

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 30F and §§122(3)bb and 139 (16 **Del.C.** Ch. 30F and §§122(3)bb and 139)

FINAL

ORDER

4502 Regulations for Certification of Animal Welfare Officers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Certification of Animal Welfare Officers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 3104.

On September 1, 2018 (Volume 22, Issue 3), 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 October 1, 2018, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Certification of Animal Welfare Officers were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (September 1, 2018 through October 1, 2018).

Entities offering written comments include:

- Delaware Department of Agriculture, Michael T. Scuse, Secretary
- Ms. Catherine Samardza

Comments from the Delaware Department of Agriculture

The curriculum requirements in section 4.2 of the proposed regulations are unclear about whether and the extent to which the training and certification curriculum would include material that educates new DDA hires on the distinction between authorities as an Animal Welfare Officer, within the OAW and as an Investigator II within DDA.

- Response: The distinction between authorities is made clear in the law, 16 **Del C.** §3031. It would be up to the hiring agency to clarify for the employee their role and authority as outlined in the law.

The language provided in 9.1.1-9.1.5 describing disciplinary authority of DPH does not include language indicating how DPH will consider or consult with DDA regarding disciplinary matters and sanctioning of DDA employees (reference in section 10.2). DDA reserves the authority to discipline DDA employees and take any action DDA may deem appropriate.

- Response: For clarification, OAW's authority for discipline is strictly limited to the offenses as detailed in law, 16 **Del.C.** §139. Likewise, sanctions are limited to those outlined in the same law. OAW does not have any authority for discipline outside of these parameters, and other disciplinary actions for performance will be the responsibility of the employer. However, OAW agrees with the suggestion to include the employer in disciplinary sanctions decisions regarding certification. The final regulation adds subsection 9.2.4 which reads, "Consultation with certified animal welfare officer's employing agency."

As referenced in sections 3.4 and 4.5, DPH may waive all or part of the certification requirements, as well as the exam, for a DDA employee if the employee has completed equivalent training or experience. In addition, states that new people being hired have 60 days to complete requirements. DDA's job description for the position entitled Investigator II does not require that a candidate complete trainings or have certification as required by the proposed regulations.

- Response: Certification is statutorily required for anyone serving as an animal welfare officer in Delaware. Future job postings should be amended to include the requirement for training and certification in the "Conditions of Hire".

DDA has 1 position designated to address animal welfare issues and conduct investigations related to issues of animal welfare. If DDA hires an individual to fill this position, DDA would expect that a new hire perform duties required by the DDA Investigator II position and any duties specified by DDA. As referenced in section 4 of the proposed regulations, if new hires are subject to the training and certification timeline and requirements referenced in the proposed regulations, DDA may be

subject to a period with no coverage for animal welfare matters.

- Response: The agency appreciates this concern. OAW officers or police may enforce Title 11 cruelty to animals laws and would provide coverage during the transition if required.

Comments from Ms. Catherine Samardza

- I still believe drug testing should be required.
- 3.1 - Does this requirement apply to animal control officers with the Newark and Dover Police Departments (and any others that may have their own)? Otherwise, who, exactly, would be working as an animal welfare officer in Delaware outside of OAW/DAS?
- 4.0 - 40 hours seems inadequate considering the amount of material to be covered.
- 4.3 - I think 75% is too low to be a passing grade for law enforcement and animal handling.
- 5.0 - Is there a training course - official or otherwise - actually established/in place? Who created it, and who teaches it?
- 7.1 - 8 hours of continuing education seems low, again, with the amount of material covered in training.
- 8.0 - how many officers are currently using CEWs in the field? And how often are CEWs/stun guns actually being used on animals? I don't question the training requirement. But between this and the requirement in 4.2.5, it really seems like training needs more than 40 hours.
- 9.0 - given that this is about animal welfare laws, shouldn't sanctions also be imposed if an officer is guilty of animal cruelty in some way? A crime against people or property rules out stray animals.
- 10.1, 10.2 - The references to a contracting entity and other agencies/employer/entity concern me. See my note at 3.1. Who, exactly, will be contracting with animal welfare officers, or an organization who employs them? These sections sound suspiciously as if the State plans to dump animal welfare and dog control back onto the counties.

Response

The agency acknowledges and appreciates these comments. Most comments address the training requirements set forth by the regulations. The requirements represent the minimum levels of training needed, and may be exceeded. They are in line with similar certification requirements in other states, such as New Jersey and Connecticut. The Office of Animal Welfare has a training course already in place that was created after researching best practices throughout the country, and with input from other experts in the fields of animal control, law enforcement and veterinarians. The regulations apply to anyone who employs animal welfare officers in the state, including Newark and Dover Police Departments. One comment addresses the use of Conducted Electrical Weapons (CEW): only officers who have received training by a certified instructor carry CEWs. Another comment asks about sanctions for officers found guilty of animal cruelty. This is considered a crime against person or property. Lastly, Section 10.0 will be edited to remove reference to "contracting entity" which is no longer applicable.

FINDINGS OF FACT:

Some changes were made to the regulations based on the comments received. 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 Radiation Control is adopted and shall become effective March 11, 2019, after publication of the final regulation in the Delaware *Register of Regulations*.

2/12/19

Date

Dr. Kara Odom Walker
Secretary

4502 Regulations for Certification of Animal Welfare Officers

1.0 Authority and Purpose

- 1.1 These regulations are promulgated by the Delaware Department of Health and Social Services pursuant to 16 Del.C. §§122(3)bb and 139 pertaining to training and certification requirements for animal welfare officers.
- 1.2 The overall purpose of these regulations is to establish minimum training requirements for the certification of animal welfare officers working in the State of Delaware. These regulations also establish procedures for documenting all complaints filed against the officers/agents, and conducting investigations of complaints concerning violations of this chapter.

1.3 These regulations define:

- 1.3.1 ~~[training Training]~~ and certification requirements for animal welfare officers;
- 1.3.2 ~~[procedures Procedures]~~ for obtaining a certification from the Office of Animal Welfare;
- 1.3.3 ~~[training Training]~~ course approval processes;
- 1.3.4 ~~[continuing Continuing]~~ education and recertification obligations;
- 1.3.5 ~~[disciplinary Disciplinary]~~ sanctions; and
- 1.3.6 ~~[complaint Complaint]~~ documentation and investigation procedures.

[1.4 **Effective Date. These regulations are effective March 11, 2019.**]

2.0 Definitions

The following words or terms, when used in these regulations, shall have the meaning indicated, unless the context otherwise requires:

"Animal welfare officer" means any person qualified to act pursuant to 11 Del.C. §1325 and 16 Del.C. §3041F, notwithstanding additional training/certification requirements listed in those sections.

"Certified Animal Welfare Officer" means an individual who has been certified by the Office to perform animal control pursuant to Section 3.0.

"Department" means the Department of Health and Social Services or its duly authorized representatives.

"Office" means the Division of Public Health Office of Animal Welfare or its duly authorized representatives.

3.0 Animal Welfare Officer Certification

- 3.1 Except as permitted by subsection 4.7, below, no person shall serve as a Delaware animal welfare officer unless such person is trained and certified by the Office of Animal Welfare ~~[("Office")]~~ as set forth in this section.
- 3.2 Individuals seeking certification as an animal welfare officer shall submit a written application to the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare ~~[("Office")]~~.
- 3.3 In order to qualify for certification as an animal welfare officer, an applicant shall submit proof of the following requirements with their application:
 - 3.3.1 Is eighteen (18) years of age or older;
 - 3.3.2 Is employed as an animal welfare officer in Delaware. A letter of intent from an organization hiring the individual as an animal welfare officer may be accepted;
 - 3.3.3 A Certified Delaware Criminal History, obtained at the State Bureau of Identification not more than 90 days prior to submitting an application for certification, showing the individual has no convictions or pending criminal charges of a crime against person or property;
 - 3.3.4 Has successfully completed an animal control/welfare training course that has been approved by the Office;
 - 3.3.5 Has passed an examination given by or approved by the Office; and
 - 3.3.6 Has completed a minimum of 80 hours of infield training under the direction of one or more Certified Animal Welfare Officers currently working in that capacity. The infield training shall commence upon successful completion of the animal control/welfare training course and exam.
- 3.4 The Office may, by endorsement, without written examination, certify an animal welfare officer who has completed a training program that meets the educational requirements for certification defined in Section 4.0 and who, in the opinion of the Office, meets the qualifications specified by these regulations for an animal welfare officer.

4.0 Training of Certified Animal Welfare Officers

- 4.1 An animal welfare officer training course shall provide at least forty (40) hours of instruction.
- 4.2 The course must be administered by or approved by the Office and minimum curriculum requirements shall include:
 - 4.2.1 Role and authority of an animal welfare officer;
 - 4.2.2 Delaware laws governing rabies control, animal control and protection, dangerous dogs, animal cruelty, and enforcement powers;
 - 4.2.3 Animal health and disease recognition, control, and prevention;
 - 4.2.4 First aid for injured animals;
 - 4.2.5 Principles and procedures for humanely capturing and handling domestic animals, wildlife, and livestock;

4.2.6 Criminal justice system, investigative techniques, rules of evidence, and report writing;

4.2.7 Principles of courtroom testimony and prosecution;

4.2.8 Communications, conflict resolution, and officer safety; and

4.2.9 Emergency management.

4.3 Following the training detailed in subsection 4.2, the applicant shall take an examination provided by or approved by the Office. Applicants who fail to obtain a minimum score of 75% after testing two times must repeat the training course before additional testing is permitted.

4.4 Upon completion of an examination outlined in subsection 4.3, the applicant shall complete a minimum of eighty (80) hours of infield training under the direction of one or more Certified Animal Welfare Officers currently working in that capacity.

4.5 The Office may waive the completion of all or part of the curriculum required in subsection 4.2 upon presentation of documentary evidence that the individual has satisfactorily completed equivalent training or experience.

4.6 An animal welfare officer, if serving as such on the effective date of this Rule shall, within 6 months after the effective date of this Rule, complete the certification requirements outlined in Section 3.0. Persons who fail to complete the certification requirement within 6 months after the effective date of this Rule will not be authorized to act as an animal welfare officer in the State of Delaware and shall be subject to penalties pursuant to 16 Del.C. §107(a).

4.7 An animal welfare officer hired on or after the effective date of this Rule shall, within 60 days after the date of hire, complete the certification requirements outlined in Section 3.0. Officers that have not completed the certification requirement within 60 days after the date of hire will not be authorized to act as an animal welfare officer in the State of Delaware.

5.0 Approval of Training Course

5.1 Any organization or institution desiring to conduct an animal welfare officer education program shall apply to the Office for approval. The organization must submit evidence, deemed satisfactory by the Office, that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying animal welfare officers, and that it is prepared to meet other standards which may be established by the Office.

5.2 If the Office determines that any approved educational program is not maintaining the standards required by these regulations and by the Office, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be issued to the program. The Office shall withdraw such program's approval if it fails to correct the deficiency within the time proscribed. The organization or institution may reapply for approval to the Office once the program meets standards established by the Office.

6.0 Issuance of Certification

6.1 The Office shall issue a certificate to each qualified applicant who has successfully met the requirements under subsection 3.3.

6.2 A copy of the certificate shall be kept on file at the animal welfare officer's place of employment.

6.3 The employer shall notify the Office in writing, no later than 10 days from the date of termination or resignation, of an animal welfare officer's employment. The employer shall state the reason for termination in the notification.

6.4 The Office shall maintain a current registry of all persons certified as animal welfare officers in the state.

6.5 If a certified animal welfare officer resigns or leaves the employment of an animal control/cruelty agency in good standing and is no longer working in the role of animal welfare officer, the officer's certification shall become inactive. If the officer is rehired as an animal welfare officer within 12 months, the certification will be reinstated to active. If the officer is not rehired within 12 months, the certification shall be revoked. The officer can apply for recertification once they become employed as an animal welfare officer.

6.6 If a certified animal welfare officer has been found by an employer to be unfit or incompetent, the Office may impose sanctions as outlined in subsection ~~[4.2.2]~~ 9.3].

7.0 Continuing Education and Recertification

7.1 A certified animal welfare officer shall complete 8 hours of continued education and training by December 31 every calendar year, commencing the year after initial certification in order to maintain certification. The Office may grant an officer additional time for good cause, not to exceed one year, to complete the training.

7.2 Evidence of completion of the training shall be submitted to the Office within 30 days after training is completed to satisfy the continuing education requirement in subsection 7.1.

- 7.3 The certification of an animal welfare officer shall be suspended if the officer fails to satisfactorily complete the training in accordance with subsection 7.1. Training must be completed before the suspension may be lifted.

8.0 Conducted Electrical Weapon (CEW)

In order for an animal welfare officer to carry/use a conducted electrical weapon (CEW), he/she must complete a training program taught by a certified instructor and all certifications or re-certifications must be on file with the Office of Animal Welfare.

9.0 Denial, Revocation and Disciplinary Sanctions

- 9.1 The Office may impose sanctions, defined in this chapter singly or in combination when it finds a certified or former certified animal welfare officer committed any offense described below:
- 9.1.1 Engages in fraud or deceit in procuring or attempting to procure a certification/license;
 - 9.1.2 Is guilty of a crime against person or property;
 - 9.1.3 Has been found by an employer to be unfit or incompetent;
 - 9.1.4 Has had a certification or license to serve as an animal welfare officer suspended or revoked in any jurisdiction; or
 - 9.1.5 Has willfully or negligently violated this chapter.
- 9.2 In determining whether to impose sanctions, the Department shall consider the following factors:
- 9.2.1 The seriousness of the offense;
 - 9.2.2 The circumstances surrounding the offense; **[and]**
 - 9.2.3 The relation of the offense to the duties of a certified animal welfare officer~~;~~; **and**
 - 9.2.4 Consultation with the certified animal welfare officer's employing agency.]**
- 9.3 Disciplinary sanctions shall include one or more of the following:
- 9.3.1 Permanently revoking a certification;
 - 9.3.2 Refusing a certification or certification renewal;
 - 9.3.3 Suspending a certification;
 - 9.3.4 Issuing a letter of reprimand;
 - 9.3.5 Requiring additional training; or
 - 9.3.6 Placing a certification on probationary status and requiring the individual to:
 - 9.3.6.1 Report regularly to the Office upon the matters which are the basis of probation;
 - 9.3.6.2 Limit practice to those areas prescribed by the Office; or
 - 9.3.6.3 Continue or renew professional education until satisfactory degree of skill has been attained in those areas which are the basis of the probation.
- 9.4 An animal welfare officer may request an administrative hearing if they wish to contest the disciplinary sanctions.
- 9.4.1 The request shall be made in writing to the Secretary of the Department within 20 calendar days after issuance of the final written report and associated sanctions.
 - 9.4.2 As soon as possible, but not later than 30 calendar days of receipt of the request for an administrative hearing, the Department shall set a time and place to conduct a hearing.
 - 9.4.3 Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, 29 **Del.C.** Ch. 101, and the Freedom of Information Act, 29 **Del.C.** Ch. 100.
 - 9.4.4 The Department shall make a determination based upon the evidence presented.
 - 9.4.5 A written copy of the determination and the reasons upon which it is based shall be sent to the officer within 30 calendar days.
- 9.5 During an administrative hearing:
- 9.5.1 The animal welfare officer has the right to be represented by counsel~~;~~;
 - 9.5.2 All statements made shall be under oath~~;~~;
 - 9.5.3 The animal welfare officer has the right to examine and cross-examine witnesses~~;~~; **and**
 - 9.5.4 A stenographer recording will be made by a qualified court reporter. At the request and expense of any party, such record shall be transcribed with a copy to the other party.
- 9.6 The decision of the Department shall be based upon sufficient legal evidence. The Department may continue, modify or revoke the disciplinary sanctions.

- 9.7 All decisions of the Department shall be final and conclusive. Where the officer is in disagreement with the action of the Department, the officer may appeal the Department's decision to the Superior Court within 30 days of service or of the postmarked date of the copy of the decision mailed to the officer. The appeal shall be on the record to the Superior Court and shall be as provided in 29 Del.C. §§10142-10145.

10.0 Documenting and Investigating Complaints

- 10.1 The Office shall document all complaints filed directly with the Office[, or] the employer[~~, or with a contracting government entity~~] against certified animal welfare officers of alleged violations of 16 Del.C. §139.
- 10.2 All complaints must be received in writing and shall be reviewed. Only complaints concerning violations of this chapter will be investigated by the Office. Complaints that do not involve alleged violations of 16 Del.C. §139 may be referred to the employer, another agency or entity as appropriate according to the subject matter of the complaint.
- 10.3 The Office shall notify the animal welfare officer[, and] the officer's employer[~~, and contracting entity, if applicable,~~] of the complaint investigation within 10 days of receipt of said complaint.
- 10.4 The Office shall issue a final written report of the complaint investigation findings and any associated disciplinary sanctions outlined in subsection ~~[10.2~~ 9.3] to the animal welfare officer[, and] the officer's employer[~~, and the contracting entity, if applicable,~~] sent by Certified Mail or hand delivered. If the complaint concerns an officer employed by the Office of Animal Welfare, the complaint will be forwarded to the Division Director or Deputy Director for investigation.

22 DE Reg. 770 (03/01/19) (Final)