
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 15, 2010.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

13 **DE Reg.** 24-47 (07/01/09)

Refers to Volume 13, pages 24-47 of the *Delaware Register* issued on July 1, 2009.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
May 1	April 15	4:30 p.m.
June 1	May 14	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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	13 DE Reg. 503(Final)
	13 DE Reg. 946(Final)
1700 Board of Medical Practice.....	13 DE Reg. 236(Prop.)
	13 DE Reg. 284(Final)
	13 DE Reg. 680(Final)
1770 Respiratory Care Practice Advisory Council.....	13 DE Reg. 815(Prop.)
	13 DE Reg. 1223(Final)
1790 Acupuncture Advisory Council.....	13 DE Reg. 237(Prop.)
	13 DE Reg. 858(Final)
1800 Board of Plumbing, Heating, Ventilation, Air Conditioning & Refrigeration Examiners.....	13 DE Reg. 825(Prop.)

2000 Board of Occupational Therapy Practice.....	13 DE Reg. 606(Prop.)
2500 Board of Pharmacy.....	13 DE Reg. 1095(Final) 13 DE Reg. 57(Prop.) 13 DE Reg. 506(Final) 13 DE Reg. 1198(Prop.)
2700 Board of Professional Land Surveyors, Sections 12.0 Minimum Technical Standards for Licences and 15.0 Reciprocity Eligibility	13 DE Reg. 244(Prop.)
2930 Council on Real Estate Appraisers.....	13 DE Reg. 123(Final)
3300 Board of Veterinary Medicine.....	13 DE Reg. 1061(Prop.)
3500 Board of Examiners of Psychologists.....	13 DE Reg. 124(Final)
3600 Board of Registration of Geologists.....	13 DE Reg. 390(Prop.) 13 DE Reg. 682(Final)
3700 Board of examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers.....	13 DE Reg. 826(Prop.) 13 DE Reg. 1097(Final)
3800 Committee on Dietetics/Nutrition	13 DE Reg. 79(Prop.)
4400 Delaware Manufactured Home Installation Board.....	13 DE Reg. 414(Final) 13 DE Reg. 834(Prop.) 13 DE Reg. 1098(Final)
Office of the State Bank Commissioner	
2101 Mortgage Loan Brokers Operating Regulations.....	13 DE Reg. 468(Prop.) 13 DE Reg. 862(Final)
2201 Licensed Lenders Operating Regulations.....	13 DE Reg. 468(Prop.) 13 DE Reg. 862(Final)
2401 Mortgage Loan Originator Licensing.....	13 DE Reg. 468(Prop.) 13 DE Reg. 862(Final)
Public Service Commission	
3001 Reg. Docket No. 49: Rules and Regulations to Implement the Provisions of 26 Del.C. Ch. 10 Relating to the Creation of a Competitive Market for Retail Electric Supply Service.....	13 DE Reg. 614(Prop.) 13 DE Reg. 950(Final)
3007 Reg. Docket No. 50: Rules, Standards and Indices to Ensure Reliable Electric Service by Electric Distribution Companies.....	13 DE Reg. 837(Prop.) 13 DE Reg. 1100(Final)
3008 Reg. Docket No. 56: Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act.....	13 DE Reg. 623(Prop.) 13 DE Reg. 952(Final)
3010 Reg. Docket No. 60: Integrated Resource Planning for the Provision of Standard Offer Service by Delmarva Power & Light Company.....	13 DE Reg. 395(Prop.) 13 DE Reg. 953(Final)
8000 Reg. Docket No. 61: Adoption of Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program	13 DE Reg. 416(Final)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2201 Procedure for Re-licensing Investigations Character Background Review	13 DE Reg. 908(Prop.) 13 DE Reg. 1225(Final)
2217 Interim Identification Procedure for the Division of Motor Vehicles.....	13 DE Reg. 911(Prop.) 13 DE Reg. 1226(Final)
2287 Public Carrier Regulations.....	13 DE Reg. 405(Prop.) 13 DE Reg. 955(Final)
Division of Planning and Policy	
2309 Standards and Regulations for Subdivision Streets and State Highway Access	13 DE Reg. 626(Prop.) 13 DE Reg. 1101(Final)
Division of Transportation Solutions	
2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 6, and 9.	13 DE Reg. 418(Final)

2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6.. 13 **DE Reg.** 1199(Prop.)

EXECUTIVE DEPARTMENT**Delaware Economic Development Office**

402 Procedures Governing The Delaware Strategic Fund..... 13 **DE Reg.** 489(Prop.)

13 **DE Reg.** 1227(Final)

Office of Management and Budget

Freedom of Information Act Policy and Procedures..... 13 **DE Reg.** 493(Prop.)

STATE EMPLOYEE BENEFITS COMMITTEE

2001 Group Health Care Insurance Eligibility and Coverage Rules..... 13 **DE Reg.** 126(Final)

13 **DE Reg.** 683(Final)

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

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

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 5.1.8. The Commission will hold a public hearing on the proposed rule changes on May 11, 2010. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on April 1, 2010.

The proposed changes are for the purpose of updating Rule 5 and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml

A copy is also available for inspection at the Harness Racing Commission office.

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

5.0 Licensees

5.1 General Provisions

(Break in Continuity Within Section)

5.1.8 Substance Abuse/~~Addiction~~ Controlled Substances

PROPOSED REGULATIONS

- 5.1.8.1 It is the right and obligation of the Commission to test and establish rules governing substance abuse and controlled substances to preserve the safety and integrity of harness racing.
- 5.1.8.1.1 All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.
- 5.1.8.1.2 As used in this regulation, the terms "controlled substance" and "drug paraphernalia" have the meanings provided in the Uniform Controlled Substance Act, 16 Del.C., Ch. 47.
- 5.1.8.2 It shall be a violation to exercise the privileges granted by a license from this Commission if the licensee:
- 5.1.8.2.1 Is engaged in the illegal sale or distribution of alcohol or any controlled substance;
- 5.1.8.2.2 Possesses, without a valid prescription, any controlled substance;
- 5.1.8.2.3 Is intoxicated or under the influence of alcohol or any controlled substance;
- 5.1.8.2.4 ~~Is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the Commission; Has in his or her possession any drug paraphernalia;~~
- 5.1.8.2.5 ~~Has in his possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance; Refuses to submit to breathalyzer, urine or other alcohol or drug testing when requested by the Presiding Judge or Chief Investigator;~~
- 5.1.8.2.6 ~~Refuses to submit to urine or drug testing, when notified that such testing is based on a random drug testing procedure, is based on reasonable suspicion that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition; or~~
- 5.1.8.2.7 ~~Presently has drugs (controlled substances) or alcohol in his or her body. With regard to alcohol, †The results of a breathalyzer test showing a reading of more than .05 0.02 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body; provided, however, that with respect to licensees under the age of 21, the presence of any measurable level of alcohol in the blood shall constitute a violation. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph.~~
- 5.1.8.2.6.1 The breathalyzer shall be maintained and tested to insure accuracy according to the guidelines of the manufacturer.
- 5.1.8.2.7 Presently has any controlled substance in his or her body. The presence of the drug controlled substance in any quantity measured by the testing instrument establishes the presence of the drug controlled substance for purposes of this paragraph.
- 5.1.8.2.7.1 A licensee is responsible for giving notice (on a Commission approved form) to the Chief Investigator that he or she is using a controlled substance or prescription drug under a valid prescription form a licensed physician. No licensee using a controlled substance or prescription drug will be allowed to participate in racing activities unless the physician has certified (on a Commission approved form) that the use of the controlled substance or prescription drug, when used as prescribed, will not adversely affect the licensee's ability to properly and safely carry out his or her responsibilities.

- 5.1.8.3 ~~At its discretion, the Commission may conduct random or episodic random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the racetrack. The Commission may conduct random or episodic alcohol or drug testing, as well as alcohol or drug testing based on reasonable suspicion.~~
- 5.1.8.3.1 ~~No notice need be given as to onset or cessation of alcohol or drug testing.~~
- 5.1.8.3.2 ~~The testing of a licensee may include a field test.~~
- 5.1.8.3.2.1 ~~For licensees whose field test results are positive under this regulation, the field test results shall be confirmed by a laboratory acceptable to the Commission, provided that the licensee may be summarily suspended for up to ten days pending the results of the laboratory confirmation test. If the laboratory test confirms the positive field test the licensee may continue to be summarily suspended pending a Commission hearing.~~
- 5.1.8.4 ~~When conducted, random drug testing shall apply equally to all licensees who are, at the time of the random testing, exercising the privileges of their license in such ways as may affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.~~
- 5.1.8.5 ~~No notice need be given as to onset or cessation of random testing.~~
- 5.1.8.6 ~~For licensees who are tested under the provisions in this chapter, and whose urine testing shows the presence of drugs (controlled substances) or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the Commission which shall include Gas Chromatography/Mass Spectrometry (GC/MS) procedures.~~
- 5.1.8.7 ~~When the sample quantity permits, each test sample may be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized to obtain an independent analysis of the urine sample.~~
- 5.1.8.8.2.2 ~~The Commission shall provide for a secure chain of custody for l the sample.~~
- 5.1.8.9 ~~Assuming that laboratory procedures confirm the field screening test results, all costs for the transportation and testing of the sample, including the costs of the independent analysis of the divided portion of the sample, shall be the financial responsibility of the licensee.~~
- 5.1.8.10 ~~Payment shall be due from the requesting person licensee immediately upon receipt of notice of the costs.~~
- 5.1.8.11 ~~A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license.~~
- 5.1.8.12 ~~If there has been a violation, as specified in 5.1.8.2 above, the following procedures will be followed:~~
- 5.1.8.12.1 ~~The Commission or Presiding Judge may, at its or his discretion,~~
- 5.1.8.3.3 ~~The testing of a licensee may also include a laboratory test without a prior field test.~~
- 5.1.8.3.3.1 ~~The specimen sample quantity collected should be adequate to be divided into portions so that one portion may be used for the initial laboratory test procedure and another portion may be utilized to obtain an independent analysis of the specimen sample.~~
- 5.1.8.3.3.2 ~~All costs for the transportation and testing of an independent analysis of the specimen sample shall be the financial responsibility of the licensee. Payment shall be due from the licensee immediately upon receipt of notice of the costs.~~
- 5.1.8.3.4 ~~The Commission shall provide for a secure chain of custody for the sample.~~
- 5.1.8.3.5 ~~The Commission shall have discretion to require alcohol or drug testing at any time for any licensee having a prior violation of Section 5.1.8.2.~~
- 5.1.8.4 ~~A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license.~~

PROPOSED REGULATIONS

- 5.1.8.5 If there has been a violation, as specified in Section 5.1.8.2, the licensee shall be subject to the following actions:
- 5.1.8.125.1 The Commission or Presiding Judge may at its or his discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the Commission or Presiding Judge may act on the information at hand any controlled substance.
- 5.1.8.125.2 Actions in the case of a first violator's violation may include revocation imposition of the license a fine of up to \$1,000 or written warning, suspension of the license for up to six months, and placing the violator on probation for up to 90 days or ordering formal assessment and treatment.
- 5.1.8.125.3 Treatment or assessment, if ordered, must meet Actions in the conditions set forth below.
- 5.1.8.12.4 The license case of a second violation, within two years of the person first violation may be revoked or suspended for a period include imposition of a fine of up to \$2,000 or written warning, suspension of the license for up to one year or a professional assessment of the person may be ordered by the Commission or Presiding Judge.
- 5.1.8.12.5 If, placing the violator on probation and ordering the licensee to enroll in and complete, at the licensee's expense, a professional assessment indicates presence of a problem of alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year recognized, appropriately licensed treatment program.
- 5.1.8.12.6 If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the Commission or Presiding Judge may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the Commission or Presiding Judge. Required features of any program or practitioner acceptable to the Commission will be:
- 5.1.8.12.6.1 Accreditation or licensure by an appropriate government agency, if required by Delaware law;
- 5.1.8.12.6.2 A minimum of one year follow-up of formal treatment; and
- 5.1.8.12.6.3 A formal contract indicating the elements of the treatment and follow-up program that will be completed by the licensee and, upon completion, certified to the Commission or Presiding Judge as completed. To effect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.
- 5.1.8.12.7 For third time violators, the violator's license may be revoked and the violator may be deemed ineligible for licensure for up to five years.
- 5.1.8.13 Although relapse (failure to maintain abstinence) is not inevitable, it is common for relapse to occur in recovery from alcoholism or other substance dependence. Therefore, a licensee who is engaged in a formal program of recovery, and is compliant with all provisions other than abstinence, will not be regarded automatically as having committed a new violation.
- 5.1.8.14 When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the Commission or Presiding Judge an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery, and an opinion as to whether a "new violation" occurred.
- 5.1.8.15 The Commission or Presiding Judge will determine whether a new violation has occurred in each instance. If a new violation has occurred, the Commission or Presiding Judge will proceed under 5.1.8.12.1 5.1.8.12.3 above or 5.1.8.12.4 5.1.8.12.6 above. Otherwise, the licensee shall continue in the agreed upon program of recovery.

- 5.1.8.5.4 Actions in the case of a third or subsequent violation, within two years of the second or most recent violation, may include imposition of a fine of up to \$5,000 or written warning, revocation of the license, suspension of the license for up to five years, placing the violator on probation and ordering the licensee to enroll in and complete, at the licensee's expense, a recognized, appropriately licensed treatment program.
- 5.1.8.5.5 The licensee shall be required to pay for any costs associated with any alcohol or drug testing following a violation of Section 5.1.8.2.
- 5.1.8.5.6 The terms of any probation shall be determined at the discretion of the Commission.
- 5.1.8.5.7 In the case of a violation of Section 5.1.8.2 involving an illegal drug, actions for any violation may include any actions provided in Section 5.1.8.5.4 otherwise applicable to third or subsequent violations.

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

[501 Harness Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 731

731 School Food Service Employees

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

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 731 School Food Service Employees. The regulation was reviewed pursuant to the five-year review cycle. The amendments were limited to formatting only.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 4, 2010 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 amendments were limited to formatting only.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments were limited to formatting only.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments were limited to formatting only.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments were limited to formatting only.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments were limited to formatting only.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments were limited to formatting only.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments were limited to formatting only.

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 amendments were limited to formatting only.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments were limited to formatting only.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments were limited to formatting only.

731 School Food Service Employees

1.0 Experience

School food service employees may be granted one (1) year's experience for each creditable year of experience in similar employment.

2.0 Determination of Employee Staffing and Formula

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

2.1.1 Of the total number of full time workers assigned to a food preparing cafeteria, a maximum of two may be paid as a cook baker. Satellite schools are eligible for state funded positions as set forth in 14 **Del.C.** §1322(c).

8 DE Reg. 1608 (5/1/05)

3.0 Salary Formula

3.1 The salaries prescribed in 14 **Del.C.** §1322(e) for general workers, cooks and bakers shall be paid by the State from funds not derived from local food service operations as determined by the formula:

3.1.1 Seven (7) hours of labor per 100 meals determined as follows:

3.1.1.1 Total number of reimbursable lunches served in the base month; plus

3.1.1.2 Total number of reimbursable breakfasts served in the base month; plus

3.1.1.3 Total of all other meals served in the base month determined by aggregating all income.

3.1.1.3.1 The number of meals prepared and served shall be based on the average reported for the month of October on the monthly reimbursement claim.

3.2 Each school district ~~will~~ shall submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.

3.3 Each school district shall submit a roster of cafeteria managers to the Department of Education showing names of managers and the salaries prescribed in 14 **Del.C.** §1322(a). Each district shall also submit a computation sheet as prescribed by the Department to determine the number of meals served according to the state formula.

3 DE Reg. 1542 (5/1/00)

8 DE Reg. 1608 (5/1/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)
14 **DE Admin. Code** 733

733 Payment of Substitutes for Teachers

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

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to reauthorize 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers with no changes. This was reviewed as part of the 5 year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 4, 2010 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? No changes were made to this regulation.

2. Will the amended regulation help ensure that all students receive an equitable education? No changes were made to this regulation.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? No changes were made to this regulation.

4. Will the amended regulation help to ensure that all students' legal rights are respected? No changes were made to this regulation.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? No changes were made to this regulation.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? No changes were made to this regulation.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? No changes were made to this 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? No changes were made to this regulation.

9. Is there a less burdensome method for addressing the purpose of the regulation? No changes were made to this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? No changes were made to this regulation.

733 Payment of Substitutes for Teachers

1.0 Payment of Substitutes for Teachers

- 1.1 State substitute teacher funds may be used to pay substitutes for State funded teachers when the state funded teachers are unavailable for duty under the provisions of 14 **Del.C.** §1318, 29 **Del.C.** §5524 and 29 **Del.C.** §5933 (for sick leave calculations for teachers qualifying for workers' compensation).
- 1.2 Substitutes for state funded teachers may also be paid from State substitute teacher funds for:

- 1.2.1 Military leave for training or duty not in excess of 15 working days per year.
- 1.2.2 Kindergarten Teachers on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for ½ day on abbreviated days when kindergarten is scheduled.
- 1.2.3 Teachers participating in Department of Education initiated committee work and project assignments.
- 1.3 Substitutes for teachers who are absent without pay may be charged to the Division I teacher salary line.
- 1.4 Substitutes for teachers who are paid from federal funds shall be paid from federal funds from the federal program involved or local funds.
- 1.5 Substitutes for teachers who are paid from local funds shall be paid from local funds.
- 1.6 Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds shall be paid on the same proportional basis.
- 1.7 Substitutes shall be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in 14 **Del.C.** §1326. School districts paying more for teacher substitutes than prescribed in 14 **Del.C.** §1326 shall do so from local or federal funds. Federal funds may be used only if the federal program permits that use.

3 DE Reg. 1542 (5/1/00)

8 DE Reg. 1609 (5/1/05)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1503

1503 Educator Mentoring

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

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1503 Educator Mentoring. This regulation requires amendments to reflect recent changes in regulation 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. In addition, amendments include allowing additional mentoring opportunities for employing authorities and clarity in the Department's responsibilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, April 30, 2010 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

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

1503 Educator Mentoring

1.0 Content

- 1.1 This regulation shall apply to mentoring activities required of ~~(1) all educators who hold an Initial License and (2) all educators who hold a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing, or Advanced License; who are new to the State of Delaware, new to an employing authority, or who move from one category of position to another (i.e., teacher to administrator),~~ pursuant to 14 **Del.C.** §~~1240(e)~~ Ch. 12.

2.0 Definitions

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

"Approved Mentoring Program" means a mentoring program approved by either the Department or the Standards Board.

"Contact Hours" means the face-to-face time a Mentor or Lead Mentor spends with his/her Protégé.

"Department" means the Delaware Department of Education.

"DPAS" means an approved State educator performance evaluation system pursuant to 14 **Del.C.** Ch. 12, Subchapter VII.

PROPOSED REGULATIONS

“Educator” means a public school employee who holds a license issued ~~person licensed and certified by the State under the provisions of 14 Del.C. Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del.C. §1203, but does not include substitute teachers 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 the purposes of this regulation, licensed and certified alternative routes and charter school teachers, and teachers or specialists who are employed on temporary contracts of including but not limited to ninety-one (91) days or longer duration shall be included under the term “educator”.

“Employing Authority” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, or management companies.

“Experienced Educator” is an educator who holds a Continuing or Advanced License, or an educator who holds held a Standard or Professional Status Certificate issued prior to August 1, 2003, and a Standard Certificate in the area assigned. An educator from another jurisdiction who has completed three (3) or more years of successful teaching may be considered an experienced educator.

“Lead Mentor” means a teacher, specialist, or administrator who holds a ~~Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing or Advanced License, who~~ has participated in the training specified approved by the Department for Lead Mentors and who is employed by an employing authority as a lead mentor and performs the duties and responsibilities assigned that position. Educators serving as lead mentors must have satisfactory DPAS evaluations, and may not be on a DPAS improvement plan.

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

“Mentor” means an educator teacher, specialist, or administrator who holds a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing or Advanced License, who and has participated in the training for mentors specified by the Department and the employing authority. Educators serving as mentors must have satisfactory DPAS evaluations, and may not be on a DPAS Improvement Plan.

“Mentoring” means activities, ~~prescribed by the Department or other employing authority in which a holder of an Initial License must engage during the three year term of the Initial License. Mentoring also means activities prescribed by the Department or other employing authority for educators who are new to Delaware or who move to another employing authority.~~ training and service in mentoring support or assistance provided through a formally organized approved mentoring program or such supplemental mentoring programs as required by regulation or by the educator's employing authority. Mentoring includes, but is not limited to the mentoring programs required for educators during their three (3) year Initial Licensure period, a Continuing Licensure period, or any other mentoring program as required by law.

“NASSP” means the National Association of Secondary School Principals.

“New to a Category” means that an educator has moved from the position of a teacher to the position of either a specialist or an administrator; has moved from the position of an administrator to the position of a teacher or a specialist; or has moved from the position of a specialist to the position of a teacher, an administrator or to a different type of certificated specialist position. Examples include but are not limited to a teacher changing positions to a school nurse, or a teacher changing positions to a principal or assistant principal, or a school nurse changing positions to a school counselor, or a teacher changing positions to a school counselor.

“New Educator” means an educator who holds an Initial License.

“Site Coordinator” means an individual appointed by an employing authority to oversee an educator mentoring program.

“Specialist” is an educator other than a teacher or administrator and includes, but is not limited to School Counselors, Library Media Specialists, School Psychologists and School Nurses.

“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.

“Successful Teaching” means the educator has demonstrated successful teaching experience by submitting documentation to the Department or employing authority of a minimum of three (3) years of teaching experience and of having received at least two (2) satisfactory evaluations from the other jurisdiction that the Department or employing authority finds are the equivalent of the two (2) satisfactory summative evaluations required of a Delaware educator.

“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance under a State credential in any PreK to 12 public school setting or as approved by the Department.

3.0 Mentoring Programs

- 3.1 The Department shall develop and approve educator mentoring programs for the following:
 - 3.1.1 All mentoring programs for teachers shall be aligned with Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
 - 3.1.2 All mentoring programs for specialists shall be aligned with applicable national specialist standards, Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
 - 3.1.3 All mentoring programs for administrators shall be based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards, aligned with Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
- 3.2 An employing authority may develop then implement a distinct educator mentoring program as specified in Sections 4, 5 or 6:
 - 3.2.1 Each mentoring program shall meet the requirements in the distinct mentoring programs as listed in Sections 4, 5 or 6.
 - 3.2.2 The employing authority shall submit each distinct mentoring program plan to the Standards Board for review and consideration of approval.
 - 3.2.3 The employing authority's mentoring program must be approved by the Standards Board a minimum of three (3) months prior to implementation.
- 3.3 Failure by an educator to successfully complete mentoring requirements:
 - 3.3.1 Failure by a new educator to successfully complete the requirements of a new educator mentoring program shall result in the denial of a Continuing License.
 - 3.3.2 Failure by an experienced teacher, specialist or administrator new to the State of Delaware, or those educators who are new to a category, to successfully complete the requirements of the appropriate approved mentoring program within the stipulated timeframe shall result in the suspension of their Continuing or Advanced License.
- 3.4 The Department shall also develop the following programs:
 - 3.4.1 A mentor training program for Lead Mentors, and
 - 3.4.2 A mentor training program for Administrative Lead Mentors

34.0 New Educator Mentoring

- 34.1 In accordance with 14 **Del.C.** §1210(c), educators who are new to the profession and who hold an Initial License shall participate in mentoring activities prescribed approved by the Department or the Standards Board. Each new educator will shall at a minimum be assigned a mentor for his or her first year in the profession on an active Initial License, with continuing support in years two and three, who,

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- 4.1.1 ~~The mentor will shall~~ assist the new educator in becoming acclimated to the role, the school or other setting, and ~~the~~ Delaware content standards ~~and, the~~ Delaware Professional Teaching Standards, applicable national specialist standards, or ~~the~~ Delaware Administrator Standards.
- 4.1.2 The new educator ~~will shall~~ meet with his or her mentor ~~for~~ at least thirty (30) documented hours, which may include a combination of in school and after school time, during the first year of employment.
- 4.1.3 The assignment of a mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the educator's performance.
- 4.1.4 The employing authority shall provide continuing support to the new educator during the second and third year of their Initial License.
- ~~34.2~~ The new educator shall:
4.2.1 ~~during the three year term of the Initial License, a~~Attend such activities as are planned by the Department ~~or employing authority during the three (3) year term of the Initial License, as part of the specified Nnew Eeducator Mmentoring Pprogram and offered in by~~ individual employing authorities, ~~and~~
- ~~3.3~~ The new educator shall participate in workshops and other activities offered for new educators as part of the New Educator Mentoring Program by the employing authority.
- ~~34.2.2~~ The new educator shall ~~e~~Complete the requirements of the appropriate Nnew Eeducator Mmentoring Pprogram, which shall consist of no more than sixty (60) hours in the first year, inclusive of meetings between the mentor and the new educator, and no more than thirty (30) hours in the second and third years.
- ~~3.4.1~~ The New Educator Mentoring Program shall be aligned with Danielson's (1996) "A Framework for Teaching" and shall include training and support in the components of the Delaware Performance Appraisal System, including descriptive, non-evaluative feedback. ~~In the first year, 18 hours of training shall be based on the Pathwise Induction Program.~~
- ~~3.5~~ Failure by a new educator to complete the requirements of the New Educator Mentoring Program shall result in the denial of a Continuing License.

45.0 Experienced Educators New to the State of Delaware

- ~~4.1~~ Experienced teachers and specialists new to the State of Delaware who hold an Initial License shall participate in mentoring activities prescribed by the Department. Each teacher or specialist shall be assigned a mentor for the first year of employment in the State. The mentor will assist the new teacher or specialist in becoming acclimated to the role, the school or other setting, and Delaware content and teacher or specialist standards. The teacher or specialist will meet with his or her mentor at least 30 documented hours, which may include a combination of in-school and after-school time, during the first year of employment. The assignment of a mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the teacher's or specialist's performance.
- ~~4.1.1~~ The teacher or specialist shall, during the three year term of the Initial License, attend such activities as are planned by the Department and offered by individual employing authorities.
- ~~4.1.2~~ The teacher or specialist shall also participate in workshops and other activities concerning employing authority specific practices offered for new teachers and specialists by the employing authority.
- ~~4.2~~ Experienced teachers and specialists educators new to the State of Delaware who hold a Continuing or Advanced License shall, within the first year of employment, participate in, and successfully complete, an Department sponsored approved mentoring program consisting of at least thirty (30) documented hours, which focuses on current best practices in curriculum, instruction and assessment aligned to state or national standards.
- ~~4.3~~ Experienced educators new to the State who are employed as school administrators shall participate in mentoring activities specified by the Department, as well as in mentoring activities required by the employing authority.

- 4.4 ~~Experienced teachers and specialists new to the State of Delaware who hold Initial Licenses shall complete the requirements of the New Educator Mentoring Program, which shall consist of no more than 60 hours, inclusive of meetings between the mentor and the experienced teachers and specialists.~~
- 4.4.1 ~~The Educator Mentoring Program shall be aligned with Danielson's (1996) "A Framework for Teaching" and shall include training and support in the components of the Delaware Performance Appraisal System, including descriptive, non-evaluative feedback. In the first year, 18 hours of training shall be based on the Pathwise Induction Program.~~
- 4.5 ~~Failure by an experienced teacher or specialist new to the State of Delaware to complete the requirements of the Educator Mentoring Program shall result in the denial of a Continuing License.~~
- 5.0 Experienced Delaware Educators New to an Employing Authority**
- 5.1 ~~Experienced Delaware educators who hold a Continuing or Advanced License, or a Standard or Professional Status Certificate issued prior to August 1, 2003, who move to a different employing authority shall, within the first year of employment, participate in, and complete, an employing authority sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.~~
- 5.2 ~~Experienced Delaware administrators moving to a new employing authority shall participate in that employing authority's designated mentoring program during the first year of employment.~~
- 6.0 Experienced Delaware Educators New to a Category of Employment [Reserved]**
- 6.1 Experienced educators who are new to a category shall within the first year of employment be assigned a mentor, and participate in and complete an approved mentoring program consisting of at least thirty (30) documented hours which focuses on current best practices in curriculum, instruction, assessment or a specialist's or an administrator's position within the district or charter school and is aligned to State and national standards.
- 6.1.1 The assignment of a mentor beyond the first year of employment is at the discretion of the employing authority, based upon a review of the teacher's, specialist's or administrator's performance.
- 7.0 Duties and Responsibilities of Mentors**
- 7.1 Lead Mentors
- 7.1.1 Lead Mentors shall work a minimum of forty-five (45) documented hours per school year in the Department specified or approved Lead Mentor activities. Lead Mentor activities may include, but are not limited to, a combination of in school and after school time per year in the program in a leadership position, planning mentor training, providing mentor training to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the site coordinator.
- 7.1.42 ~~Teacher and Specialist~~ Lead Mentors must shall: satisfactorily complete training in mentoring and coaching development approved by the Department for Lead Mentors. A minimum of one (1) Lead Mentor per district shall be trained in Danielson's (2007) "A Framework for Teaching" or the appropriate Department approved specific specialist mentoring program.
- 7.1.1.1 ~~Satisfactorily complete training in mentoring and coaching development provided by the Department for lead mentors. A minimum of one lead mentor per district shall be trained in the Pathwise Induction Program; and~~
- 7.1.1.2 ~~Work a minimum of 45 documented hours per year in Lead Mentor Activities. Lead Mentor activities may include, but are not limited to, a combination of in school and after school time, per year in the program in a leadership position, planning mentor training, providing two day mentor training to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the site coordinator.~~

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- 7.1.2 Administrative Lead Mentors ~~must shall;~~ satisfactorily complete training in mentoring and coaching development approved by the Department and based on 14 DE Admin. Code 1590 Delaware Administrator Standards and aligned with Danielson's (2007) "A Framework for Teaching".
- 7.1.2.1 ~~Satisfactorily complete training in mentoring and coaching development provided by the NASSP Leadership Development and Assessment Program.~~
- 7.1.2.2 ~~Satisfactorily complete training in the mentoring and coaching facilitator development provided by the NASSP Leadership Development and Assessment Program or Assessor Training for the Developmental Assessment Center provided by the NASSP Leadership Development and Assessment Program;~~
- 7.1.2.3 ~~Work a minimum of 45 documented hours per year in Administrative Lead Mentor activities. Administrative Lead Mentor activities may include, but are not limited to, a combination of in school and after school time, in the program in a leadership position, planning mentor training, providing two day mentor training as prescribed by NASSP to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the site coordinator; and~~
- 7.1.2.4 ~~Serve on the administrative mentoring program advisory committee.~~
- 7.2 Educator Mentors
- 7.2.1 Facilitate thirty (30) documented contact hours, which may include a combination of in school and after school time, with their protégées annually which are designed to help the new teacher or specialist acquire additional skills and knowledge appropriate to their specific positions, and
- 7.2.2 Submit contact log documentation accounting for all mentoring activities provided during the specified time period to their coordinator by January 15 and May 15. This documentation shall be forwarded to the Department by May 30.
- 7.2.43 Teacher and Specialist mentors must shall:
- 7.2.43.1 Satisfactorily complete training in mentoring and coaching development aligned with Danielson's (2007) "A Framework for Teaching" or the appropriate Department approved specific specialist mentoring program provided by the Lead Mentors; and
- 7.2.43.2 Attend structured meetings concerning the mentoring program as directed by the district;
- 7.2.43.3 ~~Facilitate 30 documented contact hours, which may include a combination of in school and after school time, with their protégées annually which are designed to help the new teacher acquire additional skills and knowledge appropriate to their specific positions; and~~
- 7.2.43.4 ~~Submit contact log documentation to site coordinator January 15 and May 15. This documentation must be forwarded to the Department by May 30.~~
- 7.2.24 Administrative mentors ~~must shall~~:
- 7.2.24.1 Satisfactorily complete training in Mmentoring and Ccoaching Ddevelopment provided by the NASSP Leadership Development and Assessment Program; based on 14 DE Admin. Code 1590 Delaware Administrator Standards and aligned with Danielson's (2007) "A Framework for Teaching" and DPAS, and
- 7.2.24.2 ~~Attend a minimum of three (3) structured meetings with protégées; Satisfactorily complete training in DPAS, and~~
- 7.2.24.3 ~~Facilitate 30 documented contact hours annually in Administrative mentoring activities. Administrative mentoring activities may include, but are not limited to, a combination of in school and after school activities which are designed to help the new administrator link school leadership theory and on the job practice; Attend a minimum of three (3) structured meetings with protégées;~~
- 7.2.24.4 ~~Submit contact log documentation to site coordinator January 15 and May 15. This documentation must be forwarded to the Department by May 30.~~

8.0 Payment of Salary Supplement

Mentors and lead mentors who are paid in accordance with the provisions of 14 **Del.C.** §1305 shall be paid an extra responsibility salary supplement annually, upon documentation of satisfactory fulfillment of duties and responsibilities, in accordance with the schedule adopted annually by the Standards Board, with concurrence of the State Board.

8 DE Reg. 347 (8/1/04)

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** 1511

1511 Issuance and Renewal of Continuing License**Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)****A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. This regulation requires a minor amendment to clarify requirements for educators with expired Continuing Licenses.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, April 30, 2010 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1511 Issuance and Renewal of Continuing License

1.0 Content

This regulation shall apply to the issuance and renewal of a Continuing License for educators, pursuant to 14 **Del.C.** §1211 and §1213.

6 DE Reg. 518 (10/1/02)

2.0 Definitions

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

(Break in Continuity Within Section)

"Approved Mentoring Program" means a mentoring program approved by either the Department or the Standards Board.

(Break in Continuity Within Section)

"Teaching Experience" means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance under a State credential in any PreK to 12 public school setting or as approved by the Department.

6 DE Reg. 518 (10/1/02)

7 DE Reg. 197 (8/1/03)

10 DE Reg. 97 (7/1/06)

13 DE Reg. 1084 (02/01/10)

3.0 Issuance of the Original Continuing License

(Break in Continuity Within Section)

3.5 Applicants from Another Jurisdiction

3.5.1 The Department shall issue a Continuing License to a qualified applicant currently licensed as an educator in another jurisdiction who provides evidence of having completed three (3) or more years of successful teaching experience with the following conditions:

3.5.1.1 The educator may demonstrate three (3) years of successful teaching experience by submitting documentation to the Department or employing authority of a minimum of three (3) years of teaching experience and of having received at least two (2) satisfactory evaluations from the other jurisdiction that the Department or employing authority finds are the equivalent of the two (2) satisfactory summative evaluations required of a Delaware educator.

3.5.1.2 If the educator has been out of the profession for more than three (3) years, the educator must meet the following as a condition of maintaining the original Continuing License:

3.5.1.2.1 The educator shall, within the first year of employment, successfully complete an Department approved mentoring program which focuses on current best practices in curriculum, instruction and assessment and aligned to state and national standards.

(Break in Continuity Within Section)

4.0 Educators with Expired Delaware Licenses applying for their Original Continuing License**4.1 Delaware Certificates issued prior to July 2, 2001**

4.1.1 In accordance with 14 **Del.C.** §1215, the Department may issue an original Continuing License to qualified educator who holds a Delaware certificate issued by an education certifying board prior to July 13, 1971 or who previously held a valid Delaware Standard or Professional Status certificate that has expired

4.1.1.1 As a condition of maintaining the original Continuing License, the educator shall successfully complete the first year of ~~the Department's~~ an approved mentoring program required of educators on an Initial License within their first year of employment.

(Break in Continuity Within Section)

5.0 Renewal of a Continuing License

(Break in Continuity Within Section)

5.2 Renewal of Expired Delaware Continuing License

5.2.1 The Department may issue a Continuing License to a qualified educator who previously held a Delaware Continuing License that expired not more than five years before the renewal application, with the following conditions:

5.2.1.1 Prior to renewal of the License, the educator shall provide to the Department evidence of successfully completing ninety (90) clock hours of professional development during the five (5) years preceding application, pursuant to Section 7.

5.2.1.2 If the educator has been out of the profession for less than three (3) years since the expiration of the Continuing License, the educator shall, within the first year of employment, successfully complete an approved mentoring program which focuses on current best practices in curriculum, instruction and assessment and aligned to state and national standards.

5.2.1.2.1 Failure to successfully complete the approved mentoring program shall result in the suspension of the License.

5.2.1.43 If the educator has been out of the profession for more than three (3) years since the expiration of the Continuing License, the educator shall, within the first year of

employment, successfully complete a ~~Department approved mentoring program which focuses on current best practices in curriculum, instruction and assessment and aligned to state and national standards~~ the first year of an approved mentoring program required of educators on an Initial License.

- 5.2.1.3.1 Failure to successfully complete the approved mentoring program shall result in the suspension of the License.
- 5.2.1.2 ~~Prior to renewal of the License, the educator shall provide to the Department evidence of successfully completing ninety (90) clock hours of professional development during the last five (5) years, pursuant to Section 7.~~
- 5.2.1.34 A Continuing License is valid for five (5) years unless extended pursuant to 14 **Del.C.** §1216 or revoked or suspended for cause, as defined in 14 **Del.C.** §1218 or suspended for failure to meet the other conditions of maintaining a License.

(Break in Continuity Within Section)

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

[1511 Issuance and Renewal of Continuing License](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1582

1582 School Nurse

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

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1582 School Nurse. This regulation requires some formatting changes to conform to other Standard Certificates, and the updating of certification requirements. This regulation sets forth the requirements for a School Nurse.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, April 30, 2010 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1582 School Nurse

1.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate for School Nurses, pursuant to 14 **Del.C.** §1220(a).~~

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for School Nurse. This certification is required for grades preK to 12.

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

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 a public school employee who holds a license issued under the provisions of 14 **Del.C.** c.12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers. For the purposes of this regulation, school nurses are considered educators.~~

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

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

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

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

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

3.0 Standard Certificate

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

- ~~3.1 Bachelor's degree in Nursing or School Nursing from an accredited college or university; and,~~
- ~~3.2 Current RN license, recognized by the DE Board of Nursing; and,~~
- ~~3.3 A minimum of three years clinical nursing experience; and~~
- ~~3.4 Valid and current certification in CPR.~~

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

- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
- 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505, Standard Certificate including any subsequent amendment or revision thereto; and
- 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Induction Requirements

- ~~4.1 Pursuant to 14 Del.C. §1510, 4.2 and 14 Del.C. §1511, 3.0, during the term of the Initial License as an educator, a school nurse must complete 90 clock hours of training consisting of school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children. Failure to meet this requirement will result in the denial of a Continuing License. (See 14 Del.C. §1511, 3.0).~~

4.0 Additional Requirements

- 4.1. An educator must also have met the following additional education and licensure requirements:
 - 4.1.1 Holds a Bachelor's degree in Nursing (BSN) from a regionally accredited college or university; and,
 - 4.1.2 Holds and maintains a current Registered Nurse license, recognized by the Delaware Board of Nursing; and,
 - 4.1.3 Holds and maintains a valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED); and,
 - 4.1.4 Completes within eighteen (18) months of hire, ninety (90) clock hours of training consisting of school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children.
- 4.2 An educator must also have met the following experience requirement:
 - 4.2.1 Has completed a minimum of three (3) years of supervised clinical nursing experience.

5.0 Revocation

- 5.1 ~~A Standard Certificate, or a Limited Standard, Standard or Professional Status Certificate as a School Nurse issued prior to August 31, 2003 may be revoked in accordance with 14 Del.C. §1514 for:~~
- ~~5.1.1 Making a materially false or misleading statement in a certificate application; or~~
 - ~~5.1.2 Revocation of a license issued under 14 Del.C. c.12; or~~
 - ~~5.1.3 Failure to maintain a current license as a registered nurse in the State of Delaware; or~~
 - ~~5.1.4 Failure to maintain valid and current certification in CPR.~~

5.0 Suspension

- 5.1 A Standard Certificate shall be suspended if the educator:
- 5.1.1 Fails to maintain a current Registered Nurse license, recognized by the Delaware Board of Nursing; or
 - 5.1.2 Fails to maintain valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED).
 - 5.1.3 Fails to complete within eighteen (18) months of hire, ninety (90) clock hours of training consisting of school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children.
- 5.2 The Standard Certificate shall be suspended until the Department receives valid documentation of the attainment of or successful completion of the requirements in Sections 4.1.2, 4.1.3, or 4.1.4.

7 DE Reg. 633 (11/1/03)

Renumbered effective 6/1/07 - see Conversion Table

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

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

PUBLIC NOTICE

Citizenship and Alienage and Deemed Newborns

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to make administrative changes to the Title XIX Medicaid and the Title XXI Delaware Healthy Children Program state plans, as well as the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage and Deemed Newborns*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2010.

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

Summary of Proposed Amendments

The purpose of this regulatory action is to amend the Title XIX and Title XXI State Plans and existing rules in the Division of Social Services Manual (DSSM) necessitated by the citizenship documentation requirements of the Deficit Reduction Action (DRA) of 2005 and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). These amendments provide for medical assistance coverage to certain immigrants who are lawfully residing in the United States and are otherwise eligible for assistance, as described under CHIPRA. This population was previously required to complete a 5-year waiting period to be eligible for federal medical assistance. Children who were otherwise eligible for Medicaid and subject to the 5-year bar formerly received medical coverage under Delaware's State-Funded Only (Medical Assistance) Program. Children who were otherwise eligible for the Delaware Healthy Children Program (DHCP) did not receive State-funded coverage.

In addition, this regulatory action proposes amendments that remove the requirements for an infant to be deemed Medicaid-eligible for 12 months because of "newborn" status, a mandatory coverage group under the Medicaid program.

Statutory Authority

- Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193, enacted on August 22, 1996
- Deficit Reduction Action (DRA) of 2005, Public Law 109-171, enacted on February 8, 2006
- Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, enacted on February 3, 2009

Background***DRA***

The Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) was signed into law on February 8, 2006. Prior to the enactment of the DRA, a signature on the application form under penalty of perjury attesting that an individual was a citizen or national of the United States was sufficient. No further documentation was required unless there was information to the contrary. In addition, there was no requirement to verify identity.

Section **6036** of the DRA of 2005 amends the Federal Medicaid statute to require that individuals declaring to be a citizen or national of the United States for purposes of qualifying for Medicaid must present satisfactory documentary evidence of citizenship or nationality and identity when initially applying for Medicaid or upon a recipient's first Medicaid redetermination. Section 6036 prohibits states from receiving federal reimbursement for medical assistance provided under Medicaid to an individual who has not provided satisfactory documentary evidence of citizenship or nationality.

CHIPRA***Citizenship***

Previously, under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P.L. 104-193), individuals who entered the United States on or after August 22, 1996, were barred from participating in any federal means-tested program for five years from their date of entry and could only receive emergency services and labor and delivery only.

In State Fiscal Year 1998, the Delaware legislature appropriated State-only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Section **214** of the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3), known as CHIPRA, now allows States the option to extend coverage to all otherwise eligible children and pregnant women who are lawfully residing in the United States (U.S.). These amendments do not extend coverage to children and pregnant women who do not have documentation of their legal entry to the U.S.

CHIPRA also requires a state to apply this requirement to both Medicaid and CHIP if they choose to adopt this option.

Deemed Newborns

On January 1, 1991, Section 4603 of the federal Omnibus Budget Reconciliation Act of 1990 required states to adopt Section 1902(e)(6) of Title XIX of the Social Security Act, which continued eligibility for pregnant women when there was a change in income of the family of which she is a member. Additionally, Section 1902(e)(4) provides automatic Medicaid eligibility to infants born to Medicaid eligible women, providing that the infant continues to live with his/her mother and that the mother remain eligible for Medicaid or would remain eligible if still pregnant.

Section 113 of CHIPRA amends the automatic enrollment for children born to women receiving pregnancy-related assistance under Title XIX, Section 1902(e)(4) of the Social Security Act as follows:

A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year...

Summary of Proposed Amendments**Old Policy - Citizenship**

Currently, certain immigrants who arrived in the United States on or after August 22, 1996 were subject to a five-year bar on receiving federal benefits, including Medicaid and the Delaware Healthy Children Program other than emergency services and labor and delivery only. At this time, Delaware provides coverage for Medicaid children using State-only funds.

New Policy - Citizenship

As a result of the option allowed under Section 214 of the CHIPRA, Delaware is electing, through these amending regulations: 1) to provide coverage to children and pregnant women who are lawfully residing in the United States; and, 2) to receive federal financial participation for services currently provided using State-only funds. Adoption of this option will result in a cost-savings since the cost will now be shared with the federal government. This policy applies to both persons in existing open cases and new applicants.

Old Policy – Deemed Newborns

Currently, deemed newborn Medicaid eligibility required that the newborn must come home from the hospital to live with the mother, remain a member of the mother's household, and that the mother remain eligible for Medicaid, or would remain eligible if still pregnant.

New Policy – Deemed Newborns

As a result of the provision mandated under Section 113 of CHIPRA, Delaware will delete the following deemed eligibility requirements: 1) the infant must be a member of the mother's household and, 2) that the mother remain Medicaid-eligible or would have remained eligible if she were still pregnant. The effect of this amendment is that an infant who was born to a woman who was Medicaid-eligible at the time of the infant's birth shall remain eligible through the month of the infant's first birthday, even if the infant is no longer living with the mother or the mother would no longer qualify for Medicaid. This change will ensure the continuous availability of medical care to infants during their first year of life.

State Plan Amendments (SPAs)

The sections of the Title XIX Medicaid State Plan that are affected by this regulatory action are Attachment 2.2-A, *Mandatory Coverage – Categorically Needy and Other Required Special Groups* and Attachment 2.6-A, *Eligibility Conditions and Requirements*.

The section of the Title XXI Delaware Healthy Children State Plan that is affected by this regulatory action is Section 4, *Eligibility Standards and Methodology*.

Division of Social Services Manual (DSSM)

The sections of the Division of Social Services Manual (DSSM) affected by this regulatory action are:

DSSM 14300 through DSSM 14420, *Citizenship and Alienage* and DSSM 18100, *Delaware Healthy Children Program*: The proposed revisions are being made to reorganize and reformat the content to align and conform to federal regulations and guidance. This includes updating, revising, clarifying, and deleting text /terminology, where necessary. DMMA is not changing existing policies or procedures, but is clarifying the content to reflect current practices.

DSSM 14350, *Ineligible Aliens*: This proposed amendment authorizes coverage under Medicaid or CHIP to certain legal immigrant pregnant women and children. CHIP does not currently provide coverage of emergency services and labor and delivery only.

DSSM 14810, *Continuously Eligible Newborn*, DSSM 14920.6, *Retroactive Eligibility for Newborns*, DSSM 16280, *Deemed Eligibility of Newborns*: The proposed revisions are being made to eliminate the requirement that a deemed newborn must come home from the hospital to live with the mother, remain in the mother's household, and that the mother remain eligible for Medicaid.

Fiscal Impact Statement

Currently, the medical services used by these groups of eligible persons are being reimbursed with State-only Funds. This proposal will allow the State to claim a federal match on all medical services reimbursed through the Delaware Medical Assistance Program for this group of lawfully admitted noncitizen children and pregnant women. Implementation of these rules will result in a projected annual savings to the General Fund of \$555,600.00.

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

[Citizenship and Alienage and Deemed Newborns](#)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 79, §7903
(16 Del.C., Ch. 79, §7903)

PUBLIC NOTICE**4455 Delaware Regulations Governing a Detailed Plumbing Code**

The Department of Health and Social Services is proposing regulations which amend Title 16 of the Delaware Code relating to the adoption and enforcement of a Unified Plumbing Code. This legislation makes the plumbing code uniform for all three counties and requires the Department of Health and Social Services, Division of Public Health to adopt and enforce the most recent version of the International Plumbing Code (IPC) within one year of its issuance. 77 Del. Laws, c. 200, §1 requires that the Department pass regulations to enforce compliance according to the provisions of 16 Del.C., Ch. 79 relating to Health and Safety, Building and Plumbing, Basic Plumbing Principles. On April 1, 2010, the Division plans to publish as proposed the Regulations Governing a Detailed Plumbing Code and hold them out for public comment per Delaware law. Due to the extensive number of

amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

Notice of Public Hearing

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Regulations Governing a Detailed Plumbing Code. Delaware law requires the Division of Public Health to adopt and enforce the most recent version of the International Plumbing Code (IPC) within one calendar year of its issuance, in conformity with the basic plumbing principles provided in Title 16 of the Delaware Code. Additionally, the Division of Public Health may adopt and enforce additional plumbing regulations which shall not be in conflict with the IPC and the basic plumbing principles set forth in this Chapter. The IPC is issued every 3 years.

The public hearing will be held on April 22, 2010 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the April 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by April 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 30, 2010 to:

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

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

[4455 Delaware Regulations Governing a Detailed Plumbing Code](#)

DIVISION OF SOCIAL SERVICES

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

9059 Income Exclusions

PUBLIC NOTICE

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 policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program regarding *Income Exclusions*.

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 Friday, April 30, 2010.

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

Summary of Proposed Changes

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income Exclusions*.

Statutory Authority

- Food, Conservation, and Energy Act of 2008 (Public Law 110-246)
- Food and Nutrition Act of 2008, Section 5(d)(18)
- 7 CFR §273.9(c), *Income exclusions*

Background

Food and Nutrition Act of 2008 as amended through Public Law No. 110-246, commonly referred to as the *2008 Farm Bill* reauthorizes and amends the original Food Stamp Act of 1977.

Income Exclusions for Combat-Related Military Pay

The Act at Section 4101 of the Food and Nutrition Act of 2008 makes statutory the income exclusion for combat-related military pay.

Child Support Payments

The Food and Nutrition Act of 2008 at Section 5(d) gives the State agency an option regarding the treatment of child support payments.

Filipino Veterans Equity Compensation Fund (FVECF) Payments

Section 1002 of the American Recovery and Reinvestment Act of 2009 (ARRA) established the Filipino Veterans Equity Compensation Fund (FVECF) to issue one-time payments to eligible Filipino veterans and the spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II. The compensation fund offers one-time payments of up to \$15,000 to eligible persons.

Summary of Proposed Changes

DSSM 9059: *Income Exclusions*: The purpose and effect of the proposed changes is: 1) to add new federal laws exempting certain income; and, 2) to change a state-option regarding the treatment of child support payments. Food and Nutrition Service (FNS) now exempts combat pay and payments from the Filipino Veterans Equity Compensation Fund as income in the Food Supplement Program (FSP). The Division of Social Services (DSS) has elected to change the treatment of child support payments made by a FSP household member as an income exclusion instead of a deduction to allow more households to meet the gross income test. Additional changes are proposed to reformat and reorganize original text to simplify language and improve readability.

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

[**9059 Income Exclusions**](#)

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Child Care Subsidy Program

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

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 April 30, 2010.

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

Summary of Proposed Change

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Review/Determination*.

Statutory Authority

45 CFR §98.1, *Goals and purposes*

Summary of Proposed Change

DSSM 11004.11, *Review/Determination*: This manual revision implements new policy regarding child care eligibility requirements. The Division of Social Services (DSS) intends to adopt rules: 1) to extend the six month review period to a twelve month review period; and, 2) to add language referencing the return of the interim report. Child care assistance cases will remain open continuously for twelve months and a child care/food benefit case will close if the parent/caretaker fails to complete a review or return the six month interim report. These revisions promote the well-being of children by providing consistency of care. Additional changes are proposed to reformat and reorganize original text to simplify language and improve readability.

DSS PROPOSED REGULATION #10-14

REVISION:

11004.11 Review/Determination

45 CFR 98.1

~~Authorizations remain effective for the entire authorization period as long as parents/caretakers continue to meet the requirements for service (such as the parent/caretaker remains a Food Stamp Employment & Training (FS E&T) participant, keeps employment, remains income eligible, etc.). At least once every six months and just prior to the end of each authorization period, review/redetermine the circumstances of each parent/caretaker to see if child care services can continue.~~

~~It will not always be necessary to schedule parents/caretakers for a face to face interview or to repeat the application process. As long as parents/caretakers provide some proof that they remain employed, a Food Stamp~~

or TANF Employment & Training (FS E&T) participant or, remain an employed TANF recipient, and verify income or special needs and remain income eligible, they remain eligible for child care services. However, at least once per year, schedule parents/caretakers for a face to face interview.

If parents/caretakers fail to show for a recertification interview or fail to provide necessary documentation, close the Child Care case. If the parents/ caretakers provide good cause for their failure to act, and the case has not closed, continue service. If the case has closed complete the redetermination and backdate to the first day of the month the authorization would have begun.

Good cause can be anything believed to be reasonable, but generally includes things such as:

1. illness;
2. court required appearance;
3. a household emergency (fire, heating problem, family crisis, etc.);
4. lack of transportation; or
5. bad weather.

Do not allow an authorization to end or close a case without first ensuring the parents/caretakers were given timely and adequate notice.

Parents/caretakers whose child care case closes because of their failure to keep a redetermination interview or provide verification of need and income may request a fair hearing.

In the event the agency errs in not completing a redetermination before a parent/caretaker's current authorization expires (such as change of Case Manager causes no redetermination letter to go out), still do a redetermination authorization, backdated to the first day of the month the new authorization would have begun had the agency not erred.

Parents/caretakers whose child care cases close because they failed to keep a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1).

9-DE-Reg-572 (10/01/05)

All childcare applicants and recipients are continuously eligible for child care services for twelve months. This means that the applicants and recipients remain eligible for child care services unless:

- A. The child moves out of or is removed from the parent's/caretaker's home, or
- B. The child moves out of state, or
- C. The child is deceased, or
- D. The parent/caretaker does not cooperate with child support requirements

In the event of any of the above, close the child care case.

Additionally, the child care parent fee will **not** change during the authorization unless the parent/caretaker in a single parent home loses his or her job or one or both parents in a two parent home loses his or her job. (See DSSM 11004.12.1 Continuing Child Care after Loss of Need.)

Complete a review/redetermination of the circumstances of each parent/caretaker at least once every twelve months and just prior to the end of each authorization period.

Close the child care case if parents/caretakers fail to complete a review or return the six month interim report. Only child care/food benefit cases will receive an interim report. If the parents/caretakers provide good cause for their failure to complete or return the report, the case should be processed.

Good cause can be anything believed to be reasonable, but generally includes things such as:

1. illness;
2. court required appearance;
3. a household emergency (fire, heating problem, family crisis, etc.);
4. lack of transportation; or
5. bad weather.

Parents/caretakers whose child care cases close because they failed to complete a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1).

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 **Del.C.** §§314, 1111)
18 **DE Admin. Code** 505

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 505 relating to fiduciary fund requirements for insurance producers. The docket number for this proposed regulation is 1341.

The purpose of the proposed regulation 505 is to prescribe fiduciary fund requirements and exceptions for insurance producers. The text of the proposed amendment is reproduced in the April 2010 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 May 3, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

505 Fiduciary Fund Requirements for Insurance Producers

1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 **Del.C.** §§311, 1706 (e), and 2304(7). It is promulgated in accordance with 29 **Del.C.** Ch. 101.

2.0 Scope

This regulation shall apply to all producers as defined herein.

3.0 Definitions

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

"**Anti-commingling**" is when the agent is required to keep premium monies in a separate account from the agency's capital, operating or other monies.

"**Commingling**" is the act of maintaining all fiduciary funds and some or all of the agency's other funds in a single banking account.

"**Fiduciary capacity**" is the position of a person who acts on behalf of another in matters involving property or money. The term implies a position of trust and power in which confidence is placed and responsibility and good faith are required.

4.0 Consent of the Insurer Required.

No insurance producer shall sell, solicit, or negotiate a contract of insurance and fraudulently appropriate or convert to his own use or, with intent to use or fraudulently appropriate, take, or

otherwise dispose of, or withhold, appropriate, lend, invest or otherwise use or apply money or substitutes for money received by him as an insurance producer, contrary to the instructions or without the consent of the insurer.

5.0 Holding of Premium Funds

All insurance producers shall hold premium funds in a fiduciary capacity.

6.0 Immediate Remittance, Separate Bank Accounts Not Required

- 6.1 Producers who make immediate remittance of collections to their entities need not maintain separate bank accounts for these collections.
- 6.2 To constitute immediate remittance, payments to entities shall be in the same form as the collection was received from the insured, with the exception of payments by the insured made in cash or with check.
- 6.3 To constitute immediate remittance, remittance shall occur within five business days.

7.0 Mingling of Premium Funds, when permitted.

- 7.1 Insurance producers who have the express written consent of their entities to mingle premium moneys with their own funds may do so if the following exists:
- 7.2 Monies held in a fiduciary capacity are reasonably ascertainable from the books of accounts and records of the producers.
- 7.3 Amounts due entities are equal to or less than the combined accounts receivable and current bank balances.

8.0 Commingling of funds, when not permitted.

- 8.1 A producer who does not have the express consent of his entities to commingle moneys with his personal funds shall hold the premium moneys separate from other funds in accordance with the following:
- 8.2 A producer who does not make immediate remittance to his entities may not deposit premiums in office operating accounts but shall keep the moneys in a separate bank account from which disbursement may not be made other than for the payment of premiums to he entities, the return of premiums to the insured or the transfer of commissions or the withdrawal of voluntary deposits.
- 8.3 Voluntary deposits in the premium account in excess of premiums collected and unpaid to entities may be made for the purpose of maintaining a minimum balance, to guarantee the adequacy of the account or for the purpose of the payment premiums to the entities in advance of their collection. These deposits may not be withdrawn except to the extent that the remaining balance is equal to the total of net premiums collected and unpaid to entities.
- 8.4 The deposit of a premium collection in a separate bank account may not be construed as a mingling by the producer of the net premium and of the commission portion of the premium. The commission portion of the premium may be withdrawn from the separate bank account at the discretion of the producer.
- 8.5 The maintenance in a separate bank account of at least the net balance of premiums collected and unpaid to the entities by producers operating under the "account current system" shall be construed as compliance with this section and with 18 Del.C. §§1706 (e) and 2304(7), if the funds so held are readily ascertainable from the books of account and records of producers.

9.0 Operating and Premium Accounts, Requirements

When both an operating and a premium account are maintained by producers under this section for purposes of segregating premiums collected, the premium account balance shall include funds sufficient to pay premiums collected and any amount delinquent or in dispute with the entity

represented. Upon reconciliation of delinquent or disputed accounts, excess moneys remaining in the premium bank account may be withdrawn as if they had been voluntary deposits.

10.0 Deposit of Premiums Collected from Insureds

A producer may deposit premiums collected from insureds in an interest bearing account when the producer is not required to make an immediate remittance to the entity of premium moneys, if the moneys are not placed in an account upon which a penalty may be levied against the principal for early withdrawal and/or if the moneys are placed in an account insured by the United States government or instruments secured by the Unites States government.

11.0 Separability

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

12.0 Effective Date

This regulation becomes effective on June 11, 2010.

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322B (19 Del.C. §2322B)
19 DE Admin. Code 1341

1341 Workers' Compensation Regulations

1342 Health Care Practice Guidelines

PUBLIC NOTICE

The Secretary of Labor, in accordance with 19 Del.C. §§2322B, C, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System. These proposals revise sections of the Definitions; Fee Schedule Instructions and Guidelines; as well as revise the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 3, 2010, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be at the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

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

[1341 Workers' Compensation Regulations; 1342 Health Care Practice Guidelines](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT**Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)**REGISTER NOTICE:****SAN #2010-10****1. Title of the Regulations:**Adoption of a new regulation, 7 **DE Admin. Code** 1150, **Outer Continental Shelf Air Regulations****2. Brief Synopsis of the Subject, Substance and Issues:**

Section 328(a)(1) of the Clean Air Act requires the EPA to establish requirements to control air pollution from outer continental shelf ("OCS") sources in order to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of Part C of Title 1 of the Act. 40 CFR Part 55 **Outer Continental Shelf Air Regulations** establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with the stated objectives of section 328(a)(1) of the Act.

Delaware is proposing to adopt a new regulation which will incorporate by reference the provisions of 40 CFR Part 55. 40 CFR Part 55 is currently implemented and enforced by the EPA, specifically incorporates many of Delaware's existing air regulations, and makes those regulations applicable to OCS sources (i.e., generally within 25 miles of the State's seaward boundary). This adoption will enable the EPA to delegate to Delaware primary responsibility to implement and enforce these OCS requirements, as opposed to the EPA.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 60

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, April 21, 2010 beginning at 6:00 PM in the DNREC's Priscilla Building Conference Room, 156 S. State Street, Dover, DE. Interested parties may submit comments in writing to: Mark A. Prettyman, DNREC Air Quality Management Section, 156 South State Street, Dover, DE 19901.

7. Prepared By:

Mark A. Prettyman (302) 739-9402 mark.prettyman@state.de.us March 4, 2010

1150 Outer Continental Shelf Air Regulations06/11/2010**1.0 Applicability**

Upon delegation of authority by the Administrator of the EPA to the Department, this regulation shall apply to the owner or operator of any OCS source for which Delaware is the corresponding onshore area

(COA) as authorized under Section 328 of the federal Clean Air Act Amendments (42 U.S.C. 7627) and 40 CFR Part 55 (July 1, 2009 ed.).

06/11/2010

2.0 Requirements

The provisions of Part 40 CFR Part 55 (July 1, 2009 ed.) are incorporated herein as 7 **DE Admin. Code** 1149. OCS sources shall comply with all requirements of 1100 Air Quality Management Section of Title 7 of the Delaware Administrative Code to the extent that they are incorporated by EPA into 40 CFR Part 55.14.

This rule incorporates the following provisions of 40 CFR Part 55:

Outer Continental Shelf Air Regulations

<u>55.1</u>	<u>Statutory authority and scope.</u>
<u>55.2</u>	<u>Definitions.</u>
<u>55.3</u>	<u>Applicability.</u>
<u>55.4</u>	<u>Requirements to submit a notice of intent.</u>
<u>55.6</u>	<u>Permit requirements.</u>
<u>55.7</u>	<u>Exemptions.</u>
<u>55.8</u>	<u>Monitoring, reporting, inspections, and compliance.</u>
<u>55.9</u>	<u>Enforcement.</u>
<u>55.10</u>	<u>Fees.</u>
<u>55.13</u>	<u>Federal requirements that apply to OCS sources.</u>
<u>55.14</u>	<u>Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by State.</u>
<u>55.15</u>	<u>Specific designation of corresponding onshore areas.</u>
<u>Appendix A to 40 CFR Part 55</u>	<u>Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State</u>

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 1902(a)(4) (7 **Del.C.** §1902(a)(4))
7 **DE Admin. Code** 3702 & 3771

REGISTER NOTICE # 2010-12

1. Title of the Regulations:

Amendments To Shellfish Regulations

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

Oyster harvesting regulations need to be updated to clarify when oyster bags and cages are to be tagged. Additionally, a time frame for the retention of tags has been established; so that Enforcement may document the amount of oysters harvested and processed.

It is also proposed to make it illegal to have onboard a vessel used or invalid oyster tags, because some harvesters have been reusing tags to harvest more than their quota of oysters.

Onboard processing is being prohibited in order to ensure that tags remain on bags and cages until the oysters are unloaded at the dock.

"Processor" and "processing" have been defined to establish when the oyster tags may be removed, and determine the party responsible for retaining the tags for the 90 days post calendar year.

3. Possible Terms Of The Agency Action:

None

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. § 1902

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 1990, (302 739 9914). A public hearing on this proposed amendment will be held on April 29, 2010 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 P. M. April 30, 2010.

7. Prepared By:

Richard Cole, (302 739 4782), February 22, 2010

3700 Shellfish Regulations

3702 Definitions:

1.0 "2 Consecutive Years", as it appears in 7 Del.C. §1918(c) shall mean any consecutive 24 month period.

"A Person's Intent to Sell Shellfisheries to Another" shall mean a person has in his possession a quantity of that species of shellfish in excess of the quantity specified under the definition of "Commercial Shellfishing" or this same person advertises for sale, offers for sale or completes the sale of any portion of that measure of shellfish to another person.

"Commercial Shellfishing" shall mean for any person to possess those species of shellfish in excess of the following quantities unless said person has a valid receipt for all shellfish above these quantities; or as otherwise provided by law or regulation:

- Oysters - one (1) bushel per vessel
- Blue Crabs - one (1) bushel per person
- Hard Clams - five hundred (500) clams per person
- Lobsters - two (2) lobsters per person

"Commercial Measure" shall mean that unit of measurement of a species of shellfish as described herein:

- Oysters - bushels
- Blue Crabs -bushels
- Clams - actual numbers or bushels
- Lobsters - actual numbers or pounds
- Blue Mussels - bushels or pounds

"Delaware Bay" shall mean all those waters and submerged lands under the jurisdiction of the State located within an area bordered on the North by a straight line drawn between Liston Point, Delaware and Hope Creek, New Jersey and bordered on the South by a line drawn from Cape May Inlet East Jetty Light to Cape May Harbor Inlet Lighted Bell Buoy 2CM; thence to the northernmost extremity of Cape Henlopen, but not including any tributaries thereto.

"Delaware River" shall mean all those waters and submerged lands under the jurisdictions of the State located within an area to the North of a straight line connecting Liston Point, Delaware and Hope Creek, New Jersey, but not including any tributaries thereto.

"New Licensee"

- shall mean for purposes of interpreting 7 Del.C. §1918(a), any person who has never been issued a commercial crab pot license or any person who has not been issued a valid commercial crab pot license by the Department before May 1, 1994 and annually thereafter when applying for the renewal of such license.
- shall mean for purposes of interpreting 7 Del.C. §1918(b), any person who has never been issued a commercial crab dredger's license or any person who has not been issued a valid crab dredger's license by the Department before May 1, 1994 and then annually thereafter when applying for the renewal of such license."

"Processing" shall mean, with respect to shellfish or shellfisheries products: Preparing, shucking, freezing, changing into different market forms, manufacturing, preserving, packing.

"Processor" shall mean any person engaged in the purchasing, or commercial, custom, or institutional processing of shellfish products.

"Recreational Purposes" shall mean the noncommercial use of shellfish that does not include the sale, trade or barter of shellfish in quantities less than the prescribed quantities for commercial shellfishing.

3771 Oyster Harvesting Licensee Requirements

(Penalty Section 7 Del.C. §1912)

- 1.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel while harvesting oysters.
- 2.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an current Department issued oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters. The tag shall be cinched around the top of the bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and ~~returning to any port~~ remain in place while being transported for processing.
- 3.0 It shall be unlawful for any person to possess a bushel bag that is empty or partially filled with oysters so long as an oyster harvesting tag is attached to said bag.

5 DE Reg. 2140 (5/1/02)

6 DE Reg. 1356 (4/1/03)

- 4.0 It shall be unlawful for any person to possess an oyster cage that is empty of oysters so long as an oyster harvesting tag is attached to said cage. A filled or partially filled oyster cage must have the appropriate number of tags attached in the locked position to reflect the number of bushels of oysters in the cage.
- 5.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess, while on board any vessel listed on said person's oyster harvesting license, used or otherwise invalid oyster harvesting tags. A used tag shall mean any tag that has been locked or sealed and subsequently cut, broken, or made unusable.
- 6.0 Any processor receiving oysters that were harvested from the State's natural oyster beds must keep the oyster harvesting tag or tags in place until the container is broken open or emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for a period of 90 days beyond the end of the calendar year, unless otherwise directed by authorized representatives of the Department.

6.1 It shall be unlawful for any person to process oysters aboard a vessel.

6 DE Reg. 1356 (4/1/03)

11 DE Reg. 1496 (05/01/08)

PROPOSED REGULATIONS

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 103 and 104

PUBLIC NOTICE

Pursuant 28 Del.C. §1122, the Delaware Gaming Control Board has proposed revisions to its rules and regulations.

A public hearing will be held on May 6, 2010 at 1:15 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 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 amendments to Rule 3.1.1 and Rule 3.1.5 in 10 DE Admin. Code 103, which address requirements concerning members of charitable organizations. Currently, Rule 3.1.1 requires that a charitable organization designate a bona fide active member as the Member in Charge primarily responsible for each function. The proposed amendment would prohibit the Member in Charge from working for a third party vendor or performing any service during the function for a third party vendor. Rule 3.1.5 concerns the handling of funds at a function. The proposed amendment would state that any organization member handling the money at a function may not be employed by or assist a third party vendor in performing its duties.

The Board also proposes to add a new rule to 10 DE Admin. Code 104 to require that only members of the charitable organization may receive funds during a Texas Hold'Em Tournament.

103 Regulations Governing Charitable Gambling Other Than Raffles

1.0 Definitions

“Board” The Delaware Gaming Control Board.

“Charitable Gambling” Any game or scheme operated by an organization which has been in existence for two (2) years or longer in which chance is the dominant factor in determining the allocation of a prize, excluding slot machines, roulette, craps, baccarat games, or raffles as defined in the Board's Regulations for Raffles.

“Function” is a licensed event of Charitable Gambling maintained and conducted by a Sponsoring Organization for the disposal of awards of merchandise, cash, or its equivalent by means of **“Game”** as defined in this section. This includes without limitation thereto, so-called Las Vegas, Casino, or Monte Carlo Nights.

“Game” shall include without limitation card games such as draw poker, stud poker, or blackjack, devices such as big six wheels or similar devices, dice games other than craps, horse racing games, Nevada cards or pull tabs or any other activity similar to these mentioned games approved by the Board.

“Gross Receipts” means the total amount of money or other consideration received as admission fees, income from gambling and except for a bazaar, carnival, festival, or similar affair, from the sale of food and beverages from any one event.

“Instant Bingo” shall mean any game of chance played with sealed or covered cards which must be opened in some fashion by the holder, such that the cards reveal instantly whether the holder has won a prize. This game includes, but is not limited to games commonly known as “rip-offs” and “Nevada pull-tabs.”

“**Net Proceeds**” is Gross Receipts less license fee, prizes and reasonable and necessary expenses ordinarily incidental to the conduct of a function.

“**Sponsoring Organization**” Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

2 DE Reg. 1224 (01/01/99)

2.0 Licensing List Required To Be Kept: Membership List

- 2.1 Each licensed organization must maintain a list of its current membership by name, address, and a description of the type of membership in the organization which shall be kept available for inspection at all reasonable times.

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 or she 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. Neither the member-in-charge nor his or her designee may be employed by or in any way assist a third party vendor in performing its duties during the Function.

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, 1984, 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~~ Member 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). The member responsible for gross receipts shall not be employed by or perform any duties for a third party vendor during the function.~~
- 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. 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)

4.0 Limitation of Participation of Certain Persons

No person directly or indirectly connected with the manufacture, sale, lease or distribution of gaming equipment or supplies, or the premises where the function is held if the premises are not owned by a Sponsoring Organization, or the agents, servants or employees of such person, shall conduct, participate, advise or assist in the conduct of a Function or render any service to anyone conducting, participating or assisting in the conduct of a Function including preparation of any form relating thereto.

5.0 Equipment and Premises

- 5.1 Ownership of Equipment. The licensed organization shall conduct games only with equipment owned by it, borrowed from another qualified Sponsoring Organization or which a lessor undertakes to provide by the terms of a written lease. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.
- 5.2 Equipment. Equipment used in the conduct of a bazaar must be maintained in good repair and sound working condition. Equipment shall be used and operated so that each player is given an equal opportunity to win.
- 5.3 The function shall be held on premises owned or regularly leased by the applicant. If the applicant desires to hold the function at other premises, a separate written request therefor (together with supporting reasons), shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of a Function on specially leased or donated premises.

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.

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

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

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

7.0 Prohibited Acts

- 7.1 Wagering Among Participants Not Permitted. No Sponsoring organization shall permit, as part of a Function, a gambling activity which involves a wagering or other items of value by one participant directly against another participant, if the activity does not provide for some portion of the proceeds to go to the Sponsoring Organization. This rule shall not be construed to prohibit games wholly administered by the Sponsoring organization wherein the licensee collects wagers from among the participants and determines the winners and amount of prizes on a parimutuel basis.
- 7.2 Credit and Checks. No Sponsoring Organization may extend credit to any patron at a Function. No checks may be cashed for more than \$20 or received by the Sponsoring organization except for the receipt of checks in the exact amount for any admission charge.
- 7.3 Persons Under Age Eighteen. No person under eighteen years of age shall be permitted on that portion of the premises used for a Function.
- 7.4 Transaction of Certain Business Prohibited. No person who is directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies or his agents, servants or employees may be present during a Function for the transaction of business.
- 7.5 Workers Prohibited From Participating. Workers are prohibited from participating in games at any Function during which they participate as workers except that they may participate during their breaks if they continue to display their identification, except that if a Function is scheduled for more than one day, a worker may participate in games on any day on which he does not participate as a worker.

8.0 Limitation of Functions

- 8.1 No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to 1:30 p.m. The operation of a Function shall be limited to six (6) consecutive hours except as permitted by **§3.08(2)**. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time or time.
- 8.2 When a Function is conducted in conjunction with a bazaar, carnival, festival or similar affair scheduled for more than one day but less than ten consecutive days, the Function shall be considered one licensed event. The games may be operated during the hours when other activities of the bazaar, carnival, festival or similar affair are available to the public.

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

9.0 Record Keeping

- 9.1 Record Keeping. Accurate records and books shall be kept by each Sponsoring Organization including but not limited to detailed financial reports of the amount and source of proceeds, the members participating in the promotion and/or operation of the Function, all expenses and disbursements.
- 9.2 Access to Records. Board personnel shall at all times have access to all books and records of any Sponsoring organization required by subsection (a).
- 9.3 Period for Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of events by the Sponsoring Organization shall be retained and available for

inspection by Board personnel for a period of two years from the close of the calendar year to which the records apply.

- 9.4 Expenses. Each Sponsoring Organization should incur only those expenses which are reasonable and necessary for the promotion and/or operation of a Function.

10.0 Violations of Regulations

- 10.1 Failure to comply with any of the Regulations shall be deemed a violation of 28 **Del.C.** Ch. 11.

11.0 Application

- 11.1 All applications for a license to conduct a Function shall be submitted on Form BCC-3. The information supplied must include the name, address, and phone number of the Sponsoring organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.
- 11.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.
- 11.2 There shall be a license fee of \$15 for each occasion upon which the organization wishes to conduct charitable gambling under a license.
- 11.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new charitable gambling license on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.
- 11.4 The Board may issue a license only after it determines that:
- 11.4.1 The applicant is duly qualified to conduct the charitable games under the State Constitution, statutes, and rules and regulations governing charitable gaming; and
- 11.4.2 The person or persons who intend to conduct the games are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
- 11.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
- 11.4.4 No unreasonable salary, compensation or reward whatever will be paid or given to any person under whom the game is conducted.
- 11.5 No charitable gambling license shall be effective for a period of more than one year from the date it was issued.
- 11.6 No charitable gambling license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

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

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

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

12.0 Reports After the Function

- 12.1 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).
- 12.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 12.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing licensee shall be suspended until such time as the deficiency has been corrected.

2 DE Reg. 1224 (1/1/99)
11 DE Reg. 516 (10/01/07)
13 DE Reg. 107 (07/01/09)

13.0 Suspension and Revocation of Licenses

- 13.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 13.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 13.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.
- 13.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 13.5 Upon a finding of a violation of these rules or of the appropriate statute, a license or permit may be suspended or revoked by the Board. In addition to any other penalty imposed, the Board may declare the violator to be ineligible to apply for a license or permit for a period not to exceed thirty (30) months. Such decision may be extended to include the violator's parent organization, subsidiary organization or any organization having a common parent or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

2 DE Reg. 1224 (1/1/99)
12 DE Reg. 357 (09/01/08)

14.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

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 Only a member of the sponsoring organization may receive the funds during the tournament.

12 DE Reg. 357 (9/01/08)
13 DE Reg. 107 (07/01/09)

3.0 Re-buys

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

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

4.0 Application

- 4.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.

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

5.0 Prize Amount

No prize greater in amount or value than \$5,000 shall be offered or given in any single tournament and the aggregate amount or value of all prizes offered or given in any single tournament shall not exceed \$13,000.

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

DIVISION OF PROFESSIONAL REGULATION**1600 Commission On Adult Entertainment Establishments**

Statutory Authority: 24 Delaware Code, Section 1604 (24 **Del.C.** §1604)

24 DE Admin. Code 1600

1600 Commission on Adult Entertainment Establishments**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §1604, the Commission on Adult Entertainment Establishments has proposed revisions to its rules and regulations.

A public hearing will be held on April 25, 2010 at 2:00 p.m. in the second floor conference room 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 Commission on Adult Entertainment Establishments, 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 Commission has proposed to add a definition of "substantial portion" to the rules and regulations. This revision implements the recent amendment to the Commission's licensing law, Chapter 16 of Title 24 of the Delaware Code, with respect to adult oriented retail establishments.

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

1600 Commission on Adult Entertainment Establishments**1.0 Sanctions for Violations**

- 1.1 Pursuant to 24 **Del.C.** §1618(c), the Commission may, following a hearing, impose civil fines and/or license suspensions for violations of the following statutes:

- 1.1.1 24 **Del.C.** §1608
- 1.1.2 24 **Del.C.** §1610
- 1.1.3 24 **Del.C.** §1611
- 1.1.4 24 **Del.C.** §1617
- 1.1.5 24 **Del.C.** §1622
- 1.1.6 24 **Del.C.** §1629
- 1.2 The Commission may, in its discretion, impose fines of no less than \$250.00 and no more than \$1000.00 and/or license suspensions of no less than one (1) day and no more than sixty (60) days for each violation of the laws set forth at Rule 1.1.
- 1.3 If a penalty imposed by the Commission, pursuant to this rule, is not complied with pursuant to the terms of the Commission's Order, the Commission shall convene a hearing for the licensee to show cause why the license should not be revoked and/or additional penalties imposed.
- 1.4 Nothing in this rule shall prohibit the Commission from imposing a license revocation in lieu of or in addition to any penalty established under this rule, if license revocation is a penalty authorized by statute for the specific offense(s).

2.0 Adult Oriented Retail Establishments

The Commission has determined that as used in 24 **Del.C.** §1602(3) the term "**substantial portion**" means fifty percent (50%) or more of the (i) retail floor space open to the public; or (ii) gross receipts earned by the retail establishment.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

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

ORDER

Pursuant to 29 **Del.C.** 10108(c) and 3 **Del.C.** 10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on March 16, 2010, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed amendments in the February 1, 2010 *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed changes to amend Section 14.6 of the Commission's Rules to allow a Jockey, if unseated during the parade to the post, to re-mount in the vicinity of where the Jockey was unseated, instead of having to return to the area at which thrown. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on March 16, 2010, at the public hearing on the proposed amendments to the Commission's Rules.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on March 16, 2010, at the public hearing. No comments were received by writing. No comments were received by testimony.

2. The Commission concludes that the proposal to amend Section 14.6 of the Commission's Rules to allow a Jockey, if unseated during the parade to the post, to re-mount in the vicinity of where the Jockey was unseated, instead of having to return to the area at which thrown, should be adopted.

3. The effective date of this Order will be ten (10) days from the publication of this Final Order in the *Register of Regulations* on April 1, 2010.

IT IS SO ORDERED this 16th day of March 2010.

Bernard J. Daney, Chairman

V. Duncan Patterson, Secretary/Commissioner

Henry James Decker, Commissioner

Debbie Killeen, Commissioner

Edward Stegemeier, Commissioner

1001 Thoroughbred Racing Rules and Regulations

*Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 971 (13 DE Reg. 971). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1001 Thoroughbred Racing Rules and 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 262

REGULATORY IMPLEMENTING ORDER

262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action for minor formatting changes. 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 February 5, 2010, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action for minor formatting changes.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 262

General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action 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** 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action 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 March 18, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of March 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March 2010

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 975 (13 DE Reg. 975). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[262 General Administrative Appeal Procedures for National School Lunch Programs \(NSLP\)](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 264

REGULATORY IMPLEMENTING ORDER

264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to readopt 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA. 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 February 5, 2010, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to readopt 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA 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** 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA 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** 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA 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 March 18, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of March 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March 2010.

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 977 (13 DE Reg. 977). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA](#)

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 401

REGULATORY IMPLEMENTING ORDER

401 Major Capital Improvement Programs

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 401 Major Capital Improvement Programs to reflect current practice and for clarifications. The amendments include, but are not limited to: 1) definitions, 2) changes to align to the Planning Land Use Service (PLUS) review process, 3) clarification of processes the local school district must take in regard to interaction with other State, Local and Municipal regulatory agencies, 4) recording of capital assets, 5) clarification on the Certificate of Necessity process and transfer of funds between projects within a Certificate of Necessity, and 6) addition of playground construction requirements.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 5, 2010, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 401 Major Capital Improvement Programs in order to reflect current practice and for clarifications.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 401 Major Capital Improvement Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 401 Major Capital Improvement Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 401 Major Capital Improvement 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** 401 Major Capital Improvement Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 401 Major Capital Improvement 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 March 18, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of March 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March 2010

*Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 980 (13 DE Reg. 980). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[401 Major Capital Improvement Programs](#)

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

609 District and School Based Intervention Services

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 609 District and School Based Intervention Services. 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 regulation was first published in the November 2009 *Register of Regulations* and was republished in the February 2010 *Register of Regulations*. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 5, 2010, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Both Councils recognized that the republication reflects the addition of language regarding student population served and the membership of the school based intervention teams. Both Councils expressed concerns that section 1.0 of the regulation bars districts from providing school based intervention services to any student who is "eligible" for placement in an alternative school pursuant to 14 DE Admin. Code 611. The Department interprets section 1.0 to require districts to provide services to disruptive students who are not eligible for placement in consortia discipline alternative programs (CDAPs) while providing flexibility to districts to voluntarily provide school based services to such students. The intent is for students whose behavior disrupts the classroom setting and creates distractions to be served first in the district/school based programs prior to going to the CDAP, which is for chronic and severe infractions. Further, district/school based intervention programs are not designed for students who are ineligible for CDAP placement because of a serious violation of the criminal code (see 14 DE Admin. Code 611 §2.0). In addition, the Department declines to make parents mandatory members of the school based intervention team as districts must have the flexibility to act quickly. Parents are mandatory members of CDAP teams.

II. Findings of Facts

For the foregoing reasons, the Secretary finds that it is appropriate to amend 14 DE Admin. Code 609 District and School Based Intervention Services.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 609 District and School Based Intervention Services. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 609 District and School Based Intervention Services attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 609 District and School Based Intervention Services 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** 609 District and School Based Intervention Services amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 609 District and School Based Intervention Services 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 March 18, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of March 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March 2010

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 986 (13 DE Reg. 986). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[609 District and School Based Intervention Services](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 712

REGULATORY IMPLEMENTING ORDER**712 Employee Leave****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 712 Employee Leave for formatting purposes only. 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 February 5, 2010, in the form hereto attached as *Exhibit "A"*. There were no comments on the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 712 Employee Leave for formatting purposes only.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 712 Employee Leave. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 712 Employee Leave attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 712 Employee Leave 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** 712 Employee Leave amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 712 Employee Leave 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 March 18, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of March 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March 2010.

712 Employee Leave**1.0 Sick Leave**

1.1 Sick leave accumulated by an employee of any state agency or school district shall be transferred when said employee begins subsequent employment in a school district. If there is a break in service the transfer can only occur if the break was for less than six (6) months.

1.42 Sick leave days are made available at the start of the fiscal year, but adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.

8 DE Reg. 1479 (4/1/05)

2.0 Annual Leave

Subject to any limitation imposed by statute, accumulated annual leave shall be paid upon termination of employment. The employee may either remain on the regular payroll until such time as all annual leave is exhausted, or a lump sum payment for all unused annual leave on the employee's final paycheck. The vacated position may be filled at any time provided that the two employees do not receive compensation for the same pay period. Accumulated annual leave shall not be transferred between different employing state agencies or school districts.

3 DE Reg. 1392 (4/1/00)

8 DE Reg. 1479 (4/1/05)

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 1560

REGULATORY IMPLEMENTING ORDER

1560 Art Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1560 Art Teacher. It is necessary to amend this regulation in order to bring the format up to the current Standard Certificate style. There have been no changes in the certification requirements. This regulation sets forth the requirements for an Art Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, February 1, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

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

III. Decision to 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** 1560 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 4th day of March, 2010

Kathleen Thomas, Chair
Michael Casson
Joanne Christian
Samtra Devard
Marilyn Dollard
Karen Gordon

David Kohan
Jill Lewandowski
Wendy Murray
Gretchen Pikus
Whitney Price
Shelley Rouser

Cristy Greaves
Lori Hudson

Karen Schilling-Ross
Juanita Wilson

IT IS SO ORDERED the 18th day of March, 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March, 2010

STATE BOARD OF EDUCATION

Teri Quinn Gray, President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Dennis J. Savage
Dr. Terry M. Whittaker
Dr. James L. Wilson

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 990 (13 DE Reg. 990). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1560 Art Teacher](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 1563

REGULATORY IMPLEMENTING ORDER

1563 Music Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1563 Music Teacher. It is necessary to amend this regulation in order to bring the format up to the current Standard Certificate style. There have been no changes in the certification requirements. This regulation sets forth the requirements for a Music Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, February 1, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

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

III. Decision to 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** 1563 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 4th day of March, 2010

Kathleen Thomas, Chair

David Kohan

Michael Casson

Jill Lewandowski

Joanne Christian

Wendy Murray

Samtra Devard

Gretchen Pikus

Marilyn Dollard

Whitney Price

Karen Gordon

Shelley Rouser

Cristy Greaves

Karen Schilling-Ross

Lori Hudson

Juanita Wilson

IT IS SO ORDERED the 18th day of March, 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March, 2010

STATE BOARD OF EDUCATION

Teri Quinn Gray, President

Dennis J. Savage

Jorge L. Melendez, Vice President

Dr. Terry M. Whittaker

G. Patrick Heffernan

Dr. James L. Wilson

Barbara B. Rutt

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 994 (13 DE Reg. 994). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1563 Music Teacher](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 1564

REGULATORY IMPLEMENTING ORDER

1564 Physical Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1564 Physical Education Teacher. It is necessary to amend this regulation in order to bring the format up to the current Standard Certificate style. There have been no changes in the certification requirements. This regulation sets forth the requirements for a Physical Education Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, February 1, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

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

III. Decision to 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** 1564 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 4th day of March, 2010.

Kathleen Thomas, Chair

Michael Casson

Joanne Christian

Samtra Devard

David Kohan

Jill Lewandowski

Wendy Murray

Gretchen Pikus

Marilyn Dollard
Karen Gordon
Cristy Greaves
Lori Hudson

Whitney Price
Shelley Rouser
Karen Schilling-Ross
Juanita Wilson

IT IS SO ORDERED the 18th day of March, 2010.

DEPARTMENT OF EDUCATION

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

Approved this 18th day of March, 2010

STATE BOARD OF EDUCATION

Teri Quinn Gray, President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Dennis J. Savage
Dr. Terry M. Whittaker
Dr. James L. Wilson

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 998 (13 DE Reg. 998). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1564 Physical Education Teacher](#)

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

Statutory Authority: 11 Delaware Code, Section 8564(g) (11 **Del.C.** §8564(g))
16 **DE Admin. Code** 3101

3101 Adult Abuse Registry

ORDER

Nature of the Proceedings:

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Adult Abuse Registry. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code, Section 10114, with authority prescribed by 29 Delaware Code, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 Delaware Code Section 10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2010 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 proposal updates the regulations to accommodate the statutory amendments enacted last year and found at 11 Del.C. § 8564 which provides on-line access to the Adult Abuse Registry. Additionally, the regulation expands the existing authority to remove a person from the AAR before the expiration of their period when the person no longer poses a threat to any person receiving care to include removal when equity requires.

Statutory Authority

11 Del.C., §8564, Adult Abuse Registry Check

Background

Access to the Adult Abuse Registry was cumbersome because it required the inquiring party to secure a signed consent form and transmit the form to the Division of Long Term Care Residents Protection. That transmission was usually done by FAX, which produced thousands of printed pages each year. The vast majority of inquiries were negative, but time was spent examining the registry and communicating back with the inquiring source. There was a concern that very few inquiries came from individuals, as opposed to corporate or State employers, who appeared to be uninformed about the Registry, or about how to secure the information. The solution to all problems was to put the Registry online. The proposed regulatory changes were necessary to accommodate the statutory change.

Summary of Proposed Amendment

The proposed Amendment eliminates the parts of the regulation that became obsolete because of the statutory change. The exigent circumstance component of the statute appeared to be moot, since the online registry would be available any time. Thus Sections 2.1.2, and 2.1.3 were marked for deletion.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

First, the statute permits an employer to hire an applicant pending clearance on the Adult Abuse Registry. Because the web site for the Registry could become unavailable, the option should be retained.

Response: The point is well-taken. The language will be retained, with a modification to conform to the current on-line access. The regulation will read:

- 2.1.2 When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, and access to the on-line Adult Abuse Registry is unavailable, the employer may hire a person seeking employment on a conditional basis not to exceed 15 days pending a Registry check.
- 2.1.3 The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

Second, no notice to the applicant is required, nor is the applicant required to consent to the Registry search. The records are not public. Employers may violate the applicants' rights, particularly since there is no language in the regulation which imposes confidentiality requirements.

Response: The purpose of the statutory change enacted last year was to facilitate rapid public access to the Registry which is especially important to those in the community who need home care assistance. The statutory change necessarily included the elimination of consent and a signed statement authorizing the release of the information. An individual who applies for a position which requires an Adult Abuse Registry check implicitly

consents to the Registry review. The policy decision to put the Registry online embraces the potential for abuse by non-employers or others who do not seek the information for an employment-related purpose.

The statutory change enacted last year permitted only a limited exception to the privacy requirement. The records of the underlying investigation, and administrative appeal, if any, remain confidential. The new statute permits the Division to post the "names of those actively listed on the Adult Abuse Registry and whether the listing is due to a substantiated finding of abuse, neglect, mistreatment or financial exploitation." 11 Del.C., §8564(e). The comparison to Criminal Background Checks is not valid because the dissemination of that data continues to be restricted; it never becomes public.

Findings of Fact

The Department finds that the proposed changes set forth in the February 2010 *Register of Regulations* should be adopted, subject to the modification set forth above which is not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3101 - Adult Abuse Registry, with the modification indicated herein, is adopted and shall be final effective April 1, 2010.

Rita Landgraf, Secretary, DHSS

3101 Adult Abuse Registry

1.0 Definitions

"**Abuse**" shall have the same meaning as contained in 16 Del.C. §1131, and shall include mistreatment, neglect and financial exploitation as defined therein.

"**Child Care Facility**" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

"**Contractor**" means an entity under contract to provide services for more than 20 hours per week (aggregate) and for more than six weeks in a twelve month period for a health care service provider, and whose employees have the opportunity for direct access to persons receiving care. For purposes of these regulations, contractor does not include construction contractors.

"**Department**" means the Department of Health and Social Services.

"**Direct Access**" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

"**Division**" means the Division of Long Term Care Residents Protection.

"**Health Care Service Provider**" means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including but not limited to, hospitals, home health care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. Health Care Service Provider does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

"**Nursing Facility and Similar Facility**" means any facility required to be licensed under 16 Del.C. Ch. 11. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to 16 Del.C. §5001 or 5136.

"**Person Receiving Care**" means any person who, because of his/her physical or mental condition, requires a level of care and services suitable to his/her needs to contribute to his/her health, comfort and welfare.

"**Person Seeking Employment**" means any person applying for employment with or in a health care service provider, nursing facility or similar facility that may afford direct access to persons receiving care at such facility, or a person applying for licensure to operate a child care facility or nursing facility and similar facility. It shall also include a self-employed health caregiver who has direct access in any private home.

"**Substantiated Pending Appeal**" refers to a placement on the Registry based on an investigative finding prior to the subject exercising his/her right to appeal.

"**Substantiated Abuse**" means that, weighing the facts and circumstances, a reasonable person has concluded by a preponderance of evidence that the identified individual has committed adult abuse for the purpose of placement on the Adult Abuse Registry.

5 DE Reg. 1073 (11/1/01)

2.0 Use of Registry

- 2.1 No health care service provider, to include nursing and similar facilities, or child care facility shall hire any person seeking employment or retain any contractors without ~~requesting and receiving~~ conducting a check of the person through the on-line Adult Abuse Registry check for such person available at the Division's website. The provider shall maintain a copy of the results of the check to demonstrate compliance with this requirement.
 - ~~2.1.1 Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. Said authorization shall include the following language: "I hereby release the indicated employer to obtain from the Division of Long Term Care Residents Protection any information concerning me which may be on the Adult Abuse Registry pursuant to **11 Del.C. §8564.**"~~
 - [2.1.1 When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.]**
 - ~~2.1.2 When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.~~
 - [2.1.2 The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.]**
 - ~~2.1.3 The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.~~
- 2.2 Private individuals seeking to hire an individual to provide health care services in a private residence may ~~request the Division to determine if the potential employee is listed on the Adult Abuse Registry~~ conduct a check of the on-line Adult Abuse Registry available at the Division's website. A An individual who does not have access to the internet may submit short letter of request along with a release form signed by the prospective employee may be mailed or faxed to the Division of Long Term Care Residents Protection (DLTCRP) # 3 Mill Road, Suite 308, Wilmington, DE 19806, fax number (302) 577-6673 by mail or fax.

5 DE Reg. 1073 (11/1/01)

3.0 Investigation of Adult Abuse

- 3.1 The Division shall investigate any individual against whom an allegation of adult abuse has been made in accordance with the time frames delineated in 16 **Del.C. §1134(d)**.
- 3.2 If the investigation substantiates pending appeal that the alleged abuse occurred, the Division's Investigations Unit Chief shall enter on the Adult Abuse Registry, with a finding of "Substantiated

Pending Appeal," the individual's name, date/time of the incident, a description of same and the length of time the finding shall remain on the Registry.

- 3.3 The Division may accept preliminary investigations by a state agency or an entity contracted by a state agency. The Division will review and may revise the findings upon further investigation.
- 3.4 Upon placement of a person on the Adult Abuse Registry, the Division will notify the facility from which the complaint originated as well as the current employer, if different, and the victim that the person is on the Registry as "Substantiated Pending Appeal."

5 DE Reg. 1073 (11/1/01)

4.0 Administrative Hearings

- 4.1 An individual against whom an allegation is substantiated pending appeal shall be notified by certified mail at his/her home address, to be followed by written notice in care of his/her current employer at the discretion of the Division, that his/her name has been entered on the Adult Abuse Registry and shall be offered a right to an administrative hearing. The burden of proof in such hearing shall be on the Division. Individuals shall be informed upon completion of the investigation of the following:
 - 4.1.1 The date and time of the incident if known.
 - 4.1.2 The name and type of facility where the incident occurred.
 - 4.1.3 A brief description of the incident.
 - 4.1.4 Length of time the finding remains on the Adult Abuse Registry.
- 4.2 All requests for an administrative hearing must be received in writing, postmarked within 30 days of the date of the notice that a finding of abuse has been substantiated pending appeal. The Director or his/her designee shall dismiss untimely requests for hearing except when the individual submits evidence of good cause.
- 4.3 An individual who fails to request an administrative hearing as described above shall have his/her name and information regarding the incident changed from a finding of "Substantiated Pending Appeal" to a finding of "Substantiated Abuse" on the Adult Abuse Registry. At that time the Division shall notify the individual, the facility from which the complaint originated as well as the current employer, if different, and the victim that the individual is on the Registry with a finding of "Substantiated Abuse."
- 4.4 An individual who has entered a plea or who has been convicted by a court of law of a criminal offense based on the same conduct that resulted in placement on the Adult Abuse Registry shall have the right to an administrative hearing solely to challenge the proposed length of time of registration on the Adult Abuse Registry.
- 4.5 The hearing officer shall have the power to compel the attendance of witnesses and the production of evidence. Under no circumstance shall the hearing officer order the release of the investigative report and documents attached thereto, provided however, the hearing officer may order the release of statements of witnesses.
- 4.6 The hearing officer should receive requests for witnesses and/or the production of evidence no less than ten business days prior to the hearing date.
- 4.7 The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Division presents. Limited continuances shall be granted for good cause.
- 4.8 If, at the conclusion of the hearing, the hearing officer concludes by a preponderance of evidence, that the identified individual has committed adult abuse, for the purpose of placement on the Adult Abuse Registry, a notice of "Substantiated Abuse" shall be placed on the Adult Abuse Registry. If, at the conclusion of the hearing, the hearing officer concludes that the individual has not committed adult abuse, the finding of "Substantiated Pending Appeal" shall be removed from the Adult Abuse Registry.
- 4.9 The hearing officer shall render a written decision within thirty working days of the hearing and will notify the individual, the Division, the facility and the victim of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the Adult Abuse Registry.

- 4.10 Any person placed on the Adult Abuse Registry shall have the right to appeal the decision within thirty days of the finding. The decision of the hearing officer may be appealed on the record to Superior Court. Appeals of hearing officer decisions are governed by the Administrative Procedures Act, Title 29, Chapter 101.

5 DE Reg. 1073 (11/1/01)

7 DE Reg. 82 (7/1/03)

5.0 Length of Time on the Adult Abuse Registry

- 5.1 The length of time on the Adult Abuse Registry shall be based on the seriousness of the incident and whether there exists a pattern of adult abuse. Evidence of mitigating circumstances may be considered.
- 5.2 The names of registrants with findings of abuse, neglect or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR §483 shall be entered on the Adult Abuse Registry with a finding of substantiated abuse. There shall be a right of appeal for findings entered on the Adult Abuse Registry under this section solely to challenge the proposed length of time of registration on the Adult Abuse Registry.
- 5.3 Upon final disposition of the allegation, the Division shall notify, in writing, the victim, the facility where the incident occurred as well as the current employer of the individual, if different, of the final disposition.

5 DE Reg. 1073 (11/1/01)

6.0 Removal of a Person from the Adult Abuse Registry

- 6.1 The Department shall be authorized to remove a person from the Adult Abuse Registry before the expiration of his/her registration period when the Department deems that the person no longer poses a threat to any person receiving care in accordance with 11 **Del.C.** §8564(g) or where equity requires.
- 6.2 A person whose name has been placed on the Adult Abuse Registry shall have the right to petition the Division, in writing, for the removal of his/her name from the Registry. Said petitioner must demonstrate:
- 6.2.1 A minimum of twelve months has passed since his/her placement on the Registry.
- 6.2.2 Affirmative steps have been taken to correct behavior that led to placement on the Registry, i.e. anger management counseling, drug/alcohol treatment, sensitivity training, etc.
- 6.2.3 Demonstrated improved behavior through work references.
- 6.3 The Division will evaluate the information provided by the petitioner and respond in writing within 60 days of receipt of all information provided by the petitioner. The Division is authorized to grant or deny the removal based on the review of the information presented. If the Division denies the request, the petitioner may request a hearing to appeal the denial, or reapply for the removal after 6 months or when the petitioner can produce evidence of performance of the affirmative steps listed above.

5 DE Reg. 1073 (11/1/01)

7.0 Disclosure of Adult Abuse Registry Records

Except as otherwise provided in these regulations, the dissemination of information contained in the Adult Abuse Registry shall be limited as follows:

- 7.1 Hearing Officer Opinions shall be released upon request to the following:
- 7.1.1 The subject of the hearing.
- 7.1.2 A victim identified by name in the record or his/her legal representative.
- 7.1.3 Law enforcement officials pursuant to an official investigation.
- 7.1.4 The Long Term Care Ombudsman pursuant to a complaint from a victim identified in the record.
- 7.1.5 The Medicaid Fraud Control Unit of the Department of Justice.

- 7.1.6 The Division of Professional Regulation if a finding of substantiated abuse pertains to a licensed professional.
- 7.2 Investigative files shall be released upon request to:
- 7.2.1 Law enforcement officials pursuant to an official investigation.
- 7.2.2 The Medicaid Fraud Control Unit of the Department of Justice.
- 7.2.3 Rights protection agencies otherwise entitled under applicable federal or state law.
- 5 DE Reg. 1073 (11/1/01)**

Addendum Reporting To Nurse Aide Registry

In accordance with 42 CFR §483, the Division of Long Term Care Residents Protection will report findings of abuse to the Nurse Aide Registry under the following procedure:

1. When the Division has substantiated pending appeal a finding of abuse, neglect, mistreatment or financial exploitation against a certified nurse assistant, a determination will be made whether the substantiated findings meet the criteria required in the federal regulations or the criteria in state statute and regulations.
2. If the findings support the criteria for abuse, mistreatment or misappropriation of property in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding will result in a lifetime prohibition against employment in a federally certified facility.
3. If the findings support the criteria for neglect in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding of neglect will result in a lifetime prohibition against employment in a federally certified facility. However, the CNA will be further informed of his/ her right to petition the Division to have the report removed from the Nurse Aide Registry in accordance with §1819(g)(1)(D) of the Social Security Act.
4. The notice to the certified nurse assistant will include an explanation that the hearing described in the Adult Abuse Registry regulations will also consider the placement of the CNA on the Nurse Aide Registry. The CNA will be informed that if the evidence presented at a hearing does not warrant a finding of abuse, neglect, mistreatment or misappropriation of property under the federal regulations, the evidence will be considered to determine whether it meets the criteria for abuse, neglect, mistreatment or financial exploitation under the state Adult Abuse statute.

5 DE Reg. 1073 (11/1/01)

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1141(e) (11 **Del.C.** §1141(e))
16 **DE Admin. Code** 3105

3105 Criminal History Record Checks and Pre-employment Drug Testing for Persons Working in Nursing Homes and Other Facilities Licensed Under 16 Del.C. Ch. 11.

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding Criminal Background Checks for Nursing homes. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.**, §10114, with authority prescribed by 29 **Del.C.**, §7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Del.C.**, §10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2010 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 proposal updates the regulations to accommodate the statutory amendment enacted last year which eliminated payment by the State for Criminal Background Checks at Nursing Homes and Similar Facilities. The proposal permits the Division of Long Term Care Residents Protection to require that the entities obligated to secure such checks to submit quarterly reports so that compliance can be monitored. The entities governed by this regulation are facilities licensed by the Division of Long Term Care Residents Protection which includes "Nursing homes" which is defined as: "any facility licensed pursuant to [16 **Del.C.**, Ch.11], including but not limited to nursing facilities (commonly referred to as nursing homes), assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and rest residential facilities. Also included are temporary employment agencies which refer individuals to nursing homes.

Statutory Authority

16 **Del.C.**, Ch. 11 §§1141.

Background

The proposed regulatory change is necessary to ensure that the statutory change does not compromise compliance with the statutory obligation to secure Criminal Background Checks.

Summary of Proposed Amendment

The proposed Amendment specifically permits the Division to require quarterly reports listing new hires.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

Comment: The regulation would be improved by the addition of the following words "*which shall conform in format and content to Division standards*".

Response: *The suggestion is good, the language will be added to provide flexibility in the reporting obligation.*

Findings of Fact

The Department finds that the proposed changes set forth in the February 2010 *Register of Regulations* should be adopted, subject to the modification set forth above which is not substantive. The regulation will read:

- 10.16 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations, including but not limited to the requirement that agencies submit on a quarterly basis a list of applicants hired which shall conform in format and content to Division standards."

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3105 - Criminal History Record Checks and Drug Testing, with the modification indicated herein, is adopted and shall be final effective April 1, 2010.

Rita Landgraf, Secretary, DHSS

3105 Criminal History Record Checks and Drug Testing

(Break in Continuity of Sections)

7.0 Other criminal convictions

The following criteria are to be used in determining whether a person is suitable for employment in a nursing home:

- 7.1 Type of offense(s)
- 7.2 Frequency of offense(s)
- 7.3 Length of time since the offense(s)
- 7.4 Age at the time of the offense(s)
- 7.5 Severity of the offense(s)
- 7.6 Record since the offense(s)
- 7.7 Nature of the offense(s) in relation to the type of job assignment
- 7.8 Disposition of the offense(s).

(Break in Continuity of Sections)

10.0 Employer Responsibilities

- 10.1 Criminal history record checks and drug testing are to be completed on applicants who have been prescreened and to whom an offer of employment may be made. Payment for drug testing is the responsibility of the employer or the applicant.
- 10.2 Conditional employment cannot begin until the employer has received evidence that the applicant's State and Federal criminal history records have been requested, he/she has been fingerprinted, and he/she has requested the appropriate drug testing. Under no circumstances shall an applicant be employed on a conditional basis for more than 2 months if his/her employer has not received the test results.
- 10.3 An employer whose nursing home includes both licensed and unlicensed areas must ensure that all persons who perform services in the licensed areas comply with the law.
- 10.4 The employer shall ensure that every application for employment at a nursing home specifies that the applicant is required to provide any and all information necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire Federal criminal history record pursuant to the Federal Bureau of Investigations appropriation of Title II of Public Law 92-544. In addition, every application for employment shall contain a statement that must be signed by the applicant in which the applicant grants full release for the employer to request and obtain any such records or information contained on a criminal history record.
- 10.5 The employer shall ensure that a *criminal history record request form* has been completed and that the employer copy is maintained in its files.
- 10.6 The employer shall also maintain a signed copy of a *verification of providing fingerprints to the Delaware State Police form*.
- 10.7 When exigent circumstances exist, and an employer must fill a position in order to maintain the required level of service, the employer may hire an applicant on a conditional basis when the employer receives evidence that the applicant has actually had the appropriate drug testing, as long as the person has also provided verification of fingerprinting. All persons hired shall be informed in writing and shall acknowledge, in writing, that his/her drug test results have been requested.
- 10.8 The employer must ensure that no applicant remains employed in conditional status for more than two months without receiving the results of the mandatory drug testing. If the drug testing results are not

received within two months, the applicant must be terminated from employment, or in the case of an applicant who was conditionally promoted, the applicant can be returned to his/her prior position or removed from employment in the nursing home.

- 10.9 The employer must provide to the Department a copy of each applicant's final drug test results within 10 business days of their receipt .
- 10.10 When the employer is notified of conviction of one or more disqualifying crimes in either the State or Federal criminal history of an applicant, the employer shall terminate the applicant immediately.
- 10.11 If an employer wishes to have a criminal history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the cost for this must be borne by the employer. Payment must be made directly to the State Police. The Department will, at no cost, provide the results of the Federal Bureau of Investigation information, just as it would for an applicant who had not had such a check conducted within the previous 5 years.
- 10.12 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the cost of that fingerprinting will not be borne by the State. If billed, the Department will obtain payment from the employer specified on the *criminal history record request form*. Such employer may obtain payment from the applicant.
- 10.13 The employer will notify the Department if an applicant is separated from employment for any reason prior to completion of the criminal history check process.
- 10.14 The employer will have the responsibility for using the results of the criminal history record check and the drug testing as factors in making the determination of suitability for final employment, unless the State and/or Federal criminal history record check identifies the presence of a conviction of one or more disqualifying crimes, in which case the applicant is automatically disqualified for final employment and must be terminated.
- 10.15 The employer will notify the applicant of the findings.
- 10.16 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations, including but not limited to the requirement that facilities submit on a quarterly basis a list of applicants hired [which shall conform in format and content to Division standards].

***Please note that no additional changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1007 (13 DE Reg. 1007). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

[3105 Criminal History Record Checks and Drug Testing](#)

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1145(f) (11 **Del.C.** §1145(f))
16 **DE Admin. Code** 3110

3110 Regulations for Criminal History Record Checks and Drug Testing for Home Health Agencies

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding Criminal Background Checks for Home Health Agencies.

The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.**, §10114, with authority prescribed by 29 **Del.C.**, §7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Del.C.**, §10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2010 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 proposal updates the regulations to provide a process for oversight of Home Health Agencies to ensure that they are meeting their statutory obligation to secure Criminal Background Checks of new hires. The proposal permits the Division of Long Term Care Residents Protection to require Home Health Agencies, as defined in 16 **Del.C.**, §122(3)o, to submit quarterly reports so that compliance can be monitored.

Statutory Authority

16 **Del.C.**, Ch. 11 §§1145.

Background

The proposed regulatory change is necessary to ensure that Home Health Agencies comply with the statutory obligation to secure Criminal Background Checks.

Summary of Proposed Amendment

The proposed Amendment specifically permits the Division to require quarterly reports listing new hires.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

Comment: The regulation would be improved by the addition of the following words "*which shall conform in format and content to Division standards*".

Response: *The suggestion is good, the language will be added to provide flexibility in the reporting obligation.*

Findings of Fact

The Department finds that the proposed changes set forth in the February 2010 *Register of Regulations* should be adopted, subject to the modification set forth above which is not substantive. The regulation will read:

- 3.3.9 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations, including but not limited to the requirement that agencies submit on a quarterly basis a list of applicants hired which shall conform in format and content to Division standards."

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3.3.9 - Criminal History Checks and Drug Testing for Home Health Agencies, with the modification indicated herein, is adopted and shall be final effective April 1, 2010.

Rita Landgraf, Secretary, DHSS

3110 Criminal History Checks And Drug Testing For Home Health Agencies

1.0 Purpose

The purpose of these regulations is to ensure the safety and well-being of residents in this State who use the services of home health agencies licensed pursuant to 16 **Delaware Code**, §122(3)o, and/or self-employed healthcare givers in the resident's own home or home of residence. To this end, persons selected for employment by home health agencies shall be subject to pre-employment criminal history checks and pre-employment drug testing; persons selected for employment by private individuals may be subject to pre-employment criminal history checks and pre-employment drug testing at the discretion of the private individual selecting the person for employment.

2.0 Definitions

“Conditional Employment” pertains to the period of time during which an applicant is working while his/her employer has not received the results of (a) the state criminal history record, (b) the federal criminal history record, and (c) the results of the testing for illegal drugs. Conditional employment must end immediately if either the state or federal criminal history record contains disqualifying crime(s) as delineated in Section 3.1 of these regulations.

“Department or DHSS” means Department of Health and Social Services.

“Employer” is any person, business entity, management company, home health agency, temporary agency, or other organization that hires persons or that places persons in a private residence for the purposes of providing licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services.

“Final Employment” means employment upon the employer's receipt of the State Bureau of Identification criminal history record containing evidence of no disqualifying convictions, a report by the Department that there are no disqualifying convictions in such person's federal criminal record, and the results of the testing for illegal drugs.

“Hire” means to begin employment of an applicant, or to pay wages for the services of a person who has not worked for the employer during the preceding three-month period, or to refer a caregiver to a private residence in return for a finder or placement fee.

“Home Health Agency” is any business entity, public or private, which provides directly or through contract arrangements, to individuals in their home or private residence, either (a) two or more of the following services: licensed nursing, home health aide, physical therapy, speech pathology, occupational therapy, or social services where at least one of these services is licensed nursing or home health aide services or (b) home health aide services exclusively, provided under appropriate supervision.

“Illegal drug” for purposes of these regulations means marijuana/cannabis, cocaine, opiates including heroin, phencyclidine (PCP), amphetamines, barbiturates, benzodiazepene, methadone, methaqualone and propoxyphene.

“Promotion” means any change in job classification that results in additional responsibility and/or an increase in wages. It does not include a change in job status from part-time to full-time.

3.0 Criteria For Unsuitability For Employment

- 3.1 The following types of criminal convictions (or convictions in another jurisdiction which are comparable under Delaware law) automatically disqualify a person from providing home health services when such conviction occurred within the time periods specified:
- 3.1.1 Conviction of any act causing death as defined in 11 **Delaware Code**, Chapter 5, Subchapter II, Subpart B with no time limit;
 - 3.1.2 Conviction of any sexual offense designated as a felony in 11 **Delaware Code**, Chapter 5, Subchapter II, Subpart D with no time limit;
 - 3.1.3 Conviction of any violent felony as specified in 11 **Delaware Code**, Section 4201(c) within the last ten years;

- 3.1.4 Conviction of any felony involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 **Delaware Code**, Chapter 47 within the last ten years;
 - 3.1.5 Conviction of any felony other than those specified above within the last five years;
 - 3.1.6 Conviction of any misdemeanor involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 **Delaware Code**, Chapter 47 within the last five years;
 - 3.1.7 Conviction of any Class A misdemeanor included in 11 **Delaware Code**, Chapter 5, Subchapter II, Subpart A within the last five years;
 - 3.1.8 Conviction of any attempt to commit a crime, as defined in 11 **Delaware Code**, Section 531, with respect to any of the above listed offenses.
- 3.2 For other criminal convictions, the following criteria are to be used by the employer in determining whether a person is suitable for employment in home health care:
- 3.2.1 Type of conviction(s);
 - 3.2.2 Frequency of conviction(s);
 - 3.2.3 Length of time since conviction(s) occurred;
 - 3.2.4 Age at the time of the conviction(s);
 - 3.2.5 Record since the conviction(s);
 - 3.2.6 Relationship of conviction(s) to type of job assignment.
- 3.3 Employer Responsibilities
- 3.3.1 The employer shall ensure that a *Criminal History Record Request Form* has been completed and that the employer copy is maintained in the employer's files.
 - 3.3.2 The employer shall maintain a signed copy of the *Receipt/Verification of Providing Fingerprints Form* from the Delaware State Police.
 - 3.3.3 If an employer wishes to have a criminal history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the costs shall be borne by the employer. Payment shall be made directly to the Delaware State Police. The Department shall, at no cost, provide the results of the Federal Bureau of Investigation information to the employer in the same manner as for any other applicant.
 - 3.3.4 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the costs shall not be borne by the State. If the State is billed for such fingerprinting costs, payment shall be obtained from the employer specified on the *Criminal History Record Request Form*. Such employer may obtain payment from the applicant.
 - 3.3.5 If an applicant who has been conditionally hired is separated from employment for any reason prior to completion of the criminal history check process, the employer shall notify the Department upon such separation.
 - 3.3.6 Upon receipt of the results of the criminal history record check and the results of the testing for illegal drugs, the employer shall determine the suitability of an applicant for final employment using the criteria in Section 3.2 unless the state or federal criminal history record check has identified a conviction of one or more automatically disqualifying crimes. An applicant for final employment with a conviction of an automatically disqualifying crime shall be terminated immediately.
 - 3.3.7 The employer shall notify the applicant of the findings of the criminal history record check and the testing for illegal drugs.
 - 3.3.8 The employer may provide to the individual in need of care a statement that the applicant has satisfactorily completed the criminal history record check and the testing for illegal drugs.
 - 3.3.9 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations, including but not limited to the requirement that agencies submit on a quarterly basis a list of applicants hired [which shall conform in format and content to Division standards].
- 3.4 Applicants' Responsibilities

- 3.4.1 Applicants are responsible for completing all information accurately and completely on the *Criminal History Record Request Form* and any form provided by the employer for use in obtaining mandatory pre-employment testing for illegal drugs. Any applicant who refuses to complete one or more of these forms shall be deemed to have voluntarily withdrawn his/her application.
- 3.4.2 The applicant is responsible for having his/her fingerprints taken and for returning a *Receipt/Verification of Providing Fingerprints to the Delaware State Police Form* to the employer.
- 3.4.3 The applicant is responsible for informing any potential employer if he/she has already been fingerprinted in accordance with these regulations. The cost of additional fingerprinting, exceeding the one fingerprinting per five-year period required by these regulations, shall not be borne by the State.
- 3.4.4 The applicant is responsible for submitting to the required testing for illegal drugs and providing verification of the testing to the employer.
- 3.5 Department's Responsibilities
 - 3.5.1 When the Department has received all necessary documentation, it shall perform a review and ensure that the employer receives a copy of the applicant's state criminal history report and issue a written summary of the federal criminal history report. If conviction of a disqualifying crime is included on the state or federal criminal history report, the Department shall notify the employer immediately, prohibiting either the hire or continued conditional employment of the applicant.
 - 3.5.2 Upon notification that an employer intends to hire a person who has previously had the criminal history check conducted by the Department, the Department shall review the criminal history on file and shall review the applicant's criminal history via the Criminal Justice Information System for any subsequent criminal information. If the review reveals a disqualifying conviction subsequent to the original review, the applicant shall be disqualified from employment with the new employer and the previously listed employers shall be notified of the recent conviction and encouraged to make personnel decisions based on the new information.
- 3.6 Confidentiality
 - 3.6.1 In accordance with 11 **Delaware Code**, Section 8513(c), the Department shall receive information from the State Bureau of Identification pertaining to the identification and conviction data of any person for whom the Bureau has a record solely for the purpose of determining suitability for employment of the person whose record is received.
 - 3.6.2 The Department shall store written and electronically recorded criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.
 - 3.6.3 The Department shall not release to employers, as defined in Section 3 of these regulations, copies of actual written reports of criminal history records prepared by the Federal Bureau of Investigation.
 - 3.6.4 The following procedure shall be used to permit the review of criminal history record files by any applicant:
 - 3.6.4.1 An applicant shall submit a request in writing to the Department for the on-site review of his/her criminal history record file.
 - 3.6.4.2 An applicant shall make an appointment to review the record at the Department in the presence of a Department employee. The applicant shall present photo identification at the time of the review.
 - 3.6.4.3 Written documentation of the date and time of the review and the names of those present shall be filed in the criminal history record file of the applicant.
 - 3.6.4.4 Upon completion of such a review, the Department shall return criminal history records (written or electronic) to secure storage.
 - 3.6.5 Criminal history record information shall not be disseminated to any person(s) other than the applicant, his/her employer or subsequent employer(s) as defined in Section 3 of these regulations, or the Department.

- 3.6.6 All employers shall store criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.
- 3.6.7 Employers shall limit the use of criminal history record information to the sole purpose of determining suitability for employment.

6 DE Reg. 1208 (3/1/03)

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1145(f) (11 **Del.C.** §1145(f))
16 **DE Admin. Code** 3201

3201 Skilled and Intermediate Care Facilities

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Skilled and Intermediate Care Nursing Facilities. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code, Section 10114, with authority prescribed by 29 Delaware Code, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 Delaware Code Section 10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2010 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

There are numerous changes; principle among them is the incorporation by reference of the federal regulations governing long term care facilities because those regulations better address the quality of life and quality of care of residents. Having a parallel and not entirely duplicate system of numbering in the State regulations added no value to the regulatory process. Although there are other changes, the second key provision is the authority for the Division of Long Term Care Residents Protection to require facilities to submit incident report through an electronic system.

Statutory Authority:

16 **Del.C.** Chapter 11, Nursing Facilities and Similar Facilities

Background:

The federal regulations, which are imposed by the State in all skilled nursing facilities, are updated from time to time and are the focus of the ongoing training of Division staff and facility caregivers. Federal statutes change, and rather than making corresponding changes in State regulation, it is more efficient to incorporate the federal regulations in the State regulations so that updates are simultaneous.

Technology changes the way information can be exchanged. The regulation permits the Division to implement improvements which will improve the accuracy of incident reports, and save the Division from the burdens of data input.

Summary of Proposed Amendment

The proposed change specifically incorporates by reference 42 CFR Ch. IV, Subpart B, Section 483, Requirements for Long Term Care Facilities in the State regulations. It corrects a legal error regarding the use of AWSAM trained certified nursing assistants. It updates the requirement for tuberculin testing to conform to the U. S. Health Department Centers for Disease Control requirements. It upgrades various system requirements to conform to American National Standards Institute requirements. It allows for electronic reporting of incidents. It requires facilities not providing skilled care to or renew or revise physician's orders at least every 60 days.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and the Delaware Health Care Facilities Association offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

First, in view of the incorporation of the federal regulations by reference, there is a request for clarification as to whether there will be one report using CMS form 2567 for both state and federal deficiencies and if, so how that will impact the IDR process.

Response: There will still be a federal report, 2567, and a State report. The difference is that the State report will not contain separate numbers for the same conduct-the state report will just incorporate by reference the substance of the federal report for conduct covered by federal regulations, and add-with state reference numbers-the conduct which arises only under State regulations. The IDR process will not be affected.

Second, numerous regulations protecting residents have been deleted. For example, 6.1.1. It provides: "The nursing facility shall provide to all residents the care necessary for their comfort, safety and general well-being, and shall meet their medical, nursing, nutritional, and psychosocial needs."

Response: With regard to the deleted regulations which protect residents, incorporation of the federal regulations provides protection equal to or greater than that in the state regulation.

For example, see 42 CFR 483.25. "Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well being in accordance with the comprehensive assessment and plan of care." That language provides protection equal to or greater than the current State 6.1.1.

The same is true of each of the state regulations cited in the comments.

The benefit of incorporating the federal regulations is that it avoids confusion when conduct is a violation of both state and federal regulations, and it saves time in issuing reports.

Third, with regard to the medication reconciliation time in new 6.2.3, it is suggested that time be 7 days, instead of the proposed 5 days.

Response: Medication errors are one of the most common types of problems which affect the care of residents, particularly those returning from an acute care facility. The proposed 5 days allows an adequate amount of time for medications to be reconciled.

Fourth, with regard to laundry services at 6.6.2, many providers are operating facilities that were built many years ago and may not have a janitor's closet on each floor which is exhausted to the outside.

Response: Current building codes require that there be a janitor's closet, exhausted to the outside. For more than a decade, facilities built have been required to meet this standard. In order to avoid burdening older facilities, this regulation will be withdrawn.

Fifth, the definition of what incidents must be reported may be too broad, causing more reports to be filed than desirable.

Response: Much of the language in this section is borrowed from the interpretative guidance for 42 CFR Ch. IV Part 483.13(c) and is meant to assist facilities in determining which incidents merit reporting. However, the proposed wording is not as clear as might be desired. Thus, the wording will be modified slightly to read:

9.8.4.1 Injury from an incident of unknown source in which the initial investigation or evaluation supports the conclusion that the injury is suspicious. Circumstances which may cause an injury to be suspicious are: the extent of the injury, the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma), the number of injuries observed at one particular point in time, or the incidence of injuries over time.

Sixth: The proposed deletion of 5.4.2.7, which says: "At a minimum, in the absence of a nurse on the third shift, at least one certified nursing assistant shall be qualified to assist with self-administration of medication (AWSAM) and to provide basic first aid," weakens patient well-being which was previously weakened when facilities were permitted to operate with no registered nurse on the third shift, 5.4.2.3.

Response: AWSAM stand for assistance with self-administration of medication. The statute governing Nursing, Title 24, Chapter 19, contains the definition of "Assistance with medications" in §1902 (c). That definition covers a care provider "functioning in a setting authorized by § 1921" of Title 24. Section 1921 is the Applicability section. It does not include skilled nursing and intermediate care facility settings. Thus, a person who is AWSAM trained, is not permitted to assist with medications in a skilled nursing home and intermediate care facility setting. The existing regulation is legally incorrect.

Seventh: New Section 6.3.9 speaks to the age of a person providing care to a resident. Previously it said "resident under 16 years of age." The comment is that the change from 16 to 8 years of age is contrary to pediatric regulations.

Response. The proposed regulation has been misread. It said 16 years of age. It is corrected to read 18 years of age. There is no conflict with other regulations.

Findings of Fact

The Department finds that the proposed changes set forth in the February 2010 *Register of Regulations* should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3201 Skilled and Intermediate Care Nursing Facilities, with the withdrawal and the modification indicated herein, is adopted and shall be final effective April 1, 2010.

Rita Landgraf, Secretary, DHSS

3201 Skilled and Intermediate Care Nursing Facilities

(Break in Continuity of Sections)

6.0 Services To Residents

(Break in Continuity Within Section)

6.53 Nursing Administration

- 6.53.1 The facility's director of nursing shall:
- 6.53.1.21 Develop and/or maintain nursing policy and procedure manuals
 - 6.53.1.32 Assign duties to and supervise all levels of nursing services direct caregivers
 - 6.53.1.43 Coordinate nursing services with medical, therapy, dietary, pharmaceutical, recreational, and other ancillary services
 - 6.53.1.54 Coordinate orientation programs for new nursing services direct caregivers (including temporary staff) and in-service education, as appropriate, for such staff. Written records of the content of each in-service program and the attendance records shall be maintained for two years
 - 6.53.1.65 Participate in the selection of prospective residents by evaluating the nursing services required and the facility's ability to competently provide those required services or ensure that such an evaluation is conducted by a designated registered nurse
- 6.53.2 Treatments and medications ordered by a physician shall be administered using professionally accepted techniques in accordance with 24 **Delaware Code**, Chapter 19.
- 6.53.3 Within 14 days of admission, the facility shall make a comprehensive assessment of each resident's needs. This assessment shall include, at a minimum, the following information:
- 6.53.3.1 Identification, background and demographic information
 - 6.53.3.2 Customary routine
 - 6.53.3.3 Cognitive patterns
 - 6.53.3.4 Communication
 - 6.53.3.5 Vision
 - 6.53.3.6 Mood and behavior patterns
 - 6.53.3.7 Psychosocial well-being
 - 6.53.3.8 Physical functioning and structural problems
 - 6.53.3.9 Continence
 - 6.53.3.10 Disease diagnoses and health conditions
 - 6.53.3.11 Dental and nutritional status
 - 6.53.3.12 Skin condition
 - 6.53.3.13 Activity pursuits
 - 6.53.3.14 Medications
 - 6.53.3.15 Special treatments and procedures
 - 6.53.3.16 Discharge potential
- 6.53.4 The resident assessment shall include a screening instrument for mental illness, mental retardation, and developmental disabilities to assess if an individual has an active treatment need for one of these conditions.
- 6.53.5 Based on the physician's admission orders and the admission information for each resident, an interim individual nursing care plan shall be developed within 24 hours of admission pending the completion of a comprehensive resident assessment.
- 6.53.6 A comprehensive care plan shall be developed to address medical, nursing, nutritional and psychosocial needs within 7 days of completion of the comprehensive assessment. Care plan development shall include the interdisciplinary team that includes the attending physician, an RN/LPN and other appropriate staff as determined by the resident's needs. With the resident's consent, the resident, the resident's family or the resident's legal representative may attend care plan meetings.
- 6.53.7 The assessment and care plan for each resident shall be reviewed/revised as needed when a significant change in physical or mental condition occurs, and at least quarterly. A complete comprehensive assessment shall be conducted and a comprehensive care plan shall be developed at least yearly from the date of the last full assessment.

- 6.53.8 The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.
- 6.53.8.1 The resident's comprehensive assessment shall document the medical symptom(s) potentially requiring the use of restraints.
- 6.53.8.2 The facility shall follow a comprehensive, systematic process of evaluation and care planning to ameliorate medical and psychosocial indicators prior to restraint use.
- 6.53.8.3 The resident's care plan shall document the facility's use of interventions, such as modifying the resident's environment to increase safety, and use of assistive devices to enhance monitoring in order to avoid the use of restraints.
- 6.53.8.4 Should such interventions and assistive devices fail to provide for the resident's safety, a physician's written order permitting the use of restraints shall be required and shall specify the type of restraint ordered.
- 6.53.8.5 The facility shall be accountable for the safe and effective implementation of the physician's order permitting the use of restraints.
- 6.53.8.6 When the use of restraints has been implemented, the facility shall initiate a systematic process, on an ongoing basis, documented in the care plan, in an effort to employ the least restrictive restraint.
- 6.53.8.7 In an emergency, when the resident's unanticipated violent or aggressive behavior places him/her or others in imminent danger, restraints may be used as a last resort to protect the safety of the resident or others, and such use shall not extend beyond the immediate episode.
- 6.53.9 The facility shall ensure that each nursing and ancillary staff member providing care to a resident under 46 [1]8 years of age meets the standards as defined in regulations for nursing facilities admitting pediatric residents.
- 6.53.10 The facility shall ensure that all licensed or certified direct care staff receive CPR certification and shall ensure that at least one staff person with current CPR certification is present in the facility during all shifts.
- 6.6 Activities
- 6.6.1 ~~The nursing facility's activities program shall provide diversified individual activity plans and group activities for each resident based on the comprehensive assessment as well as an activity assessment conducted by the activity director. The activities offered shall reflect the needs, interests, abilities, preferences, limitations and age of each resident.~~
- 6.6.2 ~~Scheduled activities offered to residents shall include therapeutic, recreational, social and spiritual activities, educational opportunities, and interaction with community groups. They are designed to sustain resident function, prevent decline and increase life satisfaction. Activities shall be conducted in a manner that enhances quality of life, promotes choice, stimulation or solace where appropriate and physical, cognitive, social and emotional health.~~
- 6.6.3 ~~If a resident's comprehensive assessment indicates a need for activities to be addressed in the resident's care plan, that care plan shall identify and specify the type of interventions which will promote the resident's well-being and assist in the achievement of the established care plan goals for the resident.~~
- 6.6.4 ~~There shall be a mechanism for promoting each resident's awareness of the time and location of activities programs. Facility staff members may assist in the activities program including but not limited to transporting residents to programs.~~
- 6.74 Social Services
- 6.74.1 The facility shall identify each resident's need for social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident; and shall assist each resident to obtain all required services to meet the individual resident's needs. These social services shall include, but not be limited to:
- 6.74.1.1 Making arrangements for obtaining needed adaptive equipment, clothing and personal items

- 6.74.1.2 Making referrals and obtaining services from outside entities
 - 6.74.1.3 Assisting residents with financial and legal matters, according to facility policy
 - 6.74.1.4 Discharge planning services
 - 6.74.1.5 Assisting residents to determine how they would like to make decisions about their health care, and whether or not they would like anyone else to be involved in those decisions
 - 6.74.1.6 Meeting the needs of residents who are grieving
- 6.85 Food Service
- 6.85.1 Meals. Therapeutic diets, mechanical alterations and changes in either must be prescribed by an attending physician within 72 hours of implementation. All meals and snacks shall be served in accordance with the therapeutic diet, if prescribed.
 - ~~6.8.1.1 A minimum of three meals or the equivalent shall be served in each 24-hour period. Meals shall be served at regular times comparable to meal times in the community.~~
 - ~~6.8.1.2 The facility shall offer snacks at bedtime daily.~~
 - ~~6.8.1.3 When residents refuse a meal served, substitutes of similar nutritive value shall be offered.~~
 - ~~6.8.1.4 Menus shall meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board, National Research Council, National Academy of Sciences.~~
 - ~~6.8.1.5 Therapeutic diets, mechanical alterations and changes in either must be prescribed by an attending physician within 72 hours of implementation. All meals and snacks shall be served in accordance with the therapeutic diet, if prescribed.~~
 - ~~6.8.1.6 Nutritional supplements shall be served as prescribed by the physician.~~
- 6.85.2 Menus
- 6.85.2.1 Menus shall be planned in advance and a copy of the current week's menu shall be posted in the kitchen and in a public area. Portion sizes shall be listed on a menu in the food service area.
 - 6.85.2.2 Menus showing food actually served each day shall be kept on file for at least 3 months. When changes in the menu are necessary, substitutions of similar nutritive value shall be provided.
 - 6.85.2.3 A 3-day supply of food shall be kept on the premises at all times.
 - 6.85.2.4 A copy of a recent dietary manual shall be available for planning therapeutic menus and as a resource for staff.
- 6.85.3 Nutritional Assessment
- 6.85.3.1 The immediate nutritional needs of each resident shall be addressed upon admission.
 - 6.85.3.2 A comprehensive nutritional assessment which includes an evaluation of each resident's caloric, protein, and fluid requirements shall be completed within 14 days of admission in consultation with a dietitian.
 - 6.85.3.3 The facility shall have an ongoing evaluation and assessment program to meet the nutritional needs of all residents.
 - 6.85.3.4 The facility shall obtain and document each resident's weight at least monthly.
- 6.96 Housekeeping and Laundry Services
- 6.96.1 The facility shall employ sufficient housekeeping personnel and provide the necessary equipment to maintain a safe, clean, and orderly environment, free from offensive odors, for the interior and exterior of the facility.
- [6.6.2 At least 1 janitor's closet, exhausted to the outside, shall be provided for each floor.]**

(Break in Continuity Within Section)

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1013 (13 DE Reg. 1013). Therefore, the final regulation is

not being republished here in its entirety. A copy of the final regulation is available at:
[3201 Skilled and Intermediate Care Nursing Facilities](#)

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1119C (16 **Del.C.** §1119C)
16 **DE Admin. Code** 3225

3225 Assisted Living Facilities

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Assisted Living Facilities. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code, Section 10114, with authority prescribed by 29 Delaware Code, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 Delaware Code Section 10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

Statutory Authority:

16 **Del.C.** Chapter 11, Nursing Facilities and Similar Facilities

Background:

DLTCRP identified the need to update the Assisted Living regulations to better address the quality of care and quality of life of residents residing in such facilities.

Summary of Proposed Amendment:

The proposed amendments make various changes in the regulations. It moves requirement that a facility give an applicant notification of the reason for rejection of admission from 10.1 to 5.1. Appendix A is deleted, and a governmental list of Notifiable Diseases and Conditions is incorporated by reference. Requirements for tuberculin testing are amended to conform to the U.S. Health Department Centers for Disease Control recommendations. The requirement for semi-annual resident surveys is deleted. The Division is permitted to control the method for the filing of incident reports. Injury from an "unknown source" is more clearly defined.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and the Delaware health Care Facilities Association offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

First, the requirement that assisted living facilities must inform applicants in writing why they are denied admission should be eliminated, or limited to "when requested".

Response: This is not a new requirement. It is in the current regulation at 10.1. It was moved to 5.1 because it fits better in that section of the regulations. The suggestion that a letter be provided upon request meets the dual goals of providing specificity when desired, and avoiding unnecessary work when not desired. The section will be revised to read:

- 5.1 All written information provided by the assisted living facility including the written application process shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws. If an applicant is rejected the facility shall provide clear reasons for the rejection in writing, upon request.

Second: The semi-annual surveys required in 15.2 should be retained, or made annual.

Response: Semi-annual surveys have not been demonstrated to be an effective tool. Experience indicates that number of resident who respond is small. The facilities obligation to maintain a quality assurance program is preserved in Section 15.1 (reunumbered 15). The facility has the burden of finding the most effective method of implementing quality assurance. Section 15 reads:

The assisted living facility shall develop, implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

Third, Section 8.4 relates to securing resident medications. The comment recommends modifying the language to "lockable container or cabinet", adding exceptions for emergency medications such as epipens and inhalers, and exempting non-prescription medications. The argument is that a facility cannot be responsible for the conduct of residents.

Response: The words "or cabinet" will be added. The problem addressed with the proposed exception will be remedied by adding "or under the resident's personal control." Non-prescription medications are not exempted as they can pose health risks when accessed by others in the same way that prescribed medications do. The facility's obligation is to have a policy which it makes a good faith effort to enforce. The language will be revised to read:

- 8.4 Residents who self-administer medication shall be provided with a lockable container or cabinet. This requirement does not apply to medications which are kept in the immediate control of the individual resident, such as in a pocket or in a purse. Facility policies must require that medications be secured in a locked container or in a locked room.

Fourth, the definition of "Medication Log" is changed to delete the requirement that it list the "prescribing practitioner and phone number". The comment is that the language should be retained because there is no Assisted Living regulation which records the information.

Response; There are Assisted Living regulations which require the preservation of the information at §19.1, and 19.3. Thus, deleting the language from the definition of Medication Log merely reduces the burden of providing duplicate information.

Findings of Fact

The Department finds that the proposed changes set forth in the February 2010 *Register of Regulations* should be adopted, subject to the modifications set forth above which are not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3225 Assisted Living Facilities, with the modifications indicated herein, is adopted and shall be final effective April 1, 2010.

Rita Landgraf, Secretary, DHSS

*Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1018 (13 DE Reg. 1018). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[3225 Assisted Living Facilities](#)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 30D (16 Del.C. Ch. 30D)

4454 Tanning Facilities Regulations

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the *State of Delaware Regulations Governing Tanning Facilities*. The DHSS proceedings to adopt the regulations were initiated pursuant to 29 Del.C. Ch. 101 and authority as prescribed by 16 Del.C., Ch. 30D.

On February 1, 2010 (Volume 13, Issue 8), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 2, 2010, or be presented at a public hearing on February 23, 2010, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No oral comments were made at the public hearing and no written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

Findings of Fact

There were no public comments received and only minor non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed *State of Delaware Regulations Governing Tanning Facilities* are adopted and shall become effective April 10, 2010, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

Summary of Evidence

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Tanning Facilities were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. No oral comments were received at the February 23, 2010 public hearing and no written comments were received on the proposed regulations during the public comment period (February 1, 2010 through March 2, 2010).

Only minor grammatical corrections were made to further clarify the proposed regulations.

The public comment period was open from February 1- March 2, 2010.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

4454 Tanning Facilities Regulations

1.0 Definitions

The following words and terms, when used in this regulation, shall have the meaning set forth in 16 Del.C. § 3002D: "**Customer**", "**Department**", "**Minor**", "**Operator**", "**Person**", "**Tanning equipment or device**", "**Tanning facility**".

2.0 Requirements of a Consent Form:

2.1 The consent form to be used by a tanning facility shall include the following model language:

WHAT YOU SHOULD KNOW ABOUT TANNING:

AVOID UNNECESSARY EXPOSURE:

Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.

ULTRAVIOLET RADIATION SENSITIVITY

Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medicines or birth control pills). A person taking a prescription or over the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.

PROTECTIVE EYE WEAR

Failure to use protective eyewear may result in severe burns or long-term injury to the eye.

2.2 A model consent form that a tanning facility may use is found at Appendix A.

3.0 Records

A tanning facility shall maintain at the facility records of consent forms for all minor customers for a period of at least 3 years from the date of signature on the consent form. The tanning facility shall make records of consent forms available, upon request, for review by the Department.

4.0 Compliance and Enforcement Procedures

4.1 Administrative Penalties

Whoever violates a provision of these regulations shall be subject to an administrative penalty of \$250.00 for the first violation, \$500[.00] for the second violation and \$1,000[.00] for the third and all subsequent violations.

4.2 Right to Administrative Hearing

Upon due notice that the Department intends to assess a tanning facility an administrative penalty, as indicated in section 4.1, the facility may submit to the Department, within thirty (30) days of the date of the notice of intent, a written request for an administrative hearing.

4.3 Orders of the Department

FINAL REGULATIONS

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department, shall be fined not less than \$100.00 and not more than \$1,000.00, together with costs, unless otherwise provided by law.

5.0 Severability

In the event a particular clause or section of these regulations should be declared invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of these regulations shall remain in full force and effect.

Appendix A: Model Consent Form **TANNING FACILITY** **PARENT/GUARDIAN CONSENT FORM**

Delaware law states that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure, and the signature of the consent form is witnessed by an operator. (DE Code, Title 16, Chapter 30(D): Tanning Facilities).

WHAT YOU SHOULD KNOW ABOUT TANNING: AVOID UNNECESSARY EXPOSURE:

Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.

ULTRAVIOLET RADIATION SENSITIVITY

Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to tranquilizers, diuretics, antibiotics, high blood pressure medicines or birth control pills). A person taking a prescription or over the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.

PROTECTIVE EYE WEAR

Failure to use protective eyewear may result in severe burns or long-term injury to the eye.

CONSENT

I have read and understood the above stated facts about tanning.

I am the _____ parent or _____ legal guardian (check one) of _____
_____ a minor between the ages of 14 and not yet 18 years of age.
(Please print name of minor)

My child and I have been given adequate instruction in the operation of tanning devices.

My child and I have read and understand the contents of this form.

I give consent for my child to use the tanning devices in this facility.

Signature of parent/legal guardian _____ Date _____

Print name of parent/legal guardian _____

Signature of operator _____ Date _____

Print name of operator _____

The minor's parent or legal guardian may withdraw this consent form at any time. Unless so withdrawn, this consent form shall expire one year from the date of the signature.

DIVISION OF SOCIAL SERVICES

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

DSSM: 3034 General Assistance Time Limits; 4007.1 Standards of Need/Payment Standard - GA

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 Delaware's General Assistance 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 February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

As a reminder, the proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's General Assistance Program. The proposed change also adds new policy language to the *Technical Eligibility for Cash Assistance* section.

Statutory Authority

31 **Del.C.**, §503, *Eligibility for Assistance; Amount; Method of Payment; and,*

31 **Del.C.**, §505, *Categories of Assistance*

Summary of Proposed Changes

DSSM 3034.1, *Determining Time Limits for General Assistance Recipients* and **DSSM 4007.1**, *Standards of Need/Payment Standard – GA*: The Division of Social Services (DSS) is making several changes to General Assistance (GA) policy to ensure that the limited funds available to the program may be used to provide assistance for the duration of the State fiscal year and is distributed to the neediest recipients.

Specifically, the proposed rule changes:

- 1) Takes the GA Payment Standard and Standard of Need amounts out of the DSS policy manual.
- 2) Creates a rule requiring annual notification by Administrative Notice of the GA Standard of Need and Payment Standard. Creates a rule requiring an administrative notice at least 30 days prior to a change in the Payment Standard and Standard of Need.
- 3) Establishes policy allowing separate Payment Standards and Standards of Need for adults and children receiving GA.
- 4) Creates a 24 month time limit for adult recipients of GA after January 31, 2010.

Summary of Comments Received with Agency Response

No public comments were received by the promulgating agency.

Findings of Fact:

The Department finds that the proposed changes as set forth in the February 2010 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Determining Time Limits for General Assistance Recipients and Standard of Need/Payment Standard - GA* is adopted and shall be final effective April 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #10-15

NEW:

3034 General Assistance Time Limits

3034.1 Determining Time Limits for General Assistance Recipients:

This policy applies to General Assistance recipients who are 18 years old and older.

1. Effective to February 1, 2010 General Assistance is a time limited program for adult recipients.
2. After January 31, 2010 adults may only receive GA for up to 24 months.

Exception: GA recipients who have applied for SSI and whose SSI determination is pending may continue to receive GA past the 24 month time limit.

(Break In Continuity of Sections)

REVISION:

4007.1 Standards of Need/Payment Standard - GA

Number in Budget	Basic Personal Needs, Including Shelter and Utilities
1	\$123.00
2	166.00
3	224.00
4	263.00

5	324.00
6	371.00
7	416.00

This policy applies to all General Assistance applicants and recipients.

1. The Payment Standard is equal to the Standard of Need.
2. The Division of Social Services determines the Standard of Need.
3. The Division of Social Services may establish different Standards of Need for children and adults.
4. The Division of Social Services will issue an administrative notice detailing Standard of Need changes at least 30 days prior to an implementation of a Standard of Need change.
5. The Division of Social Services will issue an administrative notice annually detailing the current Standard of Need.

DIVISION OF SOCIAL SERVICES

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

DSSM: Food Benefit Employment & Training Program

ORDER

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest regarding the provisions of *Food Benefit E & T Program*. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

The proposed changes described below amends policies in the Division of Social Services Manual (DSSM) regarding the *Food Benefit Employment & Training Program*.

Statutory Authority

7 CFR §273.7, *Work provisions*

Summary of Proposed Changes

These revisions incorporates the most recent federal policy changes effected by the provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), enacted on February 17, 2009.

DSSM 9018.1, *Work Registration Requirements*; **DSSM 9021.1**, **9021.2**, **9021.3**, **9021.4**, *Failure to Comply*; and, **DSSM 9026**, **9026.1**, **9026.2**, **9026.3**, **9026.4**, **9026.5**, *Voluntary Quit*. Federal requirements no longer require the Food Benefit Employment and Training (E & T) program to be mandatory. DSS policy will change from mandatory participation in Food Benefit E & T activities to voluntary. The proposed amendments remove the

penalties for those participants who chose not to comply with the program but still offer services to participants who need Employment and Training services.

Summary of Comments Received With Agency Response

No public comments were received by the promulgating agency.

Findings of Fact:

The Department finds that the proposed changes as set forth in the February 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend *Food Benefit E & T Program* policies regarding *Work Registration Requirements*, *Non-Compliance with Food Stamp Work Requirements*, and *Voluntary Quit* provisions are adopted and shall be final effective April 10, 2010.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1033 (13 DE Reg. 1033). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[DSSM: Food Benefit Employment & Training Program](#)

DIVISION OF SOCIAL SERVICES

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

DSSM: 9094 Cooperation with the Division of Child Support Enforcement (DCSE)

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 Delaware's Food Supplement 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 February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Food Supplement Program.

Statutory Authority

7 CFR §271.2, *Definitions*; and,

7 CFR §273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*

Summary of Proposed Changes

DSSM 9094: *Redesignate DSSM 9094 from Cooperation with the Division of Child Support Enforcement to Definitions.* The Division of Social Services (DSS) is removing the current contents of DSSM 9094, *Cooperation with the Division of Child Support Enforcement (DCSE)* because DSS did not implement this according to our original plans and has decided not to implement this option in the Food Supplement Program. This section is not in DSSM policy, only in the Administrative Code. DSS is replacing this entire section with Definitions. The definitions compiled in DSSM 9094 are used throughout the Food Supplement Program rules found in Section 9000.

Summary of Comments Received with Agency Response

No public comments were received by the promulgating agency.

Findings of Fact:

The Department finds that the proposed changes as set forth in the February 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) to *Redesignate DSSM 9094 from Cooperation with the Division of Child Support Enforcement to Definitions* is adopted and shall be final effective April 10, 2010.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1040 (13 DE Reg. 1040). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[DSSM: 9094 Cooperation with the Division of Child Support Enforcement \(DCSE\)](#)

DIVISION OF SOCIAL SERVICES

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

DSSM: 11003.2.1, TANF and Transitional Work Program Sanctions

ORDER**Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *TANF and Transitional Work Program Sanctions*. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public

concerning the proposed regulations to be produced by March 2, 2010 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 proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *TANF and Transitional Work Program Sanctions*.

Statutory Authority

45 CFR §98.14, *Plan process*

Summary of Proposed Change

DSSM 11003.2.1, *TANF and Transitional Work Program Sanctions*: The policy on TANF Sanctions is updated to include sanctions that may be applied as a result of noncompliance with the Transitional Work Program. It also corrects policy to indicate that TANF E&T sanctions are full family sanctions which close the case.

Summary of Comments Received with Agency Response and Explanation Of Changes

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) and State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSSs) proposal to amend its TANF regulation to clarify that recipients who fail to comply with employment or training requirements lose their eligibility for TANF child care. The proposed regulation was published as 13 DE Reg. 1048 in the February 1, 2010 issue of the *Register of Regulations*.

SCPD recommends inserting "without good cause" in the second sentence between the words "fail" and "to". This would conform with the first sentence.

Agency Response: DSS agrees with your recommendation to insert "without good cause" between the words "fail" and "to" in the second sentence. DSSM 11003.2.1 has been amended to reflect the change.

Findings of Fact:

The Department finds that the proposed changes as set forth in the February 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *TANF and Transitional Work Program Sanctions* is adopted and shall be final effective April 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #10-19

REVISION:

11003.2.1 TANF and Transitional Work Program Sanctions

See Administrative Notice: [A 7-99 Child Care Issues]

Recipients who fail without good cause to meet requirements for the TANF Employment and Training or Transitional Work Program are sanctioned. ~~A sanction means that the recipient's needs are not considered in determining the family's need for assistance and the recipient loses her/his share of the TANF grant.~~

When ~~these TANF~~ recipients receive a full family sanctions, or fail **[without good cause]** to comply with the Transitional Work Program (TWP), they lose their TANF Child Care. This means their child care case will be closed. In order to ~~retain~~ regain TANF Child Care, ~~the recipients will have to~~ must cure the sanction, meaning they ~~will have to~~ must cooperate with their TANF or TWP requirements, ~~or they will have to become exempt.~~

Clients curing their TANF sanction may be eligible for child care under Presumptive Child Care Services (DSSM 11004.8).

DIVISION OF SOCIAL SERVICES

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

DSSM: 11003.7.8, Special Needs

ORDER

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Families with Transitional Work Program Needs*. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the February 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2010 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 proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Families with Transitional Work Program Needs*.

Statutory Authority

45 CFR §98.20, *A child's eligibility for child care services*

Summary of Proposed Change

DSSM 11003.7.8, Special Needs: This policy is revised to add Transitional Work Program Childcare guidelines.

Summary of Comments Received with Agency Response and Explanation Of Changes

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observation and recommendation summarized below. DSS has considered each comment and responds as follows.

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Social Services' (DSSs) proposal to revise its Child Care Subsidy Program regulation to authorize participation by families referred by the Transitional Work Program (TWP). Such families are deemed to have met the otherwise applicable "need criteria" and are not required to provide medical certification of a child's or parent's special needs. Applicants would be required to have income below 200% of the FPL. The proposed regulation was published as 13 **DE Reg.** 1049 in the February 1, 2010 issue of the *Register of Regulations*.

Since the regulation expands eligibility for child care for persons with special needs, the DDDC, the GACEC and, the SCPD endorse the proposed regulation subject to one recommendation. DSS may wish to consider inserting "gross" between the words "have" and "household" in Par. 2 of the new section. Compare 16 **DE Admin. Code** 11003.6.

Agency Response: DSS agrees with your recommendation to insert the word "gross" between the words "have" and "household" in paragraph 2 of the new section. DSSM 11003.7.8 has been amended to reflect the change.

Findings of Fact

The Department finds that the proposed changes as set forth in the February 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Families with Transitional Work Program Needs* is adopted and shall be final effective April 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #10-18 REVISION:

11003.7.8 Special Needs

45 CFR 98.20

Eligibility

Families requesting Special Needs Child Care must be technically and financially eligible.

EXCEPTION: DFS referrals do not have to meet financial criteria.

If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child under age 13 requires care that cannot be provided in a regular day care.

To be eligible for Special Needs care the parent/caretaker or child must meet the definition of need as explained below.

Children with Special Needs:

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's physical, medical or emotional condition is such that he is unable to care for himself. Children under age 13 may qualify for Special Needs Child Care if they have a need that cannot be met in a regular daycare setting. Children 13 years of age and older are only eligible for Special Needs Childcare.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

Adults with Special Needs:

A parent/caretaker may be eligible for Special Needs Child Care services if the parent has a condition which makes the parent/caretaker unable to care for his/her child.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

Families with Protective Child Care Needs

Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.

A child that is active with and referred by DFS for child care:

1. is considered to have met the need criteria;
2. does not have to meet the financial criteria;
3. may receive child care regardless of citizenship status.

Families with Transitional Work Program Needs:

Children referred by the Transitional Work Program (TWP) may be eligible for Special Needs Child Care.

A parent/caretaker that is active with and referred by TWP for child care:

1. is considered to have met the need criteria;
2. must have [gross] household income at or below 200% FPL;
3. is not required to provide a Medical Certification Form or a Special Needs Form.

DSS staff will authorize childcare for 5 days part time with extended care. Please refer to policy section 11004.9 Authorizing Service. Authorize care for additional time if the parent's/caretaker's activities with TWP require more than part time care.

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 202(a) (19 Del.C. §202(a))

1101 Apprenticeship and Training Regulations

ORDER

A public hearing was held on March 8, 2010 to receive public comments relating to proposed changes to Regulation 6.4.2 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The proposal would change the ratio of apprentices to mechanics for the insulator and asbestos worker trades from its current 1 up to 4 to 1 up to 3. In addition, the ratios for the following trades would now be recognized: Construction Laborer, Dry Wall Finisher and Hard Tile Setter will be one apprentice up to three mechanics (1 up to 3). The trades of Child Care Worker and Elevator Constructor will be one apprentice up to one mechanic (1 up to 1). The members of the Council present recommended that the Secretary of Labor adopt the proposal as it was published in the *Register of Regulations*, Vol. 13, Issue 8 (February 1, 2010).

Summary of the Evidence and Information Submitted

Exhibits Admitted:

Exhibit 1 - News Journal Affidavit of publication of notice of public hearing.

Exhibit 2 - Delaware State News Affidavit of publication of notice of public hearing.

No one addressed the Council and no written comments were received by the Council.

Recommended Findings of Fact with Respect to the Evidence and Information

The Council is persuaded that these changes are consistent with the current administration of the program.

Recommendation

The proposed changes are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 8th day of March, 2010.

COUNCIL ON APPRENTICESHIP AND TRAINING

Robert Buccini, Chairman	David G. Kitto
Dale Derrickson	John Hagelstein
R. Joseph Johnson	Thomas Shields

Decision and Effective Date

Having reviewed and considered the record and recommendations of members of the Council on Apprenticeship and Training, the proposed changes are hereby adopted (1) to Regulations Regulation 6.4.2, and (2) the ratios as set forth above for the following trades will be recognized: Construction Laborer, Dry Wall Finisher, Hard Tile Setter, Child Care Worker and Elevator Constructor and made effective 10 days following publication of the final regulation in the *Register of Regulations*.

Text and Citation

The text appears in the *Register of Regulations*, Vol. 13, Issue 8 (February 1, 2010).

DEPARTMENT OF LABOR

John J. McMahon, Jr., Secretary of Labor

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1052 (13 DE Reg. 1052). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1101 Apprenticeship and Training Regulations](#)

DIVISION OF INDUSTRIAL AFFAIRS**OFFICE OF LABOR LAW ENFORCEMENT**

Statutory Authority: 19 Delaware Code, Section 3512 (19 **Del.C.** §3512)

1326 Workplace Fraud Act Regulations**ORDER**

A public hearing was held on March 8, 2010 to receive public comments to proposed changes to the Workplace Fraud Act. The proposal regulations set forth the regulations necessary for implementation and enforcement of the Workplace Fraud Act. The Director of Industrial Affairs, the Administrator of the Office of Labor Law Enforcement and the Supervisor of the Prevailing Wage Section of the Office of Labor Law Enforcement (collectively the "Panel") present recommended that the Secretary of Labor adopt the proposed regulations as they

were published in the *Register of Regulations*, Vol. 13, Issue 8 (February 1, 2010).

Summary of the Evidence and Information Submitted

Exhibits Admitted:

Exhibit 1 - News Journal Affidavit of publication of notice of public hearing.

Exhibit 2 - Delaware State News Affidavit of publication of notice of public hearing.

No one addressed the Panel and no written comments were received by the Panel.

Recommended Findings of Fact with Respect to the Evidence and Information

The Panel is persuaded that these changes are necessary for the implementation and enforcement of the Workplace Fraud Act.

Recommendation

The proposed changes are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 8th day of March, 2010.

Panel

James G. Cagle, Jr.
Director, Industrial Affairs

Anthony J. DeLuca
Administrator, Office of Labor
Law Enforcement

Francis S. Chudzik
Supervisor, Office of Labor
Law Enforcement, Prevailing
Wage Division

Decision and Effective Date

Having reviewed and considered the record and recommendations of members of the Panel, the proposed regulations are hereby adopted and made effective 10 days following publication of the final regulation in the *Register of Regulations*.

Text and Citation

The text appears in the *Register of Regulations*, Vol. 13, Issue 8 (February 1, 2010).

John J. McMahon, Jr., Secretary of Labor

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1053 (13 DE Reg. 1053). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1326 Workplace Fraud Act Regulations](#)

FINAL REGULATIONS

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 1124

Secretary's Order No.: 2010-A-0011

1124, Control of Volatile Organic Compound Emissions: Section 2.0, "Definitions"; Section 12.0, "Surface Coating of Plastic Parts"; Section 19.0, "Coating of Metal Furniture"; Section 20.0, "Coating of Large Appliances"; and Section 22.0, "Coating of Miscellaneous Metal Parts"

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulation amendments to 7 DE Admin. Code 1124, **Control of Volatile Organic Compound Emissions**: Section 2.0, "Definitions"; Section 12.0, "Surface Coating of Plastic Parts"; Section 19.0, "Coating of Metal Furniture"; Section 20.0, "Coating of Large Appliances"; and Section 22.0, "Coating of Miscellaneous Metal Parts". The purpose of these proposed amendments is to conform to new Control Techniques Guidelines (CTG) issued by the U.S. Environmental Protection Agency (EPA).

The Department's Air Quality Management (AQM) Section of the Division of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notice 2009-10 through 2009-13. The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulations* and held a public hearing on January 5, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 26, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in AQM developed the record and drafted the proposed Amendments. The Department received public comments, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of these Amendments. With the adoption of these regulatory amendments, Delaware will have the Department's regulations conform to EPA's regulations, as required by the Clean Air Act.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;

3.) The Department held a public hearing on January 5, 2010 on the proposed Amendments in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the December 1, 2009, *Delaware Register of Regulations*;

6.) The recommended Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to conform to new CTG as issued by the EPA; (2) the Department's revisions to **7 DE Admin. Code 1124** will reduce the VOC contents of currently regulated coatings, regulate additional coating categories, require the use of coating application equipment that provides for high transfer efficiency, and require that clean-up solvent emissions be included in regulatory applicability determinations; and (3) the regulation amendments are well supported by documents in the record; and that

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

1124 Control of Volatile Organic Compound Emissions

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

[1124 Control of Volatile Organic Compound Emissions](#)

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)
7 DE Admin. Code 1125

Secretary's Order No.: 2010-A-0006

1125, Requirements for Preconstruction Review: Section 3.0, "Prevention of Significant Deterioration of Air Quality"

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulatory amendments to **7 DE Admin. Code 1125**, Requirements for Preconstruction Review: Section 3.0, "Prevention of Significant Deterioration of Air Quality" in order to cite explicitly that nitrogen oxide (NOx) is a precursor to the formation of ground level ozone.

On October 13, 2009, the Department's Air Quality Management (AQM) Section of the Division of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notice 2009-28.

The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulations* and held a public hearing on January 5, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 26, 2010 (Report). The Report recommends certain findings and the adoption of the proposed regulatory amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. The Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of this Amendment. With the adoption of the regulatory amendment to 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review: Section 3.0, "Prevention of Significant Deterioration of Air Quality", Delaware will be in compliance with the Completeness Finding of the U.S. Environmental Protection Agency (EPA), which requires this revision at the State level (see 73 FR 16205, March 27, 2008), based on EPA's determination that the current language is not clear that NOx (in addition to volatile organic compounds [VOCs]) is a ground level ozone precursor.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed Amendment as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on January 5, 2010 on the proposed Amendment in order to consider public comments before making any final decision, however, no comments were received by the Department from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any substantive changes from the proposed regulation Amendment as published in the December 1, 2009, *Delaware Register of Regulations*;
- 6.) The recommended Amendment should be adopted as a final regulation Amendment because (1) Delaware will be enabled to be in compliance with the Completeness Finding of the U.S. Environmental Protection Agency (EPA), which requires this revision at the State level (see 73 FR 16205, March 27, 2008), based on its determination that the current regulatory language is not clear that NOx (in addition to volatile organic compounds [VOCs]) is a ground level ozone precursor; and (2) the regulation amendment is well supported by documents in the record; and that
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

1125 Requirements for Preconstruction Review

*Please note that no changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 789 (13 DE Reg. 789). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1125 Requirements for Preconstruction Review](#)

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.: 2010-A-0007

1138 Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0: "Area Source Miscellaneous Parts or Products Surface Coating Operations".

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0, "Area Source Miscellaneous Parts or Products Surface Coating Operations". The proposed new Section 14.0 will affect surface coating operations that spray-apply coatings which contain any compounds of cadmium, chromium, lead, manganese or nickel. This proposed new section is based upon a federal rule that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart HHHHHH, as well as existing requirements found in similar area source standards found throughout Regulation 1138.

The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds. Additionally, many of these compounds, except the manganese compounds, are classified as either known or probable human carcinogens by the EPA. It should be noted that this proposed amendment does not apply to facilities that apply surface coatings to motor vehicles (auto body shops) or mobile equipment, as the Department plans to address these sources in the near future with separate regulatory promulgations.

The Department's Air Quality Management (AQM) Section of the Divisions of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notice 2009-09. The Department published the proposed regulatory amendments in the December 1, 2009 Delaware Register of Regulation and held a public hearing on January 5, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 1, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment. Throughout the entire regulatory development process regarding this promulgation, the Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0, "Area Source Miscellaneous Parts or Products Surface Coating Operations", Delaware will be able to mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH and

provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds, a number of which have been classified as either known or probable human carcinogens by the EPA.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on January 5, 2010 on the proposed Amendment in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any substantive change from the proposed regulation Amendment as published in the December 1, 2009, Delaware Register of Regulations;
- 6.) The recommended Amendment should be adopted as final regulation Amendments because Delaware will then be enabled to (1) mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds, a number of which have been classified as either known or probable human carcinogens by the EPA. Moreover, the regulation amendment is well supported by documents in the record; and
- 7.) The Department shall submit this Order approving the final regulation to the Delaware Register of Regulations for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

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:

[1138 Emission Standards for Hazardous Air Pollutants for Source Categories](#)

DIVISION OF AIR AND WASTE MANAGEMENT

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

Secretary's Order No.: 2010-A-0008

1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products, Section 3.0, "Portable Fuel Containers"; and a Corresponding Revision to the Delaware State Implementation Plan (SIP) for Attainment of Ground-Level Ozone Standard

Date of Issuance: March 11, 2010
Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulatory amendments to 7 DE Admin. Code 1141, **Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**, Section 3.0, "Portable Fuel Containers", and a corresponding revision to the Delaware State Implementation Plan (SIP) for attainment of ground-level ozone standard. The Department's Air Quality Management (AQM) Section of the Divisions of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notice 2009-21. The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulations* and held a public hearing on January 5, 2010¹. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 26, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. Throughout the entire regulatory development process regarding this promulgation, the Department received no public comments, as noted in the Report.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware regulations regarding portable fuel containers will no longer apply to portable fuel containers manufactured on and after January 1, 2009, but will be subject to regulation under Federal Rule 72 FR 8428. This change will enable Delaware to more efficiently and effectively reduce VOC emissions from portable fuel containers, as the Federal Rule provides for better VOC emission control of said containers, and therefore achieves greater VOC emission reductions than the previously existent Delaware regulation regarding this matter. Additionally, the Department's corresponding revision to Delaware's State Implementation Plan (SIP) will demonstrate that this promulgation and the reliance on the Federal Rule will not adversely impact Delaware's efforts for attaining the ozone air quality standard.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
- 3.) The Department held a public hearing on January 5, 2010 on the proposed Amendments in order to consider public comments before making any final decision, however, no public comments were received either prior to or after said hearing date;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the December 1, 2009, *Delaware Register of Regulations*;

1. A typographical error was made by the Delaware Register of Regulations when publishing the Register Notice for this proposed regulation in its Dec. 1, 2009 issue. Although the correct SAN number is 2009-21 as referenced above, it was incorrectly published by the Register as 2009-28 at that time. At the request of the Delaware Register of Regulations, this error is being noted at this time.

6.) The recommended Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to more efficiently and effectively reduce VOC emissions from portable fuel containers, as Federal Rule 72 FR 8428 provides for better VOC emission control, and therefore achieves greater VOC emission reductions, of said containers than the previously existent Delaware regulation regarding this matter; (2) the Department's corresponding revision to Delaware's State Implementation Plan (SIP) will demonstrate that this promulgation and the reliance on the Federal Rule will not adversely impact Delaware's efforts for attaining the ozone air quality standard; and (3) the regulation amendments are well supported by documents in the record; and that

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

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

***Please note that no changes, other than the effective date were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 972 (13 DE Reg. 972). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products](#)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103 (7 Del.C. §103)
7 DE Admin. Code 3304

3304 Creel Limits and Seasons

Secretary's Order No.: 2010-F-0009

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulation amendments to the Delaware Non-Tidal Finfish Regulation No. 3304 regarding largemouth bass (Amendments). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2009-29. The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulation* and held a public hearing on December 29, 2009. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 29, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As a result of the informal regulatory development process, the Department received several public comments, the overwhelming majority of which voiced full support of this proposed promulgation, as set forth in the Report.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of the Regulation Amendments to Delaware Non-Tidal Finfish Regulation No. 3304 as final, the specialized size regulations for largemouth bass in the freshwater state-owned impoundments of Andrews Lake (Frederica), Derby Pond (Camden) and Hearn's Pond (Seaford) would be eliminated, and the statewide size limit of twelve (12) inches would be reinstated. In the future, should DNREC discover the need in a pond for adjustment of its fish community, the Department would go in and physically remove the overabundance of smaller fish (or larger fish, if that were the problem) from that pond and transport them to other Delaware ponds that could benefit from having those additional fish moved into that community.

In conclusion, the following findings and conclusions are entered:

1. The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
2. The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
3. The Department held a public hearing on the proposed Amendments in order to consider public comments before making any final decision, and has considered all relevant and timely public comments it received;
4. The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
5. The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the December 1, 2009, *Delaware Register of Regulations*;
6. The recommended Amendments should be adopted as final regulation Amendments because (1) they are consistent with Department's recent findings that the bass population now shows a more normal size distribution; (2) the previously promulgated specialized regulations are no longer necessary; (3) the elimination of the existing slot limits for largemouth bass will enable these state-owned impoundments to once again attract bass fishing tournaments by reinstating the statewide size limit of twelve (12) inches for anglers that visit said ponds; and (4) they are well supported by documents in the record; and that
7. The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 813 (13 DE Reg. 813). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[3304 Creel Limits and Seasons](#)

FINAL REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(b)(e)(2)b (7 Del.C., §903(b)(e)(2)b)

Secretary's Order No.: 2010-F-0010**3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit****Date of Issuance: March 11, 2010****Effective Date of the Amendment: April 11, 2010**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed new regulation Delaware Tidal Finfish Regulation No. 3518 regarding Black Drum. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2009-27. The Department published the proposed regulatory amendments in the January 1, 2010 *Delaware Register of Regulations* and held a public hearing on January 21, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 29, 2010 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received only one public comment, which supported this proposed regulation, as set forth in the Report.

With the adoption of this new Regulation, Delaware Tidal Finfish Regulation No. 3518, as final, Delaware will be able to enter into a joint Fisheries Management Plan with the State of New Jersey, and mirror the current regulations in New Jersey to manage Black Drum in Delaware, to wit: (1) a 16-inch minimum size limit for both recreational and commercial anglers; (2) a recreational creel limit of three (3) drum per day, per angler; (3) an annual commercial landing quota of 65,000 pounds, with a 10,000 pound daily limit for commercial fishermen, and such commercial limits are per vessel or per individual, for both the vessel or the dealers receiving those fish.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed new regulation, and provided the public with an adequate opportunity to comment on the proposed new regulation, including at a public hearing;
- 3.) The Department held a public hearing on the proposed new regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended new regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended new regulation does not reflect any change from the proposed regulation as published in the December 1, 2009, *Delaware Register of Regulations*;

6.) The recommended regulation should be adopted as a final new regulation because (1) the Department will be better enabled to conserve Black Drum here in Delaware until a broader Fisheries Management Plan is enacted; (2) the long-term viability of this species will be better ensured, for the benefit of both current and future generations of the fishing public; (3); the Black Drum's continued role within the Delaware Estuary's ecosystem will be better preserved; and (4) the new regulation is well supported by documents in the record; and that

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

3518 Black Drum Size Limit: Possession Limit: Landing Limit: Dealer Limit

(Penalty Section 7 Del.C. §936(b)(2)

1.0 Definition

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

"Delaware Estuary" means all those tidal waters located within an area to the north of a straight line drawn between Cape May Point, New Jersey and Cape Henlopen, Delaware, but not including the tributaries of the Delaware River and Delaware Bay.

2.0 Size limit

It shall be unlawful for a person to possess a black drum (*Pogonias cromis*) taken from the Delaware Estuary that measures less than (sixteen (16) inches [~~(Option A) thirty two (32) inches (Option B)~~], total length.

3.0 Possession Limits

3.1 It shall be unlawful for a recreational fisherman to take and reduce to possession more than three (3) [~~(Option A) two (2) (Option B)~~] black drum per day (a day being 24 hours) from the Delaware Estuary.

3.2 It shall be unlawful for a commercial fisherman or a vessel, regardless of the number of licensed commercial fishermen onboard that vessel, to possess or land more than 10,000 pounds [~~(Option A) 5,000 pounds (Option B)~~] of black drum taken from the Delaware Estuary in any one (1) day.

4.0 Landing Limit

It shall be unlawful for a commercial fisherman to sell, trade or barter or attempt to sell, trade or barter black drum or parts of black drum that are landed from the Delaware Estuary in this State after a date when the Department has determined or projected that 65,000 pounds [~~(Option A) 50,000 pounds (Option B)~~] of black drum have been or will be landed in this State from the Delaware Estuary by the commercial fishery in a calendar year.

5.0 Dealer limit

It shall be unlawful for a food fish dealer to accept from a commercial fisherman or a vessel more than 10,000 pounds [~~(Option A) 5,000 pounds (Option B)~~] of black drum harvested from the Delaware Estuary in any one (1) day.

FINAL REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(b)(e)(2)b (7 Del.C., §903(b)(e)(2)b
7 DE Admin. Code 3521

Secretary's Order No.: 2010-F-0012

3521 Weakfish Size Limit; Possession Limit; Seasons

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3521 regarding Weakfish. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2009-32. The Department published the proposed amendments in the January 1, 2010 *Delaware Register of Regulations* and held a public hearing on January 21, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 2, 2010 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3521 as final, Delaware will be able to remain in compliance with the Interstate Fisheries Management Plan, as adopted by the ASMFC, to manage Weakfish in Delaware, to wit: (1) reduce the recreational creel limit for Weakfish from six (6) to one (1) fish per person, per day; and (2) limit commercial fishermen to no more than 100 pounds per vessel per day or per trip.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed new regulation, and provided the public with an adequate opportunity to comment on the proposed new regulation, including at a public hearing;
- 3.) The Department held a public hearing on the proposed new regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended new regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended new regulation does not reflect any change from the proposed regulation as published in the January 1, 2010, *Delaware Register of Regulations*;

6.) The recommended regulation should be adopted as a final new regulation because (1) Delaware will be enabled to remain in compliance with the Interstate Fisheries Management Plan, as adopted by the ASMFC, to manage Weakfish in Delaware, to wit: (1) reduce the recreational creel limit for Weakfish from six (6) to one (1) fish per person, per day; and (2) limit commercial fishermen to no more than 100 pounds per vessel per day or per trip; and (4) the new regulation is well supported by documents in the record; and that

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the January 2010 issue of the *Register* at page 899 (13 DE Reg. 899). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[3521 Weakfish Size Limit; Possession Limit; Seasons](#)

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, 102 and 103

ORDER

After due notice in the *Register of Regulations*, a public meeting was held on February 4, 2010 and March 4, 2010 at scheduled meetings of the Gaming Control Board to receive comments regarding proposed amendments to the Board's Rules.

The proposed amendments are designed to explain the proper handling of cookie jar bingo matters, to correct a typographical error, to expressly allow raffles over an extended period of time, to allow employees and family members of charitable organizations to purchase raffle tickets, but not to sell them to immediate family members, to provide that only members of the charitable organization may come in contact with money during an event and to correct technical deficiencies. The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 13, Issue 7, on January 1, 2010.

Summary of the Evidence and Information Submitted

No written comments were received. Members of the public appeared at the Board's meetings in February and March.

Findings of Fact and Conclusions of Law

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public meetings on the proposed amendments. Members of the public appeared at the Board's meetings.
2. The Board finds that the proposed amendments to the rules and regulations are necessary and in the public interest.

3. Pursuant to 28 **Del.C.** Section 1122, the Board has statutory authority to promulgate regulations governing the licensing to conduct games. The proposed amendments clarify provisions of Title 28 regarding applications.

Decision and Effective Date

The Board hereby adopts the proposed changes to its rules in the manner to be published in the *Register* in April, 2010, to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rules shall be as published in the *Register of Regulations* in April, 2010 as attached hereto as Exhibit A.

SO ORDERED this 4th day of March, 2010.

DELAWARE GAMING CONTROL BOARD

James B. Greene, Chair

W. Scott Angelucci, Member

Brad A. Barrie, Member

Sharon McDowell, Member

Deborah S. Messina, Member

101 Regulations Governing Bingo

102 Regulations Governing Raffles

103 Regulations Governing Charitable Gambling Other Than Raffles

*Please note that no changes were made to the regulation as originally proposed and published in the January 2010 issue of the *Register* at page 901 (13 DE Reg. 901). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[Delaware Gaming Control Board Regulations](#)

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1806 (24 **Del.C.** 1806)

24 DE Admin. Code 1800

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

ORDER

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §1806, the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on January 12, 2010, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed amendments in the December 1, 2009 *Register of Regulations* (as attached) and for two consecutive weeks in the *News Journal* and *Delaware State News*. The Commission proposed to amend rule 1.0 to clarify the definition of "full-time employee" as it relates to supervision, and allows for the definition to be applicable to the statute as well as the regulation.

2. The Commission received no written comments during December 2009. The Commission held a public hearing on January 12, 2010 and received public comments from Wayne Reed, who commented as follows: People pull permits for unlicensed individuals and this regulation change won't stop that practice.

Findings of Fact and Conclusions

3. 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.

4. The Board has considered the public comments at the January 12, 2010 hearing. The Board does not find those comments require further revisions of the proposed rules. The Board finds that the new 1.0 assists licenses and applicants in the determination and selection of acceptable supervision. The Board modeled this proposed regulation definition on the definition of full-time employee in the Delaware State Fire Prevention Regulations.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2010.

IT IS SO ORDERED this 9th day of March, 2010.

Dean Sherman, Presiding

Robert Briccotto

Carol Guilbert, Secretary

Gerard Pepeta

James Anderson

Christopher Preston

Frank Beebe

Jerome Todd

***Please note that no changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 825 (13 DE Reg. 825). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners](#)

DIVISION OF PROFESSIONAL REGULATION

3300 BOARD OF VETERINARY MEDICINE

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))

24 **DE Admin. Code** 3300

ORDER

The Board of Veterinary Medicine ("the Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §3306(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3306(a)(1), the Board has proposed revisions to its rules and regulations. The Board proposes amendments to Rule 2.0, addressing Unprofessional Conduct for Veterinarians. Specifically, Rule 2.1.11

is revised to set forth additional requirements for the labeling of prescription drugs. Pursuant to the revisions, labels must be legible, must identify the prescribing veterinarian and the patient's name and must set forth the specific medication usage directions.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 13, Issue 8 on February 1, 2010.

Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on March 9, 2010. No written comment was submitted and there was no public comment.

Findings of Fact

The Board carefully reviewed and considered the proposed rule revisions. The proposed revisions will serve to both protect the public and enhance practitioner competence by ensuring that clear and complete information is included on all prescriptions. Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 13, Issue 8 on February 1, 2010.

IT IS SO ORDERED this 9th day of March 2010 by the Delaware Board of Veterinary Medicine.

Rachel Longfellow, L.V.T., President

Courtney Manetti, V.M.D.

Craig Metzner, D.V.M., Vice-President

Lynn Nellius, L.V.T.

Lena Corder

Kimberly S. Vincent

Roberta Jackson, V.M.D.

3300 Board of Veterinary Medicine

***Please note that no changes were made to the regulation as originally proposed and published in the February 2010 issue of the *Register* at page 1061 (13 DE Reg. 1061). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[3300 Board of Veterinary Medicine](#)

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION
501 Harness Racing Rules and Regulations
PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 5.1.8. The Commission will hold a public hearing on the proposed rule changes on May 11, 2010. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on April 1, 2010.

The proposed changes are for the purpose of updating Rule 7 and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml

A copy is also available for inspection at the Harness Racing Commission office.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, April 15, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Citizenship and Alienage and Deemed Newborns

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to make administrative changes to the Title XIX Medicaid and the Title XXI Delaware Healthy Children Program state plans, as well as the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage and Deemed Newborns*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2010.

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4455 Delaware Regulations Governing a Detailed Plumbing Code

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Regulations Governing a Detailed Plumbing Code. Delaware law requires the Division of Public Health to adopt and enforce the most recent version of the

International Plumbing Code (IPC) within one calendar year of its issuance, in conformity with the basic plumbing principles provided in Title 16 of the Delaware Code. Additionally, the Division of Public Health may adopt and enforce additional plumbing regulations which shall not be in conflict with the IPC and the basic plumbing principles set forth in this Chapter. The IPC is issued every 3 years.

The public hearing will be held on April 22, 2010 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the April 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by April 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 30, 2010 to:

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
9059 Income Exclusions

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 policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program regarding *Income Exclusions*.

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 Friday, April 30, 2010.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Child Care Subsidy Program

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

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 April 30, 2010.

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**PUBLIC NOTICE**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 505 relating to fiduciary fund requirements for insurance producers. The docket number for this proposed regulation is 1341.

The purpose of the proposed regulation 505 is to prescribe fiduciary fund requirements and exceptions for insurance producers. The text of the proposed amendment is reproduced in the April 2010 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 May 3, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

DEPARTMENT OF LABOR**DIVISION OF INDUSTRIAL AFFAIRS****OFFICE OF WORKERS' COMPENSATION****1341 Workers' Compensation Regulations****PUBLIC NOTICE**

The Secretary of Labor, in accordance with 19 **Del.C.** §§2322B, C, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System. These proposals revise sections of the Definitions; Fee Schedule Instructions and Guidelines; as well as revise the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 3, 2010, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be at the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****REGISTER NOTICE:**

Section 328(a)(1) of the Clean Air Act requires the EPA to establish requirements to control air pollution from

outer continental shelf ("OCS") sources in order to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of Part C of Title 1 of the Act. 40 CFR Part 55 **Outer Continental Shelf Air Regulations** establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with the stated objectives of section 328(a)(1) of the Act.

Delaware is proposing to adopt a new regulation which will incorporate by reference the provisions of 40 CFR Part 55. 40 CFR Part 55 is currently implemented and enforced by the EPA, specifically incorporates many of Delaware's existing air regulations, and makes those regulations applicable to OCS sources (i.e., generally within 25 miles of the State's seaward boundary). This adoption will enable the EPA to delegate to Delaware primary responsibility to implement and enforce these OCS requirements, as opposed to the EPA.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, April 21, 2010 beginning at 6:00 PM in the DNREC's Priscilla Building Conference Room, 156 S. State Street, Dover, DE. Interested parties may submit comments in writing to: Mark A. Prettyman, DNREC Air Quality Management Section, 156 South State Street, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE**3700 Shellfish****PUBLIC NOTICE**

Oyster harvesting regulations need to be updated to clarify when oyster bags and cages are to be tagged. Additionally, a time frame for the retention of tags has been established; so that Enforcement may document the amount of oysters harvested and processed.

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 1990, (302 739 9914). A public hearing on this proposed amendment will be held on April 29, 2010 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 P. M. April 30, 2010.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****100 Delaware Gaming Control Board****PUBLIC NOTICE**

Pursuant 28 **Del.C.** §1122, the Delaware Gaming Control Board has proposed revisions to its rules and regulations.

A public hearing will be held on May 6, 2010 at 1:15 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 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 amendments to Rule 3.1.1 and Rule 3.1.5 in 10 **DE Admin. Code** 103, which address requirements concerning members of charitable organizations. Currently, Rule 3.1.1 requires that a charitable organization designate a bona fide active member as the Member in Charge primarily responsible for each function. The proposed amendment would prohibit the Member in Charge from working for a third party vendor or performing any service during the function for a third party vendor. Rule 3.1.5 concerns the handling of funds at a function. The proposed amendment would state that any organization member handling the money at a function may not be employed by or assist a third party vendor in performing its duties.

The Board also proposes to add a new rule to 10 **DE Admin. Code** 104 to require that only members of the charitable organization may receive funds during a Texas Hold'Em Tournament.

DIVISION OF PROFESSIONAL REGULATION
1600 Commission On Adult Entertainment Establishments
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §1604, the Commission on Adult Entertainment Establishments has proposed revisions to its rules and regulations.

A public hearing will be held on April 25, 2010 at 2:00 p.m. in the second floor conference room 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 Commission on Adult Entertainment Establishments, 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 Commission has proposed to add a definition of "substantial portion" to the rules and regulations. This revision implements the recent amendment to the Commission's licensing law, Chapter 16 of Title 24 of the Delaware Code, with respect to adult oriented retail establishments.

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