the family budget group.

~~FOR DELAWARE'S TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM~~

2. ~~Exclude the equity value of a primary automobile, up to the annually adjusted Food Stamp program's fair market value of vehicles which is excluded in determining the household resources. The excluded amount effective October 1996 is \$4,650. The equity value is the difference between the automobile's fair market value and the amount still owed for it. The equity value in excess of \$4,650.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.~~

~~NOTE: The fair market value of an automobile is determined by finding the car's trade-in value in the NADA Used Car Guide. If the client disagrees with this valuation, he/she may obtain a statement of the car's value from a automobile dealer.~~

~~FOR GENERAL ASSISTANCE~~

~~One automobile, the equity value of which does not exceed \$1,500.00. The equity value is the difference between the automobile's fair market value and the amount still owed on it. The equity value in excess of \$1,500.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.~~

~~The increased value of a motor vehicle specially equipped with devices for the handicapped is not counted. Farm vehicles that are used to produce income are excluded from consideration as a resource.~~

2. Automobiles:

[An automobile is defined as any motorized vehicle used:

A. for transportation via public roadways or

B. to produce income.]

The automobiles owned by members of a cash assistance household are disregarded

3. One burial plot for each member of the assistance unit.

4. Bona fide funeral agreements (e.g., pre paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.

6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 4002.6).

7. Tools and equipment necessary to produce income in a self-employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.

8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100 707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I of P.L. 100 383.

10. Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100 383.

11. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.

Recipients:

Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.

13. Cash Value of Life Insurance Policies

14. The designated Education and Business Investment Account (EBIA) is excluded up to the \$5,000.00 maximum. In addition to the current resource limit, Delaware's Temporary Assistance For Needy Families Program (TANF) and General Assistance (GA) Program families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5000.00, including interest.

Do not consider funds in such accounts as a resource for TANF, GA or Food Stamp purposes. Withdrawals from such accounts must be for approved purposes. If funds are withdrawn for non-approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include education expenses, employment start-up needs, entrepreneurship, and to purchase a vehicle or home. If staff are is unsure if the withdrawal meets an approved purpose, contact the policy unit for clarification.

Furthermore, a Saving for Education, Entrepreneurship and Downpayment (SEED) accounts is considered an EBIA account and is excluded up to the \$5000.00 limit.

9 DE Reg. 1374 (03/01/06)

4002.6 Disposal of Real Property

Real property that is not used as a residence is excluded as a resource for a period not to exceed six months if the following conditions are met:

1. The family is making a good faith effort to sell the property. This effort must be documented in the case record. Examples of acceptable documentation include a current newspaper sales advertisement, or a current sales contract with a real estate firm; and

2. The family signs Form 212, an agreement to dispose of the property and to repay the assistance received during the exemption period.

The amount of assistance that must be repaid after the property is sold is determined as follows:

1. Compare the net proceeds of the sale plus the value of other countable resources available at the time the exemption period began to the \$1,000 program resource limit.
2. If the amount is less than \$1,000 for GA, or \$10,000.00 for TANE, there is no overpayment.
3. If the amount is more than \$1,000 the program resource limit, the amount of the proceeds that is in excess of \$1,000 the resource limit is recovered as an overpayment. Note: The amount recovered cannot exceed the assistance that was received. Any proceeds in excess of the amount to be recovered are considered as an available resource to the family.
4. If the property is not sold within six months, the assistance case must be closed. All the assistance payments are overpayments.
5. If the assistance case is closed for some other reason during the six month exemption period and the property has not been sold, all payments are overpayments.

NOTE: The exemption period runs for six calendar months. If the assistance case closes and the client reapplies during this period, the exemption will continue for the remainder of the initial six month period.

DEPARTMENT OF JUSTICE DIVISION OF SECURITIES

Statutory Authority: 6 Delaware Code, Section 7325 (6 Del.C. §7325)

ORDER

Delaware Securities Act

On September 1, 2009, the Registrar of Regulations for the State of Delaware published a Notice of Proposed Revision to the Rules and Regulations Pursuant to the Delaware Securities Act (Rules and Regulations) which set forth a proposal to make numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware and to add a new Rule 800 to the Rules and Regulations. The new Rule 800 will govern the use of senior specific designations and certifications by persons (1) offering, selling or purchasing securities; or (2) providing advice as to the value of or the advisability of investing in, purchasing, or selling securities. The Securities Commissioner for the State of Delaware, James B. Ropp, held open a comment period on the proposed regulation for a period of thirty days from the date of the publication of the notice in the *Delaware Register of Regulations*. The Commissioner received no comments regarding the proposed regulation.

Findings of Fact

The Commissioner hereby finds that the promulgation of the proposed regulation is in the public interest.

Decision Adopting the Proposed Regulation

Pursuant to 29 Del. C. § 10118(b)(3), and based upon the finding that the proposed regulation is in the public interest, the Commissioner hereby adopts the proposed regulation in the form attached hereto as Exhibit A. The proposed regulation is adopted pursuant to the authority granted in 6 Del. C. § 7325 and shall be effective December 1, 2009.

SO ORDERED this 2nd day of October, 2009.

James B. Ropp
Securities Commissioner

Delaware Securities Act

*Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 381 (13 DE Reg. 381). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 667 11-01-09.htm>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT**

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

Secretary's Order No.: 2009-A-0036

Proposed Adoption of New Federal Area Source Standard into Regulation No. 1138 of the *State of Delaware Regulations Governing the Control of Air Pollution*: "Emission Standards for Hazardous Air Pollutants for Source Categories", Section 10.0: Area Source Plating & Polishing Operations

Date of Issuance: October 13, 2009

Effective Date of the Amendment: November 11, 2009

I. Background:

A public hearing was held on Tuesday, August 25, 2009, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department") Air Quality Management Office, 715 Grantham Lane, New Castle, Delaware, to receive public comment on the proposed adoption of a new federal area source standard into Regulation 1138 of the *State of Delaware Regulations Governing the Control of Air Pollution*, "Emission Standards for Hazardous Air Pollutants for Source Categories", Section 10.0: Area Source Plating and Polishing Operations. The new air toxics standard may impact any owner or operator of a facility that deposits metal coatings onto metal parts or products by either electroplating or electroless coating operations. The new standard also applies to the dry mechanical polishing (or grinding) of these coated parts or products. Typically, these metal coating and dry polishing operations provide a decorative finish, a corrosion-resistance finish, or a wear-resistance finish to the parts or products.

Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants ("HAPs") in the 1990 Amendments to the Clean Air Act. Under Section 112(k) – *Area Source Program* – Congress mandated that the EPA identify 30 or more HAPs that posed the greatest threat to public health in urban areas, and to identify the area (i.e., small) sources that emit any of those pollutants. In July 2008, the EPA promulgated another of these federal area source standards applicable to facilities in Delaware. This standard, found at 40 CFR, Part 63, Subpart WWWW, is applicable to a variety of electroplating and electroless plating processes and dry polishing operations.

This federal standard addresses the emissions of five (5) heavy metals: cadmium, chromium, lead, manganese and nickel. Compounds of each of these metals, except manganese, have been classified as known or probable carcinogens. The systematic impacts of the various metal compounds differ; however, compounds of all of these metals can pose non-cancerous risks to the exposed public.

DNREC's Air Quality Management Section's planned adoption of the new air toxics standards will provide increased protection for Delawareans against a variety of potential adverse health effects that have been linked to long-term exposure to the compounds of cadmium, chromium, lead, manganese, and/or nickel. The proposed

adoption will also bring Delaware's air toxics regulatory program into closer alignment with the U.S. Environmental Protection Agency's ("EPA") National Emissions standards for Hazardous Air Pollutants for Area or Small Sources. The Department has the statutory basis and legal authority to act with regard to these promulgations, pursuant to 7 Del.C., Chapter 60. No other Delaware regulations are affected by these proposals.

A few comments were received by the Department from members of the public regarding the aforementioned proposed promulgation, both prior to and at the time of the public hearing held on August 25, 2009. Throughout this promulgation process, the Department's personnel provided answers to the public's questions and comments in a thorough and timely manner. Proper notice of the hearing was provided as required by law. Afterwards, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report dated October 6, 2009, which is attached and expressly incorporated in to this Order regarding this matter, and submitted the same to the Secretary for review and consideration.

II. Findings:

The Department has provided a reasoned analysis and a sound basis in the record to support the issuance of the final adopted regulation proposed in this matter. 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. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and has determined it to be lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens and members of the regulated community equally in order to provide increased public health to Delaware's citizens, as well as to provide greater consistency between current state air toxics standards and the recently promulgated federal standard on which this proposed amendment is based;
7. Adoption of this proposed new air toxics standard will provide increased protection for Delawareans against a variety of potential adverse health effects that have been linked to long-term exposure to the compounds of cadmium, chromium, lead, manganese and/or nickel;
8. The adoption of the aforementioned new air toxics standard will also bring Delaware's air toxics regulatory program into closer alignment with the U.S. EPA's National Emissions Standards for Hazardous Air Pollutants for Area or Small Sources;
9. DNREC's proposed adoption of the new Section 10.0 in the existing Regulation No. 1138 is more stringent than the federal rule, and provides additional "best operating practices", including the requirement of the owner/operator of an affected facility using a control system to (1) develop and implement a Startup, Shutdown, and Malfunction plan; to (2) conduct daily monitoring of control device(s); and (3) maintain recordkeeping to demonstrate proper operation and maintenance of the facility;
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
11. The Department's proposed adoption of the aforementioned new air toxics standard, Section 10.0: Area Source Plating and Polishing Operations, to Delaware's existing Regulation 1138, "*Emission Standards for Hazardous Air Pollutants for Source Categories*", as published in the August 1, 2009 *Delaware Register of Regulations*, 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
12. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated October 6, 2009 and expressly incorporated herein, it is hereby ordered that the proposed adoption of the aforementioned new air toxics standard, Section 10.0: Area Source Plating and Polishing Operations, to Delaware's existing Regulation 1138, "Emission Standards for Hazardous Air Pollutants for Source Categories", be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the aforementioned new air standard to existing State of Delaware Regulation 1138 will bring Delaware's air toxics regulatory program in to closer alignment with the U.S. EPA's National Emissions Standards for Hazardous Air Pollutants for Area or Small Sources. The public, especially in the vicinity of the facilities affected by this promulgation, will benefit from the reduction of heavy metal emission from these and future affected facilities.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to adopt and 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., Ch. 60.

Collin P. O'Mara
Secretary

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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

<http://regulations.delaware.gov/register/november2009/proposed/13 DE Reg 668 11-01-09.htm>

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60, (7 **Del.C.** Ch. 60)
7 **DE Admin. Code** 1142

Secretary's Order No. 2009-A-0038

Revision to Section 2 of 7 DE Admin Code 1142 Relating to NO_x Control Technology for Industrial Heaters & Process Boilers at Petroleum Refineries

Date of Issuance: October 14, 2009

Effective Date: November 11, 2009

Background

Under the authority granted to the Secretary of the Department of Natural Resources & Environmental Control ("Secretary") under 7 **Del.C.** §6006 and 29 **Del.C.** Chapter 101, the Secretary enters this Order. This Order concludes a process to revise and repromulgate Section 2 of 7 **DE Admin. Code** 1142 relating to NO_x control technology for industrial heaters and process boilers at petroleum refineries.

Discussion

In July of 2007, Section 2 of 7 **DE Admin. Code** 1142 was adopted to reduce NO_x emissions from industrial heaters and process boilers at petroleum refineries. The Premcor Delaware City Refinery owned by Valero appealed DNREC's July 20 07 adoption of Regulation 1142. On or about August 15, 2009, DNREC and Valero finalized a settlement agreement where DNREC agreed to propose for adoption and receive public comment on the adoption of an agreed to version of the regulation. DNREC agreed to adopt the exact language set out in the settlement agreement unless comment from the public persuaded DNREC that these changes should not be made. As set out in the settlement agreement, the proposed version of the regulation is intended to provide for Premcor to implement alternative pollution control projects for the purpose of achieving NO_x emission reductions from boilers at the Delaware City Refinery. These reductions in NO_x emissions are intended to achieve improvements in air quality.

Public Hearing

On September 30, 2009, a public hearing was held on the proposed Section 2 of 7 **DE Admin. Code** 1142. Robert Haynes, a Hearing Officer, presided over the hearing at which public comment was taken. A copy of the transcript of the public hearing is attached hereto as Exhibit A. The Department submitted a copy of the notice of publication in the Delaware Register as DNREC Exhibit 1, a copy of which is also attached to this Order as Exhibit B. DNREC Exhibit 2 consisted of copies of the affidavits of publication for the News Journal, Sunday News Journal and the Delaware State News. A copy of the legal notice mailed to the Department's mailing list was submitted as DNREC Exhibit 3. DNREC Exhibit 4 consisted of a copy of the settlement agreement between DNREC and Premcor. The DNREC representative noted that the proposed regulation does not impact any individuals or small businesses and so Delaware's Regulatory Flexibility Act did not apply to the proposed action.

Robert Wojewodzki, the environmental manager at the Premcor Delaware City Refinery, attended the public hearing. He submitted a letter stating that significant changes at the Refinery were occurring and asking DNREC to reconsider a greater NO_x emissions limit and to adjust the compliance schedule. A review of this short letter indicates that Premcor's suggestions are not supported by sufficient documentation or justification to make any modifications to the proposed regulation at this time. This letter was submitted into the hearing record as Premcor

Exhibit 1.

Findings of Fact & Conclusions of Law

1. A public hearing was held pursuant to 7 **Del.C.** §6006 and 29 **Del.C.** Chapter 101 on September 30, 2009, on the repromulgation and revision of Section 2 of 7 **DE Admin. Code** 1142.
2. Proper notice of the hearing was provided as required by law. This Order describes the public hearing record.
3. No members of the general public attended the hearing or submitted any comments. A representative of Valero on behalf of Premcor's Delaware City Refinery did attend and submitted a letter with comments on the Department's proposed action. The suggestions in Premcor's Exhibit 1 were not supported by sufficient documentation to reasonably justify making any modifications to the proposed regulation at this time.
4. The proposed revisions to the regulation are intended to result in the implementation of pollution control projects for the purpose of achieving improvements in air quality by reducing emissions of NO_x from boilers at the Delaware City Refinery.
5. The record as a whole supports repromulgation and revision of the Regulations as published in the *Delaware Register of Regulations* and as attached hereto as Exhibit B.

Order

Based on the record identified and discussed in this Order, **IT IS HEREBY ORDERED** that the proposed Section 2 of 7 **DE Admin. Code** 1142 is adopted in the form attached hereto as Exhibit B.

Reasons

The record supports repromulgation and revision of Section 2 of 7 **DE Admin. Code** 1142. This action will resolve a pending appeal of the existing version of the regulation and is intended to achieve reductions in NO_x emissions and air quality. Thus, the promulgation of Section 2 of 7 **DE Admin. Code** 1142 will further the policies and purposes of 7 **Del.C.** Chapter 60, which require DNREC to conserve and protect our air resources.

Collin P. O'Mara
Secretary

1142 Specific Emission Control Requirements

***Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 3821 (13 DE Reg. 382). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 670 11-01-09.htm>

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.(3) (7 **Del.C.** §1903(e)(2)a.(3))
7 DE Admin. Code 3512

Secretary's Order No.: 2009-F-0039

Approving Final Delaware Regulation Amendments for 2009: 7 DE Admin. Code 3512: Winter Flounder

Date of Issuance: October 15, 2009

Effective Date of the Amendment: November 11, 2009

I. Background:

A public hearing was held on Wednesday, September 30, 2009, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments to the Delaware Tidal Finfish Regulations for both Winter Flounder and Knobbed Whelks (Conch). The purpose of the aforementioned proposed amendments to Delaware Tidal Finfish Regulation No. 3512 for Winter Flounder is to bring Delaware into compliance with Addendum 1 to Amendment 1 of the Interstate Fishery Management Plan for Inshore Stocks of Winter Flounder as administered by the Atlantic States Marine Fisheries Commission ("ASMFC"). To effectuate this compliance, Delaware must reduce its recreational daily harvest limit to two winter flounder per person per day, as well as capping the daily commercial harvest limit for any commercial fisherman at 50 pounds.

On May 4, 2009, the Winter Flounder Management Board approved Addendum 1 to the Interstate Fisheries Management Plan for in-shore stocks of winter flounder. This includes measures to achieve fishing mortality for the Gulf of Maine stock, and to rebuild the overfished southern New England Mid-Atlantic stocks to prevent excessive

fishing efforts from shifting to state waters in response to federal management measures. Individual states are required to implement all measures in this addendum, in addition to continuing those contained in Addendum 1.

The southern New England Mid-Atlantic winter flounder stock is severely depleted. The proposed reduction in creel limit from the existing ten (10) fish limit to two (2) fish is estimated to reduce harvest throughout the region by 46%, while still allowing for some directed fishing effort. Very few winter flounder are presently landed in Delaware by recreational fishermen. The proposed commercial restrictions would limit commercial vessels to a maximum possession limit of 50 pounds of winter flounder per trip. For Delaware fishermen, it should have no immediate impact, given the current levels of landings are very low. No other changes are proposed to the minimum size of winter flounder that may be taken during the open season, or to the allowable recreational harvest season. Winter flounder stocks taken in federal waters or those taken by commercial fishermen in possession of a federal permit are subject to the catch restrictions currently in place for federal waters.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments concerning Delaware Tidal Finfish Regulation 3512 for Winter Flounder, pursuant to 7 **Del.C.** §§903(e)(2)(a).(3). No other Delaware regulations are affected by these proposals.

There were no comments received by the Department with regard to the proposed regulatory amendments to Delaware Tidal Finfish Regulation 3512 concerning winter flounder.

The Department provided proper notice of the hearing as required by law. Afterwards, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report dated October 9, 2009, which is attached and expressly incorporated into this Order regarding this matter, and submitted the same to the Secretary for review and consideration.

II. Findings:

The Department has provided a reasoned analysis and a sound basis in the record to support the issuance of the final regulations proposed in this matter. 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 amendments to Delaware Tidal Finfish Regulation 3512 (Winter Flounder) would bring Delaware into compliance with Addendum 1 to Amendment 1 of the Interstate Fishery Management Plan for Inshore Stocks of Winter Flounder as administered by the Atlantic States Marine Fisheries Commission, which represents the federal guidelines for the management of winter flounder, consistent with federal management plans and state jurisdiction;
7. Adoption of the proposed amendments to Delaware Tidal Finfish Regulation 3512 would reduce Delaware fishermen's recreational daily harvest limit to two (2) winter flounder per person per day, as well as cap the daily commercial harvest limit for any commercial fishermen at 50 pounds;
8. The aforementioned proposed amendments to Delaware's existing regulations concerning winter flounder are considered necessary, due to the fact that Southern New England/Mid-Atlantic winter flounder stocks are considered to be overfished, and that overfishing is still occurring. Moreover, promulgation of the proposed amendments will cause winter flounder stocks taken in federal waters, or those taken by commercial fishermen in possession of a federal permit, to be subject to the catch restrictions currently in place for federal waters;
9. The Department has reviewed both of these proposed regulatory amendments in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
10. The Department's aforementioned proposed amendments to Delaware's regulations concerning winter flounder, as published in the September 1, 2009 *Delaware Register of Regulations* and as set forth in Attachment "A" of the aforementioned Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory

amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

11. The Department shall submit the proposed regulations as final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order; and that

12. 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 October 9, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments to Delaware Tidal Finfish Regulation 3512: Winter Flounder be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to Delaware Tidal Finfish Regulation 3512: Winter Flounder will bring Delaware into compliance with federal guidelines for the management of this species. It is incumbent upon Delaware to be in compliance with ASMFC's plan, not only to avoid federal sanctions against Delaware and its fisheries, but to protect this species with these conservation measures to ensure that winter flounder will continue to be found in Delaware waters in the future.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** § 903(e)(2)(a).(3), §1902(a)(5), and §2804.

Collin P. O'Mara
Secretary

3512 Winter Flounder Size Limit; Possession Limit; Seasons

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

- 1.0 It shall be unlawful for any person to possess any winter flounder, (*Pseudopleuronectes americanus*), that measure less than twelve (12) inches, total length.
- 2.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~ten (10)~~ two (2) winter flounder per day (a day being 24 hours) at or between the place where said winter flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 3.0 It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.
- 4.0 It shall be unlawful for any non-federally licensed commercial fishermen to harvest, land or possess more than 50 pounds of winter flounder per day. Federally licensed commercial fishermen are subject to current federal winter flounder harvest, landing, and possession limits.

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

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a)(5) and 2804
(7 Del.C. §§1902(a)(5) and 2804)
7 DE Admin. Code 3711

Secretary's Order No.: 2009-F-0039

Approving Final Delaware Regulation Amendments for 2009: 7 DE Admin. Code 3711: Knobbed Whelks (Conch)

Date of Issuance: October 15, 2009

Effective Date of the Amendment: November 11, 2009

I. Background:

A public hearing was held on Wednesday, September 30, 2009, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments to the Delaware Tidal Finfish Regulations for Knobbed Whelks (Conch).

The Department's proposed regulatory amendments to existing Delaware Shellfish Regulation 3711 for Knobbed Whelks (Conchs) were an issue at the public hearing held on September 30, 2009. The purpose of these proposed amendments is to establish a tolerance for undersize knobbed whelks (also known as knobbed conchs) in the dredge and pot commercial fisheries similar to the existing tolerance established in Regulation 3711, Section 2.0, for the channeled or smooth whelks (conchs). The proposed amendments to this regulation would allow the retention of up to five (5) undersized knobbed whelks per 60 pound bag, or basket, of whelks per day. The allowance of a few undersized knobbed whelks during the course of normal harvesting operations will be a convenience for harvesters who have to pay crews of widely varying experience to cull undersize conchs from the harvest. Additionally, such a tolerance is in recognition of the fact that, occasionally, conch shells are partially broken off either during or prior to harvesting. This proposed regulatory amendment will ease the burden of Department enforcement staff that must check the harvest for compliance with applicable minimum size limits.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments concerning Shellfish Regulation 3711, pursuant to 7 Del.C. §1902(a)(5) and §2804. No other Delaware regulations are affected by these proposals.

Only one comment was received by the Department from the public regarding the proposed amendments to Shellfish Regulation 3711 (Knobbed Whelks), which was in support of this proposed promulgation.

The Department provided proper notice of the hearing as required by law. Afterwards, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report dated October 9, 2009, which is attached and expressly incorporated into this Order regarding this matter, and submitted the same to the Secretary for review and consideration.

II. Findings:

The Department has provided a reasoned analysis and a sound basis in the record to support the issuance of the final regulations proposed in this matter. 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 amendments to Delaware Shellfish Regulation 3711 will establish a tolerance for undersized knobbed whelks (conchs) in the dredge and pot commercial fisheries similar to the

existing to tolerance established in Regulation 3711, Section 2.0, for the channeled or smooth whelks (conchs), namely, to allow the retention of up to five (5) undersized knobbed whelks per 60 pound bag or basket of whelks per day;

7. The Department has reviewed both of these proposed regulatory amendments 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;

8. The Department's aforementioned proposed amendments to Delaware's regulations concerning knobbed whelks (conchs), as published in the September 1, 2009 *Delaware Register of Regulations* and as set forth in Attachment "A" of the aforementioned Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

9. The Department shall submit the proposed regulations as final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order; and that

10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated October 9, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments to Delaware Shellfish Regulation 3711: Knobbed Whelk (Conch), be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to Delaware Shellfish Regulation 3711: Knobbed Whelks (Conchs) will establish a tolerance for undersized knobbed whelks, thereby lessening the burden on Department enforcement staff that must regularly check the harvest for compliance with applicable minimum size limits.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** § 903(e)(2)(a).(3), §1902(a)(5), and §2804.

Collin P. O'Mara
Secretary

3711 Conch Minimum Size Limits

(Penalty Section 7 **Del.C.** §1912)

- 1.0 It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, that measures less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 2.0 Notwithstanding the provisions of paragraph 1.0, a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 3.0 It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than five 5/4 inches in 2007, 5 1/2 inches in 2008, 5 3/4 inches in 2009, and six (6) inches in length in 2010. Beginning in 2010, the minimum lengths shall remain 6 inches thereafter until changed by regulation. The minimum diameter at the whorl shall be no less than 3 inches in 2007, 3 1/4 inches in 2008, 3 1/4 inches in 2009 and 3 1/2 inches in 2010 and shall remain 3 1/2 inches thereafter until changed by regulation.

4.0 Notwithstanding the provisions of paragraph 3.0, a person may possess no more than five (5) knobbed conchs per 60 pounds that are less than the allowable minimum length limit or the minimum diameter at the whorl.

1 DE Reg. 250 (9/1/97)

1 DE Reg. 835 (1/1/98)

10 DE Reg. 1034 (12/01/06)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

ORDER

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 1.0 Experience, and rule 3.0 Law Enforcement Exemption, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to allow the Board the authority to oversee all training for constables.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will allow the Board the authority to oversee all training for constables.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to allow the Board the authority to oversee all training for constables.

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 Del.C. Section 2701 et seq. and, in particular, 10 Del.C. Section 2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 Del.C. Section 2701 et seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts this amendment pursuant to 10 **Del.C.** Section 2702(b) and guidelines of 29 Del. C. Section 10118 of the Administrative Procedures Act. See, *Strauss v. Silverman*, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be November 11, 2009.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 11th day of November, 2009.

Colonel Robert Coupe, Chairman

APPROVED AS TO FORM:

Michael Tupman, Esquire

Deputy Attorney General

November 11, 2009

2400 Constables

1.0 Experience

1.1 A constable must meet the minimum training standards as established by the ~~Council on Police Training Board~~.

Adopted 09/10/86

Amended 05/16/00

Amended 01/11/09

2.0 Appeal

2.1 Any applicant who is rejected for a commission as a constable may, within 30 days of such notice of rejection, submit a written notice of appeal.

2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.

2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 29).

2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

Adopted 09/10/86

3.0 Law Enforcement Exemption

3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.

3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 4.0, and a ~~[, equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement comprehensive, multiple-choice examination]~~ of the minimum standards established by the Board to identify weaknesses in the ir knowledge of the duties of a Constable. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

Adopted 10/16/96

Amended 05/16/00

12 DE Reg. 977 (01/01/09)

4.0 Employment

- 4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 4.2 All applicants must submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.
- 4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 4.4 No full-time police officer may apply for a commission as a constable.
- 4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.
- 4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.
- 4.7 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the council on Police Training, or a member or employee of a law enforcement organization of any other state or federal jurisdiction.

Adopted 05/16/00

12 DE Reg. 977 (01/01/09)

5.0 Firearm's Policy

- 5.1 No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved fire arms course given by a Board approved certified fire arms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.
- 5.2 Firearms - approved type of weapons
 - 5.2.1 9mm
 - 5.2.2 .357
 - 5.2.3 .38
 - 5.2.4 .40
- 5.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.5 All individuals must qualify with the same type of weapon that he/she will carry.
- 5.6 All ammunition will be factory fresh (no re-loads).
- 5.7 The minimum passing score is 80%. All licenses are valid for a period of one (1) year.

Adopted 05/20/02

FINAL REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1700 Board of Medical Practice

Statutory Authority: 24 Delaware Code, Section 1713(a)(12)
24 DE Admin. Code 1700

ORDER

1700 Board of Medical Practice

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 1, 2009 at a scheduled meeting of the Delaware Board of Medical Practice (the "Board") to receive comments regarding proposed amendments to the Board's Rules and Regulations; specifically, the addition of a new regulation 30 establishing a fee schedule for copies of patient records.

Pursuant to the Administrative Procedures Act, 29 Del.C. § 10115, notice of the proposed amendments to the rules and regulations was initially published on February 1, 2009 in the *Delaware Register of Regulations*, Volume 12, Issue 8 and a hearing was held on March 10, 2009 where members of the public offered comment. The Board initially voted to adopt the regulations as proposed but, at their next regularly scheduled meeting, before finalizing the order, they determined to make substantive changes to the regulation. The revised proposal was republished on August 1, 2009 in Volume 13, Issue 2 of the *Delaware Register of Regulations* noticing the hearing for September 1, 2009.

Summary of The Evidence and Information Submitted

1. The following exhibits were made a part of the record:
 - **Board Exhibit 1:** News Journal Affidavit of Publication.
 - **Board Exhibit 2:** Delaware State News Affidavit of Publication.
 - **Board Exhibit 3:** Correspondence from Michael J. Malkiewicz, Esquire, dated August 31, 2009, asking the Board to revise the regulation to provide that the fees cover not only a patient request but the request of the patient's "representative", e.g., law firm, as well.
 - **Board Exhibit 4:** Correspondence from John S. Grady, Esquire dated August 28, 2009.¹
2. The Board received public comment from John Grady, Esquire, Nitin Rao, and Joseph M. Parise, D.O.
3. John Grady, Esquire, stated that he represents Social Security disability claimants and requests records from physicians on behalf of his clients. He was involved in the Bill directing the Medical Board to establish a fee schedule and has worked on the issue for three years. He stated that there is a difference of opinion on what the fees should be, but added that he is fairly content with the regulation as currently drafted. He wanted to make sure that he was reading the regulation correctly and that it does not provide for a retrieval fee to be charged. He believes that electronic records should actually cost less because they are transmitted by e-mail and create a windfall for the doctor but added that this was an issue for another day. He stated that some doctors have turned requests for records into an industry and submitted that HIPPA requires a reasonable fee.

Mr. Grady asked the Board to focus on his verbal comments and not his written letter which had an error in it regarding what he thought was a \$ 2.50 per page charge. Mr. Grady concluded by stating that he thinks the proposal is a reasonable compromise and added that he does not have an issue with also having to pay postage.
4. Nitin Rao stated that the Medical Society of Delaware supports the new proposal, finds it to be fair and believes that it should be binding on patient requests for records.

1. Mr. Grady's letter is not summarized because he asked the Board to focus on his verbal comments rather than his letter.

5. Joseph Parise, D.O., stated that he is commenting as a physician and as a member of the public. He believes the proposal as revised, without a cap, is fair. Sometimes requests can be hundreds of pages and it can take a long time to respond to the request properly. He also noted that some physicians honor requests without a fee and work with the patients.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board considered the written and verbal comments provided at the public hearing. The Board considered Mr. Malkiewicz' written comment but finds that the issue of what doctors charge lawyers for records is not before the Board. The law directed the Board to establish fees for patients obtaining their own records. The Board finds that the proposed regulation satisfies the mandate of House Bill 236 (codified at 24 **Del.C.** §1761).

The remaining public comment generally supported the proposed regulation as fair to the patient and to the physician. The physician and the patient still have an option to have the physician provide a summary in lieu of obtaining the actual records and to tailor the records requested to provide for continuity of care without the need to produce every record.

The Board's regulation does not allow for a retrieval fee and charging a retrieval fee would violate the rule.

The Law

The Board's rulemaking authority is provided by 24 **Del.C.** §1713(a)(12).

Decision and Effective Date

The Board hereby adopts Regulation 30 as effective 10 days following publication of this Order in the *Register of Regulations*.

Text and Citation

The text of Regulation 30 remains as published in *Register of Regulations*, Vol. 13, Issue 2, on August 1, 2009 without any modification.

SO ORDERED this 6th day of October, 2009.

BOARD OF MEDICAL PRACTICE

Anthony M. Policastro, M.D., President	Raymond L. Moore, Sr., Public Member, Vice-President
Oluseyi Senu-Oke, M.D., Secretary	John Banks, Public Member
George Brown, Public Member	Stephen Cooper, M.D.
Vance Daniels, Public Member	Galicano Inguito, M.D.
Sharon Jones, Public Member	Sophia Kotliar, M.D.
Vincent Lobo, D.O.	Karl McIntosh, M.D.
Daryl Sharman, M.D.	

1700 Board of Medical Practice

***Please note that no changes were made to the regulation as originally proposed and published in the August 2009 issue of the *Register* at page 236 (13 DE Reg. 236). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 680 11-01-09.htm>

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

3600 Board of Registration of Geologists

Statutory Authority: 24 Delaware Code, Section 3606 (24 Del.C. §3606)
24 DE Admin. Code 3600

3600 Board of Registration of Geologists

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 9, 2009 at a scheduled meeting of the Delaware Board of Geologists (the "Board") to receive comments regarding the Board's proposed amendments to the Board's rules and regulations. The proposed amendments to Rule 2.2, subsection 2.2.1.3, clarify that an applicant for licensure by reciprocity must have an active license in the jurisdiction from which the applicant is applying and must have actually worked for at least 2 years in the jurisdiction from which they are applying to meet the statutory requirements for licensure. The first proposed amendment to Rule 6.0 deletes language in subsection 6.1 that provided for a waiver of continuing education for the first renewal period after the continuing education requirements were enacted because it is no longer applicable. Finally, the Board is proposing to amend Rule 6.0 by adding new subsections 6.11 through 6.15 clarifying the continuing education audit process and the process for hearings for non-compliance, including the imposition of sanctions.

The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 13, Issue 3, on September 1, 2009.

Summary of the Evidence and Information Submitted

No written comments were received. No members of the public attended the hearing.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations. The Board received no written or verbal comments on the proposed amendments.

2. The Board's experience in reviewing applications is that there has been confusion on the part of the applicants as to requirements for application by reciprocity. The Board finds that the proposed amendments to the rules and regulations will clarify that an applicant for licensure by reciprocity must have an active license in the jurisdiction from which the applicant is applying and must have actually worked for at least 2 years in the jurisdiction from which they are applying to meet the statutory requirements for licensure.

3. The Board finds that its recent audit of continuing education required for licensure renewal demonstrated that there is an outdated provision in rule 6.1 that should be deleted. In addition, the Board finds that the continuing education rules and regulations will be improved by clarifying the audit and hearing processes to provide direction to the licensees.

4. Pursuant to 24 Del.C. §3606 the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute. The amendments to Rule 2.2 *Application-By Reciprocity* clarify the provisions of 24 Del.C. §3609 with regard to reciprocity. The amendments to Rule 6.0 *Continuing Education* clarify the provisions of 24 Del.C. §3611 with regard to renewal of licensure.

Decision and Effective Date

The Board hereby adopts the changes to its rules and regulations to be effective 10 days following publication of this order in the Register of Regulations.

Text and Citation

The text of the revised rules remains as published in the *Register of Regulations*, Vol. 13, Issue 3, September 1, 2009, as attached hereto as Exhibit A.

SO ORDERED this 9th day of October, 2009.

STATE BOARD OF GEOLOGISTS

William S. Schenck, President, Professional Member
Scott C. Blaier, Vice-President, Professional Member
Lorene Athey, Public Member
Patricia Ennis, Public Member
Amos Aiken, Public Member

3600 Board of Registration of Geologists

*Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 390 (13 DE Reg. 390). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 682 11-01-09.htm>

STATE EMPLOYEE BENEFITS COMMITTEE

Statutory Authority: 29 Delaware Code, Sections 5210(4) and 9602(b)(4)
(29 Del.C. §§5210(4) and 9602(b)(4))
19 DE Admin. Code 2001

ORDER

Employees Eligible to Participate in the State Group Health Insurance Program Eligibility and Enrollment Rules

Effective on November 1, 2009, under the authority of Title 29 of the Delaware Code, Section 9602(b)(4), the State Employee Benefits Committee is amending the Eligibility and Enrollment Rules regarding the Employees Eligible to Participate in the State Group Health Insurance Program to read as provided below. These amended rules were prepared by the Statewide Benefits Office and have been approved by the State Employee Benefits Committee with the consent of the State Employee Benefits Advisory Council. The amended rules are effective upon publication in the Register of Regulations in accordance with House Bill 290, Section 29 of the 145 General Assembly.

2001 Group Health Care Insurance Eligibility and Coverage Rules

(Used to determine who may enroll. See "Cost of Coverage" to determine the amount of State contributions, toward an employee's coverage.)

(Break in Continuity of Sections)

5.0 Cost Of Coverage

(Used to determine the amount of State Share contributed toward an employee's coverage and the amount of employee contributions required, if any.)

- 5.1 "Regular officers and employees" begin earning State Share contributions on the first of the month following three full months of employment. See Eligibility Table for specific information regarding State Share payments and employee payroll deductions for employees who elect coverage when eligible for State Share.
- 5.2 Permanent part-time, temporary per diem and contractual employees of the General Assembly as described in Eligibility and Enrollment Rule 1.01 are eligible to participate in the State Plan, but are not eligible for State Share. Therefore, any such employee joining the State Plan must pay the full cost of the health plan selected. Payment must be collected by the organization and forwarded to the Statewide Benefits Office by the first day of the month for which the employee's coverage becomes effective.
 - 5.2.1 If an existing full time state employee takes a limited term position, State Share shall continue.
 - 5.2.2 Casual and seasonal employees and substitutes are not eligible to participate in the State Plan, nor are they eligible for State Share.
- 5.3 When a husband and wife are both permanent full time active employees, they shall earn State Share contributions in accordance with the following:
 - 5.3.1 If they elect to enroll in two individual contracts, the increment of cost of the options selected by the two employees which exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
 - 5.3.2 If they elect to enroll in one employee and spouse or family contract, the increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
- 5.4 When the spouse of an eligible employee is a retired State of Delaware employee receiving a monthly pension or a Disability Insurance Program (DIP) LTD beneficiary receiving an LTD check, each may enroll as two individual contracts, employee and spouse contract or a family contract. The increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments. (A notation should be made in the employee's file that the spouse is a State of Delaware Pensioner or DIP LTD beneficiary). The Pension Office should be notified when the active employee terminates State Service.
- 5.5 An eligible employee who elects to be covered prior to becoming eligible for State Share must pay the full cost of coverage, State Share and employee share, until State Share begins.
- 5.6 If a regular officer, employee, eligible pensioner, or beneficiary selects coverage under any plan other than the First State Basic Plan, the employee is responsible for paying the additional cost, if any, over and above the cost of the same coverage class (individual, employee & child, employee & spouse, or family) under the First State Basic plan.
- 5.7 A regular officer or employee or eligible pensioner who is eligible for the State Share contribution may not receive the cash equivalent in lieu of the coverage itself.
- 5.8 Health coverage premiums are collected on a lag basis. (Example: January coverage is paid by deduction in the second pay of January plus deduction in the first pay of February). Each agency/school district/sub group is responsible for reconciling premiums to ensure that proper payment has been remitted. Payments, other than those made through OMB's automated payroll system, and all adjustments must be submitted in a timely manner to the Statewide Benefits Office. The State Plan will

not be responsible for payment of premiums and/or claims if a signed enrollment form/confirmation statement/waiver is not in the employee file.

- 5.9 An eligible employee who returns from an authorized unpaid leave of absence is entitled to State Share payments upon return without fulfilling another three month waiting period. The employee must request enrollment by contacting their Human Resources Office within 30 days of return from leave of absence. State Share and coverage (if it has lapsed) begin on the date of return from leave of absence.
- 5.10 Any regular officer or employee or eligible pensioner who fails to make payment for his/her share of the cost of health coverage when he/she is eligible to continue coverage and does not have sufficient salary from which payment can be deducted will have coverage canceled on the first day of the month that a regular officer or employee or eligible pensioner fails to pay the required share for the coverage selected.
- 5.10.1 Family and Medical Leave Act (FMLA) regulations provide that employees have a 30 day grace period for late premium payments. The employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Benefit Representative or Human Resources Offices should continue the employee's health coverage for the 30 day period provided under FMLA. The Benefit Representative or Human Resources Offices can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30 day grace period.
- 5.11 An employee who has a break in active employment due to authorized leave of absence, suspension, termination or unauthorized leave of absence without pay for a full calendar month, shall not be eligible for State Share for that calendar month and any subsequent calendar month that the employee is in a non pay status for the entire calendar month. In the case of an authorized leave of absence, an intermittent return to work or use of paid leave of less than five full days in one month, the employee shall not be entitled to State Share contributions. Full payment must be made for the month in order to retain coverage. Upon return, the employee is eligible for State Share without fulfilling another three month waiting period, provided the break was the result of any of the following:
- 5.11.1 an authorized leave of absence;
- 5.11.2 a suspension without pay;
- 5.11.3 termination or unauthorized leave of absence for a period less than 30 calendar days.
Coverage begins on the date of employee's return to work.
- 5.12 State Share will be paid for employees drawing Workers' Compensation, provided the employee is not eligible for coverage from a subsequent employer. Such an employee must submit payment for the share of the coverage that would normally be deducted from his/her salary.
- 5.13 State Share will be paid for employees who are approved for Short Term and/or Long Term Disability through the State's DIP.
- 5.13.1 Employee's share of premium shall be deducted by OMB from employee's salary or DIP LTD check.
- 5.13.2 Employees whose STD claims are in a pending status are entitled to receive State Share. If STD claim is denied, the employee is responsible for the State Share paid on his/her behalf while the claim was in a pending status.
- 5.13.3. Employees who are appealing a STD termination and/or benefit denial are eligible to receive State Share. If the appeal results in a denial, the employee is responsible for the State Share paid on his/her behalf while the claim was in a pending appeal status.
- 5.14 Any refund of State Share or employee share is subject to the following requirements:
- 5.14.1 An employee who has paid the State Share in order to insure continuation of health coverage and then later is found to have been eligible for receipt of State Share, is to be refunded the amount that was not paid by the State. The employee must make application for the refund within one calendar year of the date the employee paid the State Share to be refunded;
- 5.14.2 An employee who has paid the employee share then later is found to have been eligible for receipt of DSS is to be refunded the amount paid for employee share for a period not to exceed one

calendar year. The employee seeking a refund must make application for the refund within one year of the date the employee paid the employee share to be refunded;

- 5.14.3 An employee who has paid the employee share for an ineligible dependent (for example following a divorce, death or exceeding the dependent age limits) is to be refunded the amount paid for employee share for a period not to exceed 60 days, provided that the employee seeking a refund must make application for the refund within 60 days of the date the employee paid the employee share to be refunded and further that the employee shall be liable for any amounts paid by the State Plan on behalf of the ineligible dependent until the employee provides notice to the Statewide Benefits Office of the dependent's ineligibility;
- 5.14.4 If an employee is terminated from employment and does not pay the employee share for the second half of the month in which terminated, coverage under the Plan is terminated as of the first of the month, any claims paid for that month will be reversed and a refund will be given, if employee makes request for refund within 60 days.
- 5.14.5 In any event, refunds of less than \$1.00 will not be made.
- 5.15 Teachers who are granted a sabbatical leave of absence are eligible for State Share while they are on such leave. Also see Eligibility and Enrollment Rule 6.3.
- 5.16 All employees whose positions are involuntarily terminated after they have been employed for a full calendar year who return to full time State employment within 24 months of their termination will be eligible for State Share without fulfilling another three month qualification period.
- 5.17 A temporary, casual, seasonal employee, or substitute who becomes a "Regular Officer or Employee" shall have his/her unbroken temporary, casual, seasonal, or limited term, provisional or permanent part time "Aggregate State Service" applied toward the three month qualification period for State Share contributions. The "Aggregate State Service" must immediately precede becoming a "Regular Officer or Employee". The temporary, casual, seasonal employee, or substitute must have worked each pay cycle for the three months prior to hire eligibility for state share - or last three full months of the school year prior to September hire.
- 5.18 State Share shall continue for a "Regular Officer or Employee" who is temporarily appointed to a position that results in a dual incumbency.
- 5.19 Any active employee who is also receiving a survivor's pension through the State of Delaware shall receive DSS. The increment of cost, which exceeds the cost of two First State Basic family plans, shall be deducted from employee's salary.
- 5.20 A regular officer or employee called to active duty with the National Guard or Reserve for other than training purposes shall continue to receive state share toward health insurance coverage for a period of up to two years. Employee's share must be remitted to Benefit Representative or Human Resources Office for further processing.

6 DE Reg. 690 (11/1/02)

12 DE Reg. 986 (01/01/09)

13 DE Reg. 126 (07/01/09)

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

<http://regulations.delaware.gov/register/november2009/final/13 DE Reg 683 11-01-09.htm>

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER****EXECUTIVE ORDER
NUMBER TWELVE****TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES****RE: ASSURING OUR STATE GOVERNMENT CREATES AN OPEN AND SUPPORTIVE WORKPLACE FOR VICTIMS OF DOMESTIC VIOLENCE**

WHEREAS, more than 16,000 criminal cases of domestic violence are reported in the State of Delaware every year; and

WHEREAS, domestic violence causes serious emotional trauma and physical harm, sometimes including death; and

WHEREAS, domestic violence can affect all individuals, regardless of race, income, or age, and occurs in every community in Delaware; and

WHEREAS, the lasting effects of domestic violence are far-reaching and profound, and often include alcohol and drug abuse, homelessness and transiency, separation and divorce, increased health care costs, criminal proceedings, and problems in the workplace; and

WHEREAS, victims of domestic violence frequently lack economic self-sufficiency and face significant ongoing challenges to maintaining employment and promoting a healthy environment for families and children; and

WHEREAS, all employers, including the State of Delaware, are a critical part of the community response to domestic violence and can play an important role in assisting victims of domestic violence and their families; and

WHEREAS, it is in the best interest of State government, its employees, and all Delawareans for the State to devote its energies to defeating domestic violence and mitigating its effects on victims, by, among other things, serving as a resource to assist victims in receiving helpful services and developing thoughtful and comprehensive human resources policies; and

WHEREAS, all State agencies should lead by example and promote a coordinated community effort that will keep victims of domestic violence and their children safe and help perpetrators to accept responsibility for their actions;

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. Domestic violence of any type or magnitude is not tolerated by the State of Delaware.
2. All executive branch agencies are directed to create a supportive workplace for victims of domestic violence that encourages disclosure of domestic violence, ensures confidentiality for victims and their families, and promotes the availability of programs and resources to aid victims of domestic violence.
3. The Human Resources Management Section of the Office of Management and Budget shall draft a statewide policy to address issues of domestic violence affecting employees of State agencies. That policy shall include reasonable guidelines, practices, procedures and protocols for State employees designed to mitigate the personal and economic effects of domestic violence. The policy shall not be inconsistent with applicable federal and Delaware law, Merit Rules, and collective bargaining agreements.
4. The policy to be prepared by the Human Resources Management Section shall prohibit discrimination against employees who are victims of domestic violence. In developing the aforementioned policy, the Human Resources Management Section shall consider, but is not limited to, the following:
 - (i) Attendance and leave issues as they relate to domestic violence and related absences,
 - (ii) Modifications to job assignments and schedules, and development of other reasonable work-related accommodations,
 - (iii) Guidelines for managers and supervisors in addressing domestic violence incidents,
 - (iv) A reporting standard that assures State employees who are witnesses to domestic violence report it promptly, accurately and properly,
 - (v) Promotion of available supportive resources for victims, including confidential help lines and other

resources,

- (vi) Confidentiality policies applicable to domestic violence incidents, to the extent permitted by law,
- (vii) Protocols for employees who are perpetrators, and
- (viii) Training of managerial, security and other personnel to respond to domestic violence situations.

5. The policies shall be developed in consultation with the Domestic Violence Coordinating Council, the Delaware Coalition Against Domestic Violence, ContactLifeline, the Domestic Violence Task Force of the Delaware Commission for Women, and the Victims' Rights Task Force.

6. All executive branch agencies shall adhere to the domestic violence policies and shall distribute those policies to existing and new employees.

7. All executive branch agencies shall develop training on the policies related to domestic violence and the availability of resources to combat domestic violence.

8. This Order shall apply to all Cabinet Departments and Executive Agencies of the State. The members of the General Assembly and the Judiciary are also encouraged to adopt this Order.

9. No provision of this Order is intended to or shall create any individual right or legal cause of action that does not already exist under state or federal law.

APPROVED this 5th day of October, 2009

Jack A. Markell,
Governor

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

TECHNICAL INFORMATION MEMORANDUM 2009-02

DATE: July 26, 2009

SUBJECT: Legislation passed during the First Session of the 145th Delaware General Assembly.

During the First Session of Delaware's 145th General Assembly, ending June 30, 2009, eleven (11) bills were enacted of interest to or having an impact on Delaware taxpayers and/or the state's Division of Revenue. The subjects of these bills range from an increase in various tax rates to a Voluntary Compliance Initiative (HB268 w/ HA1).

Legislation significant to Delaware's Division of Revenue has been summarized below and is divided into two categories for retrieval ease:

(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year; and

(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no effect on tax-filing requirements for the upcoming year.

Bills in their entirety may be viewed on the Delaware General Assembly website: www.legis.delaware.gov.

This memorandum is intended for general notification and explanation of recently enacted Delaware laws and should not be relied upon exclusively in any pending or future audit or judicial review of an individual taxpayer or transaction. Taxpayers are advised to consult the particular bill, the Delaware Code, or Delaware regulations in all matters conflicting with any part of this memorandum.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue Help Line at (302) 577-8200, or visit the Division's website at [www.revenue.delaware.gov] where information about tax topics and links to phone numbers for other information may be found.

(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year:

House Bill 138

Signed by Governor on 07/08/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO THE DELAWARE LAND AND HISTORIC RESOURCES PROTECTION INCENTIVES ACT.

This bill extends the time period in the Delaware Land and Historic Resources Protection Incentives Act for the allocation of tax credits authorized and capped therein.

House Bill 191

Signed by Governor on 09/04/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

This bill creates a tax check-off for Delaware taxpayers to designate contributions to the Delaware Chapter of the National Multiple Sclerosis Society Fund. The use of contributions will be restricted locally by the Delaware Chapter to benefit Delaware residents.

House Bill 211

Signed by Governor on 07/01/09

AN ACT TO AMEND CHAPTER 53, TITLE 30 OF THE DELAWARE CODE RELATING TO THE LEVY, COLLECTION AND USE OF TOBACCO PRODUCT TAX REVENUE.

This bill increases the tax on cigarettes from \$1.15 to \$1.60 per 20-cigarette pack. Section 1 increases the cigarette tax rate. Section 2 makes the cigarette tax effective for possession within the state after midnight July 31, 2009. It also imposes a "floor tax" on inventories of cigarettes and requires that the difference between the new tax and the old tax be paid on stamps purchased on or before midnight July 31, 2009, but not affixed to any cigarettes as of the effective date of this Act.

House Bill 228 as amended by House Amendments 1 and 2

Signed by Governor on 09/01/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

This bill creates a tax check-off for Delaware taxpayers to designate contributions to the Delaware Ovarian Cancer Foundation Fund at the Delaware Community Foundation to be used for ovarian cancer research, with emphasis on early detection, education, and awareness.

House Substitute 1 for House Bill 260

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE TAXATION OF LOTTERY WINNINGS.

This Act eliminates the personal income tax exemption for Delaware lottery winnings. This Act shall be effective for tax years beginning after December 31, 2009.

House Substitute 1 for House Bill 264 as amended by House Amendment 2

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TAXES ON PERSONAL INCOME

This Act will increase by one percentage point the personal income tax rate for taxable income in excess of \$60,000. This Act shall be effective for tax years beginning after December 31, 2009. This Act shall sunset four (4) years from the effective date.

House Substitute 1 for House Bill 268

Signed by Governor on 07/01/09

AN ACT TO AMEND CHAPTER 5, TITLE 30 OF THE DELAWARE CODE RELATING TO PROCEDURE, ADMINISTRATION AND ENFORCEMENT.

Section 1 is intended to establish a Voluntary Compliance Initiative for eligible taxes administered by the Division of Revenue for a period running from September 1, 2009 through October 30, 2009. Any taxpayer who has a current outstanding liability for tax periods before January 1, 2009 and makes payment during the Initiative period or enters into a payment plan and makes payment before June 30, 2010 will have penalty and interest for late filing the return waived. Any non filer who files returns will have any tax, penalty and interest for non filed returns for any period prior to January 1, 2004 waived. Section 2 is intended to remove the 50% limitation on the penalty for failure to file timely tax returns. Section 3 is intended to remove the 75% limitation on the penalty for any fraudulent tax returns. Sections 4, 5 and 6 change the period for which interest accrues on an amended refund to 46 days after the receipt of the amended tax return. Previously interest accrued 46 days after the original return was filed, which could have been three years earlier.

House Bill 287

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLES 7 AND 30 OF THE DELAWARE CODE RELATING TO OCCUPATIONAL LICENSES AND FEES.

This Act establishes a business license for firms engaged in the business activity of crude oil lightering. The annual license fee is \$100,000. Crude oil lightering operators would not be subject to the gross receipts tax. Section 1 of the Act establishes the annual business license fee for crude oil lightering operators. Section 2 of the Act exempts crude oil lightering operators from the gross receipts tax and revises out-of-date references. Section 3 directs that all license fees generated by this Act are deposited into the Hazardous Substance Cleanup Fund. This Act shall be effective for tax periods beginning after December 31, 2009.

House Bill 288

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITY TAXES.

This Act adds direct-to-home satellite services to the public utility tax base and increases tax rates on public utilities other than cable television. This Act shall be effective for tax periods beginning after July 31, 2009.

House Bill 289 as amended by House Amendment 2

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLE 7 AND TITLE 30 OF THE DELAWARE CODE AND CHAPTER 282, VOLUME 76 OF THE LAWS OF DELAWARE RELATING TO GROSS RECEIPTS TAXES.

This Act increases certain General Fund business and occupational gross receipts tax rates. Sections 1 and 5 through 19 of the Act set forth the specific gross receipts tax rate increases made by the Act. Sections 2, 3 and 4 of the Act correct outdated cross references to service business license categories for purposes of the Occupational License Taxes. Section 20 of the Act eliminates a sunset provision that would have automatically repealed the gross receipts tax rate increases that were enacted in 2008. Sections 21 and 22 of this Act directs that the first \$1

million collected each year under the gross receipts tax surcharge on petroleum be deposited in the General Fund. Section 23 of the Act is a severance provision. Section 24 of the Act provides that the rate increases made by Sections 1 and 5 through 19 of the Act are effective for taxable periods beginning after December 31, 2009, and, except for Sections 21 and 22, that the other sections of the Act are effective upon enactment. This Act shall sunset on e (4) ye ars from the effective date an d the rates in effect immed iately prior to this Act shall be re-imposed.

House Bill 291 as amended by House Amendments 1 and 4

Signed by Governor on 07/01/09

AN ACT TO AMEND TITLES 3, 12 AND 30 OF THE DELAWARE CODE RELATING TO THE ESTATE TAX.

Sections 1, 2, and 3. of the Act decouple the Delaware estate tax on the estates of resident individuals from any repeal of the federal estate tax by referencing the federal law as it existed on January 1, 2001 as updated by other provisions of the federal estate tax laws with respect to the duty to file a r eturn and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax. Section 4 of the Act decouples the Delaware estate tax on the estates of non-resident individuals from any repeal of th e federal estate tax by referencing the federal law as it e xisted on January 1, 2001 as updated by other provisions of the federal estate tax laws with respect to the duty to file a return and the calculation of th e taxable estate in effect on the earlier of the d ate of the d ecedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax. The estate tax for non-residents will be calculated in the s ame manner as the estate tax for residents, the sum of which will be reduced by the ratio of Delaware taxable a ssets over t otal taxable a ssets. Sections 5, 6, and 7, reinstate enforcement and procedural requirements that would sunset with the repeal of the federal estate tax, such as the duty to file a Delaware estate tax return, creation of a special lien for estate taxes, and the duty to file an affidavit in cases where a return need not have been filed pursuant to the Internal Revenue Code in e ffect on January 1, 2001 as updated by other provisions of the federal estate tax laws with respect to the duty to file a r eturn and the calculation of the taxable estate in effect on the earlier of the date of the decedent's death or the date immediately preceding the effective date of the repeal of the federal estate tax. Section 8 exempts from tax farm land participating in the Delaware Agricultural Lands Preservation Act program. This Act shall sunset four (4) years from the effective date.

Senate Bill 62

Signed by Governor on 07/09/09

AN ACT TO AMEND TITLE 30 OF THE D ELAWARE CODE RELATING TO DELAWARE PERSONAL INC OME TAX CHECKOFF PROGRAMS.

This Bill es tablishes a procedure to allow taxpayers to designate a contribution to a newly established Delaware Children's Fund. Money depos ited to the Fund will periodic ally be turned ov er to the 21s t Century Fund for Delaware's Children, Inc.

(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no effect on tax-filing requirements for the upcoming year:

No legislation passed under section II.

Patrick Carter
Director of Revenue

**DEPARTMENT OF AGRICULTURE
DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION****PUBLIC NOTICE****304 Exotic Animal Regulations**

The Delaware Department of Agriculture re-proposes these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state.

An earlier version of these regulations was considered at a public hearing on February 20, 2009 at 10:00 a.m. at the Department of Agriculture Building, Secretary's Conference Room. Public comments were received at that time leading to substantive changes. Those earlier comments led the Delaware Department of Agriculture to re-promulgate the regulations and to solicit additional public commentary. The comment period ended on August 1, 2009.

As a consequence of receiving still additional comments from the public the Delaware Department of Agriculture again proposes these regulations and solicits comments from the public. Any such comments should be submitted to the State Veterinarian, Heather Hirst, DVM at the Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before December 1, 2009. Copies of the proposed regulations are available on request.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, November 19, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF SOCIAL SERVICES****9059 Income Exclusions****PUBLIC NOTICE****Food Supplement Program - Decennial Census 2010**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) related to the 2010 Decennial Census.

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 November 30, 2009.

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

DEPARTMENT OF INSURANCE**901 Arbitration of Automobile and Homeowners' Insurance Claims
PUBLIC NOTICE**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 901 relating to Arbitration. The docket number for this proposed amendment is 1278.

The purpose of the proposed amendment to regulation 901 is to update the existing regulation to conform to statutory changes relative to health insurance arbitration and to provide for the payment of legal services to prevailing consumers in arbitration cases. The text of the proposed amendment is reproduced in the November 2009 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday December 7, 2009, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE**1305 Loss Ratio Filing Procedures for Health Insurers and Health Service Corporations for Medical and Hospital Expense-incurred Insurance Policies and Group Plans
PUBLIC NOTICE**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1305 relating to health insurers, health service corporations and managed care organizations. The docket number for this proposed amendment is 1277.

The purpose of the proposed amendment to Regulation 1305 is to create procedures and time lines for all rate filings made by insurers. The text of the proposed amendment is reproduced in the November 2009 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a 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 December 7, 2009, 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 SAFETY AND HOMELAND SECURITY**DELAWARE COUNCIL ON POLICE TRAINING****PUBLIC NOTICE
801 Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404(a)(14) and 29 **Del.C.** §10115 of the Administrative Procedures Act, gives notice that it shall hold a public hearing on November 23, 2009 at 9:00 a.m., in the second floor conference room of the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The COPT will receive written comments or oral testimony from interested persons regarding amendments to the following COPT Regulations: 3.0 (Minimum Standards for Initial Employment); 5.0 (Minimum Standards for Training); 8.0 (Re-activation Requirements of Police Officers); 11.0 (Firearms Training); and 25.0 (Substance Abuse Screen), and to adopt a new Regulation 26.0 (Electronic Control Device (ECD) Training). The final date for

interested persons to submit written comments shall be the date of the public hearing. Written comments should be directed to Captain Ralph H. Davis, III, Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE 19903-0430.

Any person wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903 or write to the above address.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2000 Board of Occupational Therapy Practice
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2006(a)(1), the Board of Occupational Therapy Practice has proposed revisions to its rules and regulations.

A public hearing will be held on January 6, 2010 at 4:45 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes a new Rule 4.0, which addresses licensee competence to administer various treatment modalities. Pursuant to this amendment, at the request of the Board or a member of the public, a licensee will be required to provide documentation of training or education to demonstrate competence.

In addition, Rule 1.3.3 is amended to clarify the parameters of an occupational therapist's supervision of an occupational therapy assistant. Provisions are added pertaining to submission of applications for licensure. A new Rule 3.1.2.4 gives the Board authority to conduct hearings and impose sanctions regarding licensees' failure to comply with the Board's continuing education requirements.

Finally, the Board proposes minor typographical revisions and re-numbering of the rules to accommodate the addition of new rules.

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

PUBLIC SERVICE COMMISSION
3001 Regulations Governing Service Supplied by Electrical Corporations
NOTICE OF PUBLIC HEARING

Since 1999, Commission-jurisdictional electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators (powered by renewable resources) to "net meter" their electric production and consumption. *See Rules for Certification and Regulation of Electric Corporations*, adopted by PSC Order No. 5 207 (Aug. 31, 1999) and revised from time to time (the "Regulations").

In July and September 2009, certain sections of Title 26 pertaining to net energy metering and vehicle-to-grid ("V2G") resources were enacted into law. The V2G provisions include certain electric vehicles qualifying as "Grid-Integrated Electric Vehicles" in net energy metering. The other changes enacted by the recent legislation: eliminate a customer's forfeiture of excess electric generation and allow customers to request payments from an electrical supplier for the value of excess generation; allow customers to retain ownership of "renewable energy credits;" create a new provision for farm customers with respect to net energy metering; and increase the cap on customer net energy metering generation from 1% to 5% of an electric utility's aggregated customer monthly peak demand for a given calendar year.

To implement these statutory changes, the Commission now proposes changes to the "net metering" section and other sections of the Regulations. You can review the proposed amendments at the Commission's office in

Dover at the address below (and obtain copies for \$0.25 per page), or visit the Commission's website located at <http://dep.sc.delaware.gov>, under PSC Order No. 7652 (Sept. 22, 2009). You can also review PSC Order No. 7652 and the proposed amendments in the November 2009 issue of the Delaware Register of Regulations, available at <http://regulations.delaware.gov/services/register.shtml>.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed revisions to the Regulations. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **December 1, 2009**. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 49

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

The Commission Hearing will consider the revisions to the Regulations at its regularly scheduled meeting on **Tuesday, December 8, 2009** at 1:00 p.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed revisions to the Regulations on the basis of any evidence and information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 *Del.C.* §§ 362 and 1014(d).

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to john.farber@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

PUBLIC SERVICE COMMISSION

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

NOTICE OF PUBLIC HEARING

Under the "Renewable Energy Portfolio Standards Act," 26 *Del.C.* §§351-364 (2006 Supp.) (the "RPS Act"), each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Public Service Commission ("PSC") adopted "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"). See 10 **DE Reg.** 151-157 (July 1, 2006). The RPS Rules have been amended twice in the interim to conform to subsequent amendments to the RPS Act.

On July 8, 2009, the Governor of the State of Delaware signed into law Senate Bill No. 173 as amended by Senate Bill No. 1 (77 *Del. Laws ch. 131*) (July 8, 2009) ("Senate Bill 173"), which updated and clarified certain provisions of the Delaware Energy Act pertaining to Delaware's Sustainable Energy Utility (the "SEU") and amended Section 360 of the RPS Act by adding a subsection, that tolls the three-year limit on the existence of renewable energy credits and solar renewable energy credits during any period that those credits are held by the SEU.

The PSC now proposes to revise the RPS Rules to incorporate, and assure consistency with, the statutory changes made by Senate Bill 173.

You can review PSC Order No. 7653 (Sept. 22, 2009) (the "Order") and the proposed revised RPS Rules in the November 2009 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised RPS Rules at the PSC's Internet website located at <http://dep.sc.delaware.gov>. If you wish to obtain written

copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before December 1, 2009. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 56

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

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on December 8, 2009 at 1:00 P.M. at the PSC's office at the address set forth above.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications). Inquiries may be sent to the PSC by Internet e-mail addressed to "pamela.knotts@state.de.us."

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

2309 Standards and Regulations for Subdivision Streets and State Highway Access

PUBLIC NOTICE

The Delaware Department of Transportation through its Planning Division has developed proposed revisions to its regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets. This proposed revision to the Standards and Regulations for Subdivision Streets and State Highway Access is the first revision to the regulations that were enacted in December of 2007.

A public workshop will be held regarding these proposals on November 19, 2009 at the DeIDOT Administration Building in the Farmington/Felton Room from 4:00 pm until 7:00 pm.

The Department will take written comments on the proposed changes to the Regulations from November 1, 2009 through December 17, 2009.

Any requests for copies of the Regulations, or any questions or comments regarding amendments to these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning
Delaware Department of Transportation
PO Box 778
Dover, DE 19903
(302) 760-2122 (telephone)
(302) 739-2251 (fax)
theodore.bishop@state.de.us