
Delaware Register of Regulations

Issue Date: April 1, 2011

Volume 14 - Issue 10, Pages 929 - 1139



IN THIS ISSUE:

Regulations:
Proposed
Final

Governor:
Executive Orders

General Notices

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, 2011.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

14 **DE Reg.** 24-47 (07/01/10)

Refers to Volume 14, pages 24-47 of the *Delaware Register* issued on July 1, 2010.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

931

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 16 | 4:30 p.m. |
| July 1 | June 15 | 4:30 p.m. |
| August 1 | July 15 | 4:30 p.m. |
| September 1 | August 15 | 4:30 p.m. |

DIVISION OF RESEARCH STAFF

Deborah A. Porter, Interim Supervisor; **Judi Abbot**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Administrative Specialist I; **Debbie Puzo**, Research Analyst; **Don Sellers**, Printer; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Rochelle Yerkes**, Administrative Specialist II.

| | |
|------------------------|-----|
| Cumulative Tables..... | 934 |
|------------------------|-----|

PROPOSED

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

| | |
|---|-----|
| 501 Harness Racing Rules and Regulations, Rule 3.0 | 942 |
| 501 Harness Racing Rules and Regulations, Subsection 8.3.7, Anabolic / Androgenic Steroids | 945 |

DEPARTMENT OF EDUCATION

Office of the Secretary

| | |
|---|-----|
| 101 Delaware Student Testing Program | 947 |
| 103 Accountability for Schools, Districts and the State | 959 |

Professional Standards Board

| | |
|--|-----|
| 1556 School To Work Transition Teacher | 978 |
| 1584 School Social Worker | 980 |

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Long Term Care Residents Protection

Adding provision to require facilities to cooperate with state protection and advocacy agency:

| | |
|--|-----|
| 3201 Skilled and Intermediate Care Nursing Facilities..... | 982 |
| 3225 Assisted Living Facilities..... | 982 |
| 3230 Rest (Residential) Home Regulations..... | 982 |
| 3301 Group Home Facilities for Persons with AIDS..... | 982 |
| 3305 Group Homes for Persons with Mental Illness..... | 982 |
| 3310 Neighborhood Homes for Persons with Developmental Disabilities..... | 982 |
| 3315 Rest (Family) Care Homes..... | 982 |

Adding provision to require certain persons to receive dementia specific training:

| | |
|--|-----|
| 3201 Skilled and Intermediate Care Nursing Facilities..... | 989 |
| 3220 Training & Qualifications for Nursing Assistants & Certified Nursing Assistants... .. | 989 |
| 3225 Assisted Living Facilities..... | 989 |
| 3230 Rest (Residential) Home Regulations..... | 989 |
| 3301 Group Home Facilities for Persons with AIDS..... | 989 |
| 3315 Rest (Family) Care Homes..... | 989 |

Division of Medicaid and Medicaid Assistance

| | |
|---|------|
| DSSM: 14300, Citizenship and Alienage..... | 998 |
| 14360, State Funded Benefits..... | 998 |
| 18100.1, Alien Status..... | 998 |
| 20310, (Long Term Care) Resource Exclusions..... | 1001 |

Division of Public Health

| | |
|--|------|
| 4402 Regulations for Adult Day Care Facilities..... | 1002 |
| 4406 Home Health Agencies - Aide Only (Licensure)..... | 1002 |
| 4410 Skilled Home Health Agencies (Licensure)..... | 1002 |
| 4469 Personal Assistance Services Agencies..... | 1002 |

Division of Social Services

| | |
|--|------|
| DSSM: 11003.2.1 TANF and Transitional Work Program Sanctions..... | 1008 |
| 11003.7.8 Special Needs..... | 1009 |
| 11003.8 Necessity of Child Care..... | 1009 |
| 4002.5 Excluded Resources..... | 1011 |
| 4006 Excluded Income..... | 1011 |
| 8026.5 Excluded Resources..... | 1011 |
| 8030 Excluded Income..... | 1011 |

TABLE OF CONTENTS

933

DEPARTMENT OF LABOR

Division of Industrial Affairs, Office of Workers' Compensation

1341 Workers' Compensation Regulations..... 1018

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies..... 1018

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Management and Support Services

501 Procedures for Drug Testing Certain Employees..... 1026

DEPARTMENT OF STATE

Division of Professional Regulation

1700 Board of Medical Licensure and Discipline..... 1030

2500 Board of Pharmacy, Subsection 5.1.13 Electronic Transmission of Prescriptions..... 1034

Uniform Controlled Substances Act Regulations..... 1036

DEPARTMENT OF TRANSPORTATION

Division of Transportation Solutions

2402 Delaware Manual on Uniform Traffic Control Devices..... 1044

FINAL

DELAWARE STATE FIRE PREVENTION COMMISSION

706 Specific Occupancy Requirements..... 1045

710 Ambulance Service Regulations..... 1046

DEPARTMENT OF AGRICULTURE

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations..... 1047

DEPARTMENT OF EDUCATION

Office of the Secretary

210 District School Board Member Special Education Due Process Hearing Training..... 1048

211 Notice to School Boards of Due Process Proceedings..... 1050

922 Children with Disabilities Subpart A, Purposes and Definitions..... 1053

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies..... 1057

924 Children with Disabilities Subpart C Local Educational Agency Eligibility..... 1059

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized
Education Programs..... 1060

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children. 1065

927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information 1067

928 Children with Disabilities Subpart G Use and Administration of Funds..... 1069

Professional Standards Board

1565 World Language Teacher..... 1071

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Social Services

DSSM: 3002 Time Limit, Temporary Welfare Program; 3006 TANF Employment and Training
Program, and 3031 Work For Your Welfare..... 1073

11004.7, Child Care Subsidy Program, Withdrawn..... 1078

TABLE OF CONTENTS

DEPARTMENT OF JUSTICE

Victims' Compensation Assistance Program Advisory Council

| | |
|---|------|
| 301 Victims' Compensation Assistance Program Rules and Regulations, Rule 29.0 Mental Health Claims..... | 1082 |
|---|------|

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air and Waste Management

| | |
|---|------|
| 1124 Control of Volatile Organic Compound Emissions, Section 47.0 Offset Lithographic Printing . | 1083 |
| 1142 Specific Emission Control Requirements, Section 2.0: Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries..... | 1092 |

DEPARTMENT OF STATE

Division of Professional Regulation

| | |
|---|------|
| 5200 Board of Examiners of Nursing Home Administrators..... | 1107 |
|---|------|

GOVERNOR

| | |
|---|------|
| Executive Order No. 25 , Allocation & Sub-Allocation Of State Private Activity Bond Volume Cap For Calendar Year 2011 & Reallocation Of State Private Activity Bond Volume Cap For Calendar Year 2010..... | 1109 |
|---|------|

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air and Waste Management

| | |
|---|------|
| State Implementation Plan (SIP) Revision..... | 1111 |
|---|------|

CALENDAR OF EVENTS/HEARING NOTICES

| | |
|---|-------------|
| Dept. of Agriculture, Harness Racing Commission, Notice of Public Comment Period..... | 1134 |
| State Board of Education, Notice of Monthly Meeting..... | 1134 |
| Dept. of Health and Social Services, Div. of Long Term Care Residents Protection, Notices of Public Comment Periods..... | 1134 |
| Div. of Management Services; Div. of Medicaid and Medical Asst., Notices of Public Comment Periods..... | 1135 |
| Div. of Public Health; Div. of Social Services, Notices of Public Comment Periods..... | 1136 - 1137 |
| Dept. of Labor, Div. of Industrial Affairs, Notice of Public Hearing..... | 1137 |
| Dept. of Safety and Homeland Security, Div. of State Police, Notice of Public Comment Period..... | 1138 |
| Dept. of Services for Children, Youth and Their Families, Div. of Management and Support Services, Notice of Public Comment Period..... | 1138 |
| Dept. of State, Division of Professional Regulation, Notices of Public Hearings..... | 1138-1139 |
| Dept. of Transportation, Division of Transportation Solutions, Notice of Public Comment Period..... | 1139 |

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

DELAWARE COUNCIL ON POLICE TRAINING

Delaware Council on Police Training..... 14 DE Reg. 342 (Emer.)

DELAWARE FIRE PREVENTION COMMISSION

706 Specific Occupancy Requirements, Chapter 4 - Residential Smoke Detectors,
Section 6.0 Hard-Wired Smoke Detector Program..... 14 DE Reg. 732 (Prop.)
710 Ambulance Service Regulations..... 14 DE Reg. 737 (Prop.)

DELAWARE RIVER BASIN COMMISSION

Amendments to the Water Quality Regulations, Water Code and Comprehensive
Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary
and Extend These Criteria to the Delaware Bay..... 14 DE Reg. 70 (Prop.)

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

501 Harness Racing Rules and Regulations, Subsections 2.3.2 and 5.1.22.4. 14 DE Reg. 602 (Prop.)
501 Harness Racing Rules and Regulations, Subsection 5.1.8 Substance
Abuse/Addiction..... 14 DE Reg. 23 (Final)
14 DE Reg. 894 (Final)
501 Harness Racing Rules and Regulations, Section 7.0, Rules of the Race.. 14 DE Reg. 134 (Prop.)
14 DE Reg. 553 (Final)
502 Delaware Standardbred Breeders' Fund Regulations, Section 13.0 Races 14 DE Reg. 345 (Prop.)

Nutrient Management Program

1201 Nutrient Management Certification Regulations..... 14 DE Reg. 212 (Prop.)
14 DE Reg. 645 (Final)

Delaware Standardbred Breeders' Fund

502 Delaware Standardbred Breeders' Fund Regulations, Section 13.0 Races 14 DE Reg. 646 (Final)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, Rule 15.0..... 14 DE Reg. 759 (Prop.)

DEPARTMENT OF EDUCATION

Office of the Secretary

103 Accountability for Schools, Districts and the State..... 14 DE Reg. 347 (Prop.)
14 DE Reg. 647 (Final)
210 District School Board Member Special Education Due Process Hearing
Training..... 14 DE Reg. 760 (Prop.)
211 Notice to School Boards of Due Process Proceedings..... 14 DE Reg. 762 (Prop.)
225 Prohibition of Discrimination..... 14 DE Reg. 221 (Prop.)
14 DE Reg. 554 (Final)
235 Teacher of the Year Award..... 14 DE Reg. 510 (Prop.)
14 DE Reg. 805 (Final)
251 Family Educational Rights and Privacy Act (FERPA)..... 14 DE Reg. 26 (Final)
405 Minor Capital Improvement Programs..... 14 DE Reg. 135 (Prop.)
14 DE Reg. 454 (Final)
501 State Content Standards..... 14 DE Reg. 6 (Prop.)
14 DE Reg. 167 (Final)
505 High School Graduation Requirements and Diplomas..... 14 DE Reg. 222 (Prop.)
14 DE Reg. 555 (Final)

CUMULATIVE TABLES

| | | |
|--|------------|-------------|
| 545 K to 12 School Counseling Programs..... | 14 DE Reg. | 28 (Final) |
| 710 Public School Employees Workday..... | 14 DE Reg. | 512 (Prop.) |
| | 14 DE Reg. | 807 (Final) |
| 727 Credit for Experience for Educators and for Secretarial Staff..... | 14 DE Reg. | 138 (Prop.) |
| | 14 DE Reg. | 457 (Final) |
| 746 Criminal Background Check for Student Teaching..... | 14 DE Reg. | 227 (Prop.) |
| | 14 DE Reg. | 557 (Final) |
| 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing..... | 14 DE Reg. | 848 (Prop.) |
| 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing..... | 14 DE Reg. | 851 (Prop.) |
| 920 Educational Programs for English Language Learners (ELLs)..... | 14 DE Reg. | 103 (Final) |
| 922 Children with Disabilities Subpart A, Purposes and Definitions..... | 14 DE Reg. | 104 (Prop.) |
| 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies..... | 14 DE Reg. | 606 (Prop.) |
| 924 Children with Disabilities Subpart C Local Educational Agency Eligibility.. | 14 DE Reg. | 607 (Prop.) |
| 925 Children with Disabilities Subpart D Evaluations, Eligibility Determination, Individualized Education Programs..... | 14 DE Reg. | 609 (Prop.) |
| 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children..... | 14 DE Reg. | 610 (Prop.) |
| 927 Children with Disabilities Subpart F Monitoring, Enforcement and Confidentiality of Information..... | 14 DE Reg. | 612 (Prop.) |
| 928 Children with Disabilities Subpart G Use and Administration of Funds..... | 14 DE Reg. | 614 (Prop.) |
| 930 Supportive Instruction (Homebound)..... | 14 DE Reg. | 231 (Prop.) |
| | 14 DE Reg. | 558 (Final) |
| 940 Early Admission to Kindergarten for Gifted Students..... | 14 DE Reg. | 140 (Prop.) |
| | 14 DE Reg. | 459 (Final) |

Professional Standards Board

| | | |
|--|------------|-------------|
| 1503 Educator Mentoring | 14 DE Reg. | 29 (Final) |
| 1511 Issuance and Renewal of Continuing License..... | 14 DE Reg. | 295 (Final) |
| 1517 Paraeducator Permits..... | 14 DE Reg. | 233 (Prop.) |
| | 14 DE Reg. | 560 (Final) |
| 1521 Elementary Teacher..... | 14 DE Reg. | 83 (Prop.) |
| | 14 DE Reg. | 299 (Final) |
| 1565 World Language Teacher..... | 14 DE Reg. | 765 (Prop.) |
| 1582 School Nurse..... | 14 DE Reg. | 354 (Prop.) |
| 1583 School Psychologist..... | 14 DE Reg. | 238 (Prop.) |
| | 14 DE Reg. | 562 (Final) |

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Long Term Care Residents Protection

| | | |
|--|------------|-------------|
| 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants..... | 14 DE Reg. | 169 (Final) |
|--|------------|-------------|

Division of Medicaid and Medical Assistance

| | | |
|---|------------|-------------|
| Combining §1915(c) Home and Community-Based Services Waivers..... | 14 DE Reg. | 88 (Prop.) |
| | 14 DE Reg. | 461 (Final) |
| Delaware Medicaid and CHIP Managed Care Quality Assessment & Improvement Strategy Draft..... | 14 DE Reg. | 361 (Prop.) |
| | 14 DE Reg. | 650 (Final) |
| Durable Medical Equipment (DME) Provider Specific Policy Manual..... | 14 DE Reg. | 244 (Prop.) |
| | 14 DE Reg. | 567 (Final) |
| Long-Term Care Program - Pre-Admission Screening and Resident Review | 14 DE Reg. | 615 (Prop.) |
| | 14 DE Reg. | 895 (Final) |
| Medicaid-Related General Assistance (GA) Program and Temporary Assistance for Needy Families (TANF) Program Changes..... | 14 DE Reg. | 357 (Prop.) |
| | 14 DE Reg. | 661 (Final) |
| Non-Emergency Medical Transportation Services..... | 14 DE Reg. | 103 (Final) |

| | | |
|---|------------|-------------|
| Public Assistance Reporting Information System (PARIS)..... | 14 DE Reg. | 360 (Prop.) |
| School-Based Wellness Center Clinic Services..... | 14 DE Reg. | 658 (Final) |
| Title XIX Medicaid State Plan, Medicaid Recovery Audit Contractor Program.. | 14 DE Reg. | 142 (Prop.) |
| | 14 DE Reg. | 563 (Final) |
| | 14 DE Reg. | 513 (Prop.) |
| DSSM: Citizenship and Alienage | 14 DE Reg. | 809 (Final) |
| | 14 DE Reg. | 363 (Prop.) |
| | 14 DE Reg. | 654 (Final) |
| Division of Public Health | | |
| 4455 Delaware Regulations Governing a Detailed Plumbing Code..... | 14 DE Reg. | 36 (Final) |
| | 14 DE Reg. | 517 (Prop.) |
| | 14 DE Reg. | 813 (Final) |
| 4458 State of Delaware Food Code Regulations (2011)..... | 14 DE Reg. | 526 (Prop.) |
| | 14 DE Reg. | 822 (Final) |
| 4459A Regulations for the Childhood Lead Poisoning Prevention Act..... | 14 DE Reg. | 246 (Prop.) |
| | 14 DE Reg. | 570 (Final) |
| 4461 Milk and Milk Products (Pasteurized Milk Ordinance)..... | 14 DE Reg. | 854 (Prop.) |
| Division of Social Services | | |
| DSSM: 3000 Temporary Assistance for Needy Families (TANF) - Definition.. | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3000.4 TANF and State Only Foster Care..... | 14 DE Reg. | 91 (Prop.) |
| 3000.4 TANF and State Only Foster Care..... | 14 DE Reg. | 304 (Final) |
| 3002 Time Limit, Temporary Welfare Program..... | 14 DE Reg. | 770 (Prop.) |
| 3004 Specified Relationship..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3004.1 Living in the Home..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3006 TANF Employment and Training Program..... | 14 DE Reg. | 770 (Prop.) |
| | 14 DE Reg. | 826 (Final) |
| 3006.1, 3006.2 and 3006.2.1 TANF Employment & Training Program | 14 DE Reg. | 529 (Prop.) |
| 3010 Participation and Cooperation in Developing CMR..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3018 General Assistance (GA)..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3021 Unrelated Children..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3022 Ineligibility Due to Family Cap..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3027 Age as a Condition of Eligibility..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3027.2 Minor Parents..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3028.1 Mandatory Composition of Assistance Units..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3028.2 Optional Composition of Assistance Units..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 3031 Work for Your Welfare..... | 14 DE Reg. | 770 (Prop.) |
| 4001 Family Budget Group..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 4001.1 Examples to Illustrate Rules Regarding Budget Groups..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 4004.3 Earned Income Disregards in GA..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 4007.1 Standards of Need/Payment Standard - GA..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 4009 Determining Financial Eligibility and Grant Amounts in GA..... | 14 DE Reg. | 91 (Prop.) |
| | 14 DE Reg. | 304 (Final) |
| 5001, Fair Hearings; 5100 Legal Base; 5200 Statewide Fair Hearings; | | |

CUMULATIVE TABLES

| | | |
|--|------------|-------------|
| 5300 Notices; 5400 Fair Hearing Requirements; 5500 Decisions by the Final Hearing Authority | 14 DE Reg. | 618 (Prop.) |
| 9032 Mandatory Verification..... | 14 DE Reg. | 620 (Prop.) |
| 11003.9.1: Income | 14 DE Reg. | 900 (Final) |
| | 14 DE Reg. | 8 (Prop.) |
| 11003.9.5: Making Income Determinations | 14 DE Reg. | 178 (Final) |
| | 14 DE Reg. | 8 (Prop.) |
| 11003.9.5: Making Income Determinations | 14 DE Reg. | 178 (Final) |
| 11004.2: Interviews..... | 14 DE Reg. | 11 (Prop.) |
| | 14 DE Reg. | 182 (Final) |
| 11004.7: Child Care Subsidy Program..... | 14 DE Reg. | 533 (Prop.) |
| 11004.9: Authorizing Service..... | 14 DE Reg. | 11 (Prop.) |
| 11005.4: Overpayments..... | 14 DE Reg. | 15 (Prop.) |
| | 14 DE Reg. | 187(Final) |
| 11005.4.1: Determine the Overpayment Amount..... | 14 DE Reg. | 15 (Prop.) |
| 11005.4.2: Overpayment Notices..... | 14 DE Reg. | 15 (Prop.) |
| 11005.4.3: Role of Audit and Recovery..... | 14 DE Reg. | 15 (Prop.) |
| 11006.3 Service Authorization..... | 14 DE Reg. | 39 (Final) |
| Division of Substance Abuse and Mental Health | | |
| 6001 Substance Abuse Facility Licensing Standards..... | 14 DE Reg. | 18 (Prop.) |
| | 14 DE Reg. | 471 (Final) |
| DEPARTMENT OF INSURANCE | | |
| 506 Crop Insurance Adjusters and Producers..... | 14 DE Reg. | 249 (Prop.) |
| | 14 DE Reg. | 573 (Final) |
| 507 Workers' Compensation Insurance Adjusters..... | 14 DE Reg. | 251 (Prop.) |
| | 14 DE Reg. | 575 (Final) |
| 704 Homeowners Premium Consumer Comparison | 14 DE Reg. | 41 (Final) |
| 901 Arbitration of Automobile and Homeowners' Insurance Claims (Withdrawn).... | 14 DE Reg. | 44 (Final) |
| 908 Procedures for Responding to Freedom of Information Requests..... | 14 DE Reg. | 144 (Prop.) |
| | 14 DE Reg. | 479 (Final) |
| 1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities | 14 DE Reg. | 48 (Final) |
| 1218 Determining Reserve Liabilities For Credit Life Insurance..... | 14 DE Reg. | 49 (Final) |
| 1404 Long-Term Care Insurance..... | 14 DE Reg. | 92 (Prop.) |
| | 14 DE Reg. | 316 (Final) |
| DEPARTMENT OF JUSTICE | | |
| Division of Securities | | |
| Rules and Regulations Pursuant to the Delaware Securities Act..... | 14 DE Reg. | 367 (Prop.) |
| | 14 DE Reg. | 664 (Final) |
| 301 Victims' Compensation Assistance Program Rules and Regulations, Section 28.0 Payment of Claims..... | 14 DE Reg. | 383 (Prop.) |
| | 14 DE Reg. | 666 (Final) |
| Section 29.0 Payment of Claims..... | 14 DE Reg. | 771 (Prop.) |
| Fraud and Consumer Protection Division | | |
| 102 Debt Management Services..... | 14 DE Reg. | 93 (Prop.) |
| | 14 DE Reg. | 318 (Final) |
| 103 Consumer Protection Unit Administrative Enforcement Proceedings..... | 14 DE Reg. | 252 (Prop.) |
| | 14 DE Reg. | 577 (Final) |
| DEPARTMENT OF LABOR | | |
| Division of Industrial Affairs | | |
| 1101 Apprenticeship and Training Regulations..... | 14 DE Reg. | 50 (Final) |
| 1327 Notice of Independent Contractor or Exempt Person Status..... | 14 DE Reg. | 261 (Prop.) |

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air and Waste Management

| | |
|---|------------------------|
| 1124 Control of Volatile Organic Compound Emissions, Section 11.0 Mobile Equipment Repair and Refinishing..... | 14 DE Reg. 319 (Final) |
| 1124 Control of Volatile Organic Compound Emissions, Sections 8.0, 13.0, 16.0, 23.0, 37.0 and 45.0..... | 14 DE Reg. 902 (Final) |
| 1124 Control of Volatile Organic Compound Emissions, Section 47.0 Offset Lithographic Printing..... | 14 DE Reg. 628 (Prop.) |
| 1125 Requirements for Preconstruction Review..... | 14 DE Reg. 263 (Prop.) |
| 1130 Title V State Operating Permit Program..... | 14 DE Reg. 579 (Final) |
| 1138 Emission Standards for Hazardous Air Pollutants for Source Categories | 14 DE Reg. 263 (Prop.) |
| 1140 Delaware's National Low Emission Vehicle (NLEV) Regulation..... | 14 DE Reg. 147 (Prop.) |
| 1142 Specific Emission Control Requirements, Section 2.0, Control of No _x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries..... | 14 DE Reg. 320 (Final) |
| 1302 Delaware Regulations Governing Hazardous Waste..... | 14 DE Reg. 581 (Final) |
| 1140 Delaware's National Low Emission Vehicle (NLEV) Regulation..... | 14 DE Reg. 264 (Prop.) |
| 1142 Specific Emission Control Requirements, Section 2.0, Control of No _x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries..... | 14 DE Reg. 583 (Final) |
| 1302 Delaware Regulations Governing Hazardous Waste..... | 14 DE Reg. 637 (Prop.) |
| 1302 Delaware Regulations Governing Hazardous Waste..... | 14 DE Reg. 384 (Prop.) |
| 1302 Delaware Regulations Governing Hazardous Waste..... | 14 DE Reg. 668 (Final) |

Division of Fish and Wildlife

| | |
|---|------------------------|
| 3214 Horseshoe Crab Annual Harvest Limit..... | 14 DE Reg. 406 (Prop.) |
| 3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas..... | 14 DE Reg. 904 (Final) |
| 3511 Summer Flounder Size Limits; Possession Limits..... | 14 DE Reg. 113 (Final) |
| 3536 Fish Pot Requirements..... | 14 DE Reg. 856 (Prop.) |
| 3541 Atlantic Sharks..... | 14 DE Reg. 859 (Prop.) |
| 3702 Definitions..... | 14 DE Reg. 862 (Prop.) |
| 3771 Oyster Harvesting Licensee Requirements..... | 14 DE Reg. 191 (Final) |
| 3901 Definitions..... | 14 DE Reg. 863 (Prop.) |
| 3902 Method of Take..... | 14 DE Reg. 117 (Final) |
| 3903 Federal Laws and Regulations Adopted..... | 14 DE Reg. 52 (Final) |
| 3904 Seasons..... | 14 DE Reg. 52 (Final) |
| 3907 Deer..... | 14 DE Reg. 52 (Final) |
| 3921 Guide License..... | 14 DE Reg. 52 (Final) |
| 3922 Hunter and Trapper Identification Number..... | 14 DE Reg. 52 (Final) |

Division of Parks and Recreation

| | |
|--|------------------------|
| 9202 Regulations Governing Natural Areas and Nature Preserves..... | 14 DE Reg. 407 (Prop.) |
|--|------------------------|

Division of Soil and Water Conservation

| | |
|--|------------------------|
| 5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures..... | 14 DE Reg. 868 (Prop.) |
| 5105 Regulations Governing the Election of Members of County Board of Conservation District Supervisors..... | 14 DE Reg. 773 (Prop.) |

Division of Water Resources

| | |
|---|------------------------|
| 7201 Regulations Governing the Control of Water Pollution, Section 9.5, Concentrated Animal Feeding Operation (CAFO)..... | 14 DE Reg. 19 (Prop.) |
| 7401 Surface Water Quality Standards..... | 14 DE Reg. 482 (Final) |
| 7401 Surface Water Quality Standards..... | 14 DE Reg. 869 (Prop.) |

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of Communications

| | |
|---|------------------------|
| 2500 In-Building Communications Systems Regulation..... | 14 DE Reg. 870 (Prop.) |
|---|------------------------|

Office of Highway Safety

| | | |
|---|------------|-------------|
| 1201 Driving Under the Influence Evaluation Program, Courses of Instruction, Programs of Rehabilitation and Related Fees..... | 14 DE Reg. | 419 (Prop.) |
| | 14 DE Reg. | 907 (Final) |
| 1204 Drinking Driver Programs Standard Operating Procedures..... | 14 DE Reg. | 419 (Prop.) |
| | 14 DE Reg. | 907 (Final) |
| 1206 Approved Motorcycle Helmets and Eye Protection..... | 14 DE Reg. | 432 (Prop.) |
| | 14 DE Reg. | 670 (Final) |

Office of the Secretary

| | | |
|--|------------|-------------|
| 1101 Regulations Governing Travel Restrictions During a State of Emergency | 14 DE Reg. | 414 (Prop.) |
| | 14 DE Reg. | 908 (Final) |

DEPARTMENT OF STATE**Division of Historical and Cultural Affairs**

| | | |
|---|------------|-------------|
| 100 Historic Preservation Tax Credit Program..... | 14 DE Reg. | 148 (Prop.) |
| | 14 DE Reg. | 485 (Final) |

Division of Professional Regulation**Delaware Gaming Control Board**

| | | |
|---|------------|-------------|
| 101 Regulations Governing Bingo..... | 14 DE Reg. | 156 (Prop.) |
| | 14 DE Reg. | 486 (Final) |
| 100 Board of Accountancy..... | 14 DE Reg. | 54 (Final) |
| 700 Board of Chiropractic..... | 14 DE Reg. | 268 (Prop.) |
| | 14 DE Reg. | 880 (Prop.) |
| 1100 Board of Dental Examiners..... | 14 DE Reg. | 776 (Prop.) |
| 1600 Commission on Adult Entertainment Establishments..... | 14 DE Reg. | 674 (Final) |
| 2700 Board of Registration for Professional Land Surveyors..... | 14 DE Reg. | 102 (Prop.) |
| | 14 DE Reg. | 675 (Final) |
| 4400 Delaware Manufactured Home Installation Board..... | 14 DE Reg. | 434 (Prop.) |
| | 14 DE Reg. | 797 (Prop.) |
| 5100 Board of Cosmetology and Barbering..... | 14 DE Reg. | 437 (Prop.) |
| 5200 Board of Examiners of Nursing Home Administrators..... | 14 DE Reg. | 281 (Prop.) |
| 8800 Boxing and Combative Sports Rules and Regulations..... | 14 DE Reg. | 20 (Prop.) |

Office of the State Banking Commissioner

| | | |
|--|------------|-------------|
| 103 Freedom of Information Act Requests..... | 14 DE Reg. | 487 (Final) |
|--|------------|-------------|

Public Service Commission

| | | |
|--|------------|-------------|
| 1008 Regulations Governing Requests made pursuant to the Freedom of Information Act..... | 14 DE Reg. | 162 (Prop.) |
| | 14 DE Reg. | 584 (Final) |
| 2002 Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities..... | 14 DE Reg. | 120 (Final) |
| 3001 Regulations Governing Service Supplied by Electrical Corporations..... | 14 DE Reg. | 282 (Prop.) |
| 3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act..... | 14 DE Reg. | 284 (Prop.) |
| | 14 DE Reg. | 535 (Prop.) |

DEPARTMENT OF TRANSPORTATION**Division of Planning and Policy**

| | | |
|--|------------|-------------|
| 2307 Delaware Safe Routes to School Regulations..... | 14 DE Reg. | 56 (Final) |
| 2311 Long-Term Lease Policies and Practices..... | 14 DE Reg. | 21 (Prop.) |
| | 14 DE Reg. | 196 (Final) |
| 2313 Policies and Procedures for Acquisition of Certain Real Property Interests..... | 14 DE Reg. | 800 (Prop.) |

Division of Transportation Solutions

| | | |
|---|------------|-------------|
| 2403 Special Events Policies and Procedures - Traffic Management..... | 14 DE Reg. | 546 (Prop.) |
| | 14 DE Reg. | 917 (Final) |

CUMULATIVE TABLES

941

EXECUTIVE DEPARTMENT

Office of Management and Budget

Freedom of Information Act Regulation..... 14 DE Reg. 57 (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

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 3.2.8 entitled "Steward's List" by deleting the last sentence of rule 3.2.8.5. The Commission will hold a public hearing on the proposed rule changes on April 12, 2011. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 South 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, 2011. The proposed changes are for the purpose of updating the Rules and to more accurately 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)

3.0 Officials

(Break in Continuity of Sections)

3.2 Board of Judges

3.2.1 General Authority

- 3.2.2.1 The Board of Judges for each meeting shall be responsible to the Commission for the conduct of the race meeting in accordance with the laws of this jurisdiction and these rules.
 - 3.2.2.2 The Board of Judges shall enforce these rules and the racing laws of the State of Delaware.
 - 3.2.2.3 The Presiding Judge's authority includes supervision of all racing officials, licensed personnel, other persons responsible for the conduct of racing and patrons, as necessary to ensure compliance with these rules.
 - 3.2.2.4 The Board of Judges shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.
 - 3.2.2.5 The Board of Judges have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules.
 - 3.2.2.6 The Presiding Judge shall be a representative of the Commission at all race meetings which the Commission may direct such Presiding Judge to attend. The Presiding Judge shall be the senior officer at such meetings and, subject to the control and direction of the Commission, shall have general supervision over the racing officials, medication program and drug-testing officials, and all other employees and appointees of the Commission employed at such race meet or meetings. The Presiding Judge shall, subject to the general control of the Commission, monitor the conduct of the racing and the pari-mutuel department, and supervise the testing of horses and drivers. The Presiding Judge at all times shall have access to all parts of the Association grounds, including the racecourse, physical plant and grounds. Upon instruction from the Commission, the Presiding Judge shall conduct hearings and investigations, and report his findings to the Commission. The Presiding Judge shall act for the Commission in all matters requiring its attention, to receive from all persons having knowledge thereof information required by the Commission and to perform all other duties for the compliance of the rules and regulations of the Commission and the laws of the State of Delaware.
- 3.2.2 Period of Authority
The Board of Judge's period of authority shall commence five (5) business days prior to the beginning of each race meeting and shall terminate with completion of their official business pertaining to the meeting.
- 3.2.3 Disciplinary Action
- 3.2.3.1 The Board of Judges shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.
 - 3.2.3.2 The Board of Judges shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.
 - 3.2.3.3 The Board of Judges may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.
 - 3.2.3.4 The Board of Judges may at any time inspect license documents, registration papers and other documents related to racing.
 - 3.2.3.5 The Board of Judges have the power to administer oaths and examine witnesses.
 - 3.2.3.6 The Board of Judges shall consult with the Chief DHRC Veterinarian and/or the Commission chemist to determine the nature and seriousness of a laboratory finding or an alleged medication violation.
 - 3.2.3.7 The Board of Judges may impose, but are not limited to, any of the following penalties on a licensee for a violation of these rules:
 - 3.2.3.7.1 The Board of Judges may take any appropriate actions against any horse for a violation or attempted violation of these rules.
 - 3.2.3.7.2 The Board of Judges may suspend a license; or they may impose a fine in accordance with these Rules for each violation; or they may suspend and fine; or they

may order that a person be ineligible for licensing. If a driver is given a driving suspension of five (5) days or less by the Board of Judges in Delaware, then such penalty shall commence on the first day after the driver has fulfilled all of the driving obligations programmed in the State of Delaware at the time the penalty is assessed.

- 3.2.3.8 The Board of Judge's ruling shall not prevent the Commission from imposing a more or less severe penalty.
- 3.2.3.9 The Board of Judges may refer any matter to the Commission and may include recommendations for disposition. The absence of a Board of Judge's referral shall not preclude Commission action in any matter.
- 3.2.3.10 Purses, prizes, awards, and trophies shall be redistributed if the Board of Judges or Commission order a change in the official order of finish.
- 3.2.3.11 All fines imposed by the Board of Judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.
- 3.2.4 **Protests, Objections and Complaints**

The Board of Judges shall investigate promptly and render a decision in every protest made to them. They shall maintain a record of all protests. The Board of Judges shall file daily with the Commission a copy of each protest, objection or complaint and any related ruling. All protests must be in writing and lodged with the Board of Judges not later than forty-eight (48) hours after the race in question.
- 3.2.5 **Judges' Presence**

One judge shall be present in the stand thirty (30) minutes prior to the race to observe and the others shall be present no less than fifteen (15) minutes prior to the race, during the contesting of the race and fifteen (15) minutes after the finish.
- 3.2.6 **Order of Finish for Pari-Mutuel Wagering**
 - 3.2.6.1 The judges shall determine the official order of finish for each race in accordance with the rules of the race (see Rule 7.0).
 - 3.2.6.2 The decision of the judges as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the contesting of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.
- 3.2.7 **Cancel Wagering**

The Board of Judges has the authority to cancel wagering and order refunds where applicable on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.
- 3.2.8 **Steward's List**
 - 3.2.8.1 The judges shall maintain a Steward's List of the horses which are ineligible to be entered in a race.
 - 3.2.8.2 A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused. The owner or trainer shall be notified of such action and the reason shall be clearly stated. When any horse is placed on the Steward's List, the Program Director shall make a note on the electronic eligibility certificate of such horse, showing the date the horse was put on the Steward's List the reason and the date of removal if the horse has been removed.
 - 3.2.8.3 Following an examination all horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and can not race for at least seven (7) days from the date of the scratched race. Entries will be accepted during this seven (7) day period for a race to be contested after the seventh day.
 - 3.2.8.3.1 Following an examination Veterinarians may put a horse on the Steward's List for sickness or lameness for more than seven (7) days if necessary. In that instance, the

horse may not race until proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

- 3.2.8.4 No Presiding Judge or other official at a race meeting shall have the power to remove from the Steward's List and accept as an entry any horse which has been placed on a Steward's List and not subsequently removed for the reason that he it is dangerous or unmanageable. Such meetings may refuse declarations and/or entries on any horse that has been placed on the Steward's List and has not been removed.
- 3.2.8.5 No entry or declaration to start shall be accepted by any Association in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months, ~~except for in the case of paid events. In paid in events, no horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months.~~
- 3.2.8.6 The judges may put any horse on the Steward's List for performance when such horse shows a reversal of form or does not race near its own capabilities. Such horse shall qualify in a time comparable to its known capabilities from one to three times, at the discretion of the judges, before being allowed to start.
- 3.2.8.7 Any horse put on the Steward's List as unmanageable or dangerous must qualify in a satisfactory manner for the judges at least two times.
- 3.2.8.8 The judges may put any horse on the Steward's List for being noncompetitive or unfit to race at the meeting.
- 3.2.8.9 The judges may place a horse on the Steward's List when there exists a question as to the exact identification, ownership or management of said horse.
- 3.2.8.10 A horse which has been placed on the Steward's List because of questions as to the exact identification or ownership of said horse, may be removed from the Steward's List when, in the opinion of the judges, proof of exact identification and/or ownership has been established.
- 3.2.8.11 A horse may not be released from the Steward's List without the permission of the judges.

(Break in Continuity of Sections)

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

[501 Harness Racing Rules and Regulations](#)

HARNES RACING COMMISSION

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

PUBLIC NOTICE

[501 Harness Racing Rules and Regulations](#)

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 8.3 by inserting new rule 8.3.7 entitled Anabolic / Androgenic Steroids. The Commission will hold a public hearing on the proposed rule changes on April 12, 2011. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 South 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, 2011. The proposed changes are for the purpose of updating the Rules and to more accurately 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)

8.0 Veterinary Practices, Equine Health Medication

(Break in Continuity of Sections)

8.3 Medications and Foreign Substances

(Break in Continuity of Sections)

8.3.7 Anabolic / Androgenic Steroids

8.3.7.1 With respect to nandrolone, boldenone, stanozolol and testosterone in fillies, mares, geldings and ridgelings (testosterone and nandrolone in stud horse samples are treated separately in 8.3.7.2):

8.3.7.1.1 Any test result at plasma concentrations below 100 picograms per milliliter will be considered a negative test.

8.3.7.1.2 Any test result at plasma concentration levels at or above 100 picograms per milliliter will be considered a positive test result and subject to sanctions as described in Section 8.3.7.3.

8.3.7.2 With respect to nandrolone and testosterone levels determined in intact male horses:

8.3.7.2.1 Nandrolone

8.3.7.2.1.1 Any test result at plasma concentrations below 500 picograms per milliliter will be considered a negative test.

8.3.7.2.1.2 Any test result at and above plasma concentrations of 500 picograms per milliliter will be considered a positive test and subject to sanctions as described in Section 8.3.7.3.

8.3.7.2.2 Testosterone

8.3.7.2.2.1 Any test result at plasma concentrations below 2000 picograms per milliliter will be considered a negative test.

8.3.7.2.2.2 Any test result at and above plasma concentrations of 2000 picograms per milliliter will be considered a positive test and subject to sanctions as described in Section 8.3.7.3.

8.3.7.3 Sanctions

8.3.7.3.1 First Offense: The horse will be placed on the Vets List and cannot race again until it tests below 100 picograms for Boldenone, Stanozolol, Nandrolone and Testosterone in fillies, mares, geldings and ridgelings and 2000 picograms for Testosterone and 500 picograms for Nandrolone in intact males. Any and all purse money is forfeited. The trainer is notified for a hearing and a fine not to exceed \$1,500.00 and 15 days full suspension will be assessed absent mitigating circumstances.

8.3.7.3.2 Second Offense: All sanctions for First Offense, plus trainer may be fined not in excess of \$2,500.00 and subject to 30 days full suspension absent mitigating factors.

- 8.3.7.3.3 Third Offense: All sanctions for First Offense, plus trainer may be fined \$10,000.00 and/or up to the amount of the purse of the race and subject to revocation of their DHRC License absent mitigating factors.
- 8.3.7.3.4 Should a horse be claimed from a race where positive findings are confirmed, the claimant has the right to void the claim.

(Break in Continuity of Sections)

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

[501 Harness 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 101

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

101 Delaware Student Testing Program

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 101 Delaware Student Testing Program. The regulation is being amended to reflect changes to the state assessment system.

The Department is proposing several amendments including, but not limited to: 1) replacing the Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS); 2) a definition that identifies the various assessments that are part of the state assessment system including a norm referenced assessment, a college readiness assessment and an assessment for English Language Learners (ELL); 3) changes to reflect four (4) performance levels; 4) changes around the diploma requirement, including information related to other academic indicators; 5) updates to the Security and Confidentiality section; 6) procedures for the review of the assessment in light of the online computer adaptive nature of the assessment; and 7) revisions to the Invalidations and Special Exemptions section.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 5, 2011 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 are related to the new assessment that is computer adaptive and provided multiple times a year. This should provide more timely information thus helping to provide instructional information to educators that may result in improved student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments are related to the new assessment that is computer adaptive and provided multiple times a year. This should provide more timely information thus helping to provide instructional information to educators that may result providing an additional action in ensuring all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments are related to the state assessment and not specifically students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments are related to the state assessment and not specifically students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not substantively change the authority or flexibility of decision making at the local board or school level.

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

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

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

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

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

101 Delaware Student Testing Program State Assessment System

1.0 Purpose and Definition

~~The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades 2 to 10 in the areas of reading and mathematics, grades 3 to 10 in the area of writing and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.~~

~~1.1 All students in said grades shall be tested except that students with disabilities and English Language Learners (ELLs) shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and English Language Learners (ELLs), as the same, may from time to time be amended hereafter.~~

~~1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of these dates.~~

~~1.1 Purpose: The purpose of this regulation is to outline the procedures, criteria and responsibilities related to the state assessment system required pursuant to 14 Del.C. §151.~~

~~1.2 Definitions:~~

~~**"Delaware Comprehensive Assessment System (DCAS)"** means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, used in the Delaware public schools, and a summative assessment measuring student achievement based solely on grade-level academic content standards or the alternate achievement standards, using only on grade-level items and passages.~~

~~The Delaware Comprehensive Assessment System (DCAS) shall include the assessments of all students in grades 2 through 10 in the areas of reading and mathematics; the~~

assessments of all students in grades 5, 8, and 10 in science; and the assessments of all students in grades 4 and 7 in social studies. All districts and charter schools shall participate in all components of the DCAS including field test administrations.

All students in said grades shall be tested except that students with disabilities and English Language Learners (ELLs) shall be tested according to the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and English Language Learners* (ELLs), as the same may from time to time be amended hereafter.

The Department of Education shall determine the dates upon which the DCAS shall be administered, and will advise the school districts and charter schools of those dates.

"State Assessment System" means the statewide assessment used to measure student achievement of the Delaware academic content standards including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, and other assessments such as, but not limited to, the National Assessment for Educational Progress (NAEP), a college readiness assessment, an assessment for English Language Learners (ELL), a norm-referenced assessment that may be administered or required as determined by the Department of Education.

10 DE Reg. 676 (10/01/06)

2.0 Levels of Performance

- 2.1 There shall be ~~five~~ four levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3 through 10 in reading, ~~and mathematics and writing and~~; to students in grades 4, 6, 8 and 11 in social studies and 5, 8, and 10 in science; and to students in grades 4 and 7 in social studies. There shall be ~~three levels of performance for students in grade 2 in reading and mathematics.~~ The cut points for ~~Distinguished, Exceeds the Standard~~ Advanced, Meets the Standard and ~~Below the Standard~~ shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work assessment data in making the recommendation. Said levels are defined and shall be determined as follows:
- 2.1 ~~Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education.~~
- 2.2 ~~Exceeds the Performance Standard (Level 4)~~ Advanced (Performance Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. ~~Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good."~~ The cut points for ~~Exceeds the Performance Standard~~ Advanced shall be determined by the Department of Education, with the consent of the State Board of Education.
- 2.3 Meets the ~~Performance Standard~~ (Performance Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. ~~Student performance in this range can be classified as "good."~~ The cut points for Meets the ~~Performance Standard~~ shall be determined by the Department of Education, with the consent of the State Board of Education.
- 2.4 Below the ~~Performance Standard~~ (Performance Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. ~~Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be~~

~~classified as academically "deficient."~~ The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

- 2.5 Well Below the Performance Standard (Performance Level 1): A student's performance in the tested domain shows an ~~incomplete and a clearly unsatisfactory understanding of~~ evidence of an inability to apply the fundamental skills and knowledge articulated in the Delaware Content Standards. ~~Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient."~~ The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

10 DE Reg. 676 (10/01/06)

3.0 Other Indicators of Student Performance

- 3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153 when determining the placement of students who score at Level 1 or Level # 2 on a mandated retake of a portion of the ~~DSTP~~ DCAS. Pursuant to 14 **Del.C.** §153 ~~and 153~~, local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153; student performance on end of course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153.
- 3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.
- 3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.
- 3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with ~~the Student Assessment and Accountability Committee and~~ the State Board of Education.
- 3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.
- 3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.
- 3.3.2 The supervisor of curriculum or instruction for the school district or charter school or ~~his/ her~~ designee shall chair the committee.
- 3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

7 DE Reg. 325 (9/1/03)

10 DE Reg. 676 (10/01/06)

10 DE Reg. 1425 (03/01/07)

4.0 Individual Improvement Plan (IIP)

- 4.1 The following students are required to have an Individual Improvement Plan:

Students who score below Level 3 Meets the Standard, on the reading portion of the ~~2nd, 3rd, 4th, 5th, 6th, 7th, or 8th grade Delaware Student Testing Program DCAS~~ or the mathematics portion of the 6th, 7th, or 8th grade ~~Delaware Student Testing Program DCAS~~ shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

- 4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further ~~DSTP~~ DCAS results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).
- 4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and mentoring programs.
- 4.4 The Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver who must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.
- 4.5 Disputes initiated by a student's parent or legal guardian or Relative Caregiver concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the ~~Regulations, Children with Disabilities~~ 14 DE Admin. Code 900.

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

10 DE Reg. 676 (10/01/06)

5.0 Summer School Programs for Students in Grades 3, 5, and 8 as required pursuant to 14 Del.C. §153

- 5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:
 - 5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.
 - 5.1.2 Where by mutual agreement of both districts or a charter school and the student's parent, guardian or Relative Caregiver, another district provides services.
 - 5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent, guardian or Relative Caregiver, the parent, guardian or Relative Caregiver arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent, guardian or Relative Caregiver shall be responsible for the cost of providing nonpublic school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.
 - 5.1.4 Where a student has been offered admission into a career technical school district or charter school, that district or charter school may provide summer school services.

8 DE Reg. 425 (9/1/04)

9 DE Reg. 1175 (2/1/06)

6.0 State of Delaware High School Diploma Requirements

- 6.1 ~~Students who graduate from a Delaware public high school, as members of the class of 2004 through and including the class of 2007 shall be subject to the diploma index for a distinguished diploma as stated herein.~~
 - 6.1.1 ~~Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in~~

PROPOSED REGULATIONS

~~reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.~~

- ~~6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.~~
- ~~6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.~~
- ~~6.3.1 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.~~
- ~~6.4 Students who graduate as members of the class of 2006 through and including the class of 2007 shall qualify for a State of Delaware Distinguished High School diploma or a traditional State of Delaware High School diploma as follows:~~
- ~~6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 and provided that the student has met all of the requirements as specified in 14 DE Admin. Code 505, and shall meet any other additional criteria as determined by the local district or charter school~~
- ~~6.4.1.1 Beginning with the graduating class of 2006 through and including the graduating class of 2007, "Other Academic Indicators" may be substituted for specific content area DSTP scores. The Other Academic Indicators shall be:~~
- ~~6.4.1.1.1 SAT Reasoning Test Verbal score or the SAT Reasoning Test Reading score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;~~
 - ~~6.4.1.1.2 SAT Reasoning Test Verbal score or the SAT Reasoning Test score of 622 or higher representing a Performance Level 5 on the reading portion of the diploma index;~~
 - ~~6.4.1.1.3 SAT Reasoning Test Mathematics score between 547 and 617 representing a Performance Level 4 the mathematics portion of the diploma index;~~
 - ~~6.4.1.1.4 SAT Reasoning Test Mathematics score of 618 or higher representing a Performance Level 5 on the mathematics portion of the diploma index;~~
 - ~~6.4.1.1.5 SAT Reasoning Test Writing score between 554 and 646 representing a Performance Level 4 on the writing portion of the diploma index];~~
 - ~~6.4.1.1.6 SAT Reasoning Test Writing score or SAT Subject Test writing score of 647 or higher representing a Performance level of y on the writing portion to the diploma index;~~
 - ~~6.4.1.1.7 Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and~~
 - ~~6.4.1.1.8 Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.~~
 - ~~6.4.1.1.9 Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.~~
 - ~~6.4.1.1.10 Other nationally administered tests which have scores that can be converted to the SAT scale may be used if the converted score is equal to or higher than the SAT cut score.~~

- ~~6.4.2 A student who does not qualify for a Distinguished diploma based solely on the diploma index may request the high school submit official documentation of the Other Academic Indicators to the Department.~~
- ~~6.4.3 A student shall be awarded a traditional State of Delaware Diploma provided the student has met all other requirements for graduation as established by the State and local districts or charter schools.~~
- ~~6.5.6.1 Students who graduate from a Delaware public high school, as members of the class of 2008 and beyond shall meet the following requirements for receipt of a traditional State of Delaware diploma:~~
- ~~6.5.1.1 The student shall meet all of the requirements as specified in 14 DE Admin. Code 505, and shall meet any other additional criteria as determined by the local district or charter school; and~~
- ~~6.5.1.2 The student shall demonstrate proficient levels of performance relative to the State content standards in reading, writing, mathematics, science and social studies. The student may demonstrate proficient levels of performance through the calculated diploma index or Other Academic Indicators, as follows:~~
- ~~6.5.2.1 The student shall have a diploma index of 3.0 or higher.~~
- ~~6.5.2.1.1 The Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.~~
- ~~6.5.2.1.2 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight of .20 for each content area and summing the results.~~
- ~~6.5.2.1.3 A student with less than a 3.0 diploma index based on the 10th grade assessments in reading, writing and mathematics shall be required to retest in at least one of the content areas the student received a score below Performance Level 3. A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.~~
- ~~6.5.2.2 The student may use Other Academic Indicators as a substitute for specific content area DSTP scores. A student shall be required to retest in any content area the student received a score below Performance Level 3 before any other academic indicator can be used as a substitute for that content area.~~
- ~~6.5.2.2.1 SAT Reasoning Critical Reading score between 200 and 334 representing a Performance Level 1 on the reading portion of the diploma index;~~
- ~~6.5.2.2.2 SAT Reasoning Critical Reading score between 335 and 430 representing a Performance Level 2 on the reading portion of the diploma index;~~
- ~~6.5.2.2.3 SAT Reasoning Critical Reading score between 431 and 543 representing a Performance Level 3 on the reading portion of the diploma index;~~
- ~~6.5.2.2.4 SAT Reasoning Critical Reading score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;~~
- ~~6.5.2.2.5 SAT Reasoning Critical Reading score between 622 and 800 representing a Performance Level 5 on the reading portion of the diploma index;~~
- ~~6.5.2.2.6 SAT Reasoning Test Mathematics score between 200 and 414 representing a Performance Level 1 the mathematics portion of the diploma index;~~
- ~~6.5.2.2.7 SAT Reasoning Test Mathematics score between 415 and 477 representing a Performance Level 2 the mathematics portion of the diploma index;~~
- ~~6.5.2.2.8 SAT Reasoning Test Mathematics score between 478 and 546 representing a Performance Level 3 the mathematics portion of the diploma index;~~
- ~~6.5.2.2.9 SAT Reasoning Test Mathematics score between 547 and 617 representing a Performance Level 4 on the mathematics portion of the diploma index;~~

PROPOSED REGULATIONS

- 6.5.2.2.10 ~~SAT Reasoning Test Mathematics score between 618 and 800 representing a Performance Level 5 on the mathematics portion of the diploma index;~~
- 6.5.2.2.11 ~~SAT Reasoning Test Writing score between 200 and 394 representing a Performance Level 1 on the writing portion of the diploma index;~~
- 6.5.2.2.12 ~~SAT Reasoning Test Writing score between 395 and 474 representing a Performance Level 2 on the writing portion of the diploma index;~~
- 6.5.2.2.13 ~~SAT Reasoning Test Writing score between 475 and 553 representing a Performance Level 3 on the writing portion of the diploma index;~~
- 6.5.2.2.14 ~~SAT Reasoning Test Writing score between 554 and 646 representing a Performance Level 4 on the writing portion of the diploma index;~~
- 6.5.2.2.15 ~~SAT Reasoning Test Writing score between 647 and 800 representing a Performance Level 5 on the writing portion of the diploma index;~~
- 6.5.2.2.16 ~~Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and~~
- 6.5.2.2.17 ~~Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.~~
- 6.5.2.2.18 ~~Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.~~
- 6.5.2.2.19 ~~ACT English Plus Reading score of 25 or lower representing a Performance Level 1 on the reading portion of the diploma index;~~
- 6.5.2.2.20 ~~ACT English Plus Reading score between 26 and 35 representing a Performance Level 2 on the reading portion of the diploma index;~~
- 6.5.2.2.21 ~~ACT English Plus Reading score between 36 and 47 representing a Performance Level 3 on the reading portion of the diploma index;~~
- 6.5.2.2.22 ~~ACT English Plus Reading score between 48 and 57 representing a Performance Level 4 on the reading portion of the diploma index;~~
- 6.5.2.2.23 ~~ACT English Plus Reading score of 58 or higher representing a Performance Level 5 on the reading portion of the diploma index;~~
- 6.5.2.2.24 ~~ACT Mathematics score of 17 or lower representing a Performance Level 1 on the mathematics portion of the diploma index;~~
- 6.5.2.2.25 ~~ACT Mathematics score of 18 and 19 representing a Performance Level 2 on the mathematics portion of the diploma index;~~
- 6.5.2.2.26 ~~ACT Mathematics score between 20 and 23 representing a Performance Level 3 on the mathematics portion of the diploma index;~~
- 6.5.2.2.27 ~~ACT Mathematics score between 24 and 27 representing a Performance Level 4 on the mathematics portion of the diploma index; and~~
- 6.5.2.2.28 ~~ACT Mathematics score of 28 or higher representing a Performance Level 5 on the mathematics portion of the diploma index.~~
- 6.51.3 A student who does not demonstrate proficient performance relative to the state content standards pursuant to Sections 6.5.2.1 or 6.5.2.2 of this regulation by January 1 of the year in which he/she the student is scheduled to graduate; or who has enrolled from another state or nonpublic school in Delaware during the school year in which the student is scheduled to graduate shall have the school or charter school academic review committee review additional Other Academic Indicators

of student performance for purposes of satisfying 6.51.2 of this regulation. The only Other Academic Indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(4); student performance on end of course assessments; student classroom work products; and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a). The district or charter school shall make the determination of whether the student has demonstrated proficient performance relative to the state content standards pursuant to 6.5.2.1 or 6.5.2.2.

6.51.3.1 Any local school district or charter school planning to use Other Academic Indicators of student performance shall submit the other academic indicators to the Department of Education, for recording and filing purposes only, by September 1st of each year.

6.51.3.2 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the Other Academic Indicators of student performance.

6.6 ~~Parent, Guardian or Relative Caregiver Notification: Within 30 days of receiving student performance levels and diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent, guardian or Relative Caregiver.~~

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

9 DE Reg. 1175 (2/1/06)

10 DE Reg. 1425 (03/01/07)

7.0 Security and Confidentiality

In order to assure uniform and secure procedures, the Delaware ~~Student Testing Program~~ Comprehensive Assessment System shall be administered pursuant to the Delaware ~~Student Testing Program~~ Comprehensive Assessment System Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district ~~test~~ state assessment coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any ~~test~~ assessment required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of an ~~test~~ assessment shall be specified in the appropriate ~~test~~ assessment administration materials in 14 **Del.C.** §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School ~~Test~~ State Assessment Coordinators shall report any questionable situations to the District ~~Test~~ State Assessment Coordinators immediately.

7.4.2 District ~~Test~~ State Assessment Coordinators, and for charter schools, the School ~~State Assessment~~ Coordinators, shall report all situations immediately to the State Director of ~~Assessment and Analysis~~ Accountability Resources.

7.4.2.1 Within 5 days of the incident the District ~~Test~~ State Assessment Coordinator or charter school ~~School State Assessment~~ Coordinator shall file a written report with the State Director of ~~Assessment and Analysis~~ Accountability Resources that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district or charter school.

7.4.2.2 Following a review of the report by the State Director of ~~Assessment and Analysis~~ Accountability Resources and the Associate Secretary of Education for ~~Assessment and Accountability~~ Teaching and Learning, an investigator from the State Department of Education will be assigned to verify the district or charter school report.

- 7.4.2.3 Within 20 working days of the receipt of the report from the District ~~Test~~ State Assessment Coordinator or, for a charter school, the School State Assessment Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District ~~Test~~ State Assessment Coordinator or, for a charter school, School State Assessment Coordinator and the investigator shall be provided access to all parties involved and to any witnesses.
- 7.4.2.4 The investigator shall report the findings to the Associate Secretary for ~~Assessment and Accountability~~ Teaching and Learning. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.
- 7.4.2.5 The ruling shall be delivered within 20 working days of the receipt of all reports and information and records shall be kept of all investigations.

10 DE Reg. 676 (10/01/06)

8.0 ~~Procedures for Reviewing Questions and Response Sheets from the Delaware Student Testing Program (DSTP)~~ Secure Materials from the State Assessment System

- 8.1 ~~School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. A student's current teacher(s), an eligible student, or a student's parent, guardian, or relative caregiver may request to review the DCAS questions for a specific student or students subject to the following provisions:~~
- 8.1.1 Any request to review a DCAS assessment shall be done on a form developed by the Department of Education. The completed and signed form shall be sent to the State Director of Accountability Resources.
- 8.1.2 A student's teacher's request shall include an appropriate reason for reviewing the student's assessment. Appropriate reasons shall include the following: concerns about incorrect scoring; suspicion of misattribution of scores; or other reasons acceptable to the Department.
- 8.1.3 The Department shall be allowed sufficient time to secure a copy of the student's assessment questions and corresponding responses from the assessment vendor.
- 8.1.4 ~~8.1.4~~ The Department shall arrange a mutually convenient time and location for a meeting to review the assessment information with the requesting individual(s). At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the ~~test~~ assessment questions and take nothing out of the viewing area.
- 8.1.5 The Department shall review the procedures for reviewing the DCAS questions for a specific student or students, assist the individual(s) as requested, and keep records of all reviews.
- 8.1.2 ~~The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.~~
- 8.1.3 ~~In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.~~
- 8.2 ~~A student's parent, guardian or Relative Caregiver may request to view the test questions and that student's responses. In order to review the DSTP questions and that student's responses, the student's parent, guardian or Relative Caregiver shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.~~
- 8.2.1 ~~At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.~~

- ~~8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.~~
- ~~8.2.3 In the case of the stand alone writing response, the student's parent, guardian or Relative Caregiver may go to the local school district or charter school to view the test responses.~~
- 8.1.5 The Department shall review the procedures for reviewing the DCAS questions for a specific student or students, assist the individual(s) as requested, and keep records of all reviews.

4 DE Reg. 464 9/1/00

5 DE Reg. 620 (9/1/01)

8 DE Reg. 425 (9/1/04)

9.0 Invalidations and Special Exemptions

- 9.1 Invalidations for students in grades 2 through 10 for reading and mathematics, ~~grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies~~ students in grades 5, 8, and 10 in science; and students in grades 4 and 7 in social studies: ~~Invalidations are~~ An Invalidation is a response to an ~~events~~ or situations that occurs during the administration of the ~~DSTP~~ DCAS assessments which may result in a statistically unreliable or invalid score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.
- 9.1.1 Reporting of events or situations that occur during ~~testing~~ assessment.
- 9.1.1.1 The school building principal or designee shall notify the District ~~Test~~ State Assessment Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).
- 9.1.1.2 The District ~~Test~~ State Assessment Coordinator or charter school School State Assessment Coordinator shall notify the Department of Education staff person assigned to the district or charter school for ~~test assessment~~ security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).
- 9.1.1.2.1 The District ~~Test~~ State Assessment Coordinator or charter school School State Assessment Coordinator shall submit an ~~DSTP~~ Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the ~~DSTP~~ Incident Report.
- 9.1.1.3 The Director of ~~Assessment~~ Accountability Resources for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.
- 9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district or charter school for test security purposes.
- 9.1.2 Consequences of invalidations.
- 9.1.2.1 Whenever the Director of ~~Assessment~~ Accountability Resources for the Department of Education determines that a student's assessment ~~test~~ score is invalid as a result of an intentional act of the student, the student ~~will~~ may be assigned a performance level 1 (well below standard) or other action recommended by a review committee, made up of Department of Education staff, and agreed upon by the Secretary of Education for that assessment ~~and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment;~~ The assessment test score of any such student shall be reported and counted in the test assessment scores of the student's school for all purposes, including school and district accountability.

PROPOSED REGULATIONS

- 9.1.2.2 Whenever the Director of Assessment Accountability Resources for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make up assessment, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.
- 9.2 Special Exemptions for students in grades 2 through 10 for reading and mathematics, grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies; students in grades 5, 8, and 10 in science; and students in grades 4 and 7 in social studies. A special exemption may be available when a student's short term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.
- 9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and English Language Learners (ELLs) are also available as provided in the Guidelines.
- 9.2.2 Requests for special exemptions based on physical or mental condition.
- 9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.
- 9.2.1 A special exemption may be available when one of the following applies:
- 9.2.1.1 The student is suffering from severe illness or injuries or the student has recently experienced severe traumatic events;
- 9.2.1.2 The student is receiving services at an out-of-state residential program that is approved by the student's Individual Education Program (IEP), is medically admitted, or is ordered by the court;
- 9.2.1.3 The student is receiving services at an in-state program that is not a Consortium Discipline Alternative Program (CDAP) as defined in 14 **DE Admin. Code** 611, or is not under the supervision of the Division of Services for Children, Youth and their Families (DSCYF). The exemption may apply to a student serving time at an adult prison; or
- 9.2.1.4 Other situations identified by the school, and evaluated and approved by the Department of Education.
- 9.2.2.2 The District Test State Assessment Coordinator or charter school School State Assessment Coordinator shall submit a Request for Special Exemption to the Director of Assessment Accountability Resources ~~for at~~ the Department of Education at least 60 calendar days before the first day of testing within ten (10) days of the date the school becomes aware of the student's issue. A copy of the physician's statement shall be required for 9.2.1.1 in the preceding subsection and shall be maintained as documentation at the school or district.
- 9.2.2.2.1 The Director of Assessment Accountability Resources shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability Teaching and Learning.
- 9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test State Assessment Coordinator or charter school School

State Assessment Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 ~~Request for special exemptions based on emergency.~~

9.2.3.1 ~~Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.~~

9.2.3.2 ~~Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.~~

9.2.3.3 ~~The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.~~

9.2.3.3.1 ~~The District Test Coordinator shall submit a DSTP Request for Special Exemption to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make-up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician that shall be maintained as documentation in the school or district.~~

9.2.3.3.2 ~~The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.~~

9.2.3.3.3 ~~The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.~~

9.2.43 ~~Consequences of Special Exemptions.~~

9.2.43.1 ~~Any special exemption granted by the Department of Education is limited to the testing assessment period for which it was requested and does not carry forward to future test assessment administrations.~~

9.2.43.2 ~~Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 **DE Admin. Code** 103.2.4 unless their medical condition prevents them from being in school during the testing assessment period.~~

9.2.43.3 ~~Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 2 through 8 for the testing period to which the exemption applies.~~

5 DE Reg. 2115 (5/1/02)

8 DE Reg. 425 (9/1/04)

10 DE Reg. 676 (10/01/06)

10 DE Reg. 1425 (03/01/07)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 103

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

103 Accountability for Schools, Districts and the State

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State related to the new Delaware Comprehensive Assessment System (DCAS) and changes in the accountability system driven by the new assessment system and federal regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 5, 2011 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 are related to the new assessment and the changes of such as they affect accountability.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments are related to the new assessment and the changes of such as they affect accountability.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments are related to the new assessment and the changes of such as they affect accountability and not specifically students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments are related to the state assessment and the changes of such as they affect accountability and not specifically students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not substantively change the authority or flexibility of decision making at the local board or school level.

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

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

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

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

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

103 Accountability for Schools, Districts and the State

1.0 Purpose and Definitions

- 1.1 Purpose: All public schools, including charter schools, reorganized and career technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and vocational

technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

1.2

Definitions:

"Average Daily Attendance (ADA)" shall mean aggregate number of days attended divided by the aggregated possible days of attendance as defined by the district or charter school calendar calculated for those students enrolled in grades Kindergarten through grade 8 of a school, district, or the state.

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

"Department" or **"Department of Education"** shall mean the Delaware Department of Education.

"Delaware Comprehensive Assessment System (DCAS)" means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, used in the Delaware public schools, and a summative assessment measuring student achievement based solely on grade-level academic content standards or the alternate achievement standards, using only on grade-level items and passages.

"Delaware Department of Education Achievement Metric" or **"DDOE Achievement Metric"** shall mean the calculation that is based on the risk and need of each school as demonstrated by its performance on the ~~DSTP~~ or successor statewide assessment.

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

"Elementary School", for purposes of this regulation, shall mean a school with a grade configuration including any of the following: Kindergarten, grade 1, grade 2, grade 3, grade 4, grade 5, or grade 6. However, a school that has grade 6 as its lowest grade level may be considered a Middle School or Secondary School as those terms are defined in this regulation herein.

"ESEA" shall mean the Elementary and Secondary Education Act of 1965 or any reauthorization thereof.

"High School", for purposes of this regulation, shall mean a school with a grade configuration including any of the following: grade 9, grade 10, grade 11, or grade 12. A High School shall also be considered a Secondary School as that term is defined herein.

"Local Educational Agency" or **"LEA"** means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

"Middle School", for purposes of this regulation, shall mean a school with a grade configuration with more than one of the following: grade 6, grade 7, or grade 8, but that does not include any grade lower than grade 5.

"Persistently low-achieving school" means

- (i) Any Title I school in improvement, corrective action, or restructuring that:
 - (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or
 - (b) Is a high school that has had a graduation rate as defined in 34 C.F.R. 200.19(b) that is less than 60 percent for two of the last three years; and
- (ii) Any secondary school that is eligible for, but does not receive, Title I funds that:
 - (a) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or
 - (b) Is a high school that has had a graduation rate as defined in 34 C.F.R. 200.19(b) that is less than 60 percent for two of the last three years; and

PROPOSED REGULATIONS

- (iii) Any non-Title I eligible secondary school that would be considered a persistently low-achieving school pursuant to one or more of the aforementioned requirements if it were eligible to receive Title I funds.

The determination shall be based on the academic achievement of the "all students" subgroup in the school in terms of proficiency on the assessments under section 1111(b)(3) of the ESEA in reading and mathematics combined; and the school's lack of progress on those assessments over a period of ~~three~~ multiple school years in the "all students" subgroup. Proficiency and lack of progress shall be weighted equally.

"Secondary School", for purposes of this regulation, shall mean a school with a grade configuration including any of the following: grade 6, grade 7, grade 8, grade 9, grade 10, grade 11, or grade 12. However, a school that includes grade 6 may be considered an Elementary School or Middle School as those terms are defined in this regulation herein.

"State Assessment System" means the statewide assessment used to measure student achievement of the Delaware academic content standards including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, and other assessments such as, but not limited to, the National Assessment for Educational Progress (NAEP), a college readiness assessment, an assessment for English Language Learners (ELL), a norm-referenced assessment that may be administered or required as determined by the Department of Education.

7 DE Reg. 57 (07/01/03)

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

13 DE Reg. 1064 (02/01/10)

2.0 Adequate Yearly Progress (AYP)

- 2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools, including charter schools, reorganized and career technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or vocational technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as identified in ESEA, shall meet or exceed the target for percent proficient using, with or without the use of a confidence interval to be determined by the Department of Education, and approved by U.S. Department of Education, in the state assessments of reading/language arts and mathematics; 95% of the students as an aggregate and within each subgroup shall participate in the state assessments of reading/language arts and mathematics, and the respective entity shall meet the requirements of the Other Academic Indicator(s) as defined in 2.6. ~~In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used to determine the school, district or State AYP status. Beginning 2011 (2010-11 school year), in calculating the percent proficient, the state shall compare the current year's percent proficient on the spring summative assessments to the state Annual Measurable Objectives (AMO) in reading and mathematics.~~

- 2.1.1 Adequate Yearly Progress shall include three levels: Above Target, Meets Target and Below Target.

2.1.1.1 Above Target shall mean that the school, district, or State in the aggregate student population and for each subgroup exceeds the ~~annual target~~ AMO in ~~English language arts~~ reading and mathematics for percent proficient as defined in 2.3 and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.2 Meets Target shall mean that the school, district, or State in the aggregate student population and for each subgroup meets the ~~annual target~~ AMO in ~~English language arts~~ reading and mathematics with or without the application of a confidence interval for percent proficient as defined in 2.3 or meets the criteria of Safe Harbor defined in 2.5, and

further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

- 2.1.1.3 Below Target shall mean that the school, district, or State in the aggregate student population and for each subgroup did not meet the ~~annual target AMO~~ in ~~English language arts reading~~ and mathematics through the application of a confidence interval for percent proficient as defined in 2.3 or does not meet the criteria of Safe Harbor defined in 2.5, or does not meet the criteria for participation as defined in 2.4 or does not meet the criteria of Other Academic Indicator(s) as defined in 2.6.
- 2.2 Full academic year for accountability:
- 2.2.1 For school accountability students enrolled continuously in the school from September 30 through ~~May 31~~ the end of the DCAS summative assessment window of a school year including those students identified in 3.1.1 and 3.1.2, shall be considered enrolled for a full academic year.
- 2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through ~~May 31~~ the end of the DCAS summative assessment window of a school year, including those students identified in 3.1.1 and 3.1.2, shall be considered enrolled for a full academic year.
- 2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through ~~May 31~~ the end of the DCAS summative assessment window of a school year shall be considered enrolled for a full academic year.
- 2.3 Proficient: For accountability purposes, students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2 (Below the Standard) or Level 1 (Well Below the Standard) who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.
- 2.4 Participation Rate: ~~Beginning with the 2005-2006 school year~~ ~~†~~ The participation rate for each subgroup shall be the number of students who participate in the ~~DSTP~~ DCAS in grades 3 through 8 inclusive and grade 10 divided by the number of students enrolled in these tested grades during the ~~testing~~ spring summative assessment period. Students exempted by 14 **DE Admin. Code** 101.9.0 shall be ~~included in~~ excluded from the participation rate calculation ~~unless their medical condition prevents them from being in school during the testing period.~~
- 2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the ~~target~~ AMO for percent proficient for a given subgroup or for the entity in aggregate, Safe Harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup meets the requirements of the Other Academic Indicator(s) as defined in 2.6. the subgroup will have met AYP.
- 2.6 Other Academic Indicator(s):
- 2.6.1 High School: For AYP purposes in 2011 only, the Other Academic Indicator(s) shall be graduation rate as defined as the number of students in one cohort in the aggregate or, as applicable, in a subgroup, who started in the school, the district or the State in 9th grade and graduated four years later or in the time frame specified in the Individual Education Program (IEP), excluding students who earn a GED certificate, divided by the same number plus those that have dropped out during the same four year period. Students who were enrolled, because of accountability sanctions, for a second year in 8th grade while attending high school and entered 10th grade the following year are included in the 9th grade cohort of the year they began attending classes in the high school.
- 2.6.1.1 The statewide target for the high school Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for ~~2009-2010~~ shall be 84% ~~2010-2011 shall be 85.5%~~ and shall increase by 1.5% percentage points each year until 90% is reached in 2013-2014. Beginning with the school year ~~2002-2003~~ 2009-2010, if the graduation rate is used for Safe Harbor purposes, the high school, or, as applicable, the subgroup, shall ~~maintain its graduation rate or show positive progress when compared to the previous year or meet or exceed the statewide target for that school year.~~ either

PROPOSED REGULATIONS

demonstrate an increase of at least 2 percentage points from the previous year's rate, or meet the established graduation rate statewide target for that year.

- 2.6.1.2 A school, or, as applicable, the subgroup, that does not ~~maintain~~ increase its graduation rate ~~or show positive progress~~ from the previous year or meet ~~or exceed~~ the statewide target for that school year shall be considered as not meeting AYP for that year.
- 2.6.2 ~~Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be determined by improvement of the scores of the low achieving students, defined as students performing below Performance Level 3, in reading and mathematics combined or a decrease in the percent of students scoring at Performance Level 1 in reading and mathematics. The average scale score for the students who perform at Performance Level 1 and 2 in reading and mathematics combined shall be determined for the current and previous years. The scores from the current year will be compared to the previous year to determine if the school has shown progress. A confidence interval determined by the Department of Education shall be applied to the average scale scores when making this determination. Students included in this calculation shall have been in the school for a full academic year.~~
- 2.6.2.1 ~~The statewide target for the elementary and middle school Other Academic Indicator shall be 0% of students scoring at Performance Level 1 in reading and mathematics by the school year 2013-2014. Beginning with the school year 2003-2004, when compared to the previous year, the school or subgroup, if used for Safe Harbor purposes, shall maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year.~~
- 2.6.2.2 ~~An elementary or middle school that does not maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year shall be considered as not meeting AYP for that year.~~
- 2.6.2 High School: For AYP purposes beginning 2012 (2011-12 school year), the Other Academic Indicator shall be the graduation rate as defined by 34 C.F.R. 200.19.
- 2.6.2.1 The statewide target for the high school Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for 2010-2011 shall be 85.5% and shall increase by 1.5 percentage points until 90% is reached in 2013-2014. Beginning with the school year 2009-2010, if the graduation rate is used for Safe Harbor purposes, the high school, or, as applicable, the subgroup, shall either demonstrate an increase of at least 2 percentage points from the previous year's rate, or meet the established graduation rate statewide target for that year.
- 2.6.2.2 A school, or, as applicable, the subgroup, that does not increase its graduation rate from the previous year or meet the statewide target for that school year shall be considered as not meeting AYP for that year.
- 2.6.3 Elementary and Middle School: For AYP purposes, the Other Academic Indicator (OAI) for elementary and middle schools shall be the Average Daily Attendance (ADA). The Other Academic Indicator annual statewide target shall be 90%.
- 2.6.34 ~~For state and district accountability purposes, the state or a district shall be expected to meet the requirements in 2.6.1-2 and or 2.6.2-2 and 2.6.3.~~
- 2.7 Annual Measurable Objective (AMO): The annual measurable objectives for reading/language arts and mathematics shall be determined by the Department of Education and published annually. The annual measurable objectives shall be the same for all schools, districts and subgroups of students.
- 2.8 Intermediate Target: There shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the end of the school year 2013-2014, all students in all subgroups shall be proficient in reading/language arts and mathematics. The intermediate targets shall be calculated

using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.

- 2.9 Starting Point: A single statewide starting point shall be calculated for reading/~~language arts~~ and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.
- 2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for free and reduced lunch program; 3) Students ~~with Limited English Proficiency identified as English Language Learners (ELL)~~, as determined by the ~~language proficiency assessment for English Language Learners (ELL)~~; and 4) Race and ethnicity, to be further divided into African American ~~and~~ or Black, American Indian ~~and~~ or Alaska Native, Asian American ~~and~~ Native Hawaiian or other Pacific Islander, Hispanic or Latino, ~~and~~ White or Caucasian, and Multi-Racial. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this ~~Chapter~~ regulation. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.
- 2.11 AYP Determinations
- 2.11.1 For each public school, including charter schools, reorganized and career technical school districts, and the State, AYP shall be calculated annually.
- 2.11.2 School AYP: In order to meet AYP, the school shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.
- 2.11.3 District AYP: In order to meet AYP, the district shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported and used to determine AYP status and accountability ratings.
- 2.11.4 State AYP: In order to meet AYP, the State shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported and used to determine AYP status and accountability ratings.
- 2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading/~~language arts~~ or mathematics for percent proficient or for participation rate, or if a school or district in the aggregate does not meet the requirements of the Other Academic Indicator(s) as defined in 2.6.

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

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

13 DE Reg. 1064 (02/01/10)

3.0 Accountability School and Accountability District

- 3.1 For AYP purposes, the school or district to which a student's performance is assigned for a full academic year shall be the Accountability School or Accountability District. No student shall have his/her total performance assigned to more than one Accountability School or Accountability District in a given school year.
- 3.1.1 For a student enrolled in an intradistrict intensive learning center, intradistrict special school, or intradistrict special school program operating within one or more existing school facilities, the

PROPOSED REGULATIONS

- district has the option of tracking the assessment scores of the students back to the school of residence or to the school or program that is providing the instruction. The school or program shall be the Accountability School. The district shall communicate its decision regarding this option to the State Department of Education by May 15th in any year when a district determines a change is needed. The option that the district decides for accountability purposes for one year shall remain the same for the second year. Further provided, the State Department of Education will monitor the assignment of students to ensure students are appropriately assigned. For a student enrolled in interdistrict special schools or programs that have an agreement to serve students from multiple school districts, the special school that provides the instructional program shall be considered the Accountability School for that student. For district accountability purposes, the district of residence shall be the district to which these special school students are included for accountability.
- 3.1.2 For a student enrolled in an alternative program pursuant to 14 **Del.C.** Ch.16 or the program serving pregnant students pursuant to 14 **Del.C.** §203, the Accountability School or District shall be the school/district that assigned such student to the program. The time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School or District.
- 3.1.3 For a student who participates in a choice program the Accountability School or District shall be the school or district to which the student has ~~enrolled~~ been enrolled for the given year.
- 3.1.4 For accountability purposes, a school shall be considered a new school if: less than sixty percent of the students would have been enrolled in the same school together without the creation of the new school; or it is the first year of operation of a charter school; or two or more grade levels have been added to the school or to a charter school's charter.
- 3.1.5 If a school is determined not to be a new school, the school shall receive the accountability rating and related consequences of the school in which the majority of students would attend in that year.

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

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

13 DE Reg. 1064 (02/01/10)

4.0 Assessment Criteria

- 4.1 For accountability purposes, a student who tests with non-aggregable conditions using non standard accommodations as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency-English Language Learners* shall:
- 4.1.1 Not have his/her the earned performance level included in the calculation of proficiency for AYP; and
- 4.1.2 Be considered a non-participant in the calculation of AYP participation.
- 4.2 For accountability purposes, a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency a student who answers at least one question, but does not complete that content area of the DCAS shall be assigned a Performance Level 1 (Well Below the Standard) and shall be included in the participation and proficiency calculations for that content area, as applicable, for AYP.
- 4.3 For accountability purposes, a student with an invalidation or special exemption shall be included in the AYP calculations pursuant to the provisions of 14 **DE Admin. Code** 101. 9.0.
- 4.34 For accountability purposes, a student participating in alternate assessments shall have her/his that student's earned performance level included in the AYP calculation consistent with the regulations as prescribed by the federal Elementary and Secondary Education Act (ESEA) 20 U.S. C.A. §6301 et seq. or Individuals with Disabilities Education Act (IDEA).
- 4.45 Schools with more than one tested grade shall receive a single accountability rating.
- 4.56 Student performance in a tested grade 3 shall be apportioned in equal weights to each grade in a standards cluster in grades 1, 2 and 3 (30% each respectively), except that and Kindergarten shall be weighted at 10% and grade 4 shall be weighted at 100%. Beginning with the school year 2005-2006

~~students in grades 4, 5, 6, 7, 8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K to 3 standards cluster.~~

- 4.67 For AYP purposes the reading/language arts percent proficient shall be based on 100% of the ~~DSTP~~ DCAS reading assessments.
- 4.78 For AYP purposes, the mathematics percent proficient shall be based on 100% of the ~~DSTP~~ DCAS mathematics assessments.

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

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

13 DE Reg. 1064 (02/01/10)

5.0 State Progress Determinations (Repealed)

5.1 Each school and district shall receive a State Progress Determination of Above Target, Meets Target or Below Target. ~~The State Progress shall be determined by improvement in the composite score of the reading, mathematics, science and social studies DSTP assessments combined. The composite score range shall be from 25 to 125 and is determined by the following formula: Composite Score = 25 (reading score x reading weight) + (math score x math weight) + (science score x science weight) + (social studies score x social studies weight) where: Reading score = (5 x % of students in level 5 in reading) + (4 x % of students in level 4 in reading) + (3 x % of students in level 3 in reading) + (2 x % of students in level 2 in reading) + (1 x % of students in level 1 in reading); Math score = (5 x % of students in level 5 in math) + (4 x % of students in level 4 in math) + (3 x % of students in level 3 in math) + (2 x % of students in level 2 in math) + (1 x % of students in level 1 in math); Science score = (5 x % of students in level 5 in science) + (4 x % of students in level 4 in science) + (3 x % of students in level 3 in science) + (2 x % of students in level 2 in science) + (1 x % of students in level 1 in science); Social Studies = (5 x % of students in level 5 in social studies) + (4 x % of students in level 4 in social studies) + (3 x % of students in level 3 in social studies) + (2 x % of students in level 2 in social studies) + (1 x % of students in level 1 in social studies). Each of the subject areas shall be weighted equally at 25%. A two year average of the composite score shall be used if it is higher than the current year's composite score.~~

5.1.1 ~~Above Target shall mean that the school or district has a minimum composite score of 75.00 for the current year; or the school or district has demonstrated a growth of 6.00 or more points when comparing last year's composite score to the current year's composite score provided the composite score is 45.00 or more.~~

5.1.2 ~~Meets Target shall mean that the school or district with a composite score of 61.00 or less than 75.00 in the current year, shall demonstrate a growth of 1.00 or more points when comparing last year's composite score to the current year's composite score. For a school or district with a composite score of 45.00 but less than 61.00 in the current year, the school or district shall demonstrate a growth of 2.00 or more points when comparing last year's composite score to the current year's composite score.~~

5.1.3 ~~Below Target shall mean that the school or district has a composite score of less than 45.00; or the school or district does not meet the criteria of 5.1.2.~~

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

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

13 DE Reg. 1064 (02/01/10)

6.0 Performance Classifications

6.1 Schools and districts shall receive one of ~~five~~ three levels of performance classification annually which shall be based on a ~~combination of AYP determinations and State Progress determinations.~~

6.1.1 ~~Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and is a combination of Above Target for AYP and Above Target for State Progress or Above Target for AYP and Meets Target for State Progress or Meets Target for AYP and Above Target for State Progress~~ be Above Target on AYP pursuant to 2.1.1.1.

PROPOSED REGULATIONS

- 6.1.2 ~~Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement. Combinations of Above Target for AYP and Below Target for State Progress or Meets Target for AYP and Meets Target for State Progress shall be rated as Commendable. A school or district with a combination of Meets Target for AYP and Below Target for State Progress shall be determined Commendable for no more than one year; if this same combination exists for the school or district in the following year, the school or district shall be rated Academic Review be Meets Target on AYP pursuant to 2.1.1.2.~~
- 6.1.3 ~~Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category are not Under Improvement. Combinations of: Below Target for AYP and Above Target for State Progress; or Below Target for AYP and Meets Target for State Progress shall be rated as Academic Review for no more than one year; if the same combination exists for the school or district in the following year, the school or district shall be rated Academic Progress unless the provisions of 6.1.5 or 6.1.6 are met. A school or district with a combination of Below Target for AYP and Below Target for State Progress shall be rated as Academic Review unless the provisions of 6.5 and 6.6 are met.~~
- 6.1.4 ~~Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.~~
- 6.1.5 ~~Academic Progress Under Improvement: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.~~
- 6.1.6~~3~~ ~~Academic Watch: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5. Schools or districts in this category shall be Below Target on AYP pursuant to 2.1.1.3.~~
- 6.1.7 ~~Academic Watch Under Improvement: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more consecutive years in the same content area as described in 2.11.5 and shall be Under Improvement.~~

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

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

13 DE Reg. 1064 (02/01/10)

7.0 Accountability for Schools that are Under Improvement

- 7.1 Under Improvement Phase 1 -- A school that meets the definition of "Under Improvement" found in 2.11.5 shall, in the first school year after meeting the definition of Under Improvement, be considered in "Under Improvement Phase 1." A school that is in Under Improvement Phase I shall:
- 7.1.1 ~~Develop a School Success Plan or r~~Review and modify its current School Improvement Success Plan, outlining specific school improvement activities to be implemented; and
- 7.1.2 If a school is designated Title I, offer ESEA choice.
- 7.2 Under Improvement Phase 2 - A school that is identified as Under Improvement Phase 1 pursuant to 7.1 and fails to meet AYP for an additional year shall be considered "Under Improvement Phase 2." Such schools shall:
- 7.2.1 Amend the School Improvement Success Plan to add, at a minimum, one or more of the following options deemed appropriate, if permitted by State and Federal law; and that should be closely aligned with the areas in which the school failed to make AYP. Districts and charter schools may use federal, state or local funding, as permitted by State and Federal law, ~~and may request funding from the Department to implement these initiatives:~~
- 7.2.1.1 Development of community partnerships for after school opportunities/tutoring, increasing parental involvement;
- 7.2.1.2 Educator professional development or mentoring;

- 7.2.1.3 Supplemental Educational ~~s~~Services as defined in 7.2.2 or other nontraditional services such as credit recovery programs;
- 7.2.1.4 Performance incentives for Highly Effective Teachers, as defined in 14 **DE Admin. Code** 106A;
- 7.2.1.5 Use of family crisis therapists and/or counseling and support programs for students;
- 7.2.1.6 Technical assistance ~~to assist with~~ on budget development/usage, professional development and evaluation, engaging parents and the community;
- 7.2.1.7 Attendance and school climate initiatives.
- 7.2.2 Schools designated as Title I shall continue to provide ESEA school ~~C~~hoice as defined by ESEA and shall offer eligible students Supplemental Education ~~S~~ervices, as defined by ESEA. Supplemental Education Services are defined as tutoring and other supplemental academic enrichment services that are designed to increase the academic achievement of students, and are offered in addition to instruction provided during the school day and are of high quality and research-based.
- 7.3 Corrective Action Phase 1 - A school that is identified as Under Improvement Phase 2 pursuant to 7.2 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 1" status. Districts having schools in this category and charter schools in this category shall:
 - 7.3.1 Develop and implement a Corrective Action Plan for the school that should be closely aligned with the areas in which the school failed to make AYP and that includes at least one of the following, if permitted by State law:
 - 7.3.1.1 Extend the school year or school day for the school;
 - 7.3.1.2 Significantly decrease management authority at school level;
 - 7.3.1.3 Appoint outside expert to advise school on its progress toward making AYP based on its school plan;
 - 7.3.1.4 Restructure internal organizational structure of school;
 - 7.3.1.5 Replace school staff relevant to failure to achieve AYP; or
 - 7.3.1.6 Adopt and fully implement new curriculum including providing appropriate professional development for all relevant staff that is based on scientifically based research and offers substantial promise of improving educational achievement for low-achieving students.
 - 7.3.2 In addition, districts and charter schools shall examine and include one or more of the following items in their Corrective Action Plan as they deem appropriate, if permitted by State law. Districts and charter schools may use federal, state or local funding, if permitted by State and Federal law ~~and may request funding from the Department~~ to implement these initiatives:
 - 7.3.2.1 Institute flexible funding at school level to the extent authorized by applicable law;
 - 7.3.2.2 Provide performance incentives for teachers and principals based in significant part on student achievement;
 - 7.3.2.3 Renegotiate collective bargaining agreements to permit hiring without regard to seniority;
 - 7.3.2.4 Decrease class size;
 - 7.3.2.5 Implement comprehensive instructional reform, including improved instructional program and differentiated instruction;
 - 7.3.2.6 Make changes to scheduling to increase learning time for students and maximize collaboration time for teachers - consider extended learning time, modified or block scheduling; and
 - 7.3.2.7 Increase community-oriented supports, create partnerships with community services programs providing assistance to students outside of school hours, and implement a community-based school model, by which the school would partner with community groups in utilizing school facility to provide extended services to students and the community, which may include permitting student activities at the school after the end of the school day and offering services and support to parents.

PROPOSED REGULATIONS

- 7.3.3 Schools designated as Title I shall continue to offer ~~S~~supplemental Educational ~~S~~services (as defined in 7.2.2) and ~~C~~choice as required by ESEA.
- 7.4 Corrective Action Phase 2 -- A school that is identified as Corrective Action Phase 1 pursuant to 7.3 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 2" status. Districts with schools and charter schools in Corrective Action Phase 2 shall, if permitted by State law:
- 7.4.1 Continue with the activities of Corrective Action Phase 1 at the school; and
- 7.4.2 Provide retention incentives for effective educators at the school, subject to funding availability; and
- 7.4.3 Develop a Restructuring Plan pursuant to 7.5. The district or charter school shall select from the category of options based on the school's outcome on the DOE Achievement Metric based on the assessments taken during Corrective Action Phase 1.
- 7.4.4 Schools designated as Title I shall continue to offer ~~s~~Supplemental Educational ~~s~~Services and choice as required by ESEA.
- 7.5 Restructuring - A school that is identified as Corrective Action Phase 2 pursuant to 7.4 and that fails to make AYP for an additional year shall be considered in "Restructuring," unless that school falls within the category of Partnership Zone schools addressed in 7.6. Districts having schools in Restructuring shall work with the schools to implement the Restructuring Plan developed pursuant to 7.4.3. Charter schools in this category shall implement the Restructuring Plan developed pursuant to 7.4.3. The District or charter school may request funding from the Department for implementation of these provisions. The Restructuring Plan shall include one of the following, if permitted by State law:
- 7.5.1 For district schools, reopening the school as a public charter school;
- 7.5.2 Entering a contract with a private management company approved by the Department to operate the school;
- 7.5.3 Closing the school
- 7.5.4 Replacing all or most of the school staff (which may include, but may not be limited to, replacing the principal) who are relevant to the school's failure to make AYP; or
- 7.5.5 Implementing a major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance and longer school days, to improve student academic achievement in the school and that has substantial promise of enabling the school to make AYP. Whether or not a particular school is showing growth on the DOE Achievement Metric shall be a significant factor in the determination of what type of major restructuring is required pursuant to this provision.
- 7.6 Partnership Zone Schools - A school that is a Persistently Low-Achieving School and that is determined by the Secretary as likely to benefit from assignment to Partnership Zone Schools status shall be designated as a Partnership Zone School by the Secretary. The Secretary shall determine which Persistently Low-Achieving Schools would benefit from Partnership Zone School status through consideration of the academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/~~language arts~~ and mathematics combined, (ii) the school's lack of progress on those assessments over a number of years and qualitative measures as determined by the Secretary. in consultation with the State Board of Education, Chief School Officers Association, and Delaware State Education Association.
- 7.6.1 Districts with a Partnership Zone school and Partnership Zone charter schools shall enter a memorandum of understanding ("MOU") between the Department and the district or the charter school. The Partnership Zone MOU shall include the following provisions:
- 7.6.1.1 Selection of one of the models outlined in section 7.6.2;
- 7.6.1.2 Provisions for regular oversight of the Partnership Zone school by the Department or its designee;
- 7.6.1.3 For schools at which a collective bargaining agreement governs its employees, a further agreement between and among the district or charter school, the collective bargaining unit, and the Department addressing those subjects, if any, that may inhibit the schools' successful implementation of its model, including but not limited to:

- 7.6.1.3.1 Limitations on hiring, reassigning and transferring covered employees into and out of the Partnership Zone school, such as seniority limitations;
- 7.6.1.3.2 The methodology for determining which teachers will be transferred or reassigned as part of the model;
- 7.6.1.3.3 Work rules relating to the educational calendar and scheduling of instructional time and non-instructional time,
- 7.6.1.3.4 Instructional reform;
- 7.6.1.3.5 Professional development requirements and other specialized training;
- 7.6.1.3.6 Retention and employment incentives, including performance incentives for effective teachers and principals; and
- 7.6.1.3.7 Any other subject required by these regulations to be addressed in the Partnership Zone school's selected model.
- 7.6.1.4 In the event the parties are not able to reach the agreement required by 7.6.1.3 within seventy-five (75) days of notice as a Partnership Zone school, each party shall present its last best offer on the areas of disagreement along with a draft agreement, to the Secretary of the Department, who shall accept one of the last best offers, or reject all of them. Should the Secretary reject all offers, the parties shall have thirty (30) days to confer and present the Secretary revised offers for re-consideration pursuant to this section.
- 7.6.1.5 Other provisions required by the model or mutually agreed upon by the Department and the district or charter school, which may include the following:
 - 7.6.1.5.1 Instituting flexible funding at school level and oversight of same;
 - 7.6.1.5.2 Engagement of a partner, consultant, education management organization or other alternative leadership structure; and
 - 7.6.1.5.3 Extending learning time and community-oriented supports, including more learning time for students, collaboration time for teachers, enrichment activities, and mechanisms for family and community engagement.
- 7.6.1.6 Schools designated as Title I shall continue to offer Supplemental Educational Services and choice as required by ESEA.
- 7.6.1.7 Partnership Zone schools that are not making AYP by the end of the second school year following implementation of the Restructuring Plan shall renegotiate the MOU or select one of the other available models under 7.6.2.
- 7.6.2 Districts having Partnership Zone schools and Partnership Zone charter schools shall work with the Department to implement a plan from the list below. The District may request funding from the Department for implementation of these provisions.
 - 7.6.2.1 School Closure Model, in which a district closes a school and enrolls the students who attended that school in other schools in the district that are higher achieving that are within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available;
 - 7.6.2.2 Restart Model, in which a district converts a school into a public charter school pursuant to the requirements of Chapter 5 of Title 14 of the Delaware Code, or closes and reopens a school under a charter school operator, a charter management organization or an education management organization that has been selected through a rigorous review process. A restart model shall enroll, within the grades it serves, any former student who wishes to attend the school.
 - 7.6.2.3 Turnaround Model, in which
 - 7.6.2.3.1 A district or charter school shall:
 - 7.6.2.3.1.1 Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

PROPOSED REGULATIONS

- 7.6.2.3.1.2 Using the Delaware Performance Appraisal system II or any locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students, (a) screen all existing staff and rehire no more than 50 percent; and (b) select new staff;
- 7.6.2.3.1.3 Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;
- 7.6.2.3.1.4 Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;
- 7.6.2.3.1.5 Adopt a new governance structure, which includes, but is not limited to, requiring the school to report to a liaison of the Department or directly to the Secretary;
- 7.6.2.3.1.6 Use data to identify and implement an instructional program that is research-based and "vertically aligned" from one grade to the next as well as aligned with State academic standards;
- 7.6.2.3.1.7 Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;
- 7.6.2.3.1.8 Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and provide appropriate social-emotional and community-oriented services and supports for students.
- 7.6.2.3.2 A district may implement other strategies, such as:
 - 7.6.2.3.2.1 Any of the required and permissible activities under the transformation model; or
 - 7.6.2.3.2.2 A new school model (e.g., themed, dual language academy).
- 7.6.2.4 Transformational Model, in which
 - 7.6.2.4.1 A district or charter school shall:
 - 7.6.2.4.1.1 Replace the principal who led the school prior to commencement of the transformation model;
 - 7.6.2.4.1.2 Use rigorous, transparent, and equitable evaluation systems for teachers and principals that-
 - 7.6.2.4.1.2.1 Take into account data on student growth (as defined in this notice) as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduations rates; and
 - 7.6.2.4.1.2.2 Are designed and developed with teacher and principal involvement;
 - 7.6.2.4.1.3 Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high-school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, pursuant to the Delaware Performance Appraisal System II or any successor thereto, have not done so;
 - 7.6.2.4.1.4 Provide staff with ongoing, high-quality, job-embedded professional development (e.g., regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;
 - 7.6.2.4.1.5 Implement new financial incentives and increase opportunities for promotion and career growth of effective teachers, and provide more flexible work conditions

designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school;

- 7.6.2.4.1.6 Use data to identify and implement an instructional program that is research-based and "vertically aligned" from one grade to the next as well as aligned with State academic standards;
- 7.6.2.4.1.7 Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;
- 7.6.2.4.1.8 Establish schedules and implement strategies that provide increased learning time, which means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects, including English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects;
- 7.6.2.4.1.9 Provide ongoing mechanisms for family and community engagement;
- 7.6.2.4.1.10 Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates;
- 7.6.2.4.1.11 Ensure that the school receives ongoing, intensive technical assistance and related support from the district, the Department, or a designated external lead partner organization.
- 7.6.2.4.2 A district may:
 - 7.6.2.4.2.1 Provide additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;
 - 7.6.2.4.2.2 Institute a system for measuring changes in instructional practices resulting from professional development;
 - 7.6.2.4.2.3 Ensure that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority;
 - 7.6.2.4.2.4 Conduct periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;
 - 7.6.2.4.2.5 Implement a schoolwide "response-to-intervention" model;
 - 7.6.2.4.2.6 Provide additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that ~~limited-English proficient~~ English Language Learner (ELL) students acquire language skills to master academic content;
 - 7.6.2.4.2.7 Use and integrate technology-based supports and interventions as part of the instructional program;
 - 7.6.2.4.2.8 In secondary schools-
 - 7.6.2.4.2.8.1 Increase rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers,

PROPOSED REGULATIONS

including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

7.6.2.4.2.8.2 Improve student transition from middle to high school through summer transition programs or freshman academies;

7.6.2.4.2.8.3 Increase graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills;

7.6.2.4.2.8.4 Establish early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

7.6.2.4.2.9 Extend learning time and create community-oriented schools, by

7.6.2.4.2.9.1 Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;

7.6.2.4.2.9.2 Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;

7.6.2.4.2.9.3 Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or

7.6.2.4.2.9.4 Expanding the school program to offer full-day kindergarten or pre-kindergarten.

7.6.2.4.2.10 Allowing the school to be run under a new governance arrangement; or

7.6.2.4.2.11 Implementing a per-pupil school-based budget formula that is weighted based on student needs.

7.6.2.5 If a school identified as a Persistently Low-Achieving School has implemented within the last two years an intervention that meets the requirements of the Turnaround, Restart, or Transformation models, the school may continue or complete the intervention being implemented.

7.6.2.6 If elements of the model adopted by a Partnership Zone school with the approval of the Department require funding and are not funded or require statutory authorization and are not so authorized, the school may apply to the Department for an annual waiver of said requirement, and such waiver shall be granted only insofar as compliance with said requirement is rendered impracticable thereby.

13 DE Reg. 1064 (02/01/10)

14 DE Reg. 647 (01/01/11)

8.0 ~~Frozen~~ Hold Status

A school in Under Improvement, Corrective Action, Restructuring, or Persistently Low-Achieving School status that meets AYP for one year shall ~~freeze~~ hold at its then current level and shall continue to implement the School ~~Improvement~~ Success Plan for one year. If the school again meets AYP after the year during which it was ~~frozen~~ held, the school shall be removed from Under Improvement, Corrective Action, Restructuring or Persistently Low-Achieving School status and shall no longer be subject to the requirements of 7.0. A school that does not meet AYP after the year during which it was ~~frozen~~ held shall move to the next category in the continuum without regard to the ~~frozen~~ held year.

13 DE Reg. 1064 (02/01/10)

9.0 Department Responsibilities for Schools Under Restructuring and for Persistently Low-Achieving Schools

-
- 9.1 The Department shall provide continuing technical assistance to schools that are in any of the above categories.
- 9.2 The Department shall assign a School Support Team to schools beginning with Under Improvement Phase 2 and continuing through the Restructuring or Persistently Low-Achieving School phase. The School Support Team shall monitor the school's progress, ensure that all technical assistance and any other supports available are provided to the school, assist the school in developing and implementing its ~~improvement~~ plans, act as a liaison between the Department and the school, and take any other actions deemed appropriate by the Team to provide support to the school.

13 DE Reg. 1064 (02/01/10)**10.0 Process**

- 10.1 The Department shall provide districts and schools with preliminary notification of a school's identification pursuant to 7.0 no later than the end of July following the school year on which the identification is based, and final notice shall be given no later than August 1st.
- 10.2 Notice -- A district that includes a school or a charter school identified as Under Improvement shall, at least 14 days prior to the start of the upcoming school year, provide the following notification to parents of students enrolled in that school:
- 10.2.1 Information regarding the school's identification and reason for its identification;
 - 10.2.2 For Title I schools, their right to enroll their child(ren) in a different school as prescribed by ESEA, and for non-Title I schools, information on the Statewide Choice program as prescribed in 14 **Del.C.**, Chapter 4;
 - 10.2.3 For Title I schools, their right to have their child receive Supplemental Educational Services, as prescribed by ESEA, and for non-Title I schools, supplemental services if provided for in §103.7.0;
 - 10.2.4 How they can be involved in addressing the academic issues that led to identification; and
 - 10.2.5 Any other notifications required by the ESEA regulations.
- 10.3 Plan Development, Approval, and Modification
- 10.3.1 Schools receiving notice that they are identified as Under Improvement Phase I shall develop or revise their School Improvement Success Plan within three months of their preliminary notification. Schools identified as Title I shall also ensure that the ten (10) requirements for schools under improvement, as required in Section 1116(b)(3)(A) of the ESEA, are incorporated in the Success Plan. Schools and shall provide the Plan to the district in which the school is located for approval or to the body that granted its charter in the case of a charter school, to the charter school's board. The district or charter school board shall, within 45 days of receiving a revised School Success Plan from a Title I school, establish a peer review process to assist with review of the Plan. The district or charter school board must promptly review the School Success Plan, work with the school as necessary, and approve the School Success Plan if it meets the ten (10) requirements for schools under improvement as required in Section 1116(b)(3)(A) of the ESEA. The school shall then work with the district to make any necessary revisions such that final approval from the district is received within 45 days of submission. The Plan shall be implemented immediately upon approval.
 - 10.3.2 Schools receiving notice that they are identified as Under Improvement Phase II shall modify their School Improvement School Success Plan as necessary within ~~two~~ three months of their preliminary notification and submit said modifications to the Department. Following submission, the Department shall review the plan, make comment, and require revisions, if needed, by the school within 30 calendar days. The Plan shall be implemented immediately.
 - 10.3.3 Districts having schools that are identified as in Corrective Action Phase I and charter schools so identified shall develop their Corrective Action Plan within ~~three months~~ six weeks of their preliminary notification and shall provide the Plan to the Department for approval. Following submission, the Department shall collaborate with the school and the district and make any necessary revisions such that the Corrective Action Plan is approved within ~~45 days~~ six weeks of submission. If the school, the district and the Department are unable to agree on the Corrective

- Action Plan at the end of the ~~45-day~~ six week period, then the Department shall develop the Corrective Action Plan within ~~2-4~~ weeks of that deadline. ~~The Plan shall be implemented immediately.~~
- 10.3.4 Districts having schools that are identified as in Corrective Action Phase II and charter schools so identified shall develop the Restructuring Plan required in 7.5 within three months of their preliminary notification and provide the Restructuring Plan to the Department for review and approval. ~~Prior to the date of submission, the district or charter school shall have performed all necessary steps to ensure that the restructuring choice selected is viable and will be implemented, subject only to approval by the Department. Such Plan shall be submitted to the Department by April 30th of the Corrective Action Phase II year. Prior to the date of submission, the district or charter school shall have performed all necessary steps to ensure that the restructuring choice selected is viable and will be implemented, subject only to approval by the Department.~~ The Department, in consultation with the State Board of Education, shall review and approve the Restructuring Plan, or make comment, and require revisions, if needed, within 60 days of submission. ~~If revisions are required, the district or Charter school must submit a final revised Restructuring Plan to the Department by April 30th of the Corrective Action Phase II year for final review and approval. The Department and shall approve or disapprove the revised Restructuring Plan within 60 days of submission. If the Department disapproves the Restructuring Plan, the district or charter school submitting the Restructuring Plan shall make another selection from among the Restructuring options in 7.5.1. Department approval of the Restructuring Plan shall be subject to the results of that year's accountability activities. Upon receipt of the final identification for that year, if results show that the school is in Restructuring, the district or charter school shall immediately implement the Restructuring Plan.~~
- 10.3.5 Schools that are selected by the Department for participation in the Partnership Zone shall be notified of such selection by September 1st. The district or charter school shall immediately begin negotiating the MOU required by 7.6.1. If the parties to the MOU are unable to agree on the MOU within 120 days, the district or charter school shall select from the Restructuring models found in 7.5.1, 7.5.2, or 7.5.3.
- 10.3.6 All plans submitted by schools and districts pursuant to 7.0 shall be developed with input from parents, teachers, and outside experts. Such plans shall establish measurable goals/benchmarks for the school. Once a plan is approved, information regarding the plan shall be provided to parents.
- 10.3.7 In evaluating School ~~Improvement~~ Success Plans, Corrective Action Plans, and Restructuring Plans, the Department shall ensure that each such plan satisfies applicable law, reflects input required in 10.3.6, includes measurable goals/benchmarks for the school, and is likely to result in the school improving its performance classification and exiting "under improvement" status.
- 10.3.8 Provisions in this section are in addition to, and not in lieu of, existing ESEA requirements for Title I schools.

13 DE Reg. 1064 (02/01/10)

11.0 Accountability for Districts that are classified as Under Improvement:

- 11.1 Under Improvement Phase 1 - A district that meets the definition of Under Improvement found in 2.11.5 shall, in the first school year after meeting the definition of Under Improvement, be considered in "Under Improvement Phase 1." A district that is in Under Improvement Phase I shall ~~develop and implement a~~ revise their District Improvement Success Plan within three months of its identification. ~~Districts receiving Title I funds shall also ensure that the 8 requirements for Districts under improvement, as required in Section 1116(c)(7)(A) of the ESEA, are incorporated in the District Success Plan.~~
- 11.2 Under Improvement Phase 2 - A district that is identified as Under Improvement Phase 1 pursuant to 11.1 and fails to meet AYP for an additional year shall be considered "Under Improvement Phase 2." Such districts shall evaluate and modify the District ~~Improvement~~ Success Plan ~~and shall incorporate~~

~~such plan into the Consolidated Application of the Education Success Planning and Evaluation System.~~

- 11.3 Corrective Action Phase 1 - A district that is identified as Under Improvement Phase 2 pursuant to 11.2 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 1" status. The Department shall develop a ~~e~~Corrective ~~a~~Action ~~p~~Plan for the district as outlined by Federal ESEA requirements. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to finalizing the Corrective Action Pplan. The ~~e~~Corrective ~~a~~Action ~~p~~Plan may include requirements found in 20 U.S.C.A. Section 6316(c)(10)(C) as permitted by State law and may also include implementation of provisions found in 7.0. The district shall implement the ~~e~~Corrective ~~a~~Action ~~p~~Plan immediately upon Department approval.
- 11.4 Under Improvement greater than Corrective Action Phase 2, ~~a~~ - A district shall continue with the activities as outlined in 11.3. In addition the Department of Education shall evaluate the ~~e~~Corrective ~~a~~Action ~~p~~Plan and make appropriate modifications as needed.
- 11.5 ~~District Improvement Plans shall be submitted to the Department within three (3) months of identification.~~

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

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

12 DE Reg. 202 (08/01/08)

13 DE Reg. 1064 (02/01/10)

12.0 Review Process

A school or district may review school or district level data, including academic assessment data upon which the proposed AYP classification is based. The school or district shall present statistical evidence or other substantive reasons why the AYP classification should be changed before the final classification will be determined.

- 12.1 The school or district shall file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its proposed AYP classification. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or ~~the signature of~~ by the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.
- 12.2 Upon receipt of a written notice of review, the Secretary shall refer the review to his or her designee.
- 12.2.1 The designee shall be responsible for bringing the review forward to the Review Advisory Committee. The Review Advisory Committee shall be composed of a minimum of three members and assigned by the Secretary.
- 12.2.2 The Review Advisory Committee shall conduct a review of the statistical evidence or other substantive reasons presented by the school or district.
- 12.2.3 The Review Advisory Committee shall make a recommendation to the Secretary about whether the proposed AYP classification should remain as is or should be changed.
- 12.3 The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the proposed AYP classification of the school or district based on the evidence or other substantive reasons presented by the school or district.

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

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

10 DE Reg. 1795 (06/01/07)

13 DE Reg. 1064 (02/01/10)

14 DE Reg. 647 (01/01/11)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1556

Educational Impact Analysis Pursuant To 14 Del.C. Section 122(D)**1556 School To Work Transition Teacher****A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1556 School to Work Transition Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to allow for the Jobs for Delaware Graduate Office to provide necessary professional development to teacher candidates when necessary. This regulation sets forth the requirements for a School to Work Transition Teacher

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday May 2, 2011 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.

1556 School To Work Transition Teacher

1.0 Content

- 1.1 This regulation shall apply to the ~~requirements for issuance of~~ a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for School to Work Transition Teacher. ~~School to Work Transition Teachers, provide work transition training, counseling and assistance to students in~~ This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 - 8.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- ~~“Department” means the Delaware Department of Education.~~
- ~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~
- ~~“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, or education to practice in a particular area, teach a particular subject, or teach a category of students.~~
- “School to Work Transition” means the provision of work transition training, counseling and assistance to, and support in meeting graduation requirements for public high school students.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a School to Work Transition Teacher to an applicant who ~~holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements~~ who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a 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.

4.0 Additional Requirements

Additional requirements

- 4.1 An educator must also have met the following additional education requirements:
- 3.1 Educational Requirements.

~~3.1.1~~ Bachelor's degree from a regionally accredited college or university; and

~~34.1.21~~ Has completed Eighteen (18) semester hours of or the equivalent in course work in education or professional development, to include three semester hours in each of the following areas:

~~34.1.2.1~~ Educational Psychology, Human Growth and Development and Adolescent Psychology;

~~34.1.2.2~~ Tools and Techniques in Counseling;

~~34.1.2.3~~ Methods of Teaching School to Work Transition Students;

~~34.1.2.4~~ Job Development Training;

~~34.1.2.5~~ Career Guidance and Information; and

~~34.1.2.6~~ Occupational and Educational Information.

~~4.1.2~~ Professional development programs developed by the Jobs for Delaware Graduates (JDG) Office and approved by the Department may be substituted.

~~34.2~~ An educator must also have met the following Experience Requirements:-;

~~34.2.1~~ Has completed A minimum of two years of ~~continuous~~; full time work experience in trade, business, education, social services or industry; ~~or experience comparable to school to work transition, as approved by the Department.~~

9 DE Reg. 136 (7/1/05)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1584

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

1584 School Social Worker

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** 1584 School Social Worker. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to follow current formatting trends and to include references to 1505 Standard Certificate. This regulation sets forth the requirements for a School Social Worker.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday May 2, 2011 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.

1584 School Social Worker

~~Effective July 1, 1994~~

4.0 Content

- 4.1 ~~This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for School Social Worker.~~

2.0 Definitions

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

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

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

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

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

3.0 Standard Certificate

PROPOSED REGULATIONS

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

3.4 Master's Degree School Social Worker (MSW)

- 3.1.1 Master's degree in Social Work (MSW) from a regionally accredited college or university and,
- 3.1.2 Two years successful full time work experience as a social worker, and
- 3.1.3 One year of supervised experience in a school setting, or a one year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.

~~7-DE-Reg-1755 (6/1/04)~~

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

1.0 Content

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

2.0 Definitions

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

3.0 Standard Certificate

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

4.0 Additional Requirements

An educator shall also meet the following:

- 4.1 Master's degree in Social Work (MSW) from a regionally accredited college or university; and
- 4.2 Two years successful full time work experience as a social worker; and
- 4.3 One year of supervised experience in a school setting, or a one year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.

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

Statutory Authority: 16 Delaware Code, Section 1102(7) (16 Del.C. §1102(7))
16 DE Admin. Code 3201; 3225; 3230; 3301; 3305; 3310 & 3315

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 16 of the Delaware Code, Section 1102(7), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend policies to require facilities to cooperate fully with the state protection and advocacy agency.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, by Monday, May 4, 2011.

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 amends policies regarding Long Term Care Residents Protection to require facilities to cooperate fully with the state protection and advocacy agency as required by the amendment to 16 **Del.C.** §1102 which added a paragraph (7).

The proposed changes affect the following policy sections:

- 3201 Skilled and Intermediate Care Nursing Facilities;
- 3225 Assisted Living Facilities;
- 3230 Rest (Residential) Home Regulations;
- 3301 Group Home Facilities for Persons with AIDS;
- 3305 Group Homes for Persons with Mental Illness;
- 3310 Neighborhood Homes for Persons with Developmental Disabilities; and
- 3315 Rest (Family) Care Homes

Statutory Authority

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

Please Note: Only those sections of the regulations that are being amended are reproduced below. The complete regulation can be viewed in the Administrative Code.

3201 Skilled and Intermediate Care Nursing Facilities

(Break in Continuity of Sections)

3.0 General Requirements

- 3.1 The term "nursing home" or "nursing facility" shall not be used as part of the name of any facility in this State unless it has been so licensed by the Division.
- 3.2 Each nursing facility shall develop written policies pertaining to the services provided.
- 3.3 A nursing facility shall not adopt any policy which conflicts with applicable statutes or regulations.
- 3.4 Inspections and monitoring by the Division shall be carried out in accordance with 16 **Delaware Code**, §1107.
- 3.5 Upon receipt of a report of any violation(s) of these regulations, the facility shall submit a written plan of action to correct cited deficiencies within 10 working days or such other time period as may be specified. The plan of action shall address corrective actions and include all measures and completion dates to prevent their recurrence as follows:
 - 3.5.1 How the corrective action will be accomplished for a resident(s) affected by the deficient practice;

- 3.5.2 How the facility will identify other residents having the potential to be affected by the same deficient practice;
- 3.5.3 What measures or systemic changes will be put in place to ensure that the deficient practice will not recur;
- 3.5.4 What program will be put into place to monitor the continued effectiveness of the corrective actions.
- 3.6 The Division shall be notified, in writing, upon any changes in the administrator, assistant administrator or director of nursing positions.
- 3.7 The nursing facility shall comply with 42 CFR 483.10, 483.12, 483.13, 483.15 and/or 16 **Delaware Code**, §1121 regarding the rights of residents. Those rights shall be made available in writing to residents, guardians, representatives or next of kin.
- 3.8 Each facility shall provide, in writing, the refund and prepayment policy at the time of admission, and in the case of residents admitted while awaiting approval of third-party payment, an exact statement of responsibility in the event of retroactive denial. The facility shall notify residents, in writing, at least 30 days prior to a rate increase.
- 3.9 A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract to provide for facility payment from the resident's income or resources. However, in doing so, the facility shall not require a third party to incur personal financial liability for the nursing facility expenses.
- 3.10 The nursing facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

3225 Assisted Living Facilities (Formerly Regulation No. 63)

(Break in Continuity of Sections)

5.0 General Requirements

- 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.
- 5.2 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.3 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.
- 5.4 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.
- 5.5 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.
- 5.6 The assisted living facility shall arrange for emergency transportation and care.
- 5.7 Inspection summaries and compliance history information shall be posted by the facility in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.8 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority.

The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.

- 5.9 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:
- 5.9.1 Require care by a nurse that is more than intermittent or for more than a limited period of time;
 - 5.9.2 Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;
 - 5.9.3 Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;
 - 5.9.4 Are bedridden for more than 14 days;
 - 5.9.5 Have developed stage three or four skin ulcers;
 - 5.9.6 Require a ventilator;
 - 5.9.7 Require treatment for a disease or condition which requires more than contact isolation;
 - 5.9.8 Have an unstable tracheostomy or have a stable tracheostomy of less than 6 months' duration;
 - 5.9.9 Have an unstable peg tube;
 - 5.9.10 Require an IV or central line with an exception for a completely covered subcutaneously implanted venous port provided the assisted living facility meets the following standards:
 - 5.9.10.1 Facility records shall include the type, purpose and site of the port, the insertion date, and the last date medication was administered or the port flushed.
 - 5.9.10.2 The facility shall document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals and any facility reports,
 - 5.9.10.3 The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians or third party providers;
 - 5.9.11 Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;
 - 5.9.12 Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and
 - 5.9.13 Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.
- 5.10 The provisions of section 5.9 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.
- 5.11 The Assisted Living facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

8 DE Reg. 85 (7/1/04)

13 DE Reg. 1328 (04/01/10)

3230 Rest (Residential) Home Regulations

(Break in Continuity of Sections)

4.0 General Requirements

- 4.1 All required records maintained by the institution shall be open to inspection by authorized representatives of the Division of Public Health.

- 4.2 The term "**Rest (Residential) Home**" shall not be used as a part of the name of any institution in this State, unless it has been so classified by the Division of Public Health.
- 4.3 An institution classified under these regulations shall not admit any person under the age of fifteen (15) as a resident unless approved by the Division of Public Health.
- 4.4 No rules shall be adopted by the licensee or administrator of any institution which are in conflict with these regulations.
- 4.5 The Division of Public Health shall be notified, in writing, of any changes in ownership or management personnel.
- 4.6 Each facility shall exhibit, with an admission agreement, to all residents or their sponsors a complete statement enumerating all charges for services, materials and equipment which may be furnished during the period of residency. A signed statement as to receipt of the statement of charges shall be retained by the facility and the resident.
- 4.7 Refund and Prepayment Policy
- 4.7.1 Each facility shall make known, in writing, the refund and prepayment policy of the facility at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.
- 4.7.2 All payments shall be receipted.
- 4.7.3 Any revocation of any part of the financial agreement shall require one (1) week's notice.
- 4.8 The facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

3301 Group Home Facilities for Persons with AIDS (Formerly Regulation No. 62)

(Break in Continuity of Sections)

4.0 General Requirements

- 4.1 All required records maintained by the group home for persons with AIDS shall be open to inspection by the authorized representatives of the Division.
- 4.2 The term "Group Home" shall not be used as part of the name of any facility in this State, unless it has been so classified by the Department of Health and Social Services.
- 4.3 No rules shall be adopted by the licensee or administrator which are in conflict with these regulations.
- 4.4 The Division shall be notified, in writing, of any changes in the Administrator.
- 4.5 The group home shall establish written policies regarding the rights and responsibilities of residents, and these policies and procedures are to be made available to sponsoring agency(ies), and authorized representatives of the Division.
- 4.6 Each facility shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of thirdparty payment, an exact statement of responsibility in the event of retroactive denial.
- 4.7 The group home shall provide safe storage for resident's valuables.
- 4.8 The group home provider shall assure emergency transportation and care through use of appropriate transfer agreements with local medical facilities
- 4.9 All residents shall be afforded all protections and privileges contained in the Delaware Patients Bill of Rights.
- 4.10 The facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

5 DE Reg. 1079 (11/1/01)

3305 Group Homes for Persons with Mental Illness (Formerly Regulation No. 61)

PART I - STATE APPROVAL

(Break in Continuity of Sections)

4.0 Licensing by the Department

- 4.1 The service provider shall maintain a license issued by the Department for each group home. The license shall be posted in a conspicuous place in the group home to which it applies. The license shall not be transferable directly or indirectly from one service provider to another.
- 4.2 Separate licenses are required for group homes maintained in separate locations, even though operated by the same service provider. A license shall not be transferable from one group home to another or from one location to another.
- 4.3 Application for a license for a group home shall be made on forms provided by the Department. The application shall bear the notice that false statements therein are punishable. The application shall be accompanied by:
 - 4.3.1 Certification that the service provider shall comply with all applicable state and federal laws including, but not limited to, non-discrimination based on age, sex, race, nationality, religion, sexual orientation, or disability, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act;
 - 4.3.2 A sworn affidavit of a satisfactory compliance history as defined in **16 Del.C., §1104(d)** and other information to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the five year period preceding the date on which the application is made.
 - 4.3.3 The applicable license fee;
 - 4.3.4 Training and staff development plans offered by the service provider to staff, required by Section 5.3.2.;
 - 4.3.5 Written operations and personnel policies & procedures manual, and quality assurance plan required by Sections 5.0 and 7.10;
 - 4.3.6 A set of program plans which describe the service provider's capacity to implement Section 7.2.5;
 - 4.3.7 Written policies on periodic physical examinations, required by Section 9.3;
 - 4.3.8 Evidence of the ability to transport residents on an as needed basis, including provisions for emergency transportation, required by Sections 12.10 and 12.11;
 - 4.3.9 Written policies on medication maintenance and storage, required by Sections 10.;
 - 4.3.10 A letter from the Fire Marshal having jurisdiction certifying compliance by the group home with the rules and regulations of the State Fire Prevention Commission, required by Section 14.1;
 - 4.3.11 An evacuation plan required by Section 14.5;
 - 4.3.12 A staffing and work schedule;
 - 4.3.13 An identification of those persons and entities listed in **16 Del.C., §1104(c)**;
 - 4.3.14 An outline of arrangements for the provision of primary medical, emergency medical and dental care, in addition to access to community support services such as employment and day programming;
 - 4.3.15 An operating budget;
 - 4.3.16 A blueprint (or similar plan) of the group home;
 - 4.3.17 A specific plan for the safe and confidential storage of residents' records and medication including anticipated compliance with Section 8.1 and Section 10.0.
- 4.4 The Department shall grant a provisional license to any new applicant provided that the requirements of these regulations are met. The term of such provisional license shall be ninety (90) days, and thereafter, the applicant shall be entitled to an annual license, provided that the requirements of these regulations are met.

- 4.5 All applications for renewal of licenses shall be filed with the Department at least ninety (90) days prior to expiration and shall be accompanied by the attachments set forth in Section 4.3. Licenses may be issued for a period not to exceed one year (12 months) from the date of issuance.
- 4.6 The program will affirmatively notify the Department of any change in circumstances which precludes compliance with any of the regulations of this part.
- 4.7 The Department shall monitor compliance with its regulations and procedures. The service provider shall make all documentation and records deemed necessary by the Department available for the Department's review, and site visits shall be permitted at any time. The Department shall have the right of access to any information directly or indirectly related to the service provider's operation of the group home.
- 4.8 A service provider shall operate the group home in accordance with its application for licensure. A service provider shall immediately report any deviations from such operation to the Department.
- 4.9 The service provider shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

3310 Neighborhood Homes for Persons with Developmental Disabilities (Formerly Regulation No. 55)*(Break in Continuity of Sections)***3.0 Licensing and General Requirements**

- 3.1 When a Neighborhood Home pursuant to these regulations plans any structural alteration, one copy of properly prepared plans and specifications for the entire home shall be submitted to the Division of Long Term Care Residents Protection (DLTCRP). The Neighborhood Home shall receive written approval of the plans before any work is begun.
- 3.2 Separate licenses are required for separate homes, regardless of their proximity, even though operated by the same Neighborhood Home provider.
A license shall not be transferred from one provider to another or from one location to another.
- 3.3 The license shall be conspicuously posted in the Neighborhood Home.
- 3.4 All applications for renewal of licenses shall be filed with DLTCRP at least thirty days prior to expiration. Licenses shall be issued by DLTCRP for a period not to exceed one year (12 months) from the date they are issued.
- 3.5 All required records maintained by the Neighborhood Home shall be open to inspection by the authorized representatives of DLTCRP and DDDS.
- 3.6 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.
- 3.7 No Neighborhood Home provider shall adopt rules that conflict with these regulations.
- 3.8 DLTCRP shall be notified in writing of any changes in the ownership or management of a Neighborhood Home.
- 3.9 Each Neighborhood Home provider shall provide with the admission agreement, to all persons or their family member/guardian, a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the person during the period of residency.
- 3.10 Each Neighborhood Home provider shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.
- 3.11 Each Neighborhood Home provider shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

3315 Rest (Family) Care Homes

(Break in Continuity of Sections)

4.0 General Requirements

- 4.1 Each resident shall be given a physical/medical examination within ninety (90) days prior to placement and at least every three (3) years thereafter and/or more frequently as required by the Affiliated Social Agency/Program or the Division of Public Health.
- 4.2 A statement of level of care of the resident will be issued prior to placement and at least yearly thereafter. Determination of level of care will be done by a nursing representative of the Division of Public Health.
- 4.3 All required records maintained by the home shall be open to inspection by authorized representatives of the Division of Public Health and/or affiliated agency.
- 4.4 The term "Rest (Family Care) Home" shall not be used as a part of the name of any institution in this State unless it has been so classified by the Division of Public Health.
- 4.5 A home classified under these regulations shall not admit any person under the age of eighteen (18) as a resident unless approved by the State Board of Health.
- 4.6 The care provider family members shall not utilize the same sleeping quarters as the residents.
- 4.7 No rules shall be adopted by the licensure or care provider and/or Affiliated social Agency/Program of any home which are -in conflict with these regulations.
- 4.8 The Division of Public Health shall be notified in writing of any changes in ownership or care provider.
- 4.9 Each licensed home shall have a care provider and/or separate designee who will be responsible for the supervision of that home.
- 4.10 All Rest (Family Care) Homes will be under the supervision of a full-time care provider. The care provider will not leave the premises for a sustained period of time (greater than 12 hours) without delegating necessary duties to a responsible adult whose name is known on file. The Office of Health Facilities Licensing and Certification, Division of Public Health, is to be notified in case of extended absence (over one (1) week).
- 4.11 Each licensed home shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1102(7) (16 Del.C. §1102(7))
16 DE Admin. Code 3201; 3220; 3225; 3230; 3301 & 3315

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 29 of the Delaware Code, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend policies to require certain persons to receive dementia specific training.

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 Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Monday, May 4, 2011.

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 amends policies regarding Long Term Care Residents Protection to require certain persons to receive dementia specific training as required by the amendment to 29 **Del.C.** §7903 which added a paragraph (10) directing the DHSS Secretary to adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia.

The proposed changes affect the following policy sections:

- 3201 Skilled and Intermediate Care Nursing Facilities;
- 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants;
- 3225 Assisted Living Facilities;
- 3230 Rest (Residential) Home Regulations;
- 3301 Group Home Facilities for Persons with AIDS;
- 3315 Rest (Family) Care Homes

Statutory Authority

29 **Del.C.** §7903(10), Powers, duties and functions of the Secretary

Please Note: Only those sections of the regulations that are being amended are reproduced below. The complete regulation can be viewed in the Administrative Code.

3201 Skilled and Intermediate Care Nursing Facilities*(Break in Continuity of Sections)***5.0 Personnel/Administrative**

- 5.1 The administrator(s) shall be responsible for complying with all applicable laws and regulations.
- 5.2 Each nursing facility shall have a full-time administrator. When an administrator will be temporarily absent for a period of two weeks or more, a management employee shall be designated to be in charge. The Division shall be notified in writing upon such designation.
- 5.3 The nursing facility shall designate a physician to serve as the medical director who shall be responsible for implementation of resident care policies and the coordination of medical care in the facility.
- 5.4 Nursing facilities shall provide professional nursing, nursing services direct care and other services as follows:
 - 5.4.1 Nursing facilities subject to 16 **Delaware Code**, §1161 to §1165 shall provide professional nursing, nursing services direct care and other services in accordance with statutory requirements.
 - 5.4.2 Nursing facilities not subject to 16 **Delaware Code**, §1161 to §1165 shall provide professional nursing, nursing services direct care and other services as follows:
 - 5.4.2.1 The facility shall provide a sufficient number of nursing services direct care staff to provide a minimum of 2.25 hours of direct care and treatment per resident per day.
 - 5.4.2.2 In addition to the requirement above, the nursing facility shall have a full-time director of nursing who is a registered nurse. The director of nursing shall have overall responsibility for the coordination, supervision and provision of nursing services.
 - 5.4.2.3 At a minimum, a registered nurse or licensed practical nurse shall be on duty at all times during the first and second shifts.
 - 5.4.2.4 At a minimum, in the absence of a nurse on the third shift, a registered nurse or licensed practical nurse shall be on call.

- 5.4.2.5 Facilities not subject to 16 **Delaware Code**, §1164 may increase the level of care and services for a current resident whose condition requires such an increase in the level of care and services as an alternative to discharge to another facility. Such increased care and services shall be provided by a qualified caregiver(s) whose scope of practice includes the provision of such care and services, and shall be available during any shift when the resident's needs require such care and services.
- 5.4.2.6 All other nursing services direct caregivers shall be certified nursing assistants.
- 5.4.2.7 The facility shall employ an activities director who shall ensure the provision of activities as described in these regulations.
- 5.5 The facility shall have written personnel policies and procedures. Personnel records shall be kept current and available for each employee, and include the following:
 - 5.5.1 Results of tuberculosis screening
 - 5.5.2 Documentation of annual influenza vaccination or refusal.
 - 5.5.3 Results of criminal background check
 - 5.5.4 Results of mandatory drug testing
 - 5.5.5 Result of Adult Abuse Registry check
 - 5.5.6 Titles and hours of in-service training
 - 5.5.7 If applicable, license number and expiration date
 - 5.5.8 If applicable, certification expiration date
- 5.6 Dementia Training
 - 5.6.1 Nursing facilities that provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training to those healthcare providers who must participate in continuing education programs. This section shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.
 - 5.6.2 The mandatory training must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.

13 DE Reg. 1322 (04/01/10)

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

(Break in Continuity of Sections)

2.0 General Training Requirements And Competency Test

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/ agency or facility staff shall be required to meet the following:

- 2.1 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.
- 2.3 Nursing Assistants shall take the competency test within 30 days of completion of an approved program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test. The certificate of completion of an approved program, a prerequisite to testing, must be dated within 24 months of the available testing date. Nursing assistants who are trained in a facility and are counted for staffing purposes pursuant to 16 Del.C.

- §1162(f) must pass the test within 90 days of completion of the facility program to continue to be counted in staffing calculations.
- 2.4 In order to qualify for recertification, a CNA must, during each 24 month certification period: (1) complete 24 hours of approved continuing education, and (2) perform at least 64 hours of nursing related services for pay under the supervision of a licensed nurse or physician. A CNA who does not perform at least 64 hours of nursing related services in a certification period or fails to complete the required continuing education must pass the competency test again. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.
- 2.4.1 A CNA who provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall annually receive dementia specific training that must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.
- 2.5 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations §483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:
- 2.5.1 The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.
- 2.5.2 The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.
- 2.5.3 The CNA must be in good standing in the jurisdiction where he/she is currently certified.
- 2.5.4 The CNA submits \$30 to the Department to cover the costs associated with granting the reciprocity.
- 2.6 Nursing students who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a 75 hour clinical component in a long term care setting will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.
- 2.7 Nursing students who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.
- 2.8 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.
- 2.9 A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.
- 2.10 If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency

evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.

- 2.11 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

6 DE Reg. 1505 (5/1/03)

8 DE Reg. 1014 (1/1/05)

14 DE Reg. 169 (09/01/10)

3225 Assisted Living Facilities (Formerly Regulation No. 63)

(Break in Continuity of Sections)

5.0 General Requirements

- 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.
- 5.2 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.3 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.
- 5.4 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.
- 5.5 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.
- 5.6 The assisted living facility shall arrange for emergency transportation and care.
- 5.7 Inspection summaries and compliance history information shall be posted by the facility in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.8 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.
- 5.9 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:
- 5.9.1 Require care by a nurse that is more than intermittent or for more than a limited period of time;

PROPOSED REGULATIONS

- 5.9.2 Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;
- 5.9.3 Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;
- 5.9.4 Are bedridden for more than 14 days;
- 5.9.5 Have developed stage three or four skin ulcers;
- 5.9.6 Require a ventilator;
- 5.9.7 Require treatment for a disease or condition which requires more than contact isolation;
- 5.9.8 Have an unstable tracheostomy or have a stable tracheostomy of less than 6 months' duration;
- 5.9.9 Have an unstable peg tube;
- 5.9.10 Require an IV or central line with an exception for a completely covered subcutaneously implanted venous port provided the assisted living facility meets the following standards:
 - 5.9.10.1 Facility records shall include the type, purpose and site of the port, the insertion date, and the last date medication was administered or the port flushed.
 - 5.9.10.2 The facility shall document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals and any facility reports,
 - 5.9.10.3 The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians or third party providers;
- 5.9.11 Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;
- 5.9.12 Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and
- 5.9.13 Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.
- 5.10 The provisions of section 5.9 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.
- 5.11 An assisted living facility that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training to those healthcare providers who must participate in continuing education programs. The mandatory training must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.

8 DE Reg. 85 (7/1/04)

13 DE Reg. 1328 (04/01/10)

3230 Rest (Residential) Home Regulations

(Break in Continuity of Sections)

7.0 Personnel/Administrative

7.1 Administrator:

- 7.1.1 All administrators must be licensed by the Board of Examiners of Nursing Home Administrators. The administrator must be a full-time employee in facilities of 25 beds or more. Facilities with less

than 25 beds but more than 8 must have an administrator on duty at least 4 hours per day, 5 days per week. Supervision by a licensed Nursing Home Administrator is not required for facilities with 4 to 8 beds inclusive. When a facility provides two or more categories of care, the criteria for the highest level of care would determine the administrator requirements for the entire facility.

7.1.2 The administrator enforces the rules and regulations relating to the level of health care and safety of residents, and to the protection of their personal and property rights.

7.1.3 The administrator plans, organizes and directs the overall responsibilities of the facility.

7.1.4 The administrator of resident care facilities shall be physically and mentally capable of performing his duties and responsibilities, and not guilty of a felony or misdemeanor which might affect the operation of the facility.

7.1.5 In the absence of the administrator, an employee shall be authorized in writing, to act on the administrator's behalf.

7.2 A staff of persons sufficient in number and adequately trained to meet the requirements of the residents shall be employed, to maintain at least 1.75 hours direct care per twenty-four (24) hour period, per resident.

7.3 The institution shall have written personnel policies and procedures that support sound residential care. An application for employment and personnel records shall be maintained for all employees.

7.4 Each person, including volunteers, who is involved in the care of residents shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intra-dermal skin test or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement. A report of this test shall be on file at the facility of employment.

7.5 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer.

7.6 Separate bathroom facilities shall be provided for the staff.

7.7 Adequate facilities shall be provided for the orderly storage of employee's clothing and personal belongings.

7.8 Nurse Aide/Nurse Assistant Requirements

Each nurse aide/nurse assistant employed by any nursing home either as contract/agency or facility staff as of October 1, 1990, shall be required to meet the following:

7.8.1 Training/Testing

7.8.1.1 Nurse aide/nurse assistant shall complete a nurse aide training course approved by Delaware State Board of Nursing and by the Division of Public Health.

7.8.1.2 Nurse aide/nurse assistant is required to pass competency evaluation test approved by State of Delaware.

7.8.1.3 Employees of Delaware nursing homes shall be duly certified within 4 months of employment.

7.8.1.4 Contract aides must be certified prior to placement in any nursing home.

7.8.2 A nurse aide/nurse assistant who has not performed nursing related services for pay for a continuous 24 month period after completion of a training and testing program, must complete and pass a new training and competency evaluation (testing) program.

7.8.3 A nurse aide/nurse assistant who has not been employed in a health care setting for three years will be required to meet the requirements in section 7.8.1 above.

7.8.4 A nurse aide/nurse assistant trained and certified outside the State of Delaware may be deemed qualified to meet the Board of Health requirements based on a case by case review and approval.

7.8.5 Employees hired as nurse aide/nurse assistant who are currently enrolled in a nursing program and have satisfactorily completed the fundamentals of nursing course with a clinical component will be deemed to meet the training and testing requirements. These individuals will be approved with submittal of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

7.8.6 A nurse aide/nurse assistant who provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall annually receive dementia specific training that must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.

(Break in Continuity of Sections)

3301 Group Home Facilities for Persons with AIDS (Formerly Regulation No. 62)

(Break in Continuity of Sections)

7.0 Personnel/Administrative

- 7.1 There must be a licensee of the facility. The licensee must:
- 7.1.1 Exercise general policy, budget, and operating direction over the facility;
 - 7.1.2 Appoint the administrator of the facility who shall have:
 - 7.1.2.1 An associates degree or higher from an accredited college or university plus three (3) years experience in a health or human services field; or
 - 7.1.2.2 A bachelor's degree or higher in a health, business, or related field and a minimum of one year's work experience in a health or human service field.
 - 7.1.2.3 Insure all operations of the group home facility are conducted in accordance with these regulations and applicable Federal, state and local laws and requirements.
- 7.2 The licensee and the administrator shall be responsible for complying with the regulations herein contained. In the absence of the administrator, a qualified substitute shall be authorized, in writing, to be in charge.
- 7.3 The administrator must be on duty and on site in the home a minimum of four (4) hours a day, five (5) days a week.
- 7.4 In addition to the staff engaged in the direct care and treatment of residents, there must be sufficient personnel to provide basic services such as: food service, laundry, housekeeping and plant maintenance. Nursing service personnel shall not be engaged in food service, laundry, housekeeping and plant maintenance.
- 7.5 All personnel shall submit to and pass a criminal background check and drug testing in accordance with **16 Del.C. Ch. 11, Subchapter IV.**, Criminal Background Checks and Mandatory Drug Testing.
- 7.6 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a disqualifying crime as set forth in the Criminal Background Check regulations of the Division of Long Term Care Residents Protection.
- 7.7 The facility shall have written personnel policies and procedures that adequately support sound resident care. Personnel records of each employee shall be kept current and available upon request by the Division representatives and shall contain sufficient information to support placement in the positions to which assigned.
- 7.8 Minimum requirements for employee physical examinations include:
- 7.8.1 The facility shall have on file results of tuberculin tests performed annually for all employees, including volunteers who are involved in the care of residents. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

-
- 7.8.2 Employees who do not have a significant reaction to the initial tuberculin test (those individuals who have less than 10 mm induration) should be retested within 7 - 21 days to identify those who demonstrate delayed reactions. Tests done within one year of a previous test need not be repeated in 7 -21 days.
- 7.8.3 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care and service to residents.
- 7.9 Each applicant of a group home must have a medical evaluation for tuberculosis before being admitted to a group home. Any resident found to have active tuberculosis in an infectious stage may not be admitted or continue to reside in a group home.
- 7.10 The licensee shall approve written policies and procedures pertaining to the services the group home provides. Such policies and procedures should reflect the philosophy and objectives of the home to provide on a continuing basis good medical, nursing and psychosocial care for all persons admitted to the home who require such care, Such policies and procedures shall reflect the requirements of Section 62.7 and include:
- 7.10.1 Admission, transfer and discharge policies
 - 7.10.2 Categories of residents accepted or not accepted
 - 7.10.3 Physician services
 - 7.10.4 Nursing services
 - 7.10.5 Food and nutrition services including kitchen sanitation, food handling and storage
 - 7.10.6 Rehabilitative services
 - 7.10.7 Pharmaceutical services
 - 7.10.8 Diagnostic services
 - 7.10.9 Housekeeping services
 - 7.10.10 A written policy and procedure denoting care of residents
 - 7.10.10.1 In an emergency
 - 7.10.10.2 During a communicable disease episode
 - 7.10.10.3 In case of critical illness or mental disturbance
 - 7.10.11 Dental services
 - 7.10.12 Social services
 - 7.10.13 Resident activities, recreational, social, religious
 - 7.10.14 Clinical records
 - 7.10.15 Fire and safety policies
 - 7.10.16 Advance directives to include:
 - 7.10.16.1 On admission, inform residents in writing of their right 1) to accept or refuse treatment, 2) to give written instructions concerning their care and 3) to appoint an agent or proxy to make health cue decisions.
 - 7.10.16.2 Documenting in medical records whether or not residents have executed advance directives.
 - 7.10.16.3 Ensuring compliance with requirements of state law on advance directives.
 - 7.10.16.4 Providing education for staff on issues concerning advance directives.
 - 7.10.17 Infection control.
- 7.11 A group home that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training to those healthcare providers who must participate in continuing education programs. The mandatory training must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.

5 DE Reg. 1079 (11/1/01)

PROPOSED REGULATIONS

3315 Rest (Family) Care Homes

(Break in Continuity of Sections)

4.0 General Requirements

- 4.1 Each resident shall be given a physical/medical examination within ninety (90) days prior to placement and at least every three (3) years thereafter and/or more frequently as required by the Affiliated Social Agency/Program or the Division of Public Health.
- 4.2 A statement of level of care of the resident will be issued prior to placement and at least yearly thereafter. Determination of level of care will be done by a nursing representative of the Division of Public Health.
- 4.3 All required records maintained by the home shall be open to inspection by authorized representatives of the Division of Public Health and/or affiliated agency.
- 4.4 The term "Rest (Family Care) Home" shall not be used as a part of the name of any institution in this State unless it has been so classified by the Division of Public Health.
- 4.5 A home classified under these regulations shall not admit any person under the age of eighteen (18) as a resident unless approved by the State Board of Health.
- 4.6 The care provider family members shall not utilize the same sleeping quarters as the residents.
- 4.7 No rules shall be adopted by the licensure or care provider and/or Affiliated social Agency/Program of any home which are -in conflict with these regulations.
- 4.8 The Division of Public Health shall be notified in writing of any changes in ownership or care provider.
- 4.9 Each licensed home shall have a care provider and/or separate designee who will be responsible for the supervision of that home.
- 4.10 All Rest (Family Care) Homes will be under the supervision of a full-time care provider. The care provider will not leave the premises for a sustained period of time (greater than 12 hours) without delegating necessary duties to a responsible adult whose name is known on file. The Office of Health Facilities Licensing and Certification, Division of Public Health, is to be notified in case of extended absence (over one (1) week).
- 4.11 A care provider that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall receive annual dementia specific training that includes: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 14300, 14360 and 18100

PUBLIC NOTICE

Citizenship and Alienage

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 amending the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage, specifically, State Funded Benefits*.

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, 2011.

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

SUMMARY OF PROPOSAL

The proposal amends the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage*, specifically, *State Funded Benefits*.

Statutory Authority

This regulatory action proposes changes to State funded benefits necessitated by State Fiscal Year 2012 Recommended Operating Budget and Capital Improvement Act.

Background

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This does not include long term care services. Coverage for these aliens is subject to the availability of state funding.

Summary of Proposal

The purpose of this rule change is to eliminate state funded full Medicaid benefits for certain legally residing noncitizens and to delete the reference to state funded benefits under the Delaware Healthy Children Program.

Due to budgetary constraints, continued funding for the program was not included in the State Fiscal Year (SFY) 2012 recommendations of the Health Fund Advisory Committee (HFAC). This recommendation is reflected in Volume II of the SFY 2012 Governor's Recommended Budget.

Legally residing noncitizens may be found eligible for coverage of emergency services and labor and delivery only.

The proposed changes are effective July 1, 2011 and affect the following policy sections:

DSSM 14300, *Citizenship and Alienage*
DSSM 14360, *State Funded Benefits*
DSSM 18100.1, *Alien Status*.

Fiscal Impact Statement

A savings of \$1,570,000 in tobacco funds is projected.

DMMA PROPOSED REGULATIONS #11-14

REVISIONS:

14300 Citizenship and Alienage

Medicaid must be provided to eligible citizens or nationals of the United States. An individual qualifies as a U.S. citizen if the person was born in the 50 states and District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. Children of a U.S. citizen who are born outside the U.S. may automatically be eligible for a Certificate of Citizenship.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the U. S. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. Medicaid eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. The term nonqualified alien also includes illegal aliens.

~~In State Fiscal Year 1998, (SFY 98), 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. This coverage is described at Section 14360.~~

All applicants, whether citizens or aliens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, ~~emergency services and labor and delivery only, or the state funded benefits or emergency services and labor and delivery only.~~

(Break in Continuity of Sections)

14360 State Funded Benefits

~~In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This ~~does~~ did not include long term care services. Coverage for these aliens is was 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.~~ Effective July 1, 2011, state funded benefits are no longer available for these certain legally residing noncitizens. These aliens may be found eligible for emergency services and labor and delivery only.~~

~~The following groups of aliens may be found eligible for state funded benefits:~~

- ~~• Qualified aliens subject to the PRWORA five year bar~~
- ~~• Legally residing nonqualified aliens~~

~~Ineligible and illegal aliens are not eligible for state funded benefits.~~

~~State funded benefits are not provided to the adult expansion population under the 1115 demonstration waiver.~~

(Break in Continuity of Sections)

18100.1 Alien Status

The DHCP does not provide ~~state funded benefits or~~ coverage of emergency services and labor and delivery only.

Receipt of DHCP benefits cannot be considered by the U.S. Citizenship and Immigration Services (USCIS) when making public charge determinations.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20310

PUBLIC NOTICE

Long-Term Care Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

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, 2011.

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

SUMMARY OF PROPOSAL

The proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

Statutory Authority

- Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312)
- Social Security Administration's Program Operations Manual System (POMS): SI 01130.600, Retroactive Supplemental Security Income (SSI) and Retirement, Survivors and Disability (RSDI) Payments

Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) was signed into law on December 17, 2010. Section 728 of this Act disregards federal tax refunds or advance payments with respect to a refundable tax credit, received after December 31, 2009, as income and as resources (for a period of 12 months after receipt) for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid and the Children's Health Insurance program (CHIP). Section 728 also provides that these tax refunds and advance payments are not to be taken into account in determining the amount or extent of benefits provided under any program subject to this provision, including Medicaid and CHIP. This provision became effective December 17, 2010, and applies to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013.

Summary of Proposal

The purpose of the proposed change is to update the length of time certain resources are excluded. Lump sum retroactive Social Security Act (SSA) payments are now excluded for nine (9) calendar months following the month of receipt. Tax refunds and advance payments received after December 31, 2009 through December 31, 2012 are excluded for a period of twelve (12) calendar months following the month of receipt.

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

**DMMA PROPOSED REGULATION #11-15
REVISIONS:****20310.9 Retroactive Social Security Administration Lump Sum Payments**

The unspent portion of retroactive SSI and Title II Retirement, Survivors, and Disability insurance (RSDI) benefits is excluded from resources for the ~~six~~ nine calendar months following the month of receipt. (See Social Security Administration's Program Operations Manual System (POMS) SI 01130.600 for exclusion of retroactive RSDI benefits.)

(Break in Continuity of Sections)

20310.18 Tax Refunds and Advance Payments

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P. L. 111-312), which was signed into law on December 17, 2010, includes a provision that requires all programs funded in whole or in part with Federal funds, to disregard Federal tax refunds for a period of twelve months from the month of receipt.

Tax refunds and advance payments with respect to a refundable tax credit received after December 31, 2009 through December 31, 2012 are excluded from resources for the twelve calendar months following the month of receipt.

Any portion of the refund or payment that is still retained after that twelve- month period will be a countable resource.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 1205A (16 **Del.C.** §1205A)
16 **DE Admin. Code** 4402, 4406, 4410 and 4469

Health Systems Protections**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 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Public Health is proposing to amend policies regarding Health Systems Protections to require certain persons to receive dementia specific training.

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 Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Monday, May 4, 2011.

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 amends policies regarding Health Systems Protections to require certain persons to receive dementia specific training as required by the amendment to 29 Del.C. §7903 which added a paragraph (10) directing the DHSS Secretary to adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia.

The proposed changes affect the following policy sections:

- 4402 Regulations for Adult Day Care Facilities;
- 4406 Home Health Agencies –Aide Only (Licensure);
- 4410 Skilled Home Health Agencies (Licensure);
- 4469 Personal Assistance Services Agencies.

Statutory Authority

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

4402 Regulations for Adult Day Care Facilities

(Break in Continuity of Sections)

13.0 Personnel/administrative

(Break in Continuity of Sections)

13.17 An Adult Day Care facility that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training to those healthcare providers who must participate in continuing education programs. The mandatory training must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.

(Break in Continuity of Sections)

4406 Home Health Agencies--Aide Only (Licensure)

(Break in Continuity of Sections)

5.0 Administration/Personnel

(Break in Continuity within Section)

- 5.7.6 Ongoing staff development is required to maintain and improve the skills of the home health aide. Aides shall attend at least twelve (12) hours annually of staff development activities which shall consist of in-service training programs, workshops or conferences related to home health care or specific needs of patients and which shall include but not be limited to:
 - 5.7.6.1 Instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;

- 5.7.6.2 Principles of good nutrition;
- 5.7.6.3 Meal planning, food purchasing and preparation of meals, including special diets;
- 5.7.6.4 Information on the emotional and physical problems accompanying illness, disability or aging;
- 5.7.6.5 Principles and practices in maintaining a clean, healthy, pleasant and safe environment that encourages morale building and self-help;
- 5.7.6.6 Items requiring referral to the clinical director, including changes in the patient's condition or family situation;
- 5.7.6.7 Observation, reporting and documentation of patient status;
- 5.7.6.8 Policies and objectives of the agency;
- 5.7.6.9 Confidentiality of patient information;
- 5.7.6.10 Patient rights;
- 5.7.6.11 Principles of infection control;
- 5.7.6.12 Verbal/non-verbal communication skills; and
- 5.7.6.13 Principles of body mechanics.
- 5.7.6.14 *Dementia specific training that includes: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.*
- 5.7.7 Documentation of orientation and continuing education must be in each individual's personnel record and must include the date(s) and hour(s), content, and name and title of the person providing the orientation/education.
- 5.7.8 It is the responsibility of the home health agency to ensure that employees/contractors are proficient to carry out the care assigned in a safe, effective, and efficient manner.
- 5.7.9 All newly hired employees and contractors must pass a competency evaluation test prior to providing care to patients and annually thereafter.
- 5.7.10 The time allotted for training shall be sufficient to foster safe and skillful services to the patient.
- 5.7.11 Attendance records must be kept for all orientation and continuing education programs.

12 DE Reg. 1209 (03/01/09)

4410 Skilled Home Health Agencies (Licensure)

(Break in Continuity of Sections)

5.0 Administration/Personnel

(Break in Continuity within Section)

- 5.8 Staff Development
 - 5.8.1 Staff development must be supervised by a registered nurse with at least one year of home health and administrative/supervisory experience.
 - 5.8.2 All employees/contractors are required to complete an orientation program.
 - 5.8.3 An orientation/training program should be based on an instruction plan that includes learning objectives, clinical content and minimum acceptable performance standards. and shall include but not be limited to:
 - 5.8.3.1 Organizational structure of the agency;
 - 5.8.3.2 Agency patient care policies and procedures;
 - 5.8.3.3 Philosophy of patient care;
 - 5.8.3.4 Description of patient population and geographic location served;
 - 5.8.3.5 Patient rights;
 - 5.8.3.6 Agency personnel and administrative policies;

- 5.8.3.7 Job description;
- 5.8.3.8 Disaster Preparedness; and
- 5.8.3.9 Applicable state regulations governing the delivery of home health care services.
- 5.8.4 All newly hired/contracted aides shall be required to complete or show evidence of having completed seventy-five (75) hours of training which shall include instruction and supervised practicum and which addresses:
 - 5.8.4.1 Personal care services;
 - 5.8.4.2 Principles of good nutrition;
 - 5.8.4.3 Process of growth, development and aging;
 - 5.8.4.4 Principles of infection control;
 - 5.8.4.5 Observation, reporting and documentation of patient status;
 - 5.8.4.6 Maintaining a clean, safe and healthy environment;
 - 5.8.4.7 Maintaining a least restrictive environment;
 - 5.8.4.8 Verbal/non-verbal communication skills;
 - 5.8.4.9 Reading and recording temperature, pulse and respiration;
 - 5.8.4.10 Safe transfer techniques and ambulation;
 - 5.8.4.11 Normal range of motion and positioning;
 - 5.8.4.12 Principles of body mechanics; and
 - 5.8.4.13 The needs of the elderly and persons with disabilities.
- 5.8.5 Aides who experience a break in service for greater than two (2) calendar years will be expected to repeat the seventy-five (75) hour training requirement.
- 5.8.6 Ongoing staff development is required to maintain and improve the skills of the caregiver. Aides shall attend at least twelve (12) hours annually of staff development activities which shall consist of in-service training programs, workshops, or conferences related to home health care or specific needs of patients and which shall include but not be limited to:
 - Instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;
 - Principles of good nutrition;
 - Meal planning, food purchasing and preparation of meals, including special diets;
 - Information on the emotional and physical problems accompanying illness, disability or aging;
 - Principles and practices in maintaining a clean, healthy, pleasant and safe environment that encourages morale building and self-help;
 - Items requiring referral to the home health agency, including changes in the patient's condition or family situation;
 - Observation, reporting, and documentation of patient status;
 - Policies and objectives of the agency;
 - Confidentiality of patient information;
 - Patient rights;
 - Principles of infection control;
 - Verbal/non-verbal communication skills; and
 - Principles of body mechanics.
- 5.8.7 Documentation of orientation and continuing education must include the date(s) and hour(s), content, and name and title of the person providing the orientation/education.
- 5.8.8 It is the responsibility of the home health agency to ensure that employees/contractors are proficient to carry out the care assigned in a safe, effective and efficient manner.
- 5.8.9 All newly hired employees and contractors must pass a competency evaluation test prior to providing care to patients and annually thereafter.
- 5.8.10 The time allotted for training shall be sufficient to foster safe and skillful services to the patient.
- 5.8.11 Attendance records must be kept for all orientation and continuing education programs.

5.8.12 Dementia specific training that includes: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.

12 DE Reg. 1217 (03/01/09)

4469 Personal Assistance Services Agencies

(Break in Continuity of Sections)

4.0 Administration

4.1 Agency Director

4.1.1 Every Agency shall have a full-time agency director.

4.1.2 The director shall appoint an individual to act in the director's absence.

4.1.3 The director shall have full authority and responsibility to plan, staff, direct and implement the programs and manage the affairs of the agency.

4.2 Purchase of Contracted Services

4.2.1 The personal assistance services agency maintains responsibility for all services provided to the consumer.

4.2.2 The personal assistance services agency shall establish a written contractual arrangement with a contractor for the provision of all services which are not provided directly by employees of the agency.

4.3 Written Policies

4.3.1 The personal assistance services agency shall have written policies regarding qualifications, responsibilities and requirements for employment/referral for each job classification.

4.3.2 The written policies shall include but not be limited to:

4.3.2.1 Pre-employment/referral requirements;

4.3.2.2 Position descriptions;

4.3.2.3 Orientation policy and procedure for all direct care workers;

4.3.2.4 Annual performance review and competency testing policy and procedure; and

4.3.2.5 Program review and evaluation of its program.

4.3.3 Policies shall be reviewed and dated annually and revised as necessary.

4.4 Direct Care Worker Records

4.4.1 Records of each direct care worker shall be kept current and available upon request by authorized representatives of the Department.

4.4.2 For all direct care workers, the agency shall maintain individual records which shall contain at least:

4.4.2.1 Written verification of compliance with pre-employment/referral requirements;

4.4.2.2 Documentation of competence;

4.4.2.3 Educational preparation and work history;

4.4.2.4 Written performance evaluations or consumer satisfaction surveys (annually); and

4.4.2.5 A letter of appointment specifying conditions of employment/referral.

4.4.2.6 Health History

4.4.2.6.1 Minimum requirements for pre-employment/referral and annual tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

4.4.2.6.2 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to consumers.

- 4.4.2.6.3 Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.
- 4.4.2.6.4 A report of all test results and all attestation statements shall be on file at the agency.
- 4.4.2.6.5 All new direct care workers shall be required to have a pre-employment/referral physical examination, a copy of which shall be maintained in individual files.
- 4.4.2.6.6 Any individual who cannot adequately perform the duties required or who may jeopardize the health or safety of the consumers shall be relieved of their duties and removed from the agency until such time as the condition is resolved. This includes infections of a temporary nature.

4.5 Orientation and Testing

- 4.5.1 All direct care workers are required to complete an orientation program given by the Agency before providing services to a consumer.
- 4.5.2 The orientation program shall include but not be limited to:
 - 4.5.2.1 Organizational structure of the agency;
 - 4.5.2.2 Agency consumer care policies and procedures;
 - 4.5.2.3 Philosophy of consumer care;
 - 4.5.2.4 Description of consumer population and geographic location served;
 - 4.5.2.5 Consumer rights;
 - 4.5.2.6 Agency personnel and administrative policies;
 - 4.5.2.7 Principles of good nutrition;
 - 4.5.2.8 Process of growth, development and aging;
 - 4.5.2.9 Principles of infection control;
 - 4.5.2.10 Observation, reporting and documentation of consumer status;
 - 4.5.2.11 Maintaining a least restrictive environment;
 - 4.5.2.12 Verbal/non-verbal communication skills;
 - 4.5.2.13 Principles of body mechanics;
 - 4.5.2.14 The needs of the elderly and persons with disabilities;
 - 4.5.2.15 Activities of daily living;
 - 4.5.2.16 Introduction to common assistive technology;
 - 4.5.2.17 Meal planning, food purchasing and preparation of meals, including special diets;
 - 4.5.2.18 Information on the emotional and physical problems accompanying illness, disability or aging;
 - 4.5.2.19 Principles and practices in maintaining a clean, healthy, pleasant and safe environment that encourages morale building and self-help;
 - 4.5.2.20 Items requiring referral to the personal assistance services agency, including changes in the consumer's condition or family situation;
 - 4.5.2.21 Confidentiality of consumer information;
 - 4.5.2.22 Service Plan specific description; and
 - 4.5.2.23 Applicable state regulations governing the delivery of personal assistance services to consumers.
- 4.5.3 All newly hired/contracted direct care workers must pass a competency test prior to providing care to consumers and annually thereafter.
 - 4.5.3.1 The competency test must include questions addressing the competencies listed in Section 4.5.2.
 - 4.5.3.2 It is the responsibility of the personal assistance services agency to ensure that direct care workers are proficient to carry out the care assigned in a safe, effective and efficient manner.

4.5.4 A Personal Assistance Services Agency that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training to those healthcare providers who must participate in continuing education programs. The mandatory training must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11003.2.1

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 policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Sanctioning TANF and Transitional Work Program Recipients*.

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, 2011.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Sanctioning TANF and Transitional Work Program Recipients*.

Statutory Authority

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

Summary of Proposed Change

DSSM 11003.2.1, ~~TANF and Transition Work Program Sanctions~~ *Sanctioning TANF and Transitional Work Program Recipients*: This rule revision restricts TANF and Transitional Work Program (TWP) recipients to self-arranged care when cooperating to cure a second TANF or TWP sanction. An additional change is proposed to rename this section to better describe its content.

DSS PROPOSED REGULATION #11-10**REVISIONS:**

11003.2.1 ~~TANF and Transitional Work Program Sanctions~~ *Sanctioning TANF and Transitional Work Program Recipients*

Recipients who fail without good cause to meet requirements for the TANF Employment and Training or Transitional Work Program are sanctioned.

When TANF recipients receive a full family sanction 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~~ close. In order to regain TANF Child Care, recipients must work to cure the sanction, ~~meaning they must cooperate~~ by cooperating with their TANF or TWP requirements.

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

Clients working to cure their TANF and/or TWP sanctions may only use self arranged care. Clients may choose any child care option beginning the month after the sanction is cured.

See 11003.2.1 TANF & Transitional Work Program - History

See 11003.7.8 Special Needs

See 3017.1 Transitional Work Program

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11003.7.8 & 11003.8

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 *Special Needs* and *Necessity of Child Care*.

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, 2011.

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 changes described below amend Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Special Needs* and *Necessity of Child Care*.

Statutory Authority

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

Summary of Proposed Changes

DSSM 11003.7.8, *Special Needs*: The Special Needs rule is being revised by eliminating Special Needs for children and maintaining it for adults.

DSSM 11003.8, *Necessity of Child Care*: This section is being revised to clarify what constitutes a need for child care. Parents and caretakers must have a need as defined by the Division of Social Services in order to receive subsidized child care. In the case of a two-parent family both parents must have a need.

DSS PROPOSED REGULATIONS #11-09**REVISIONS:****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.~~

The parent/caretaker must meet the need criteria as listed in 11003.8.

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/~~caretaker~~ has a condition which makes him/her ~~the parent/caretaker~~ unable to care for his/her child for some portion of the day.

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.

11003.8 Necessity ~~Of~~ of Child Care

~~For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:~~

- ~~A. the child is not in school during the hours of the parent/caretaker's employment; or~~
- ~~B. the child is not in school during the hours of the parent/caretaker's participation in a training or education component of a DSS Food Stamp or TANF Employment and Training program; or~~
- ~~C. both parents in a two parent household have a need for child care. For example:~~
 - ~~1. in two parent households both parents work; or~~
 - ~~2. one works and the other has another need (such as education or training), is incapacitated (a parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable (such as one parent works the late shift and needs to sleep during the day while the other parent works).~~

45 CFR 98.20

For parents/caretakers to receive child care services, DSS must determine if child care is necessary. For two-parent households, both parents must have a need for child care. Child care is necessary when:

- A. The child is not in school during the hours of the parent's/caretaker's employment
- B. The child is not in school during the hours of the parent's/caretaker's participation in a training or education component of a DSS Employment and Training program
- C. The child is active with and referred by DFS for child care (See DSSM 11003.7.8)
- D. The parent/caretaker is active with and referred by the DSS Transitional Work Program for child care (See DSSM 11003.7.8)
- E. The parent/caretaker has a special need (See DSSM 11003.7.8)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 4002, 4006, 8026 & 8030

PUBLIC NOTICE

Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance (RCA) Programs

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 TANF and Refugee Cash Assistance (RCA) programs specifically, *Excluded Income and Excluded Resources*.

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, 2011.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance (RCA) programs specifically, *Excluded Income and Excluded Resources*.

Statutory Authority

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)

Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) made changes in the manner federal tax refunds may be considered when determining eligibility for federally funded programs. The law includes a provision that mandates disregarding tax refunds received after December 31, 2009, as income and as resources (for a period of 12 months) in programs funded in whole or in part with federal funds. Under the new law, the total amount of a federal tax refund received after December 31, 2009 – regardless of whether the refund is the result of a refundable credit, over-withholding, or both – is disregarded as income and resources in the month received. This resource exclusion is to last for 12 months from the date of receipt of the refund.

Summary of Proposed Change

The proposed change in policy brings Delaware's TANF and Refugee Cash Assistance programs into compliance with new federal law. Federal tax refunds received after December 31, 2009 are disregarded as income the month they are received and disregarded as a resource for 12 months from date of receipt.

The proposed changes affect the following policy sections:

DSSM 4002.5, *Excluded Resources*

DSSM 4006, *Excluded Income*

DSSM 8026.5, *Excluded Resources*

DSSM 8030, *Excluded Income*

DSS PROPOSED REGULATIONS #11-08**REVISIONS:****4002.5 Excluded Resources**

The equity value of real and personal property owned by a family budget group cannot exceed \$10,000.00 for TANF cases or \$1,000.00 for General Assistance cases. Resources excluded from the resource limitation are:

1. The home which is the usual residence of the family budget group.

2. Automobiles:

An automobile is defined as any motorized vehicle used:

A. for transportation via public roadways or

B. to produce income.

The automobiles owned by members of a cash assistance household are disregarded.

3. One burial plot for each member of the assistance unit.

4. Bona fide funeral agreements (e.g., pre paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.

6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 4002.6).

7. Tools and equipment necessary to produce income in a self employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.

8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100 - 707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100 383.

10. Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100 383.

11. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. All federal income tax refunds, including Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

~~Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.~~

Recipients:

~~Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.~~

The refund is disregarded regardless of whether the refund is a result of a refundable credit, over withholding, or both.

Federal tax refunds received during the previous 12 month period by any case member are disregarded.

13. Cash Value of Life Insurance Policies.

14. The designated Education and Business Account (EBIA) is excluded up to the \$5000 maximum. In addition to the current resource limit, Delaware's Temporary Assistance For Needy Families Program (TANF) and General Assistance (GA) Program families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5000.00, including interest.

Do not consider funds in such accounts as a resource for TANF, GA, or ~~Food Stamp~~ food benefit purposes. Withdrawals from such accounts as a resource must be for approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, education expenses, employment start-up needs, entrepreneurship, and to purchase a vehicle or home. If staff is unsure if the withdrawal meets an approved purpose, contact the ~~policy unit~~ Policy Unit for clarification.

Furthermore, a Saving for Education, Entrepreneurship, and Downpayment (SEED) accounts is considered an EBIA account and is excluded up to the \$5000.00 limit.

(Break in Continuity of Sections)

4006 Excluded Income

- The following kinds of income are disregarded in determining financial eligibility and grant amounts in TANF and GA:
- The value of USDA donated foods.
- The value of food ~~stamps~~ benefits.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company.

This payment is not considered as income to the assistance unit.

- A one-time bonus payment of \$50.00 will be paid from, Delaware's Temporary Assistance For Needy Families Program funds to teens who graduate from high school by age 19. This bonus will be paid directly to the high school graduate. Disregard as income and resource the bonus payment, for TANF and Food Stamp ~~Benefit~~ purposes.
- A cash payment made to the TANF unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:
 1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
 2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
 - a. Borrower's acknowledgement of obligation to repay; or
 - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
 - c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.
- Money received in the form of a non-recurring lump sum payment is to be counted as a resource in the month received unless specifically excluded from consideration as a resource by other Federal law or regulations.
- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training related expenses derived from participation in Institutional and Work Experience Training or special work projects.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100-383.
- Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100-383.
- Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E. D. N. Y.).
- Payments of supportive services or reimbursement of out of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons

serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.

- Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.
- Payments of Experimental Housing Allowance Program made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended.
- Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of P.L. 94-114.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
 - Kingswood Community Center
 - Peoples' Settlement Association
 - Catholic Social Services, Inc.
 - Neighborhood House, Inc.
 - Community Housing, Inc.
 - Jewish Family Service of Delaware
 - Salvation Army
 - Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- For the TANF program: All federal tax refunds.
- Earned Income Tax Credits (EITC).
- Income received from the Census Bureau April 01, 2000 through December 31, 2000.

(Break in Continuity of Sections)

8026.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed \$1,000.00. Resources excluded from the \$1,000.00 resource limitation are:

1. The home which is the usual residence of the family budget group.
2. One automobile, the equity value of which does not exceed \$1,500.00. The equity value is the difference between the automobile's fair market value and the amount still owed for it. The equity value in excess of \$1,500.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.

NOTE: The fair market value of an automobile is determined by finding the car's trade-in value in the NADA Used Car Guide. If the client disagrees with this valuation, he/she may obtain a statement of the car's value from an automobile dealer.

The increased value of a motor vehicle specially equipped with devices for the handicapped is not counted. Farm vehicles that are used to produce income are excluded from consideration as a resource.

EXAMPLE: A client owns a car which has a fair market value of \$5,000.00. The client owes \$3,000.00 on it. The car's equity value is \$2,000.00. Its resource value for financial assistance purposes is \$500.00 (\$2,000.00 - \$1,500.00).

3. One burial plot for each member of the assistance unit.
4. Bona fide funeral agreements (e.g., pre-paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.
6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 8026.6).
7. Tools and equipment necessary to produce income in a self-employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.
8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. All federal income tax refunds, including Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

~~Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.~~

Recipients:

~~Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.~~

The refund is disregarded regardless of whether the refund is a result of a refundable credit, over withholding, or both.

Federal tax refunds received during the previous 12 month period by any case member are disregarded.

10. A sponsor's resources cannot be considered available solely because the person is serving as a sponsor.
11. Cash value of Life Insurance Policies.

(Break in Continuity of Sections)

8030 Excluded income

The following kinds of income are disregarded in determining financial eligibility and grant amounts in RCA:

- The value of USDA donated foods.
- The value of food ~~stamps~~ benefits.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- Earnings received by children under the Summer Youth Program of the Job Training Partnership Act of 1982 for a period not to exceed six (6) months.
- A cash payment made to the RCA unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:

1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
 - a. Borrower's acknowledgement of obligation to repay; or
 - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
 - c. A written statement detailing borrower's plans to repay the loan when future anticipated income is

received.

- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training related expenses derived from participation in Institutional and Work Experience Training or special work projects under the Work Incentive Program.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked
- ~~is~~ are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Payments of supportive services or reimbursement of out-of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:

Kingswood Community Center

Peoples' Settlement Association

Catholic Social Services, Inc.

Neighborhood House, Inc.

Community Housing, Inc.

Jewish Family Service of Delaware

Salvation Army

Community Action (Sussex County)

- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- All federal tax refunds, including Earned Income Tax Credits (EITC).
- Income of an individual acting as a refugee's sponsor.

Income received from the Census Bureau from April 1, 2000 through December 31, 2000

PROPOSED REGULATIONS

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS****Office of Workers' Compensation**

Statutory Authority: 19 Delaware Code, Sections 2322B, C, E, and F
(19 **Del.C.** §§2322B, C, E, and F)
19 **DE Admin Code** 1341

1341 Workers' Compensation Regulations**PUBLIC NOTICE**

The Secretary of Labor, in accordance with 19 **Del.C.** §§2322B, C, E, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System. These proposals revise the Fee Schedule Instructions and Guidelines, Utilization Review, and Forms regulations; and add a 7th Practice Guideline, "Lower Extremities", to the regulations.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 2, 2011, 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 these 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 hearing.

1341 Workers' Compensation Regulations

***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

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE**

Statutory Authority: 24 Delaware Code, Section 1304 (24 **Del.C.** §1304)
24 **DE Admin. Code** 1300

PUBLIC NOTICE**1300 Board of Examiners of Private Investigators & Private Security Agencies**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 1.0 – Firearms Policy; Adopted Rule 7.0 – Employment Notification; and Adopted Rule 8.0 – Criminal Offenses. The amendment to Rule 1.0 will clarify the requirement of three (3) qualifying shoots within a calendar year. The amendment to Rule 7.0 will allow the rejection of an individual for make a false statement when submitting their application. The amendment to Rule 8.0 will clarify the offenses that are included in moral turpitude. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by April 30,

2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, April 28, 2011, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

1300 Board of Examiners of Private Investigators & Private Security Agencies

1.0 Firearm's Policy

- 1.1 No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course of instruction and an initial qualification administered by a Board approved certified firearms instructor. The course of instruction shall include a minimum 40 hours of training. The ~~Detective~~ Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement).
- 1.2 Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per calendar year, scheduled on at least two (2) separate days, with a ~~recommended~~ minimum 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year.
 - 1.2.1 An individual not meeting the minimum qualifications set forth in 1.2. may have their firearms license suspended until such time that they meet the minimum three (3) qualifying shoots within the calendar year.
- 1.3 Firearms - approved type of weapons
 - 1.3.1 9mm
 - 1.3.2 .357
 - 1.3.3 .38
 - 1.3.4 .40
- 1.4 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 1.5 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 1.6 All individuals must qualify with the same type of weapon that he/she will carry.
- 1.7 All ammunition will be factory fresh (no re-loads).
- 1.8 The minimum passing score is 80%.
- 1.9 All licenses are valid for a period of five (5) years, subject to proof of compliance of Rule 1.0 by submission of shoot certification or re-certification forms by January 31st of each year for the previous calendar year.
- 1.10 Firearms Instructors
 - 1.10.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), and/or another professional firearms training institution as a "certified firearms instructor".
 - 1.10.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified shotgun instructor may only instruct and qualify individual with the shotgun.)
 - 1.10.3 All firearms instructors must be approved by the Board before they are authorized to instruct or qualify individuals licensed under Title 24 Chapter 13.

Adopted 11/04/1994

3 DE Reg. 960 (1/1/00)

7 DE Reg. (3/1/04)

13 DE Reg. 502 (10/01/09)

2.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

Adopted 11/04/1994

13 DE Reg. 502 (10/01/09)

3.0 Personnel Rosters and Job Assignments

- 3.1 Anyone licensed under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the director of the Detective Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

| | | | | | |
|---------------------|----------|---|---|----------|----|
| Mark A. Smith | 01/25/60 | W | M | 01/25/99 | FA |
| Helen E. White | 03/17/71 | B | F | 03/17/00 | FA |
| John F. Henry | 05/23/43 | B | M | 05/23/00 | PI |
| James D. Williams | 12/03/40 | W | M | 06/30/99 | MG |
| Frank G. Montgomery | 07/24/55 | B | M | 06/30/99 | LH |
| Anne L. Murray | 10/20/40 | W | F | 06/30/99 | CO |

| | |
|----|----------------------|
| SG | Security Guard |
| FA | Firearm's |
| PI | Private Investigator |
| MG | Delaware Manager |
| LH | License Holder |
| CO | Corporate Officer |

- 3.2 Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry
 Barley Mill Road
 2200 - 0600 Hours, Monday, Wednesday, and Friday

Adopted 11/04/1994

3 DE Reg 960 (1/1/00)

4.0 Record Book; Right of Inspection

All persons licensed under 24 **Del.C.** Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

Adopted 11/04/1994

3 DE Reg 960 (1/1/00)

5.0 Uniforms, Patches, Badges, Seals, Vehicular Markings Amended 04/17/97

- 5.1 No person licensed under 24 **Del.C.** Ch. 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking,

letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

5.2 Advertisement and other forms of publications:

5.2.1 No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

5.2.2 All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

5.3 Vehicle Identification

5.3.1 No person or entity licensed under Title 24, Chapter 13 of the **Delaware Code** shall utilize any vehicle in the course of activities covered by said Chapter 13, unless the appearance of the vehicle, including any identifying marking, shall have been first approved by the Board of Examiners using the standards and criteria set forth in this Rule.

5.3.2 The content of any vehicle marking shall be governed by the standards and criteria set forth in Rule 5.1 above.

5.3.3 No vehicle utilized for purposes covered by Title 24, Chapter 13 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Rule.

5.3.4 In the event that a vehicle is not approved by the Board of Examiners pursuant to this Rule, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standard and criteria set forth above.

5.3.5 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

Adopted 11/04/1994

3 DE Reg. 960 (1/1/00)

Adopted 11/04/1994

3 DE Reg 960 (1/1/00)

8 DE Reg 325 (8/1/04)

6.0 Qualified Manager

6.1 A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

6.2 A qualified license holder must be an owner/partner/corporate officer of the agency requesting licensure.

Adopted 11/04/1994

8 DE Reg 325 (8/1/04)

7.0 Employment Notification

7.1 Under no circumstances will a security guard be permitted to be employed by more than **two** agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact.)

7.2 Anyone applying for licensure under this chapter may be rejected without refund, or have their license revoked, for knowingly omitting any criminal history, other material information or to make a false statement on their application.

7.23 Employers Responsibility

7.23.1 A licensed private security agency, after investigation, shall notify the ~~Detective~~ Professional Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

7.23.2 A licensed private security agency shall report to the Detective Licensing Office, in writing, the following:

7.23.2.1 The name of any employee arrested;

7.23.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

7.23.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

Adopted 11/04/1994

4 DE Reg. 361 (8/1/00)

13 DE Reg. 502 (10/01/09)

8.0 Criminal Offenses

8.1 In addition to those qualifications set forth in Title 24, Chapter 13, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or ~~Offensive Touching~~ misdemeanor within the last three (3) years.

8.2 For the purposes of Chapter 13 of Title 24 of the Delaware Code, the Board may deny an application for a license or suspend or revoke a license if the applicant or licensee has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):

8.2.1 Title 11:

8.2.1.1 §763 Sexual harassment;

8.2.1.2 764 Indecent exposure in the second degree;

8.2.1.3 §765 Indecent exposure in the first degree;

8.2.1.4 §766 Incest;

8.2.1.5 §767 Unlawful sexual contact in the third degree;

8.2.1.6 §781 Unlawful imprisonment in the second degree;

8.2.1.7 §840 Shoplifting;

8.2.1.8 §861 Forgery;

8.2.1.9 §871 Falsifying Business Records

8.2.1.10 §881 Bribery

8.2.1.11 §907 Criminal Impersonation

8.2.1.12 §1101 Abandonment of a Child;

8.2.1.13 §1102 Endangering the Welfare of a Child;

8.2.1.14 §1105 Endangering the Welfare of an Incompetent Person;

8.2.1.15 §1106 Unlawfully Dealing with a Child;

8.2.1.16 §1107 Endangering Children;

8.2.1.17 §1245 Falsely Reporting an Incident;

8.2.1.18 §1341 Lewdness;

8.2.1.19 §1342 Prostitution;

8.2.1.20 §1343 Patronizing a Prostitute; and

8.2.1.21 §1355 Permitting Prostitution

8.2.2 Title 16

8.2.2.1 §1166 Patient Neglect or Abuse

8.2.3 Title 31

8.2.3.1 §3913 Abuse/Neglect/Exploitation/Mistreatment of an Infirm Adult.

8.23 Anyone applying for licensure under Title 24 Chapter 13 shall not be issued a license if they have any pending criminal charge(s) for any crimes listed in this Chapter.

8.34 The ~~Detective~~ Professional Licensing Section may suspend anyone licensed under Title 24 Chapter 13 who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

Adopted 11/04/1994

13 DE Reg. 502 (10/01/09)

9.0 **Private Investigators**

9.1 A Private Investigator shall not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other state of federal jurisdiction.

9.2 The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

9.3 A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

Adopted 11/04/1994

13 DE Reg. 502 (10/01/09)

10.0 **Licensing Fees**

10.1 Class A License - Private Investigative Agency

10.1.1 In-State License Holder

10.1.1.1 Individual - No Employees - Not Corporation

10.1.1.1.1 \$230

10.1.1.1.2 \$5,000 Bond

10.1.1.1.3 \$1,000,000 Liability Insurance per occurrence

10.1.1.2 Corporation - Has Employees

10.1.1.2.1 \$345

10.1.1.2.2 \$10,000 Bond

10.1.1.2.3 \$1,000,000 Liability Insurance per occurrence

10.1.2 Out-of-State

10.1.2.1 License Holder - Individual and Corporation

10.1.2.1.1 \$345

10.1.2.1.2 \$10,000 Bond

10.1.2.1.3 \$1,000,000 Liability Insurance per occurrence

10.1.2.2 Delaware Manager

10.1.2.2.1 \$230

10.1.2.2.2 \$5,000 Bond

10.2 Class B License - Private Security Agency

- 10.2.1 In-State License Holder
 - 10.2.1.1 Individual - No Employees - Not Corporation
 - 10.2.1.1.1 \$230
 - 10.2.1.1.2 \$5,000 Bond
 - 10.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 10.2.1.2 Corporation - Has Employees
 - 10.2.1.2.1 \$345
 - 10.2.1.2.2 \$10,000 Bond
 - 10.2.1.2.3 \$1,000,000 Liability Insurance per occurrence
- 10.2.2 Out-of-State
 - 10.2.2.1 License Holder - Individual and Corporation
 - 10.2.2.1.1 \$345
 - 10.2.2.1.2 \$10,000 Bond
 - 10.2.2.1.3 \$1,000,000 Liability Insurance per occurrence
 - 10.2.2.2 Delaware Manager
 - 10.2.2.2.1 \$230
 - 10.2.2.2.2 \$5000 Bond
- 10.3 Class C License - Private Investigative & Private Security Agency
 - 10.3.1 In-State License Holder
 - 10.3.1.1 Individual - No Employees - Not Corporation
 - 10.3.1.1.1 \$345
 - 10.3.1.1.2 \$10,000 Bond
 - 10.3.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 10.3.1.2 Corporation - Has Employees
 - 10.3.1.2.1 \$520
 - 10.3.1.2.2 \$15,000 Bond
 - 10.3.1.2.3 \$1,000,000 Liability Insurance per occurrence
 - 10.3.2 Out-of-State
 - 10.3.2.1 Individual and Corporation
 - 10.3.2.1.1 License Holder
 - 10.3.2.1.1.1 \$520
 - 10.3.2.1.1.2 \$15,000 Bond
 - 10.3.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 10.3.2.1.2 Delaware Manager
 - 10.3.2.1.2.1 \$345
 - 10.3.2.1.2.2 \$10,000 Bond
 - 10.4 Class D License - Armored Car Agency License
 - 10.4.1 License Holder
 - 10.4.1.1 \$345
 - 10.4.1.2 Banking Commissioner License as required by 5 Del.C. §3203
 - 10.4.1.3 \$10,000 Bond
 - 10.4.1.4 \$1,000,000 Liability Insurance per occurrence.
 - 10.4.2 Delaware Manager
 - 10.4.2.1 \$230
 - 10.4.2.2 \$5000 Bond
 - 10.5 All licenses will expire 2 years from the last day of the month they are approved for licesure.

6 DE Reg. 637 (11/01/02)

7 DE Reg. (03/01/04)

11.0 Use Of Animals

The use of animals is prohibited in the performance of private security activities.

Adopted 04/23/1998

3 DE Reg 960 (1/1/00)

12.0 Use of Rifle and Shotgun

- 12.1 Whereas there exists a need for private security officers in the State of Delaware to be equipped to handle situations where the risk of terrorist activity is high, or at special events where there is a high risk of violent activity or attack, the following rules are established to regulate the use of rifles and shotguns by security services contractors in the State.
- 12.2 The Governor of the State of Delaware, or designee, or the Superintendent of State Police, or designee, may authorize specified security services contractors to deploy guards with rifles and/or shotguns, as appropriate to the defense of critical infrastructure facilities, or private business facilities and operations reasonably believed to be at risk of violent activity or attack likely to result in injury or significant damage to or loss of property. The situations where such protection would be required would include, but not be limited to:
 - 12.2.1 An increase in the threat level from the Department of Homeland Security to "Orange", or higher;
 - 12.2.2 Special circumstances where additional protection would be deemed appropriate, including but not limited to:
 - 12.2.2.1 Credible threats to local facilities or operations;
 - 12.2.2.2 Response to natural disasters;
 - 12.2.2.3 Response to biological or chemical threats;
 - 12.2.2.4 Civil unrest.
 - 12.2.3 Any situation where additional trained responders are required to assist in the protection of life and property in the State of Delaware;
 - 12.2.4 An armored car company or agency, as defined by 24 **Del.C.** §1302(1), dealing with a credible threat or genuine risk to life or to property.
- 12.3 Guards who would be deployed and authorized to use such additional weaponry would be required to:
 - 12.3.1 Be trained by certified firearms instructors pursuant to State of Delaware standards;
 - 12.3.2 Be required to re-qualify with the weapons on a three times per year basis;
 - 12.3.3 Maintain a handgun firearms license through the State;
 - 12.3.4 Be listed by name on a roster of authorized individuals; and
 - 12.3.5 Maintain employment in good standing with their security services contractor employer at all times for inclusion on the list.
- 12.4 Guards using such firearms would be required to maintain strict compliance with the provisions of 24 **Del.C.** §1321.
- 12.5 Rifles deemed appropriate for use in the State would be .30 caliber weapons, .223 caliber weapons, 9mm rifle type weapons, and other weapons approved by the Superintendent, or designee, as need and technology dictate. Shotguns would be of the 12 gauge law enforcement/military style weapons. All firearms would be subject to the approval of the Superintendent or designee.

10 DE Reg. 1445 (03/01/07)

13.0 Training Requirements

- 13.1 Each person licensed as a security guard under Title 24 Chapter 13 shall undertake a total of sixteen (16) hours of training through a program approved by the Board, and any such additional training as the Board deems appropriate.

- 13.2 The required training shall include instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.
- 13.3 The Detective Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this regulation.

11 DE Reg. 810 (12/01/07)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF MANAGEMENT AND SUPPORT SERVICES

Statutory Authority: 29 Delaware Code, Section 9020 (29 **Del.C.** §9020)

PUBLIC NOTICE

501 Procedures for Drug Testing Certain Employees

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and as required by HB 190 of the 145th General Assembly.

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 Michael Alfree, Deputy Director, Division of Management and Support Services, 1825 Faulkland Rd., Wilmington, DE 19805 or by fax to (302) 633-2735 by April 30, 2011.

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 REGULATION

The proposed regulation establishes guidelines by which the Department of Services for Children, Youth and their Families (DSCYF) will develop a policy requiring all employees in a safety, security sensitive or childcare position to undergo testing for illegal drugs and commonly abused controlled substances and to establish procedures for the Department's drug testing program in order to detect and deter the use of illegal drugs and illegally held controlled substances by employees.

Statutory Authority

29 **Del.C.**, §9020

Background

HB190 passed by the General Assembly authorized the implementation of a drug testing policy within the Department.

Summary of Proposed Regulation

The regulation provides guidelines for the adoption of policy and procedures for the implementation of a drug testing policy at the Department.

501 Procedures for Drug Testing Certain Employees

1.0 Authority

29 Del.C., §9020

2.0 Purpose

The purpose of this policy is to affirm the commitment of the Department of Services for Children, Youth and Their Families (DSCYF) to the protection of children/youth in our care by requiring all employees in a safety, security sensitive or childcare position to undergo testing for commonly abused controlled substances and to establish procedures for the department's drug testing program in order to detect and deter the use of illegal drugs by employees.

3.0 Applicability

This policy applies to all employees in a safety, security sensitive or childcare position including merit, merit exempt and casual/seasonals. If there are any conflicts between this policy and the merit rules, the merit rules shall prevail unless superseded by a collective bargaining agreement (CBA).

4.0 Definitions

"Chain of custody": the method of tracing each urine specimen to maintain control from initial collection to final disposition.

"Collection sites": the designated locations where employees present themselves to provide urine specimens.

"Confirmation test": an analytical procedure to identify the presence of a specific drug or metabolite, which is independent of the initial test, performed on the same specimen and which uses a different chemical principle from that of the initial test to ensure reliability and accuracy.

"Confirmed positive result": the presence of a controlled substance in the pure form or its metabolites, at or above the cutoff level, as identified in two consecutive tests on the same sample which employ different test methods, and which is determined not to have been caused by an alternative medical explanation.

"Contractor": entity paid on a contractual basis to maintain a list of employees in the random testing pool, select employees for random testing, collect specimens, conduct reasonable suspicion and post-incident testing, safeguard specimens, interpret results, notify DSCYF of positive tests and provide training to supervisors regarding bases for reasonable suspicion testing.

"Employee": any person occupying a safety, security sensitive or childcare position and receiving compensation as an employee of the DSCYF.

"Employee Assistance Program (EAP)": the state of Delaware's employee assistance program that provides services to a benefit covered employee who has tested positive for the use of prohibited drugs.

"Employee testing number": the employee id (EMPLID) number assigned to each employee by the Payroll Human Resource Statewide Technology (PHRST) system.

"Security sensitive positions": all positions within DSCYF residential facilities including, Ferris School, Stevenson House Detention Center, New Castle County Detention Center, Grace Cottage, Snowden Cottage, Mowlds Cottage, Terry Children's Psychiatric Center, Brenford Residential Treatment Center, Middletown Residential Treatment Center and Silver Lake Consortium.

In addition to positions assigned to the locations listed above, see addendum a for other positions/classifications covered under this policy.

5.0 Policy

It is the policy of the DSCYF to maintain a drug free environment through the use of a reasonable suspicion, post-incident and random drug testing program. The DSCYF personnel hold positions of public trust and must not place themselves in a position where client safety may be compromised as a

result of an employee's drug dependency. Such misconduct conflicts with their duties, poses a risk to the safety and security of residents, clients, other employees, and the public and jeopardizes the public's confidence.

6.0 Procedures

6.1 Notice of testing:

6.1.1 This policy will act as an official notice for periodic drug testing. No other announcement will be made. All employees will receive a copy of this policy and will sign and return the attached receipt to Human Resources.

6.2 Random testing:

6.2.1 All employees in a safety, security sensitive or childcare position are subject to random testing.

6.2.2 Selection is to be based on a computerized random selection of employee testing numbers, not names.

6.2.3 Monthly, the drug testing contractor will randomly select EMPLIDs equivalent to 25% of the random testing population per quarter. Because the selection process is random, some employees may not be tested within a year, while others may be tested more than once.

6.2.4 Employees will be given and acknowledge receipt of a chain of custody form upon selection and must report to a designated collection site within twenty-four (24) hours of notification.

6.2.5 Employees notified to report must report for testing to the site specified. No requests to be excused or rescheduled shall be granted. Any failure to report, refusal to be tested or refusal to cooperate with the testing procedure will result in the removal from the workplace without pay and will be considered as a positive result. Employees on initial probation will be terminated from employment.

6.3 Reasonable suspicion testing

6.3.1 In the event of reasonable suspicion, the facility head will contact human resources, who will make a determination and contact the contractor if a decision is made to test.

6.3.2 Evidence of reasonable suspicion includes, but is not limited to, observing the employee(s) either using or possessing a drug, displaying physical symptoms of being under the influence of a drug, or finding drug paraphernalia in the workplace.

6.4 Incident triggered testing

6.4.1 In the event of an incident triggered event, the facility head will contact human resources, who will make a determination and contact the contractor if a decision is made to test.

6.4.2 Incident triggered testing is based on any incident involving death or serious injury to a DSCYF employee, resident or client, loss or significant damage to department property, including any accident involving a motor vehicle transporting DSCYF clients or residents, or the escape or runaway of a resident where the security sensitive employee was involved in the incident.

6.5 Specimen collection procedures

6.5.1 Urine specimens will be collected in accordance with current federal department of health and human service standards. Every effort will be made to assure the dignity and privacy of employees being tested.

6.5.2 If the contractor determines that the employee is attempting to substitute or adulterate the specimen, the contractor shall document the fact and direct the employee to provide another specimen. Both specimens shall be forwarded to the laboratory.

6.6 Laboratory procedures

6.6.1 The laboratory will test for marijuana, cocaine, opiates, phencyclidine and amphetamines. The initial procedure employed will be the enzyme multiplied immunoassay testing (emit). Cutoff levels will be consistent with current federal department of health and human service standards.

6.6.2 All positive specimens shall be confirmed using the gas chromatography/mass spectrometry (gc/ms), which shall be conducted from the same specimen.

6.7 Preservation procedures

6.7.1 Specimens determined to contain drugs will be preserved at the laboratory for a minimum of twelve (12) months. Employees testing positive may, upon written request to human resources, arrange to have their specimen retested. All costs, including lab fees and transportation shall be paid by the employee requesting the retest.

6.8 Post testing procedures

6.8.1 If the lab results are negative, the sample shall be destroyed.

6.8.2 If the lab results are positive, the report will be forwarded to human resources by the laboratory.

6.8.3 The human resource office will then notify the appropriate division director or designee. They will, in turn, notify the employee and immediately remove him/her from the workplace without pay until the employee contacts an accredited drug rehabilitation program, and provides documentation of same.

6.8.4 The employee is then directed to participate in an accredited drug abuse assistance or rehabilitation program. Refusal to do so may result in dismissal. All benefit covered employees will be referred to the state's EAP program for assistance in enrollment.

6.8.4 Before being allowed to return to duty, the employee must provide documentation to human resources showing that the drug abuse assistance or rehabilitation program was successfully completed and the employee has been released to return to work. "Successful completion" means the employee has achieved a drug-free state as determined by the program counselor and received a negative result from an authorized drug test. The employee will then be required to pass a "return to duty" drug test paid for by the DSCYF before being cleared to return to work.

6.8.5 Any employee who tests positive on a drug test for a second time within five (5) years from the date of program completion will be separated from employment without the option to participate in a treatment program.

6.8.6 Employees on initial probation and casual/seasonal employees who have not satisfied the merit comparable initial probation requirement will be terminated if they fail a drug test without recourse to the grievance procedure.

6.8.7 Casual/seasonal employees who have satisfied the merit comparable initial probation requirement may enter into an accredited drug abuse assistance or rehabilitation program at their own expense. Refer to Section X. E. For returning to duty.

ADDENDUM A

In addition to Section IV, Subsection I, security sensitive positions shall include, but are not limited to, the following positions/classifications within the DSCYF:

- Senior Probation and Parole Officer and Probation and Parole Officer Supervisor
- Family Service Specialist, Senior Family Service Specialist, Master Family Service Specialist and Family Service Supervisor
- Adolescent Treatment Services Coordinators
- Psychiatric Social Worker I, II, III
- Psychologists and Psychologist Supervisors
- Teacher's Aides, Teachers, Principals
- Family crisis therapists and family crisis therapist supervisors
- Family Service Assistant I and Family Service Assistant II
- Child Care Licensing Specialist and Child Care Licensing Supervisor
- Social Service Technician

PROPOSED REGULATIONS

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 Del.C. §1713(a)(12))
24 DE Admin. Code 1700

PUBLIC NOTICE**1700 Board of Medical Licensure and Discipline**

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations as mandated by SB 233 (codified at 24 **Del.C.** §1713(f)). The proposal creates new Regulation 31 - Disciplinary Guidelines establishing guidelines for the imposition of disciplinary sanctions against persons certified or licensed to practice medicine or other professions or occupations regulated under the Medical Practice Act.

A public hearing will be held on May 3, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

1700 Board of Medical Licensure and Discipline*(Break in Continuity of Sections)***31.0 Disciplinary Guidelines [Authority: 24 Del.C. §1713 (f)]**

- 31.1 Purpose: The Legislature has created the Board of Medical Licensure and Discipline to assure the protection of the public from persons who do not meet the minimum requirements for safe practice or who pose a danger to the public. Pursuant to 24 Del.C. §1713(f), the Board provides the disciplinary guidelines it will apply to licensees regulated under 24 Delaware Code, Chapter 17, after a full investigation and at the conclusion of a hearing after finding violations of the Board's statute and/or regulations. The purpose of this rule is to notify applicants of the ranges of penalties which may be imposed unless the Board finds grounds to deviate from the guidelines due to aggravating or mitigating circumstances (Rules 31.12 and 31.13). The practice of medicine is already subject to both civil and criminal penalties. Recognizing its role as protector of the public's health, safety, and welfare, the Board offers these guidelines as a means to improve the quality of medical care and not to enforce the penal code, a responsibility left to law enforcement and to the courts. The purpose of imposing discipline is to sanction licensees for violation; deter them from future violations; to offer opportunities for rehabilitation when appropriate; and to dissuade other applicants and licensees from committing disciplinable offenses.
- 31.2 Violations and Range of Penalties: When imposing discipline, the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations unless grounds to deviate are found. The following identification of categories of offenses and summary explanations are intended to be descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.
- 31.3 Negligence is an act or omission that deviates from accepted standards of practice in the medical community
- 31.3.1 Gross Negligence – a range from 1 year probation with education to 1 year suspension with reinstatement upon proof of improvement in practice proficiency - §1731(b)(11)

- 31.3.2 Pattern of Negligence – a range from 1 year probation to suspension with reinstatement after proof of satisfactory improvement - §1731(b)(11)
- 31.4 Incompetence is failing to exercise appropriate professional judgment or failing to utilize skill to a degree showing a lack of general competence.
 - 31.4.1 Incompetence in Practice – practice reviewed by organization of the Board's choice and a range from 1 year probation to revocation - §1731(b)(11)
 - 31.4.2 Failure to Use Skill or Judgment - practice reviewed by an organization of the Board's choice and a range from \$1,000 fine to 6 months probation
 - 31.4.3 Incompetent Acts of Supervision – range from \$1,000 fine to \$1,000 fine and letter of reprimand - §1731(b)(10)
- 31.5 Misconduct is that conduct which is recognized to be unsafe or improper by the ethical and competent members of the profession. The term also includes, but is not limited to, general conduct that is dishonorable or unprofessional and that is not addressed in other categories within these guidelines, and includes acts prohibited by policies expressed in legislation.
 - 31.5.1 General Misconduct - a range from \$1,000 fine to 6 months suspension - §1731(b)(1); §1731(b)(3); §1731(b)(4); §1731(b)(5); §1731(b)(9); §1731(b)(19)
 - 31.5.2 Willful Failure to Report – minimum \$5,000 fine and/or 6 months probation - §1731(b)(13); §1731(b)(14); §1731(b)(15); §1731(b)(22)
 - 31.5.3 Unjustified Failure to Cooperate – a range from 6 months probation to 6 months suspension - §1731(b)(16); §1731(b)(17)
- 31.6 Criminal Conduct is conduct which violates rules and statutes that define conduct prohibited by the government. Such unprofessional conduct reflects upon the licensee's fitness and qualifications to practice in the healthcare field and detracts from the trust of the public.
 - 31.6.1 Crimes Substantially Related – a range from 90 days probation to suspension with reinstatement only after proof satisfactory to the board of practice improvement, not to be less than any court-ordered sanctions – §1731(b)(2)
 - 31.4.2 Felony Sexual Offenses – revocation - §1731(a)
- 31.7 Sexual Misconduct – These guidelines cannot define or foresee all the possible scenarios of sexual misconduct. The professional boundary required between physician and patient is based upon the fiduciary relationship in which the patient entrusts his or her welfare to the physician, reflects the physician's respect for the patient. That boundary, once crossed, severely impacts the patient's well-being on an individual basis, and causes distrust to other professional relationships in general. Sexual misconduct is a harmful example of a boundary violation, occurring in multiple contexts and involving a wide range of behaviors. Sexual misconduct includes but is not limited to, sexual impropriety towards a patient, sexual conduct towards patients, sexual harassment in the workplace facilitating a hostile work environment, sexual conduct between supervisors and subordinates, the commission of sexual assault and other sexual crimes.
 - 31.7.1 Sexual involvement can occur in circumstances involving two consenting adults. For instance, sexual involvement with a current patient is generally considered misconduct unless a physician immediately transfers the patient's care to another health care provider immediately. Psychiatrists, pediatricians, and pain management physicians can never have sexual relations with a patient under any circumstances.
 - 31.7.2 Sexual involvement with former patients is misconduct when the licensee exploits knowledge or information obtained from the previous physician-patient relationship. Sexual or romantic relationships between physicians and their patients may exploit the vulnerability of the patient and may obscure the physician's objective judgment concerning the patient's health care. Sexual misconduct between a physician and a patient is never diagnostic or therapeutic. Romantic or intimate relationships may impede the physician's ability to confront the patient about noncompliance with treatment or to bring up unpleasant medical information. Physicians must set aside their own needs or interests in the service of addressing the patient's needs. The physician-patient relationship depends upon the ability of the patient to have absolute confidence and trust in

PROPOSED REGULATIONS

- the physician, and a patient has the right to believe that a physician is dedicated solely to the patient's best interests. If consensual, physician must transfer the patient's care to another health care provider immediately.
- 31.7.3 Sexual impropriety may include, but is not limited to, sexually suggestive behavior, gestures, expressions, statements, and it may include failing to respect a patient's privacy such as in the following examples:
- 31.7.3.1 failing to employ disrobing or draping practices that respect the patient's privacy;
 - 31.7.3.2 examination or touching of a patient's genital region without donning gloves without clinical justification;
 - 31.7.3.3 inappropriate comments to a patient about the patient's body, sexual orientation, or potential sexual performance during the examination; and
 - 31.7.3.4 performing an intimate examination without clinical justification
- 31.7.4 Sexual misconduct may include, but is not limited to, physical contact such as:
- 31.7.4.1 touching breasts, genitals, or other body part without clinical justification; and
 - 31.7.4.2 offering clinical services or prescriptions in exchange for sexual favors.
- 31.7.5 Sexual Relations with a Patient - a range from 6 months suspensions revocation
- 31.7.6 Sexual Impropriety Involving Current Patients – education on boundary issues and a range of minimum \$1,000 fine to maximum \$10,000 fine to suspension - §1731(b)(23)
- 31.7.7 Sexual Harassment Associated with Practice (employees) – education on sexual harassment and a \$1,000 fine and a letter of reprimand
- 31.7.8 Casual embracing and kissing as part of a greeting or acknowledgment of gratitude between consenting patient and physician is not considered misconduct.
- 31.8 Billing/Business Issues, includes but is not limited to, charging grossly exorbitant fees for services, failure to report laboratory costs and failure to disclose to the patient a financial interest.
- 31.6.1 Financial Exploitation of Patients or Fraud of Others – a range from a minimum \$1,000 fine to 6 months probation - §1731(b)(8); §1731(b)(18); §1769
 - 31.6.2 Other Wrongful Transactions - education on billing and a \$1,000 fine and letter of reprimand
- 31.9 False Advertising, includes but is not limited to, false or prohibited statements, exploitation, or economic injury – \$1,000 fine and letter of reprimand - §1731(b)(7); §1731(b)(8)
- 31.10 Impairment is a condition which renders the licensee unable to practice medicine with reasonable skill or safety. Impaired licensees are not only at risk of causing patient harm but are also at risk of causing significant personal endangerment. Impairments include drug abuse, alcohol abuse, and mental or physical conditions that impede the licensee's ability to practice with reasonable skill and safety.
- 31.10.1 Not cooperating with remediation or non-remediable - a range from 6 months suspension to indefinite suspension until treatment is deemed to be effective
 - 31.10.2 Appears remediable but discipline needed - appropriate treatment with probation and/or suspension until remediation is proven to the Board
- 3.11 Administrative Misconduct is conduct that fails to adhere to the standards required for the regulation of the profession. All licensees in their practice have not only professional medical requirements but administrative requirements that are integral to their performance as a licensed physician. Administrative misconduct includes, but is not limited to, disregard of continuing medical education requirements.
- 31.11.1 Failure to comply with other administrative requirements of the Board – \$1,000 fine and letter of reprimand - §1763; §1769; §1769A
 - 31.11.2 Failure to comply with CME requirements - \$1,000 fine and requirement to complete CME within 60 days and license suspended until CME completed, if not completed within 60 days.
 - 31.11.3 Violation of a Board Order (§1731(b)(17)) – Suspension until compliance of Board Order is accomplished to revocation
- 31.12 Inappropriate Prescribing is prescribing that fails to follow medically accepted standards to ensure the patients health and safety. It includes, but is not limited to, misconduct as the failure to follow required

procedures that have been established to ensure prescriptions are legitimate, prescribing to family or friends who suffer from addiction or misuse, diversion for self use, and criminal trafficking in dangerous drugs.

- 31.12.1 No legitimate medical purpose – education in pharmacology and a range from a letter of reprimand to suspension - §1731(b)(6)
- 31.12.2 Failure to follow requirements – \$1,000 fine and/or a letter of reprimand – §1731(b)(21)
- 31.12.3 Failure to follow Federation of State Medical Boards’ Model Policy for the Use of Controlled Substances for the Treatment of Pain - education in pharmacology of pain management and a range from \$1,000 fine and probation to revocation
- 31.13 Patient Records Violations – Patient records consist of documentation that reflects the physician-patient relationship and any misuse of the documentation constitutes a patient records violation. Failure to adequately maintain patient records includes, but is not limited to, misconduct such as the failure to adequately document evaluation and/or treatment of the patient, failure to adequately maintain or store the records, and failure to allow the patient or the patient’s authorized representative access to the records.
 - 31.13.1 False documentation/alteration – a range from \$2,000 fine and letter of reprimand to 6 months probation
 - 31.13.2 Poor documentation - letter of reprimand
 - 31.13.3 Confidentiality Issues/HIPPA – education on confidentiality/HIPAA and letter of reprimand - §1731(b)(12)
 - 31.13.4 Problems with access to patient records which impedes continuity of care - letter of reprimand - §1761
 - 31.13.5 Notice requirement of Office Closure – letter of reprimand – §1761
 - 31.13.6 Practice Abandonment – Suspension to revocation
 - 31.13.7 Falsely Documenting a Death Certificate - a range from \$2,000 fine and letter of reprimand to 6 months probation - §1731(b)(20)
- 31.14 Aggravating (worsening) factors when determining the degree of discipline, the board may consider certain factors, including but not limited to the following:
 - 31.14.1 Prior Disciplinary Offenses
 - 31.14.2 Past Disciplinary Record
 - 31.14.3 Frequency of Acts
 - 31.14.4 Nature and (extreme) gravity of the allegation
 - 31.14.5 False evidence, false statements, other deceptive practices during disciplinary process or proceedings and during the investigative process
 - 31.14.6 Dishonest or selfish motive
 - 31.14.7 Motivation; criminal dishonest; or personal gain
 - 31.14.8 Different multiple offenses
 - 31.14.9 Failing to comply with rules or orders
 - 31.14.10 Refusal to acknowledge wrongful nature of conduct and vulnerability of the victim
 - 31.14.11 Intentional
 - 31.14.12 Abuse of trust
 - 31.14.13 Consensus about blameworthiness of conduct
 - 31.14.14 No consent of patient/Against patient’s will
 - 31.14.15 Age capacity or vulnerability of patient or victim of licensee’s misconduct
 - 31.14.16 Severe injury caused by misconduct
 - 31.14.17 Potential for injury ensuing from act
 - 31.14.18 Practitioner present competence in medical skills
 - 31.14.19 Pattern of misconduct

PROPOSED REGULATIONS

- 31.14.20 Illegal conduct
- 31.14.21 Heinousness of actions
- 31.14.22 Ill repute upon profession
- 31.14.23 Public's perception of protection
- 31.15 Mitigating (lessening) factors when determining the degree of discipline, the board may consider certain factors, including but not limited to the following:
 - 31.15.1 Absence of prior disciplinary record
 - 31.15.2 Single act
 - 31.15.3 Nature and (minimal) gravity of the allegation
 - 31.15.4 Voluntary restitution or other actions taken to remedy the misconduct
 - 31.15.5 Remorse and/or consciousness of wrongful conduct
 - 31.15.6 Absence of dishonest or selfish motive
 - 31.15.7 Timely good faith effort to rectify consequences of misconduct
 - 31.15.8 Interim rehabilitation
 - 31.15.9 Remoteness of prior offenses
 - 31.15.10 Length of time that has elapsed since misconduct
 - 31.15.11 Inadvertent
 - 31.15.12 Consent of patient
 - 31.15.13 No apparent vulnerability of patient
 - 31.15.14 No significant injury caused by misconduct
 - 31.15.15 No significant potential for injury ensuing from act
 - 31.15.16 No evidence of motivation of criminal; dishonest or personal gain
 - 31.15.17 Mental or physical health; weak health; cancer
 - 31.15.18 Personal circumstances
 - 31.15.19 Present fitness of the practitioner
 - 31.15.20 Potential for successful rehabilitation
 - 31.15.21 Practitioner's present competence in medical skills
 - 31.15.22 Personal problems (if there is a connection to violation)
 - 31.15.23 Emotional problems (If there is a connection to violation)
 - 31.15.24 Isolated incident unlikely to reoccur
 - 31.15.25 Public's perception of protection

***Please Note: As the remainder of the sections are not being amended they are not being published here. A copy of the full text of the regulation is available at:**

[1700 Board of Medical Licensure and Discipline](#)

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2501 (24 Del.C. §2500)
24 DE Admin. Code 2500

PUBLIC NOTICE

2500 Board of Pharmacy

The Delaware Board of Pharmacy, pursuant to 24 Del.C. §2501, proposes to revise their rules and regulations. The proposed revisions to rule 5.1.13.6 expands the use of electronically transmitted prescriptions beyond just via facsimile.

The Board will hold a public hearing on the proposed rule change on May 18, 2011 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Judy Letterman, Administrator of the Delaware Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

The proposed rule change is as follows:

5.1.13.6 Controlled substance prescriptions may ~~only~~ be electronically transmitted ~~via a facsimile~~.

2500 Board of Pharmacy

(Break in Continuity of Sections)

5.0 Dispensing

(Break in Continuity within Section)

5.1.13 Electronic Transmission of Prescriptions

5.1.13.1 All Prescription Drug Orders communicated by way of Electronic Transmission shall:

5.1.13.1.1 be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

5.1.13.1.2 identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

5.1.13.1.3 be transmitted by an authorized Practitioner or his designated agent; and

5.1.13.1.4 be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

5.1.13.2 The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

5.1.13.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

5.1.13.4 All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5.1.13.5 Persons other than those bound by a confidentiality agreement pursuant to Section 2.A.(2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

5.1.13.6 Controlled substance prescriptions may ~~only~~ be electronically transmitted ~~via a facsimile~~.

5.1.13.7 Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

5.1.13.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and fax number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

5.1.13.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

5.1.13.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

5.1.13.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

5.1.13.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

***Please Note: As the remainder of the sections are not being amended they are not being published here. A copy of the full text of the regulation is available at:**

[2500 Board of Pharmacy](#)

**DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE**
Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

PUBLIC NOTICE

Uniform Controlled Substances Act Regulations

The Delaware Controlled Substance Advisory Committee, pursuant to 16 **Del.C.** §4700, proposes to revise their rules and regulations. The proposed revisions to the rules address the audit requirements when a pharmacy relocates, broaden the categories classes of persons who may give and accept verbal prescriptions, permit electronic transmission of prescriptions, clarify the non-resident practitioner waiver, require identification to be presented at the time a controlled substance prescription is picked up only, bar the presentation of controlled substance prescriptions at drive-through windows, and impose additional security requirements on newly constructed or renovated pharmacies.

The Board will hold a public hearing on the proposed rule change on May 25, 2011 at 9:30 a.m., Beuna Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Written comments should be sent to Judy Letterman, Administrator of the Delaware Controlled Substance Advisory Committee, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

Uniform Controlled Substances Act Regulations

~~(Adopted by the Secretary of Health and Social Services pursuant to 16 **Del.C.** §4731 effective February, 1973 amended July 8, 1974, May 27, October 30, 1975, September 27, 1976, February 1, 1983, July 1, 1985, January 28, 1987, March 5, 1992, and August 29, 1995.)~~

Adoption of Federal Regulations

~~To the extent consistent with 16 **Del.C.** Ch. 47, regulations promulgated by the Federal Government pursuant to the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and in effect as of this date, are adopted as a part of these regulations. Readopted October 30, 1975.~~

~~13 DE Reg. 281 (08/01/09)~~

1.0 Controlled Substance Advisory Committee

- 1.1 The Controlled Substance Advisory Committee (hereafter designated as "the Committee") has a primary objective to promote, preserve and protect the public health, safety and welfare by regulating and monitoring controlled substance use and abuse through a program of registration, inspection, investigation and education. The Committee regulates by registering prescribers, dispensers, manufactures, distributors, clinics, researchers and other controlled substance registrants (i.e. – dog handler). Among its functions, the Committee issues and renews licenses; and makes recommendations to the Secretary of State of new or amended controlled substance regulations and disciplinary actions of registrants who violate the law. (16 **Del.C.** § 4700 to the end)
- 1.2 The Committee shall consist of 9 members: one physician, one dentist, one podiatrist, one veterinarian, one nurse practitioner, two pharmacists, one physician assistant and one public member. The Secretary of State will be provided recommendations for appointments to the Committee from the associated licensing Boards. Members shall have engaged in the prescribing, dispensing or storing of

controlled substances for at least 5 years except for the public member. The public member will be appointed by the Secretary of State or their designee.

- 1.3 Each Committee member shall serve a term of three years and may succeed themselves for one additional term. A Committee member whose appointment has expired remains eligible to participate in Committee proceedings unless replaced by their respective regulatory board.
- 1.4 The Committee shall hold regularly scheduled meetings at least four times a calendar year and at other times the Committee considers necessary at the request of a majority of the members. A president and vice-president shall be elected by the members annually.
- 1.5 The conduct of all hearings and issuance of orders shall be in accordance with the procedures established pursuant to this section, Chapter 101 of Title 29, section 8735 of Title 29, and sections 4731 through 4736 of Title 16.
- 1.6 The Drug Control Administrator for the Division of Professional Regulation, who is an ex officio member of the Committee without a vote, is responsible for the performance of the regular administrative functions of the Committee and other duties as the Committee may direct.
- 1.7 A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 5 members. For proceedings involving the denial, suspension or revocation of a controlled substance registration at least 1 member of the quorum must be from the same profession as the practitioner whose registration is the subject of the proceeding. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Secretary of State.
- 1.8 Minutes of all meetings shall be maintained by the Division of Professional Regulation. A record from which a verbatim transcript can be prepared shall be made of all hearings where evidence is presented. The expense of preparing any transcript shall be borne by the person requesting it.

13 DE Reg. 281 (08/01/09)

2.0 Requirements

- 2.1 Registration shall be on a biennial basis upon forms supplied by the Division of Professional Regulation and/or Secretary of State for that purpose. A separate registration is required at each principal place of business or professional practice where controlled substances are manufactured, distributed, dispensed, or kept for research substances are manufactured, distributed, dispensed, or kept for research or analysis. Out-of-State registrants who dispense or distribute controlled substances to patients or facilities in Delaware are required to obtain a registration.
- 2.2 Revocation and Suspension
 - 2.2.1 Revocation of registration by the Federal Government will result in automatic revocation of the State registration.
 - 2.2.2 Proceedings for denying, suspending or revoking a registration shall be held before the Committee. The Committee will forward their recommendation in writing to the Secretary of State for his/her review and decision. Persons complained against may appear personally or by counsel, and may produce any competent evidence in their behalf in answer to the alleged violation.
 - 2.2.3 Whenever a registration is denied, suspended, or revoked by the Secretary of State, the Secretary of State or his/her designee will reduce in writing his/her findings and rulings, and the reasons therefore, and forward them to the persons complained against within 15 days of receiving the written recommendation of the Committee. This provision shall in no way stay any such denial, suspension, or revocation. The Secretary of State's decision is final and conclusive. A person aggrieved may file an appeal as provided in 16 **Del.C.** §4786.

13 DE Reg. 281 (08/01/09)

3.0 Records and Inventory

- 3.1 Requirements

- 3.1.1 Practitioners authorized to prescribe or dispense controlled substance shall maintain a record with the following information:
- 3.1.1.1 Name and address of patient
 - 3.1.1.2 Date prescribed
 - 3.1.1.3 Name, strength, refills authorized and amount of medication.
- 3.1.2 Other records required by 21 **CFR** 1300 to end of 1316. The information for prescribed controlled substances may be kept either in a log or on patient records provided such records or logs are made available for inspection. The information for dispensed controlled substances must be maintained in a separate log. Entries must include the date dispensed, name and address of the patient, name and strength of medication, and amount dispensed.
- 3.1.3 Other persons registered to manufacture, distribute, or dispense controlled substances shall maintain a record with the following information:
- 3.1.3.1 Amount received or distributed.
 - 3.1.3.2 Names, addresses and dates regarding these transactions.
 - 3.1.3.3 Other records required by 21 **CFR** 1300 to the end of 1316.
- 3.1.4 When a pharmacy relocates to a new building, a complete audit of all controlled substances must be conducted before the move and within twenty-four hours after the move is complete. If the relocation occurs in the same building, no inventory count shall be required, so long as a pharmacist physically moves the controlled substance inventory.

3.2 Accountability Audits

- 3.2.1 Accountability audits in pharmacies will be accomplished through a review of invoices, prescription files, other records required by 21 **CFR** 1300 to the end of 1316.
- 3.2.2 Accountability audits of registered practitioners will be accomplished through a review of records to be kept by paragraph 3.1 of this section.
- 3.2.3 Accountability audits of registered manufacturers and distributors (including wholesalers) will be accomplished through a review of invoices received and distributed and other records required by 21 **CFR** 1300 to the end of 1316.

3.3 Final inventory

- 3.3.1 Pharmacies. Whenever the pharmacist in charge of a pharmacy in the State of Delaware leaves his position, a complete inventory of all medication covered by 16 **Del.C.**, Ch. 47 will be taken by the present and prospective pharmacist-in-charge. A copy of such inventory will be sent to the Office of Controlled Substances and another copy retained on the premises.
- For the purpose of this regulation, the "pharmacist-in-charge" is a pharmacist registered with the State Board of Pharmacy and who is responsible for the prescription department of the registrant.
- 3.3.2 Registered practitioners who cease legal existence or discontinue business or professional practice shall notify the Office of Controlled Substances promptly of such fact, and shall provide the Office with an inventory of controlled substances on hand.

3.4 Retention of Records

- 3.4.1 All records required by this Regulation must be retained for a period of at least two (2) years.

13 DE Reg. 281 (08/01/09)

4.0 Prescriptions

4.1 Definitions. As used in this section:

- 4.1.1 The term "**Act**" means the Controlled Substance Act, 16 **Del.C.**, Ch. 47.
- 4.1.2 The term "practitioner" means physician, dentist, veterinarian, podiatrist, nurse practitioner, physician assistant or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe, dispense or store a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy, or an institutional practitioner.

- 4.1.3 The term “pharmacist” means any pharmacist licensed by the State of Delaware to dispense controlled substances and shall include any other person (e.g. pharmacist intern) authorized by the State of Delaware to prescribe, dispense or store controlled substances under the supervision of a pharmacist licensed by this State.
- 4.1.4 The term “prescription” means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)
- 4.1.5 The terms “register” and “registered” refer to registration required by 16 **Del.C.** §4732.
- 4.2 Persons Entitled to Issue Prescriptions
- 4.2.1 A Prescription for a controlled substance may be issued only by a practitioner who is:
- 4.2.1.1 Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and
- 4.2.1.2 Either registered or exempt from registration pursuant to 16 **Del.C.** §4732.
- 4.2.2 A verbal prescription for a controlled substance may only be communicated to a pharmacist ~~or a pharmacy intern or a pharmacy student participating in an approved College of Pharmacy coordinated practical experience program under the direct supervision of a licensed pharmacist by the prescriber. Prescriptions for controlled substances communicated by an employee or agent of the prescriber are not valid. Verbal prescriptions for schedule III-V controlled substances in a hospice or long term care facility may be communicated by an authorized agent of the prescriber.~~
- 4.2.3 All verbal prescriptions for controlled substances must be verified and authorized by the prescriber.
- 4.2.34 Written prescriptions for controlled substances may be transmitted via facsimile or electronic transmission by a practitioner or by the practitioner’s authorized agent to a pharmacy only when the transmission complies with 21 ~~CFR~~ 1306.11, 1306.21 and 1306.31.
- 4.3 Purposes of Issue of Prescription
- 4.3.1 A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by practitioner acting in the usual course of their professional practice. The responsibility for proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of §4738 of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances.
- 4.3.2 A prescription may not be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.
- 4.3.3 A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs, unless otherwise authorized by law.
- 4.4 Manner of Issuance of Prescriptions. All prescriptions for controlled substances shall be dated and signed on the day when issued and shall bear the full name and address of the patient, and the name, address, telephone number and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g. J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner but the prescribing practitioner is responsible where the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations. Each written prescription shall have the name of the practitioner stamped, typed, or hand-printed on it, as well as the signature of the practitioner.

- 4.5 Persons Entitled to fill Prescriptions. A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy or by a registered institutional practitioner.
- 4.6 Dispensing Narcotic Drugs for Maintenance Purposes. No person shall administer or dispense narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence except in compliance with and as authorized by Federal law and regulation.
- 4.7 Emergency Dispensing of Schedule II Substances. In an emergency situation a pharmacist may dispense controlled substances listed in Schedule II upon receiving oral authorization of a prescribing practitioner, provided that the procedures comply with Federal law and regulation.
- 4.8 Expiration of Prescription.
- 4.8.1 Prescriptions for controlled substances in Schedules II and III will become void unless dispensed within seven (7) days of the original date of the prescription or unless the original prescriber authorizes the prescription past the seven (7) day period. Such prescriptions ~~cannot be written nor dispensed for more than~~ may be dispensed up to 100 dosage units or a 31 day supply whatever is the greater at one time. As an exception to dosage limitations set forth in this subparagraph, and in accordance with 21 **CFR** Section 1306.1(b), prescriptions for controlled substances in Schedule II for patients either having a medically documented terminal illness or patients in Long Term Care Facilities (LTCF), may be filled in partial quantities, to include individual dosage units. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed.
- 4.8.2 Schedule II prescriptions for terminally ill or LTCF patients, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.
- 4.9 Mail Order Prescription. Before dispensing prescriptions for Schedules II, III, IV, V controlled substances by mail, the registrant and/or the pharmacist-in-charge must assure that the prescription is valid and written by a prescriber properly registered with the Federal Government. Such verification may be made either in writing or orally.
- 4.10 Pursuant to authority granted by 16 **Del.C.** §4732 the Secretary of State finds that waiver of the registration requirements contained in that section as to non-resident practitioners is consistent with the public health and safety subject to the conditions contained in this regulation. ~~Pharmacists may dispense controlled substances pursuant to a prescription written by a non-resident practitioner (who is not registered under 16 Del.C. Ch. 47) provided that:~~
- 4.10.1 The pharmacist must establish that the name of the non-resident practitioner does not appear on the list kept by the Office of Controlled Substances of those non-resident practitioners to whom the waiver granted by this regulation does not apply.
- 4.10.2 The waiver of the registration requirement provided by the registration shall not apply to non-resident practitioners determined by the Office of Controlled Substances to have acted in a manner inconsistent with the Public Health and Safety. The Office of Controlled Substances shall maintain a list of those non-resident practitioners found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident practitioners whose names appear on that list unless such non-resident practitioners have registered pursuant to the provisions of 16 Del.C. §4732.
- 4.40-411 ~~The pharmacist must establish that the non-resident a practitioner is properly registered to prescribe controlled substances under Federal Law. The pharmacist may keep a record which contains the name and address of the non-resident practitioner, his Federal registration number, and the name and address of the source of the registration data.~~
- 4.40-211.1 ~~The pharmacist and/or an employee under his/her direct supervision must verify the identification of the bearer and receiver of the controlled substance prescription by reference to valid photographic identification and record the unique number associated with the valid~~

~~photographic identification as part of the prescription record.~~ For the purposes of this section, a valid photographic identification is limited to the following:

4.40.2.411.1.1A valid Delaware motor vehicle operator's license which contains a photograph of the person ~~presenting~~ receiving the prescription - record the license number listed on the license as part of the ~~prescription~~ patient record.

4.40.2.211.1.2A valid Delaware identification card which contains the photograph of the person presenting the prescription - record the identification number listed on the card as part of the prescription record.

4.40.2.311.1.3A valid United States passport.

4.40.2.411.1.4A valid passport or motor vehicle operator's license or state identification card of another state, territory or possession of the United States or a foreign country only if it:

4.40.2.11.1.4.1 Contains a photograph of the person ~~presenting~~ receiving the prescription:

4.40.2.11.1.4.2 Is encased in tamper-resistant plastic or is otherwise tamper-resistant.

4.40.2.11.1.4.3 Identifies the date of birth of the person ~~presenting~~ receiving the prescription and has an identification number assigned to the document which can be recorded as part of the ~~prescription~~ patient record.

4.11.2 I.D.s for mail order dispensed controlled substances must comply with all federal standards.

4.10.3 ~~The pharmacist must establish that the name of the non-resident practitioner does not appear on the list kept by the Office of Controlled Substances of those non-resident practitioners to whom the waiver granted by this regulation does not apply.~~

4.10.3.1~~The waiver of the registration requirement provided by the registration shall not apply to non-resident practitioners determined by the Office of Controlled Substances to have acted in a manner inconsistent with the Public Health and Safety. The Office of Controlled Substances shall maintain a list of those non-resident practitioners found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident practitioners whose names appear on that list unless such non-resident practitioners have registered pursuant to the provisions of 16 Del.C. §4732.~~

4.11.3 No filled prescription for any Schedule II controlled substance may be received at any drive through window. Written prescriptions for Schedule II controlled substances may be initially presented at a drive through, but the filled prescription must be picked up inside the pharmacy.

4.11.2 Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no Schedule V cough preparation containing codeine, dilaudid or any other narcotic cough preparation may be dispensed without the written or oral prescription of a practitioner.

4.12 ~~The pharmacist and/or an employee under his/her supervision must also verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. The manner in which valid photographic identification is verified and recorded shall be the same as provided in 4.10.2.~~

13 DE Reg. 281 (08/01/09)

5.0 Security and Disposal

5.1 Security

5.1.1 Schedule II Substances Storage

5.1.1.1 Pharmacies and practitioners must store Schedule II controlled substances in a burglar resistant type safe. If the safe weighs less than 750 pounds, it must be bolted, cemented, or secured to the wall or floor in such a way that it cannot be readily removed. Other types of substantially construed, securely locked cabinets or drawers are acceptable provided that the room, storage area or areas shall be provided with electronic intrusion detection equipment to all sections of the said area or areas where Schedule II controlled substances are stored, so as to detect four-step movement (as defined in Section 12.8 of U.L. Standards 681).

- 5.1.1.1.1 The aforementioned electronic intrusion detection equipment shall be installed using equipment that must be U.L. approved and listed. The said system must be capable of transmitting a local alarm to an outside audible device that shall comply with U.L. Standard 4.64.
 - 5.1.1.1.2 A local alarm connection shall not be permitted if the controlled substance premise is located more than 400 feet from a public roadway. If said controlled substances premise is more than 400 feet from public roadway or found to be within a location where such an alarm would not be effective, then the alarm system on said controlled substances premises shall transmit an alarm signal to a certified station or directly into a law enforcement agency that has 24-hour monitoring capabilities.
 - 5.1.1.1.3 The Secretary of State may require additional security requirements if he/she deems it necessary as a result of diversion of controlled substances.
 - 5.1.1.1.4 Definitions: Four-step movement - 12.8 - The system shall respond to the movement of a Four-step person walking not more than four consecutive steps at a rate of one step per second. Such Four-step movement shall constitute a "trial", and a sufficient number of detection units shall be installed so that, upon test, an alarm will be initiated in at least three out of every four consecutive "trials" made moving progressively through the protective area.
 - 5.1.1.2 Safes containing Schedule II controlled substances must be kept locked at all times. They may be opened only by the practitioner or by the pharmacist-in charge or other designees, who must be licensed medical professionals.
 - 5.1.1.3 Practitioners who store no more than 400 total dosage units of Schedule II substances are not required to comply with the safe or alarm requirements of the Regulation. However, their Schedule II controlled substances must be stored in securely locked, substantially constructed cabinets.
 - 5.1.1.4 Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. Pharmacies may disperse such substances in Schedule III, IV and V throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances. The immediate area in a pharmacy containing dispersed, controlled drugs must be secured in a manner approved by the Office of Controlled Substances which will prevent entry by unauthorized persons. Such a matter includes, but is not limited to, the implementation of a floor to ceiling physical barrier limiting access to the pharmacy area, motion detectors, strategically placed surveillance cameras and back-up alarm systems. In addition, ~~the~~ keys to such area shall at all times be carried by a pharmacist. The doors shall be locked whenever the area is not directly under the supervision of a pharmacist or a responsible person designated by the pharmacist.
 - 5.1.2 Pharmacies.
 - 5.1.2.1 Schedule II controlled substances kept in areas other than prescription areas in pharmacies must be placed in safes of the type described above. These must be kept locked at all times and may be opened only by the pharmacist-in-charge or his designee, who must also be a registered pharmacist.
 - 5.1.2.2 Schedule III through V controlled substances kept in areas other than prescription areas in pharmacies must be kept in adequately locked enclosures. They may be opened only by the pharmacist-in-charge, or his designees, who must be licensed pharmacists.
 - 5.1.3 Report of Loss or Theft. Registrants shall notify the Office of Controlled Substances, of any theft or significant loss of any controlled substances, or of any prescription blanks, upon the discovery of such loss or theft. In addition, registrants shall complete the Federal forms regarding such loss or theft, one copy of which must be filed with the Office of Controlled Substances.
 - 5.1.4 Hypodermic syringes and needles must be secured in an area only accessible to personnel authorized under 16 **Del.C.** Ch. 47 to dispense such items.
- 5.2 Disposal

- 5.2.1 Controlled Substances. Any registrant in possession of any controlled substances and desiring or required to dispose of such substance or substances shall contact the Office of Controlled Substances for proper instructions regarding disposal.
- 5.2.2 Hypodermic Syringe or Needle. Hypodermic syringes or needles shall be destroyed before disposal in such a manner as will render it impossible to adapt them for the use of narcotic drugs by subcutaneous injections.

13 DE Reg. 281 (08/01/09)

6.0 Procedures for Adoption of Regulations

- 6.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary of State/Committee will give at least twenty (20) days notice of the intended action. The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, or the time when, the place where present their views thereon. The notice will be mailed to persons who have made timely request of the Office of Controlled Substances for advance notice of such rule-making proceedings and shall be published in two newspapers of general circulation in this State.
- 6.2 Hearing. The Secretary of State shall designate the Committee to preside over hearings. The Committee will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing.
- 6.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his/her reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing he/she finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.
- 6.4 Finding and Availability. The Secretary of State will maintain on file any adoption, amendment or repeal of these regulations. In addition, copies of these regulations will be available for public inspection at the Office of Controlled Substances.

13 DE Reg. 281 (08/01/09)

7.0 Severability

- 7.1 If any provision of these regulations is held invalid the invalidity does not effect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable.
- 7.2 Pursuant to 16 **De I.C.** §4718(f) and 16 **Del.C.** §4720(c) the Secretary of State finds that the compounds, mixtures or preparations listed in 21 CFR 1301.21, 21 CFR 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore:
- 7.2.1 The Secretary of State, as authorized by 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c), does hereby except by rule the substances listed in 21 CFR 130.21, CFR 1308.24 and 21 CFR 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.

13 DE Reg. 281 (08/01/09)

PROPOSED REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41
(17 Del.C. §§134, 141 and 21 Del.C. Ch. 41)
2 DE Admin. Code 2402

2402 Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the Delaware Code, Sections 134 and 141, as well as 21 Delaware Code Chapter 41, the Delaware Department of Transportation (DelDOT) is seeking to adopt a revised Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). This revision of the Delaware MUTCD, will supersede any previous versions and is required by revisions to the Federal version of the MUTCD.

The Department will take written comments on the draft changes to the Delaware MUTCD from April 1, 2011 through April 30, 2011. Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/register/april2011/proposed/MUTCD.pdf>.

Questions or comments regarding these proposed changes should be directed to: Adam Weiser, P.E., PTOE, Safety Programs Manager, Division of Transportation Solutions, Delaware Department of Transportation, 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4073 (telephone) (302) 653-2859 (fax) adam.weiser@state.de.us.

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

2402 Delaware Manual on Uniform Traffic Control Devices

Symbol Key

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

Final Regulations

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Sections 6604(1) and 6637(e)
1 DE Admin. Code 706

ORDER**706 Specific Occupancy Requirements**

AND NOW, this 15 day of March, 2011, the Delaware State Fire Prevention Commission, in accordance with 16 Del.C. §§6604(1) and 6637(e), for the reasons stated below enters this ORDER adopting and promulgating regulation 706 SPECIFIC OCCUPANCY REQUIREMENTS, CHAPTER 4 – RESIDENTIAL SMOKE DETECTORS (the “Regulation”).

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101, the Delaware State Fire Prevention Commission is adopting the final Regulation To establish the rules and regulations for the installation of Hard-Wired Smoke Detectors pursuant to Delaware Code, Title16, Chapter 66, §6637.

FINDINGS OF FACT AND CONCLUSIONS

1. The objective of the Delaware State Fire Prevention Commission is to protect the general public, specifically those persons who are the direct recipients of services regulated by the Delaware State Fire Prevention Commission, from unsafe practices.

2. The Regulation reflects the policy and procedures to implement the Delaware State Fire Prevention Commission's statutory objective.

3. The Delaware State Fire Prevention Commission has statutory authority to promulgate the Regulation pursuant to 16 **Del.C.** §§6604(1) and 6637(e).

DECISION AND ORDER CONCERNING THE REGULATION

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the the Delaware State Fire Prevention Commission does hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Bob Ricker, Chairman

David J. Roberts, Vice-Chairman

Marvin Sharp, Commissioner

Tom DiCristofaro, Commissioner

Alan Robinson, Commissioner

Kevin Wilson, Commissioner

706 Specific Occupancy Requirements

***Please note that no changes were made to the regulation as originally proposed and published in the February 2011 issue of the *Register* at page 732 (14 DE Reg. 732). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[706 Specific Occupancy Requirements](#)

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Sections 6604(1), 6711(b)(2), 6712(h) and 6717(a)
1 DE Admin. Code 710

ORDER

710 Ambulance Service Regulations

AND NOW, this 15 day of March, 2011, the Delaware State Fire Prevention Commission, in accordance with 16 **Del.C.** §§6604(1), 6711(b)(2), 6712(h) and 6717(a), for the reasons stated below enters this ORDER adopting and promulgating regulation 710 AMBULANCE SERVICE REGULATIONS (the "Regulation").

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Delaware State Fire Prevention Commission is adopting the final Regulation to ensure a consistent and coordinated high quality level of ambulance service throughout the State of Delaware focusing on timeliness, quality of care and coordination of efforts.

FINDINGS OF FACT AND CONCLUSIONS

1. The objective of the Delaware State Fire Prevention Commission is to protect the general public, specifically those persons who are the direct recipients of services regulated by the Delaware State Fire Prevention Commission, from unsafe practices.

2. The Regulation reflects the policy and procedures to implement the Delaware State Fire Prevention Commission's statutory objective.

3. The Delaware State Fire Prevention Commission has statutory authority to promulgate the Regulation pursuant to 16 **Del.C.** §§6604(1), 6711(b)(2), 6712(h) and 6717(a).

DECISION AND ORDER CONCERNING THE REGULATION

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the the Delaware State Fire Prevention Commission does hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Bob Ricker, Chairman

Kevin Wilson, Commissioner

David J. Roberts, Vice-Chairman

Alan Robinson, Commissioner

710 Ambulance Service Regulations

*Please note that due to the size of the regulation as originally proposed and published in the February 2011 issue of the *Register* at page 737 (14 DE Reg. 737) it is not being re published. A copy of the final regulation is available at:

[710 Ambulance Service Regulations](#)

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

1001 Thoroughbred Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed rules to the Commission's Rules. Following notice and a public hearing on March 15, 2011, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed rules February 1, 2011 in the *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to amend rules and regulations to conform to recently revised national standards for the acceptable levels of phenylbutazone and oxyphenbutazone in thoroughbred race horses.

2. The Commission received no written comments. The Commission held a public hearing on March 15, 2011 and received no public comments.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
4. The Commission concludes that the proposed changes to rules 15.1.3.1.5 and 15.1.3.1.6 should be adopted to reflect current policies, practices, and procedures.
5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2011.

IT IS SO ORDERED this 15th day of April 2011.

Bernard J. Daney, Chairman
W. Duncan Patterson, Secretary/Commissioner
Henry James Decker, Commissioner
Debbie Killeen, Commissioner

Not present
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 2011 issue of the *Register* at page 759 (14 DE Reg. 759). 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))

REGULATORY IMPLEMENTING ORDER

210 District School Board Member Special Education Due Process Hearing Training

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 210 District School Board Member Special Education Due Process Hearing Training. The regulation is required as a result of the passage of HB 386 of the 145th General Assembly. The regulation relates to special education due process hearing training for school district board of education members. The law as written does not apply to charter schools; therefore, this regulation does not apply to charter schools.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 4, 2011 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 endorsing the proposed regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 210 District School Board Member Special Education Due Process Hearing Training in order to outline the criteria and process for the required training for member of school district boards of education.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 210 District School Board Member Special Education Due Process Hearing Training. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 210 District School Board Member Special Education Due Process Hearing Training attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 210 District School Board Member Special Education Due Process Hearing Training 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** 210 District School Board Member Special Education Due Process Hearing Training amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 210 District School Board Member Special Education Due Process Hearing Training 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 17, 2011. 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 17th day of March 2011.

Department of Education

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

Approved this 17th day of March 2011

210 District School Board Member Special Education Due Process Hearing Training

1.0 Purpose

The purpose of this regulation is to outline the criteria and process for the required training for members of district school boards, including vocational technical school boards, pursuant to 14 **Del.C.** §1049B. The purpose of the training is to inform school board members of the educational and legal issues generally involved in special education due process hearings arising under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 ("IDEA") and Chapter 31 of Title 14 of the **Delaware Code** ("Chapter 31").

2.0 Definitions

"**District School Board**" shall mean reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to Chapter 10 of Title 14 of the **Delaware Code**.

“Materials” shall mean training aids approved by the Secretary of Education for use in the Special Education Due Process Hearing Training.

“School Board Member” shall mean a district school board member whether that person is elected, appointed, or is a volunteer.

“Trainer” means an individual, agency, or organization approved by the Secretary of Education to provide the Special Education Due Process Hearing Training, in whole or in part.

3.0 Special Education Due Process Hearing Training Requirement

- 3.1 The Special Education Due Process Hearing Training means the program and materials approved by the Department of Education consisting of a minimum of two (2) hours and covering the following topics:
- 3.1.1 Overview of special education requirements related to the identification, evaluation, and educational placement of children with disabilities, and the provision of a free, appropriate public education to children with disabilities; and
 - 3.1.2 Overview of the due process hearing system; and
 - 3.1.3 Summary of other procedural safeguards and dispute resolution options available to parents and school districts under the IDEA and Chapter 31.
- 3.2 The training may be provided in a format that includes, but not limited to, an electronic media format or in person.

4.0 Special Education Due Process Hearing Training Requirement for District School Board Members

- 4.1 Each district School Board Member shall participate and complete the Special Education Due Process Hearing Training the later of the following:
- 4.1.1 Within one (1) year of election, appointment, or voluntary service to a District School Board; or
 - 4.1.2 Within one year of the initial effective date of this regulation.

5.0 Trainer

The training required by this regulation shall be conducted by a trainer as defined in this regulation.

6.0 Materials

The materials used for the training required by this regulation shall be those as defined in this regulation.

14 DE Reg. 760 (02/01/11)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 211

REGULATORY IMPLEMENTING ORDER

211 Notice to School Boards of Due Process Proceedings

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code by adding a new regulation 211 Notice to School Boards of Due Process Proceedings. The regulation is required as a result of the passage of HB 387 of the 145th General Assembly. The regulation relates to notification of special education due process proceedings. This law applies to both local school boards and charter schools.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 4, 2011 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 endorsing the regulation with two considerations. The Department has reviewed the comments and has made a wording change as recommended. An amendment related to board notifications was not made as the regulation was proposed based on the wording in the current law.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 211 Notice to School Boards of Due Process Proceedings. The regulation relates to notification of special education due process proceedings.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings 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** 211 Notice to School Boards of Due Process Proceedings amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings 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 17, 2011. 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 17th day of March 2011.

Department of Education

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

Approved this 17th day of March 2011

211 Notice to School Boards of Due Process Proceedings

1.0 Purpose

The purpose of this regulation is to outline the process for notifying school board members pursuant to 14 **Del.C.** §3110(d) of special education administrative hearings under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA") and 14 **Del.C.** §3101 et seq. ("Chapter 31") involving the school district or charter school.

2.0 Definitions

“School Board” shall mean charter school boards of directors organized pursuant to Chapter 5 of Title 14 of the Delaware Code, and reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to Chapter 10 of Title 14 of the Delaware Code.

“School Board Member” shall mean a district school board member or charter school board member whether that person is elected, appointed, or is a volunteer.

3.0 Privacy and Confidentiality Considerations

Actions taken and documents provided in accordance with this regulation and 14 Del.C. §3110(d) must comply with IDEA and its regulations, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“FERPA”) and its regulations, the Delaware Freedom of Information Act, 14 Del.C. §10001 et seq. (“FOIA”), and all other applicable federal and state laws and regulations governing the privacy and confidentiality of student information and records.

4.0 Notice of Due Process Complaint

- 4.1 After receiving notification that a due process complaint has been received by the Secretary of the Department of Education, the superintendent of a reorganized school district or a vocational technical school district (“superintendent”) or charter school principal (“principal”) shall provide a copy of the complaint to each school board member at the next scheduled school board meeting.
- 4.2 The school board president shall sign a statement that all school board members received a copy of the complaint and the superintendent or principal shall provide a copy of the statement to the parent(s) or legal guardian of the child named in the complaint by certified mail.

5.0 Notice of Due Process Hearing Panel Decision

- 5.1 Within 7 school days of receiving a due process hearing decision, the superintendent or principal shall provide a copy of the decision to each school board member.
- 5.2 The superintendent or principal shall send a letter signed by the school board president to the parent or legal guardian of the child named in the hearing decision by certified mail, stating that the members of the school board were provided with a copy of the due process hearing panel decision.

6.0 Notice of Parent Request for Judicial Review of Due Process Hearing Panel Decision

- 6.1 After receipt of the civil action filed by a parent or legal guardian seeking judicial review of a due process hearing decision pursuant to applicable laws and regulation, the superintendent or principal shall provide each school board member with a copy of the civil action at the next regularly scheduled school board meeting.
- 6.2 The superintendent or principal shall send a letter signed by the president of the school board by certified mail to the parent(s) or legal guardian of the child named in the civil action stating that the members of the school board were provided with a copy of the civil action.

7.0 School District or Charter School Request for Judicial Review of Due Process Hearing Panel Decision

A decision by a reorganized school district or a vocational technical school district or charter school to seek judicial review of a due process hearing decision must be made by a majority of school board members.

14 DE Reg. 762 (02/01/11)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 922

REGULATORY IMPLEMENTING ORDER**922 Children with Disabilities Subpart A, Purposes and Definitions****I. Summary of the Evidence and Information Submitted**

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 922, Children With Disabilities, Subpart A, Purposes and Definitions.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 922 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 922 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 8, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 922 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

The Secretary also makes the following specific findings:

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities suggested Section 2.2.4 be revised to substitute "Correction" for "Corrections" in reference to the Department of Correction. The Department agrees, and has made this non-substantive revision to the regulation.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities also suggested the definition of "Core Academic Subjects" in Section 3.0 be revised to substitute "world languages" for "foreign languages" to be consistent with the high school graduation requirements in 14 **DE Admin. Code** 505. The Department agrees, and has made this non-substantive revision to the regulation.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities suggested the definition of "Free Appropriate Public Education" in Section 3.0 be revised to reflect the provisions of a recent change to 14 **Del.C.** 3101 requiring that special education and related services provide significant learning and meaningful benefit to children with disabilities gauged to their potential. The Department agrees, and has made this revision to the regulation for consistency with recent changes to the Delaware Code.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 922. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 922, attached hereto as *Exhibit "B"* is hereby

amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 922 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** 922 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 922 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 17, 2011. 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 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

922 Children with Disabilities Subpart A, Purposes and Definitions

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

3.0 Definitions Applicable to Regulations 922 to 929:

“Act” means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a); 14 **Del.C.** §3110)

“Assistive Technology De vice” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1); 14 **Del.C.** §3110)

“Assistive Technology Service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2); 14 **Del.C.** §3110)

“Charter School” means given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221i(1); 14 **Del.C.** §§3110 and 505(a))

“Child with a Disability” means a child evaluated in accordance with 14 **DE Admin. Code** 925.4.0 through 925.12.0 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these regulations as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

Except as further provided in this paragraph, if it is determined, through an appropriate evaluation under 14 **DE Admin. Code** 925.4.0 through 925.12.0, that a child has one of the disabilities identified in the definitions of disability terms below, but only needs a related service and not special education the child is not a child with a disability under these regulations. If, consistent with the definition of Special Education in this section, the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

Child with a disability for children aged three (3) through nine (9), subject to the conditions described in 14 **DE Admin. Code** 923.11.0, includes a child who is experiencing developmental delays, as defined in the eligibility requirements for 14 **DE Admin. Code** 925, measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

Definitions of Disability Terms: The specific disability terms used in this definition of a child with a disability are defined as follows:

“Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the other criteria in this definition are satisfied.

Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in this section.

“Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

“Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

“Emotional Disturbance” means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or

health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.

“Hearing Impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

“Mental Retardation” means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

“Multiple Disabilities” means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. *Nothing in these regulations shall be construed to require that a child with a disability be identified or classified as having multiple disabilities so long as the child receives the special education and related services the child needs to receive a free appropriate public education.*

“Orthopedic Impairment” means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

“Other Health Impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, and adversely affects a child's educational performance.

“Specific Learning Disability” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, or mental retardation.

“Speech or Language Impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

“Traumatic Brain Injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

“Visual Impairment Including Blindness” means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30); 14 Del.C. 3110)

“**Consent**” means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

(Authority: 20 U.S.C. 1414(a)(1)(D); 14 **Del.C.** §3110)

“**Core Academic Subjects**” means English, reading or language arts, mathematics, science, **[foreign–world]** languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4); 14 **Del.C.** §3110)

(Break in Continuity of Sections)

***Please note that no additional changes were made to the regulation as originally proposed and published in the January 2011 issue of the Register at page 604 (14 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[922 Children with Disabilities Subpart A, Purposes and Definitions](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 923

REGULATORY IMPLEMENTING ORDER

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 923, Children With Disabilities, Subpart B, General Duties and Eligibility of Agencies.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* (“IDEA”).

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 923 as part of a comprehensive review of Delaware’s special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 923 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 8, 2011, in the form hereto attached as *Exhibit “A”*. The Department received comments from the Governor’s Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 923 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

The Secretary also makes the following specific findings:

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities suggested Sections 33.1.1 and 33.1.2 be revised to substitute "subgrant" for "sub grant". The Department agrees, and has made this non-substantive revision to the regulation.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities also suggested Section 52.1 be revised to substitute "sixty" for "Sixty". The Department agrees, and has made this non-substantive revision to the regulation.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities suggested Section 68.1.11 be revised to substitute "Correction" for "Corrections" in referencing the Department of Correction. The Department agrees, and has made this non-substantive revision to the regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 923 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 923 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 17, 2011. 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 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

***Please note that no changes were made to the regulation as originally proposed and published in the January 2011 issue of the *Register* at page 604 (14 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 924

REGULATORY IMPLEMENTING ORDER

924 Children with Disabilities Subpart C Local Educational Agency Eligibility

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 DE Admin. Code 924, Children With Disabilities, Subpart C, Local Educational Agency Eligibility.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 Del.C. Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 924 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 DE Admin. Code 924 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 8, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 924 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 924. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 924 attached hereto as *Exhibit "B"* is hereby

amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 924 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** 924 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 924 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 17, 2011. 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 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

924 Children with Disabilities Subpart C Local Educational Agency Eligibility

*Please note that no changes were made to the regulation as originally proposed and published in the January 2011 issue of the *Register* at page 604 (14 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[924 Children with Disabilities Subpart C Local Educational Agency Eligibility](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 925

REGULATORY IMPLEMENTING ORDER

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 925, Children With Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 925 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 925 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 8, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 925 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

The Secretary also makes the following specific findings:

The Department received written public comment related to Sections 20.2 and 22.2.2 from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities. Both councils suggested substantive revisions to ensure timely transition planning for students applying to vocational technical high schools within the State. The comments require further consideration by the Department. As a result, the Department is not amending Sections 20.2 and 22.2.2 as proposed.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 925 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 925 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 17, 2011. 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 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

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

Gregory Coverdale
 Terry M. Whittaker, Ed.D.
 James L. Wilson, Ed.D.

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

20.0 Definition of Individualized Education Program

- 20.1 General: Each child who is determined eligible for special education and related services shall have a single IEP. As used in these regulations, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 20.0 through 24.0, and that shall include:
- 20.1.1 A statement of the child's present levels of academic achievement and functional performance, including:
- 20.1.1.1 How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non disabled children); or
- 20.1.1.2 For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- 20.1.2 A statement of measurable annual goals, including academic and functional goals designed to:
- 20.1.2.1 Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability;
- 20.1.2.2 For children with disabilities who participate in the Alternate Assessment based on Alternate Achievement Standards (AA-AAS), a description of benchmarks or short term objectives.
- 20.1.3 A description of how the child's progress toward meeting the annual goals described in 20.1.2 will be measured; and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- 20.1.4 A statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
- 20.1.4.1 To advance appropriately toward attaining the annual goals;
- 20.1.4.2 To be involved in and make progress in the general education curriculum in accordance with 20.1.1, and to participate in extracurricular and other nonacademic activities; and
- 20.1.4.3 To be educated and participate with other children with disabilities and non disabled children in the activities described in this section;

- 20.1.5 An explanation of the extent, if any, to which the child will not participate with non disabled children in the regular class and in the activities described in 20.1.4;
 - 20.1.6 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and if the IEP Team determines that the child shall take an alternate assessment, instead of a particular regular State or district wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child;
 - 20.1.7 The projected date for the beginning of the services and modifications described in 20.1.4, and the anticipated frequency, location, and duration of those services and modifications; and
 - 20.1.8 A statement designating whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent other authorized responsible person.
- 20.2 Transition services: ~~[By the middle of the 8th grade, the IEP shall include the child's strengths, interests, and preferences, postsecondary goals, high school courses of study needed to assist the child in reaching those goals, and plans to make application to high school and career technical education programs. Full transition services planning will apply by the end of the 9th grade, or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team, and the IEP shall be updated annually and include: Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include: By the middle of the 8th grade, the IEP shall include the child's strengths, interests, and preferences, postsecondary goals, high school courses of study needed to assist the child in reaching those goals, and plans to make application to high school and career technical education programs. Full transition services planning will apply by the end of the 9th grade, or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team, and the IEP shall be updated annually and include.]~~
- 20.2.1 Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - 20.2.2 The transition services and activities (including courses of study) needed to assist the child in reaching those goals.
- 20.3 Transfer of rights at age of majority: Beginning not later than 1 year before the child reaches the age of 18, the IEP shall include a statement that the child has been informed that the child's rights under Part B of the Act will transfer to the child on reaching the age of 18 under 14 **DE Admin. Code** 926.20.0.
- 20.4 ~~IEP Forms: Each public agency shall use the IEP forms as developed and required by the DOE, including but not limited to, preschool, elementary, secondary and speech only forms. The Preschool IEP form shall be used for children eligible for special education prior to kindergarten, the Elementary IEP form shall be used beginning in kindergarten, and the Secondary IEP form shall be used beginning in the 8th grade, or earlier, if the IEP team agrees. The requirement that public agencies use the DOE's IEP forms does not prohibit or prevent an IEP team from including on an IEP any information, service or other notation the team determines necessary to provide FAPE to a child with a disability. This section shall not be construed to require an IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.~~
- 20.5 Extended school year services: A student's need for extended school year services shall be determined in accordance with 14 **DE Admin. Code** 923.6.0.
(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6); 14 **Del.C.** §3110)
- 20.6 *Twelve month program eligibility: The DOE shall include a parental notice and acknowledgement section in IEP forms described in 20.4 which both identifies students eligible for a 12-month program pursuant to Title 14 **Del.C.** §1703 and documents the parental option to accept a 12-month program.*
[Authority: Title 14 **Del.C.** §§1703(e), 1703(f)]

12 DE Reg. 1084 (02/01/09)

*(Break in Continuity of Sections)***22.0 Parent Participation**

- 22.1 Public agency responsibility, General: Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:
- 22.1.1 Notifying parents of the meeting, *in writing, no less than 10 business school days prior to the IEP Team meeting (unless mutually agreed otherwise) to ensure that they will have an opportunity to attend, and no less than three (3) business school days for removal due to disciplinary action prior to a meeting to conduct a manifestation determination under 14 DE Admin. Code 926.30;* and
- 22.1.2 Scheduling the meeting at a mutually agreed on time and place.
- 22.2 Information provided to parents: The notice required under 22.1 shall:
- 22.2.1 Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- 22.2.2 Inform the parents of the provisions in 21.1.6 and 21.3 (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and 21.6 (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
- 22.2.3 ~~[For a child with a disability beginning not later than the 8th grade or when the child turns 14, whichever occurs first, For a child with a disability beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP Team, For a child with a disability beginning not later than the 8th grade or when the child turns 14, whichever occurs first,]~~ the notice shall also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with 20.2 and that the agency will invite the student; and identify any other agency that will be invited to send a representative. *The invitation to the child shall be in writing.*
- 22.3 Other methods to ensure parent participation: If neither parent can attend an IEP Team meeting, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 28.0 (related to alternative means of meeting participation).
- 22.4 Conducting an IEP Team meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency shall keep a record of its attempts to arrange a mutually agreed on time and place, such as:
- 22.4.1 Detailed records of telephone calls made or attempted and the results of those calls;
- 22.4.2 Copies of correspondence sent to the parents and any responses received; and
- 22.4.3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- 22.4.4 Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- 22.5 Parent copy of child's IEP: The public agency shall give the parent a copy of the child's IEP at no cost to the parent.
(Authority: 20 U.S.C. 1414(d)(1)(B)(i); 14 Del.C. §3110)

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2011 issue of the *Register* at page 604 (14 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 926

REGULATORY IMPLEMENTING ORDER**926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children****I. Summary of the Evidence and Information Submitted**

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 926, Children With Disabilities, Subpart E, Procedural Safeguards for Parents and Children.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 926 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 926 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 8, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 926 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

The Secretary also makes the following specific findings:

The Department received written public comment related to Section 3.1.3 from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities. The federal regulations implementing the IDEA and 14 **Del.C.** §3133 require written notice to be provided "a reasonable time" before a public agency proposes to change the placement of a child with a disability. The Department's regulations implement a standard requiring 10 business days prior notice for most actions, and 3 business days prior notice for changes of placement due to disciplinary reasons. The councils' commented that 3 business days notice may be inconsistent with the "reasonable time" period requirement. The comments require further consideration by the Department. As a result, the Department is not amending Section 3.0 as proposed.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities suggested that "change of placement under 36.0" be added to the end of the sentence in Section 30.2. The Department agrees, and has made this non-substantive revision to the regulation. The revision is consistent with the federal regulations implementing the IDEA.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 926. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 926, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 926 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** 926 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 926 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 17, 2011. 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 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)**3.0 Prior Notice by the Public Agency: Content of Notice**

- 3.1 Notice: Written notice that meets the requirements of 3.2 shall be given to the parents of a child with a disability no less than ten (10) ~~business school~~ days before the public agency:
- 3.1.1 Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - 3.1.2 Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; and
 - 3.1.3 *In cases involving a change of placement for a disciplinary removal, written notice shall be provided no less than three (3) ~~business school~~ days before the public agency ~~proposes to change~~ the child's placement.*
- 3.2 Content of notice: The notice required in 3.1 shall include:
- 3.2.1 A description of the action proposed or refused by the agency; and
 - 3.2.2 An explanation of why the agency proposes or refuses to take the action; and
 - 3.2.3 A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; and

- 3.2.4 A statement that the parents of a child with a disability have protection under the procedural safeguards of these regulations and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- 3.2.5 Sources for parents to contact to obtain assistance in understanding the provisions of these regulations; and
- 3.2.6 A description of any other options the IEP Team considered and the reasons why those options were rejected; and
- 3.2.7 A description of other factors which are relevant to the agency's proposal or refusal; *and*
- 3.2.8 *A full explanation of all the procedural safeguards available to the parents.*
- 3.3 Notice in understandable language: The notice required in 3.1 shall be:
 - 3.3.1 Written in language understandable to the general public; and
 - 3.3.2 Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- 3.4 If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:
 - 3.4.1 The notice is translated orally or by other means to the parent in his or her native language or other mode of communication; and
 - 3.4.2 The parent understands the content of the notice; and
 - 3.4.3 There is written evidence that the requirements in 3.4.1 and 3.4.2 have been met.
(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1));14 **Del.C.** §3110)

(Break in Continuity of Sections)

***Please note that no additional changes were made to the regulation as originally proposed and published in the January 2011 issue of the *Register* at page 604 (14 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 927

REGULATORY IMPLEMENTING ORDER

927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 927, Children With Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 927 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 927 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 8, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 927 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

The Secretary also makes the following specific findings:

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities suggested Sections 4.1.2, 4.1.3, and 4.2.2.3 be revised to substitute "subgrant" for "sub grant". The Department agrees, and has made these non-substantive revisions to the regulation.

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities suggested Section 13.0 be amended to include a reference to 14 **Del.C.** §3130 concerning the rights of parents to access educational records. The Department agrees, and has made this non-substantive revision to the regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 927. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 927, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 927 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** 927 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 927 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 17, 2011. 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 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

Gregory Coverdale

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan
Barbara B. Rutt

James L. Wilson, Ed.D.

927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

13.0 Rights to Access Educational Records

- 13.1 Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under these regulations. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to **DE Admin. Code** 926.7.0 or 926.30.0 through 926.32.0 or resolution session pursuant to **DE Admin. Code** 926.10.0, and in no case more than 45 days after the request has been made.
- 13.2 The right to inspect and review education records under this section includes:
- 13.2.1 The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- 13.2.2 The right to request that the agency provide copies of the records ~~containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records~~, except the actual evaluation or examination instrument; and
- 13.2.3 The right to have a representative of the parent inspect and review the records.
- 13.3 An agency may presume that the parent has authority to inspect and review records relating to his or her child **[as provided in these regulations and 14 Del.C. §3130]** unless the agency has been advised that the parent does not have the authority under applicable State laws governing such matters as guardianship, separation, and divorce.
- (Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 **Del.C.** §§3110 and 4111)

(Break in Continuity of Sections)

***Please note that no additional changes were made to the regulation as originally proposed and published in the January 2011 issue of the Register at page 604 (14 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 928

REGULATORY IMPLEMENTING ORDER

928 Children with Disabilities Subpart G Use and Administration of Funds

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 928, Children With Disabilities, Subpart G, Use and Administration of Funds

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 928 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 928 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 8, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 928 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 928. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 928, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 928 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** 928 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 928 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 17, 2011. 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 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

Gregory Coverdale

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan
Barbara B. Rutt

James L. Wilson, Ed.D.

928 Children with Disabilities Subpart G Use and Administration of Funds

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

***Please note that no changes were made to the regulation as originally proposed and published in the January 2011 issue of the *Register* at page 604 (14 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[928 Children with Disabilities Subpart G Use and Administration of Funds](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1565

REGULATORY IMPLEMENTING ORDER

1565 World Language Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1565 World Language Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to allow for the certification of American Sign Language and other World Language teachers for whom the typical examination of content knowledge may not be applicable and available. This regulation sets forth the requirements for a World Language Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on December 3, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Councils expressed concern that section 3.1 did not apply to teachers with certificates issued on or after August, 31, 2003. Upon review of subsection 3.1 it was determined that this concern was unwarranted. The Councils also expressed concern regarding the strength of the proficiency standards. The Professional Standards Board took the comments under consideration and determined that changes were not deemed necessary. The PSB reviewed the standards and the levels specified by the American Council on the Teaching of Foreign Languages (ACTFL) using supporting documentation and the rationale in reaching the levels specified. In areas where a test is not applicable and available, the regulation requires 15 credits or their equivalent in professional development that must be approved by the Department of Education.

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** 1565 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 3rd DAY OF MARCH, 2011

| | |
|------------------------|-------------------|
| Kathleen Thomas, Chair | Lori Hudson |
| Michael Casson | Chris Kenton |
| Joanne Christian | David Kohan |
| Samtra Devard | Jill Lewandowski |
| Stephanie DeWitt | Wendy Murray |
| Marilyn Dollard | Whitney Price |
| Karen Gordon | Shelley Rouser |
| Cristy Greaves | Jacque Wisnauskas |

IT IS SO ORDERED the 17th day of March, 2011.

Department of Education

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

Approved this 17th day of March, 2011

State Board of Education

| | |
|-----------------------------------|---------------------------|
| Teri Quinn Gray, Ph.D., President | Gregory Coverdale |
| Jorge L. Melendez, Vice President | Terry M. Whittaker, Ed.D. |
| G. Patrick Heffernan | James L. Wilson, Ed.D. |
| Barbara B. Rutt | |

1565 World Language Teacher

***Please note that no changes were made to the regulation as originally proposed and published in the February 2011 issue of the *Register* at page 766 (14 DE Reg. 766). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1565 World Language Teacher](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Chapter 5, §512

(31 Del.C., Ch. 5, §512)

DSSM: 3000 Technical Eligibility for Cash Assistance**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 Temporary Assistance for Needy Families (TANF) programs specifically, *removing workfare requirements, removing clock extensions, and clearly defining hours for one- and two-parent families*. 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 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2011 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 Temporary Assistance for Needy Families (TANF) programs, specifically, *removing workfare requirements, removing clock extensions, and clearly defining hours for one- and two-parent families*.

Statutory Authority

- 31 **Del.C.** §518, *Failure to comply with job placement, education, training, work eligibility, parenting or personal responsibility requirements*
- 31 **Del.C.** §501, *Legislative intent*
- 31 **Del.C.** §505(1), *Categories of Assistance - Aid to Families with Dependent Children*
- 31 **Del.C.** §512(1), *Administration*

Summary of Proposed Changes

This rule change removes workfare requirements from Division of Social Services (DSS) policy. Removing these restrictions to the types of activities caretakers can engage in as a requirement to receive TANF allows activities to be tailored to the needs, strengths, and goals of clients thereby increasing the likelihood of long term self-sufficiency and allowing the program to be more responsive to the unique needs of each recipient.

The rule change also eliminates the separate State program that provided additional months of TANF for those clients who continued to receive TANF while also employed at least 25 hours a month. This program is thought not to foster the idea that TANF is a transitional benefit and should not become a way of life. Finally, the policy changes clarify the expectations and required hours of mandatory participants in the TANF employment and training program.

The proposed changes affect the following policy sections:

DSSM 3002, *Time Limit, Temporary Welfare Program*

DSSM 3002, *Two-Parent Families - Time Limit, Temporary Welfare Program*

DSSM 3002.2, *Single Parent / Non-Parent Caretaker Families*

DSSM 3002.3, *Time Limits for Single Parent and Two Parent Families on Assistance Prior To 01/01/2000*

DSSM 3002.9, *Exceptions to the Time Limit Counter*

DSSM 3006.1.1, *Requiring Participation in Employment and training for One-Parent and single caretaker families*

DSSM 3006.1.2, *Requiring Participation in Employment and training for Two-Parent Families*

DSSM 3031, *Work For Your Welfare*

DSSM 3031, *Hours of Participation – One-Parent Families*

DSSM 3031.2, *Hours of Participation – Two-Parent Families*

DSSM 3031.3, *Reserved*

DSSM 3031.3.1, *Reserved*

DSSM 3031.3.2, *Reserved*

DSSM 3031.4, *Initiating Work for Your Welfare – Two-Parent Families*

DSS 3031.5, *Ending a Work for Welfare Placement*

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. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Summary of Proposed Changes indicates that Delaware is experiencing an increase in its TANF rolls and the Division is attempting to "reduce the growth rate". At 771. The Division is currently experiencing a significant shortfall in its TANF budget. The GACEC and the SCPD would like to share the following observations.

First, in §3002, fourth paragraph, the comma after the word "Responsibility" should be deleted.

Agency Response: The suggested change will be made to the policy.

Second, in §3002.1A, the reference to "the caretaker is age 19 or older" should be reviewed. Earlier in the section, the reference is to "adults age 18 or older" and all other references in the regulation are to age 18 or older.

Agency Response: The policy will be corrected to read "age 18 or older".

Third, in §3006.1.1, Par. 6, substitute "(c)aretakers who fail" for (c)aretakers that fail".

Agency Response: The suggested change is already incorporated in the policy.

Fourth, there are pros and cons to the proposed substantive changes which may reduce the TANF growth rate. On the one hand, the budget deficit must be proactively addressed. On the other hand, restricting TANF eligibility may adversely affect potential and existing program participants.

Agency Response: Thank you for your analysis, the proposed policy change is in keeping with the time limited nature of the TANF program, but as you note may limit the availability of TANF for some participants.

Further analysis by Division staff resulted in changes to the rule as proposed at *DSSM 3006.1.1* and *DSSM 3006.1.2*. Language is inserted to further clarify/change expectations as follows.

DSSM 3006.1.1

- Item 2: The word "family" was replaced with "participant" to clarify that in a single parent household the plan is written for the work eligible participant.
- Item 3: The client must receive verbal and written instructions regarding required verifications. The instructions must not necessarily be incorporated into the employability plan.
- Item 4: The period to return verifications changed from 3 business days to 7 calendar days to reflect current procedures.
- Item 6: To clarify where verification of activities need to be submitted.

DSSM 3006.2.1

- Item 3: The client must receive verbal and written instructions regarding required verifications. The instructions must not necessarily be incorporated into the employability plan.
- Item 4 is revised to clarify policy and expectations.
- Item 5: The period to return verifications changed from 3 business days to 7 calendar days to reflect current procedures.
- Item 6: Substitute the word “parents” for “adults” to make it clear that the policy applies to both parents in a two-parent family.
- Item 7 is deleted for being too restrictive and limiting client options.
- Renumbered item 8: To foster self-sufficiency, the minimum requirement of countable employment and training activities for two-parent families is changed to 40 hours.
- Renumbered item 10: How parents are determined to be active is added to make the expectations and the mechanics of the policy clearer.

[Bracketed Bold language] indicates added text at the time the final order is issued.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2011 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Delaware’s TANF programs, specifically *removing workfare requirements, removing clock extensions, and clearly defining hours for one- and two-parent families* is adopted and shall be final effective April 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #11-13

REVISIONS:

(Break in Continuity of Sections)

3002 Time Limit, Temporary Welfare Program

Cash benefits will be time-limited for households headed by two employable adults age 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. ~~Families will receive these benefits only through participation in a pay after performance work experience position or if the adults are working and the family's countable income is below the need standard.~~

Time limits apply when three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age 18 or older,
- the caretaker is employable.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children’s Program.

During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility^[,] ~~and participate in a pay after performance work experience program or they are working and family income is below the need standard of 75% of the Federal Poverty level.~~ they are meeting the minimum weekly hours of required employment and training activities.

~~The pay after performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the TANF benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in Section DSSM 3011.2.~~

Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

3002.1 Two-Parent Families - Time Limit, Temporary Welfare Program

A. Delaware's Temporary Assistance for Needy Families Program (TANF), cash benefits are time-limited for households headed by two employable adults age 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. ~~Families will receive these benefits only through participation in a pay after performance work experience position or if the adults are working at least 25 hours per week and the family has countable income below the need standard.~~

Time limits apply when three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age ~~[19 18]~~ or older,
- the caretaker is employable, and

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

B. During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility, and ~~participate in a pay after performance work experience program or they are working and family income is below the need standard of 75% of the Federal Poverty level. they are meeting the minimum weekly hours of required employment and training activities~~

~~The pay after performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the TANF benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in Section 3011.2.~~

C. Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

(Break in Continuity of Sections)

3006 TANF Employment and Training Program

3006.1.1 REQUIRING PARTICIPATION IN EMPLOYMENT AND TRAINING FOR ONE-PARENT AND SINGLE CARETAKER FAMILIES

This policy applies to TANF families headed by an employable single non-parent caretaker who is included in the grant or an employable single parent caretaker aged 18 or older.

1. Caretakers are required participate with a TANF employment and training vendor.
2. The vendor will develop an individualized employability plan for each [family participant].
3. The employability plan will detail the weekly countable activities to be completed. ~~[and any verification requirements]~~ **The caretaker will receive verbal and written instructions of a ctivity verification requirements].**
4. Verifications of activities are required to be submitted the week the activity occurred.

Exception: Verification of employment by paystub or by an employer form may be submitted up to ~~[three business seven calendar]~~ days after they are received from the employer.

5. Caretakers are required to complete at least 30 hours of countable activities a week.

Exception: Single custodial parents caring for a child under six are required to complete at least 20 hours of countable activities a week.

6. Caretakers that fail to complete the activities or to provide the required verification **[to the employment and training program]** will be subject to a sanction.

- A. Non-parent caretakers will be removed from the TANF grant
- B. Single parent households are subject to the full family sanction rules.

7. The total number of hours the caretaker may engage in work experience or community service is limited by the Fair Labor Standards Act (FLSA).

The maximum required monthly hours of participation in work experience and community service is determined by dividing the combined monthly TANF and food benefits by the greater of the Federal or Delaware minimum wage.

3006.1.2 Requiring Participation in Employment and TRAINING FOR Two-Parent Families

This policy applies to TANF families headed by two employable adults aged 18 or older and who are both included in the TANF grant.

1. Two-Parent families are required to participate with a TANF employment and training vendor.
2. The vendor will design an individualized employability plan for each family.
3. The employability plan will detail the weekly countable activities to be completed. ~~[and any verification requirements]~~ **Parents will receive verbal and written instructions of activity verification requirements].**
4. ~~[Families that fail to complete the activities or to provide the required verification will be subject to a full family sanction.~~ A family will receive a full family sanction when:
 - a. The family does not complete the required hours of planned activities in a week, or
 - b. The family does not submit t he required verification of activities to the employment and training program.]
5. Verifications of activities are required to be submitted the week the activity occurred.

Exception: Verification of employment by paystub or by an employer form may be submitted up to ~~[three business seven calendar]~~ days after they are received from the employer.

6. The two week pre-participation period is not met until both [adults parents] have attended an orientation at the Employment and Training provider.

~~7. Both adults in a two parent family will be assigned to work with the same Employment and Training provider.~~

~~Exception: In cases of suspected domestic violence the adults in two parent families may be assigned to different Employment and Training providers.~~

[87]. One participant may complete all of the required employment and training activities for the household.

[98]. Two-parent families are required to complete at least [30 40] hours of countable employment and training activities a week.

[109]. The total number of hours the adults in a two parent family may engage in work experience or community service is limited by the Fair Labor Standards Act (FLSA).

The maximum required monthly hours of participation in work experience or community service is determined by dividing the combined monthly TANF and food benefits by the higher of the Federal or the Delaware minimum wage.

[410]. Two -parent families may receive child care designated for participants in the TANF Employment and Training if the following conditions are met:

A. Both adults are participating in verified countable activities.

B. Both adults are engaging in at least 20 hours of activities a week.

[The employ ment an d t raining program will not ify th e Division of Social Se rvices when the requirements of this policy are not met.]

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2011 issue of the *Register* at page 770 (14 DE Reg. 770). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[DSSM: 3000 Technical Eligibility for Cash Assistance](#)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11004

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, notice is hereby given that the proposed regulation published in Volume 14, Issue 6, Number 533 of the December 1, 2010 issue of the *Delaware Register of Regulations* is withdrawn.

Summary of Notice of Withdrawal of a Proposed Regulation

On December 1, 2010, the Division of Social Services (DSS) published for public comment a proposal to amend Child Care Subsidy Program rules in the Division of Social Services Manual (DSSM). The purpose of this rule revision is to reduce the number of situations in which a family does not have a parent fee. The proposal updates **DSSM 11004.7**, *Determination of the Child Care Parent Fee and Fee Waiving Situations*, to eliminate specific situations which allow the child care parent fee to be waived. Specifically, all families receiving subsidized child care will have a parent fee except: 1) Families active with and referred by DFS; and 2) Teen parents attending high school or high school equivalent. Effective April 1, 2011, the proposed rule published on December 1, 2010 (14 **DE Reg.** 533) is withdrawn.

DSS received approximately 13 public comments from the child care community in response to the December 1, 2010 proposed rule. Following are three representative examples of the type of comments that were received.

Representative Example #1

The proposed change will require that all families (except families referred by Division of Family Services, including foster families, and teen parents) to pay a co-pay. This proposed change eliminates the previous exemptions for the poorest families. I am concerned that this policy change will increase the burden on families and providers, arguably the two groups with the fewest resources to contribute to the problem of financing the state's subsidized child care system. I urge you to reconsider this policy change and not adopt it as currently proposed.

Representative Example #2

I am distressed that DSS has proposed to "reduce the number of situations in which a family does not have a parent fee" as a way "to continue providing services to each family that is eligible for a child care subsidy" without providing adequate information about the impact on children, families and early care and education providers. According to the proposal, DSS is eliminating three (3) of the five (5) conditions in which child care fees can be waived. Families enrolled in TANF and General Assistance programs, as well as families under an "excessive financial burden" are required to contribute to their childcare subsidy. It is not clear how the "parent fee" will be calculated or assessed. These families are already in an economically fragile situation with no guarantee they will be able to pay the "parent fee" or increase in the "parent fee".

In addition, DSS has failed to consider the additional stress and impact on early care and education programs. Programs serving these economically fragile families will be impacted in terms of the time collecting fees and ensuring compliance, while endeavoring to provide a quality early care and education experience with inadequate funds.

I while I understand funding is an ongoing issue in these difficult economic times, I strongly urge DSS to consider alternate ways to in which to address the limits in funding. The current proposal puts undo additional stress on our most vulnerable children and families and further stress on an also vulnerable early care and education system. I respectfully suggest that DDS consider changing policies such as the one that mandates no waiting list for the Child Care Subsidy Program or possible reduce the threshold at which families are eligible. While I truly dislike making such suggestions, I truly believe they are a better alternative to what is being proposed and when analyzed would have a far less negative impact on children, families and the early care and education system.

The Child Care Subsidy Program is designed to reduce the financial burden of low-income families that need child care services in order to maintain employment and move toward self-sufficiency. Eliminating child care fee waivers as proposed will have far reaching ramifications which I do not believe have been fully considered or discussed. In addition to my concern about the proposed change, I am also concerned about the limited amount of time given to comment, as well as the methods utilized to secure comments. I don't imagine the parents who will be most affected by this proposal were given notice about the proposed change in order to voice their concerns.

I appeal to DSS to exercise caution in implementing any changes and take more time to consider the unintended consequences. I strongly believe that DSS should not implement the policy changes proposed regarding child care subsidies. Please take more time to consider other alternatives which do not have the extensive repercussions as those associated with eliminating the child care fee waivers for families in dire need of them.

Representative Example #3

First, consistent with Secretary Landgraf's FY 12 budget presentation, there is ostensibly a shortfall in funds for the Child Care Subsidy Program since DHSS is requesting \$3 million as a door opener.

Second, the apparent effect of limiting fee waivers would be twofold: 1) deterring participation in the Child Care Subsidy Program by caretakers no longer eligible for fee waiver; and 2) increasing provider compensation since some currently exempt caregivers would be required to pay the fee to providers. Parenthetically, the fee can be significant. Although SCPD lacks a copy of the 2010-2011 scale, the attached 2008-2009 scale is instructive. See also 16 DE Admin. Code 11004.7.1 which contains consistent regulatory table. A single parent with income at 100% of the federal poverty level would pay 21% of the costs of care.

Third, by deterring participation by some caregivers, DSS is undermining one of the Department's "top priorities", i.e., creating employment opportunities. See attached excerpt from Secretary's FY 12 budget presentation. The availability of child care is an important support for persons seeking employment.

Since the proposed regulation restricts fee waivers, [we] cannot provide its endorsement. In addition, [we] recommend that DSS add the following exceptions in the new regulation:

- "3. Homeless families as defined in §11003.7.2." Such families would generally be extremely needy and without funds to pay fees.
- "4. Families seeking care of 13 to under 19 year old children physically or mentally incapable of caring for themselves."

See 16 DE Admin. Code 11003 and 11003.7.8. Such children may be extremely needy and benefit from socialization within day care settings rather than isolation at home.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend existing Child Care Subsidy Program rules in the Division of Social Services Manual regarding *Determination of the Child Care Parent Fee and Fee Waiving Situations* is withdrawn effective April 1, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS NOTICE OF WITHDRAWAL OF PROPOSED REGULATION #11-12**REVISION:****11004.7 Determination ~~Of The~~ of the Child Care Parent Fee and Fee Waiving Situations**

45 CFR §§98.20 and 98.42

~~Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.~~

~~Child care fees may be waived if the family meets one of the five (5) conditions below.~~

~~On a case by case basis, families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.~~

~~Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.~~

~~Caretakers in Category 31 caring for a child/children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).~~

~~When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below 40% of the federal poverty level. Deductions are limited to:~~

- ~~• rent, mortgage, lot rent;~~
- ~~• any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);~~
- ~~• actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fees and past due amounts are not included.~~
- ~~• telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;~~
- ~~• un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)~~

~~EXAMPLE:~~

~~A family of three has gross monthly income of \$1,300.00. The parent fee for this family would be 16% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.~~

~~Total income per month equals: \$1,300.00~~

~~Total expenses are: \$85.00~~

~~After deductions: \$515.00~~

~~\$515.00 is less than \$553.00, 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.~~

~~EXAMPLE:~~

~~A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.~~

~~Total income per month equals: \$2,203.00~~

~~Total expenses are: \$785.00~~

~~After deductions: \$1,418.00~~

~~\$1,418.00 is more than \$666.00, 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.~~

~~Teen parents 18 years old or younger attending high school or a high school equivalent.~~

~~All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.~~

~~As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.~~

~~See Administrative Notice: A-08-2004 Waiving Child Care Fee~~

~~A 13-99 Child Care Fees/ Waiving Fees For Caretakers of ABC or GA Children~~

~~Families are required to contribute to the cost of child care services. All families receiving subsidized child care will have a parent fee except:~~

- ~~1. Families active with and referred by the Division of Family Services (DFS) including foster care families.~~
- ~~2. Teen parents 18 years old or younger attending high school or a high school equivalent.~~

FINAL REGULATIONS

DEPARTMENT OF JUSTICE

VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL

Statutory Authority: 11 Delaware Code, Section 9004 (11 Del.C. §9004)

1 DE Admin. Code 301

ORDER

301 Victims' Compensation Assistance Program Rules and Regulations

Introduction

The Violent Crimes Compensation Advisory Council of the State of Delaware hereby adopts this Report and Order, pursuant to 29 Del.C. §10118, for the purpose of final enactment of the amended regulations attached hereto. The proposed changes would add an additional regulation, numbered 29.0, relating to payment of mental health claims, to Section 301 of Title One of the Administrative Code. This regulation would require that VCAP pay all mental health providers at 80% of the usual and customary charge for services. This amount would be considered payment in full, and the mental health provider who accepted payment from VCAP would be unable to collect any additional monies from the victim, or from third parties, through so-called "balance billing". Enactment of this regulation would help preserve VCAP funds and would bring VCAP more in line with how private health insurers and other government programs reimburse mental health providers. This regulation is consistent with the practice recently adopted by VCAP in enacting Rule 28 with regard to reimbursement of medical providers.

Summary of Comments

A public hearing on the proposed regulation was held in Dover on Wednesday, February 23, 2011. No one appeared to offer comments on the proposed regulation.

A written submission was received from Judy A. Smith, the Vice-Chair of the Governor's Advisory Council for Exceptional Citizens (GACEC). The letter indicated that the Council members had reviewed the proposed regulation, and had voted to endorse it. Ms. Smith noted that the proposed regulation is straightforward and easy to understand, and that the rate of compensation was fair, as compared to other third-party sources of reimbursement. Finally, the letter noted that the proposed Rule offers sufficient protection for victims from the practice of "balance billing". These comments were reviewed and discussed by the Advisory Council at its meeting on March 1, 2011.

A memorandum was received from Daniese McMullin-Powell, Chair of the State Council of Persons with Disabilities ("SCPD"), regarding the proposed regulation. SCPD endorsed the proposed regulation, providing comments similar to those offered by GACEC.

Findings of Fact

The Advisory Council, upon review of the comments received and further discussion, determined that no changes in the draft proposal were necessary, and that the new regulation could be submitted for publication as drafted.

The Council found that enactment of the proposed Rule 29 would bring the payment practices for mental health providers in line with those of medical providers, pursuant to Rule 28. The proposed rule would clarify the process of payment, and would protect victims from "balance billing".

The Advisory Council further determined that a similar such regulation covering reimbursement for dental services should be pursued.

Decision of the Advisory Council

The Advisory Council reviewed the proposed rule at its meeting on March 1, 2011, and voted to adopt the proposed new rule, as drafted, with no changes.

Text of Rules Adopted

The final version of the proposed amended regulations of the Advisory Council is attached hereto, along with the signatures of those Advisory Council members, constituting a quorum, who voted to adopt the rule.

301 Victims' Compensation Assistance Program Rules and Regulations

*Please note that no changes were made to the regulation as originally proposed and published in the February 2011 issue of the *Register* at page 771 (14 DE Reg. 77 1). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[301 Victims' Compensation Assistance Program Rules and 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.: 2011-A-0021

Date of Issuance: March 16, 2011

Effective Date of the Amendment: April 11, 2011

1124 Control of Volatile Organic Compound Emissions

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 47.0, "Offset Lithographic Printing". The purpose of these proposed amendments is to conform to new Control Techniques Guidelines (CTG) issued by the U.S. Environmental Protection Agency (EPA).

Section 182(b)(2) of the Clean Air Act requires that all ozone non-attainment areas, including Delaware, must develop or update relevant regulations to implement Reasonably Available Control Technology controls on emission sources covered in the U.S. Environmental Protection Agency ("EPA")'s Control Techniques Guidelines ("CTG"), or Alternative Control Techniques, and submit the regulations to EPA as State Implementation Plan revisions.

Section 47.0 was originally developed in 1994 after EPA issued a CTG in 1993 for control of volatile organic compound (VOC) emissions from the offset lithographic printing industry. In September 2006, the EPA updated its CTG for the offset lithographic printing industry by adding control requirements for letterpress printing operations.

To reflect the new requirements in EPA's 2006 CTG, the Department's Division of Air Quality ("DAQ") revised 7 **DE Admin. Code** 1124, Section 47.0, "Offset Lithographic Printing" in early 2010. The 2010 revision expanded the control scope to include letterpress printing presses, and set up a new and more stringent 95% reduction standard for those control systems installed after the effective date of the proposed revision. After a relevant public comment period, a public hearing was held on June 2, 2010.

Two organizations, Printing Industries of America ("PIA") and Graphic Arts Association ("GAA") submitted comments regarding the proposed Section 47.0 prior to the June 2, 2010 hearing. Based on these comments, DAQ determined that substantive changes to the proposed Section 47.0, as set forth in the public hearing of June 2, 2010, were necessary. Two major changes are (1) specifying a one-year transition period for facilities to comply with the new requirements, and (2) providing flexibility for facilities to locate temperature monitoring devices for control systems. These new and substantive changes are reflected in Sections 47.1.2, 47.3.1, 47.5.4.4, 47.4.4, 47.6.1.2.2, and 47.6.3.1. To provide the opportunity for the public to review and comment on these new changes, the Department published a new and revised proposed Section 47.0, established a new public comment period, and scheduled a second public hearing on February 1, 2011 to specifically address those new changes.

The Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notice 2010-25. The Department published the proposed regulatory amendments in the January 1, 2011 *Delaware Register of Regulations* and held a public hearing on February 1, 2011. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 8, 2011 (Report). The Report recommends certain findings and the adoption of the proposed *revised* 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 DAQ developed the record and drafted the proposed Amendments. It should be noted that, while the Department received public comments once again from GAA with regard to the proposed *revised* amendments to the aforementioned Section 47.0 of 7 **DE Admin. Code** 1124, the Department believes that no additional revisions to this proposed regulatory language is necessary at this time.

I find that the Department's experts in DAQ fully developed the record to support adoption of these *revised* Amendments. With the adoption of these *revised* 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 *revised* Amendments, and provided the public with an adequate opportunity to comment on the proposed *revised* Amendments, including at a public hearing;
- 3.) The Department held public hearings, initially on June 2, 2010, and then again on February 1, 2011 on the proposed *revised* Amendments, in order to consider public comments before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments were fully vetted to the public, both in legal notices and at the time of the public hearing, and do not reflect any substantive changes from the proposed *revised* regulation Amendments as published in the January 1, 2011, *Delaware Register of Regulations*;
- 6.) The recommended *revised* 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 Section 47.0 of 7 **DE Admin. Code** 1124 will enable Delaware to do the following: (i) specify a one-year transition period for facilities to comply with the new requirements, (ii) provide flexibility for facilities to locate temperature

monitoring devices for control systems; and (3) the *revised* 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

(Break in Continuity of Sections)

47.0 Offset Lithographic Printing and Letterpress Printing.

~~41/29/1994~~ 04/11/2011

47.1 Applicability.

- 47.1.1 ~~The provisions of 47.0 of this regulation apply to any offset lithographic or letterpress printing press facility, including heatset web, non heatset web (non newspaper), non heatset sheet fed, and newspaper (non heatset web) facilities. Except as provided in 47.1.2 of this regulation, every owner or operator of any offset lithographic or letterpress printing press shall comply with the provisions of 47.0 of this regulation on and after [insert effective date of the revised 47.0 of regulation].~~
- 47.1.2 Transition period for existing permitted sources. Every owner or operator of any offset lithographic printing press that is subject to a permit issued pursuant to 7 DE Admin Code 1102 or 1130 containing all applicable conditions of 47.0 of this regulation, as that regulation existed on November 29, 1994, shall comply with those permit conditions for up to one year after the effective date of this revision of 47.0 of this regulation. Every owner or operator of any letterpress printing press that is subject to a permit issued pursuant to 7 DE Admin Code 1102 or 1130 shall comply with the permit's conditions for letterpress printing for up to one year after the effective date of this regulation. On and after the date one year after the effective date of this revision of 47.0 of this regulation, every such owner or operator of any offset lithographic or letterpress printing press shall comply with the provisions of 47.0 of this regulation.
- 47.1.23 Except as specified in 47.6.1 of this regulation, the provisions of 47.0 of this regulation do not apply to any offset lithographic and letterpress printing facility press within a facility whose total actual volatile organic compound (VOC) emissions from all offset lithographic and letterpress printing operations (including emissions from cleaning solutions used on lithographic printing presses) are less than 6.8 kilograms (kg) (15 pounds [lb]) VOCs per day before the application of capture systems and control devices.
- 47.1.3 ~~The provisions of 47.0 of this regulation do not apply to other types of printing operations, such as flexography, rotogravure, or letterpress.~~
- 47.1.4 ~~Existing sources affected by 47.0 of this regulation shall comply with the provisions of 47.0 of this regulation as soon as practicable, but no later than April 1, 1996. New, modified, or reconstructed sources affected by 47.0 of this regulation shall comply with the provisions of 47.0 of this regulation upon startup.~~
- 47.1.54 Any facility that becomes or is currently subject to the provisions of 47.0 of this regulation by exceeding the applicability threshold in 47.1.23 of this regulation shall remain subject to these provisions 47.0 of this regulation even if its emissions later fall below the applicability threshold.
- 47.1.65 Any facility that is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to these provisions, even if its throughput or emissions have fallen or later fall below the applicability threshold.

- 47.2 Definitions. As used in 47.0 of this regulation, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments (CAAA), or in 2.0 of this regulation.
- “Alcohol”** means a chemical compound consisting of the hydroxyl (OH) group attached to an alkyl radical and having the general formula $C_nH_{2n+1}OH$, such as ethanol, n-propanol, and iso-propanol.
- “Alcohol substitute”** means a non-alcohol additive that contains VOCs and is used in the fountain solution to reduce the surface tension of water or to prevent piling (ink build-up).
- “Batch”** means a supply of fountain solution that is prepared continuously or as a batch and that is used without alteration until completely used or removed from the printing process.
- “Cleaning solution”** means a liquid that is used to remove ink, including dried ink, and debris from the operating surfaces of the printing press and its parts.
- ~~**“Dampening system”** means equipment that is used to deliver the fountain solution to the lithographic plate.~~
- “Fountain solution”** means a mixture of water and non-volatile printing chemicals, and additives which reduce the surface tension of the water. The fountain solution wets the non-image areas so that the ink is maintained within the image areas.
- “Heatset”** means any operation in which heat is required to evaporate ink oil from the printing ink.
- “Letterpress printing”** means a printing process in which the image is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.
- “Lithography”** or **“lithographic printing”** means a printing process in which the image and non-image areas are chemically differentiated; the image area is oil-receptive and the non-image area is water-receptive. This method differs from other printing methods, in which the image is a raised or recessed surface.
- “Non-heatset”** or **“coldset”** means any operation in which printing inks are set without the use of heat. For the purposes of 47.0 of this regulation, ultraviolet-cured and electron beam-cured inks are considered non-heatset operations.
- “Offset lithographic printing”** means a printing process ~~in which that transfers~~ the ink film is transferred from the lithographic plate to an intermediary surface (blanket), which, in turn, transfers the ink film to the substrate.
- “Press”** means a printing production assembly that is composed of one or many units to produce a printed sheet or web.
- “Sheet-fed”** means a printing operation in which individual sheets of substrate are fed to the press sequentially.
- “Total actual VOC emissions”** means the quantity of VOCs emitted from all lithographic ~~printing presses and letterpress printing operations, including VOC emissions from cleaning materials and activities,~~ during a particular time period.
- “Unit”** means the smallest complete printing component of a printing press.
- “Web”** means a continuous roll of paper used as the printing substrate.
- 47.3 Standards.
- 47.3.1 No owner or operator of a heatset offset lithographic printing press or a heatset letterpress printing press shall operate the printing press unless the owner or operator installs a control device to reduce VOC emissions from the press dryer exhaust vent by complying with 47.3.1.1, or 47.3.1.2, or 47.3.1.3 at all time the press operates:
- 47.3.1.1 At least 90% (weight) of the uncontrolled total organics (minus methane and ethane), or maintains a maximum dryer exhaust outlet concentration of 20 parts per million by volume (ppmv) as methane (as C1), whichever is less stringent when the press is in operation by weight, if the first installation date of the control device is prior to [insert the effective date of this regulation].
- 47.3.1.2 At least 95%, by weight, if the first installation date of the control device is on or after [insert the effective date of this regulation].

- 47.3.1.3 Maintaining a maximum press dryer exhaust outlet VOC concentration of 20 parts per million by volume (ppmv) as carbon (C1) on a dry basis.
- 47.3.2 No owner or operator of an offset lithographic printing press that uses alcohol in the fountain solution shall operate the printing press unless the owner or operator meets one of the requirements listed under 47.3.2.1, 47.3.2.2, or 47.3.2.3, and 47.3.2.4 of this regulation.
- 47.3.2.1 For any heatset web offset lithographic printing presses:
- 47.3.2.1.1 When the fountain solution contains alcohol, the fountain solution on-press (as applied) VOC content shall be maintained at 1.6% or less (by volume). Alternatively, a standard of 3% or less (by volume) alcohol may be used if the fountain solution containing alcohol is refrigerated to less than 15.6 degrees Celsius (°C) (60 degrees Fahrenheit [°F]).
- 47.3.2.1.1.1 At 1.6% or less (by volume), or
- 47.3.2.1.1.2 At 3.0% or less (by volume) and the temperature of the fountain solution shall be maintained at or below 15.5 degrees Celsius (°C) (60 degrees Fahrenheit [°F]).
- 47.3.2.1.2 When the fountain solution contains no alcohol, the fountain solution on-press (as-applied) VOC content shall be maintained at 3.0% or less (by volume).
- 47.3.2.2 For any non-heatset web offset lithographic printing presses, the alcohol content in the fountain solution shall be eliminated. Alternatively, non alcohol additives or alcohol substitutes may be used to accomplish the total elimination of alcohol use:
- 47.3.2.2.1 There shall be no alcohol in the fountain solution, and
- 47.3.2.2.2 The fountain solution on-press (as-applied) VOC content shall be maintained at 3.0% or less (by volume).
- 47.3.2.3 For any sheet-fed offset lithographic printing presses, the alcohol content in the fountain solution shall be maintained at 5% or less (by volume). Alternatively, a standard of 8.5% or less (by volume) alcohol may be used if the fountain solution is refrigerated to below 15.6°C (60°F) the fountain solution on-press (as-applied) VOC content shall be maintained.
- 47.3.2.3.1 At 5.0% or less (by volume), or.
- 47.3.2.3.2 At 8.5% or less (by volume) and the temperature of the fountain solution shall be maintained at or is refrigerated to below 15.65°C (60°F).
- 47.3.2.4 Any type of offset lithographic printing press shall be considered in compliance with this regulation if the only VOCs in the fountain solution are in non alcohol additives or alcohol substitutes, so that the concentration of VOCs in the fountain solution is 3.0% or less (by weight). (The fountain solution shall not contain any alcohol.)
- 47.3.3 No owner or operator of an offset lithographic printing press or a letterpress printing press shall operate the printing press unless the owner or operator reduces VOC emissions from cleaning solutions by meeting requirements in 47.3.3.1, or 47.3.3.2 and 47.3.3.3, of this regulation:
- 47.3.3.1 Using a cleaning solution with a 30% or less (as used) VOC content.
- 47.3.3.2 Alternatively, the use of cleaning solutions with a VOC composite partial vapor pressure less than 10 millimeters (mm) mercury (Hg) (0.4 inches [in] Hg) at 20°C (68°F) may be used. The VOC composite partial vapor pressure is calculated as follows:

$$PP_C = \sum_{i=1}^n \frac{\frac{(W_i)(VP_i)}{MW_i}}{\frac{W_w}{MW_w} + \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

(47-1)

Where:

FINAL REGULATIONS

W_i = Weight of the i^{th} VOC compound, in grams (g);

W_w = Weight of water, in g;

W_e = Weight of exempt compound, in g;

MW_i = Molecular weight of the i^{th} VOC compound, in grams per gram-mole

$$\left(\frac{\text{g}}{\text{g-mole}} \right);$$

MW_w = Molecular weight of water, in $\left(\frac{\text{g}}{\text{g-mole}} \right);$

MW_e = Molecular weight of exempt compound, in $\left(\frac{\text{g}}{\text{g-mole}} \right);$

PP_C = VOC composite partial pressure at 20°C, in mmHg

VP_i = Vapor pressure of the i^{th} VOC compound at 20°C, in mmHg

47.3.3.3 Keeping all cleaning solutions and used shop towels or cloths in closed containers.

47.4 Control Devices. An owner or operator of an offset lithographic printing press or a letterpress printing press equipped with a control system shall ensure that:

47.4.1 The capture system and control device are operated at all times ~~that~~ when the printing press is in operation, and ~~the owner or operator demonstrates~~ compliance with 47.0 of this regulation is demonstrated through the applicable coating analysis and capture system and control device efficiency test methods specified in **Appendix B**, **Appendix D**, and **Appendix E** of of this regulation and in accordance with the capture efficiency test methods specified in **Appendix D** of this regulation.

47.4.2 The control device is equipped with the applicable monitoring equipment specified in 2.0 of **Appendix D** of this regulation, and the monitoring equipment is installed, calibrated, operated, and maintained according to the vendor's specifications at all times the control device is in use.

47.5 Test Methods and Procedures.

47.5.1 The VOC content of each ink, the alcohol content of each fountain solution, and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in **Appendix A** through **Appendix D** of this regulation to establish the records required under 47.6 of this regulation.

47.5.2 To demonstrate compliance with the emission control requirements of 47.0 of this regulation, the ~~affected facility~~ affected by 47.0 of this regulation shall be run at maximum operating conditions and flow rates during any emission testing.

47.5.3 Emission tests for facilities using an add-on dryer exhaust control device shall include an initial test when the control device is installed and operating in operation that demonstrates compliance with either the 90% (by weight) reduction or the 20 ppmv emission limit 47.3.1 of this regulation.

47.5.4 To determine compliance with 47.3.2 of this regulation, the owner or operator of an offset lithographic printing facility shall perform the following procedures:

47.5.4.1 A sample shall be taken of the fountain solution (as used) from the fountain tray or reservoir that contains a fresh batch of fountain solution (after mixing), for each unit or centralized reservoir, to determine the alcohol content of the fountain solution in accordance with 47.3.2.1 through 47.3.2.34 of this regulation, before the fountain solution is used.

- 47.5.4.2 A direct measurement of the alcohol content of the fountain solution sample or samples shall be performed in accordance with the method specified in **Appendix L** of this regulation.
- 47.5.4.3 Alternatively, a sample of the fountain solution (as used) may be taken from the fountain tray or reservoir of fountain solution during use and measured with a hydrometer or refractometer that has been standardized with tests performed in accordance with 47.5.4.1 and 47.5.4.2 of this regulation. The unit shall be considered in compliance with 47.3.2.1 through 47.3.2.34 of this regulation if the refractometer or hydrometer measurement is less than or equal to the measurement obtained by the method specified in **Appendix L** of this regulation plus 10%.
- 47.5.4.4 The VOC content of a fountain solution containing alcohol substitutes or non-alcohol additives shall be established with proper recordkeeping and the manufacturer's ~~laboratory analysis~~ technical information of the VOC content of the concentrated alcohol substitute and included in facility records. Records shall include the amount of concentrated substitute added per quantity of fountain water; the date and time of preparation if the fountain solution is mixed as a batch; and the calculated VOC content of the final solution to fulfill the requirements listed in 47.3.2.4 of this regulation.
- 47.5.5 To determine compliance with 47.3.2.1.12 and 47.3.2.32 of this regulation, an owner or operator of an offset lithographic printing facility shall use a thermometer or other temperature detection device capable of reading to 0.28°C (0.5°F) accuracy to ensure that a refrigerated fountain solution containing alcohol is below 15.65°C (60°F) at all times.
- 46.5.6 To determine compliance with 47.3.3 of this regulation, an owner or operator of an offset lithographic printing press or a letterpress printing press shall:
- 47.5.6.1 Take a sample of the cleaning solution (as used) to demonstrate compliance with the cleaning solution VOC content limitations listed in 47.3.3 of this regulation. If the cleaning solution is used as received from the supplier without dilution or alteration, the manufacturer's technical information may be used to demonstrate compliance.
- 47.5.6.2 Use the method specified in **Appendix L** of this regulation to determine the VOC content of the cleaning solution (as used). Alternatively, the VOC content and VOC partial pressure of the cleaning solution may be established using the manufacturer's technical data. If the cleaning solution is prepared through the dilution of concentrated materials, the blending ratio and VOC content of the concentrate may be used to determine the "as used" VOC content of the cleaning solution.
- 47.6 Recordkeeping and Reporting.
- 47.6.1 Requirements for Sources Below Threshold Emission Limit. Any owner or operator of any offset lithography printing ~~press facility, any letterpress printing facility, or any facility with both offset lithographic and letterpress printing operations,~~ that emits less than the threshold limit according to 47.1 of this regulation shall comply with the following requirements:
- 47.6.1.1 Initial Certification. Within six months after April 11, 2011, or upon initial startup of a new printing press, ~~the~~ owner or operator shall certify to the Department that the facility emits less than the threshold limit according to 47.1 of this regulation. Such certification shall include the following information:
- 47.6.1.1.1 The name and location of the facility.
- 47.6.1.1.2 The address and telephone number of the person responsible for the facility.
- 47.6.1.1.3 A declaration that the facility is not subject to the requirements of 47.0 of this regulation because of the criteria listed in 47.1 of this regulation.
- 47.6.1.1.4 The calculations demonstrating that total actual VOC emissions from all offset lithographic and letterpress printing presses at the facility are and will be less than 6.8 kg (15 lb) per day before the application of capture systems and control devices.

- 47.6.1.1.5 A description of the instrument or method by which the owner or operator accurately measured or calculated the volume of ink applied and the amount that can potentially be applied each year on each printing press.
- 47.6.1.2 Recordkeeping. On and after April 11, 2011, ~~the~~ owner or operator shall collect and record all of the following information each year for each offset lithographic printing press and each letterpress printing press and maintain the information at the facility for a period of five years:
- 47.6.1.2.1 The name and identification number of each ink, as applied, each year on each printing press.
- ~~47.6.1.2.2 The weight of VOC per volume of coating solids and the volume of solids of each ink, as applied, each year on each printing press.~~
- 47.6.1.2.3~~2~~ The total actual VOC emissions as calculated in 47.6.1.1.4 of this regulation using the VOC content for that year.
- 47.6.1.3 Reporting. On and after April 11, 2011, ~~Upon promulgation of 47.0 of this regulation,~~ any record showing that total actual emissions of VOCs from all offset lithographic printing presses and all letterpress printing presses exceed 6.8 kg (15 lb) per day before the application of capture systems and control devices shall be reported by sending a copy of the record to the Department within 45 calendar days after the exceedance occurs. This requirement is in addition to any other State of Delaware exceedance reporting requirements.
- 47.6.2 Requirements for Sources Above Threshold Emission Limit. Any owner or operator of any offset lithography printing press facility, or any letterpress printing facility, or any facility with both offset lithographic and letterpress printing operations, that emits greater than the threshold limit according to 47.1 of this regulation shall comply with the following requirements:
- 47.6.2.1 Initial Certification. Within six months after April 11, 2011, or upon initial startup of a new printing press, ~~the~~ owner or operator shall certify to the Department that the facility emits greater than the threshold limit according to 47.1 of this regulation. Such certification shall include the following information:
- 47.6.2.1.1 The name and location of the facility.
- 47.6.2.1.2 The address and telephone number of the person responsible for the facility.
- 47.6.2.1.3 The calculations demonstrating that total actual VOC emissions from all ~~offset lithographic printing presses~~ aspects of printing operations at the facility are and shall be greater than 15 lb (6.8 kg) per day before the application of capture systems and control devices.
- 47.6.2.1.4 A description of the instrument or method by which the owner or operator accurately measured or calculated the volume of ink applied and the amount that can potentially be applied each year on each printing press.
- 47.6.2.2 Recordkeeping. On and after April 11, 2011, ~~the~~ owner or operator shall collect and record all of the following information each year for each offset lithographic printing press and each letterpress printing press and maintain the information at the facility for a period of five years:
- 47.6.2.2.1 The name and identification number of each ink, as applied, each year on each printing press.
- 47.6.2.2.2 The weight of VOCs per volume of coating solids and the volume of solids of each ink, as applied, each year on each printing press.
- 47.6.2.2.3 The total actual VOC emissions as calculated in ~~47.6.1.1.4~~ 47.6.2.1.3 of this regulation using the VOC content for that year.
- 47.6.3 Requirements for Sources Using an Add-On Dryer Exhaust Control Device.
- 47.6.3.1 Within six months after April 11, 2011, or upon initial startup of a new printing press, ~~the~~ owner or operator of a heatset offset lithographic printing press, or a heatset letterpress printing press, shall install, calibrate, maintain, and operate a temperature monitoring

- device, according to the manufacturer's instructions, at the outlet of the control device or at a location approved by the Department [and the EPA]. The monitoring temperature shall be set during the testing required to certify compliance with the requirements of 47.4 of this regulation. Monitoring shall be performed only when the unit is operational.
- 47.6.3.2 The temperature monitoring device shall be equipped with a continuous recorder and shall have an accuracy of 0.28°C (0.5°F).
- 47.6.3.3 The dryer pressure shall be maintained lower than the press room area pressure such that air flows into the dryer at all times when the press is operating. A 100% emissions capture efficiency for the dryer shall be demonstrated using an air flow direction measuring device.
- 47.6.4 Requirements for Monitoring Fountain Solution VOC Concentration. On and after April 11, 2011, ~~the~~ alcohol concentration in the fountain solution shall be monitored to provide data that can be correlated to the amount of material used when the fountain solution complies with the limits listed in 47.3.2.1 through 47.3.2.4~~3~~ of this regulation. One of the following methods shall be used to frequently measure the concentration of alcohol in the fountain solution:
- 47.6.4.1 The owner or operator of any offset lithographic printing press shall monitor the alcohol concentration of the fountain solution with a refractometer that is corrected for temperature at least once per 8-hour shift or once per batch, whichever is longer. The refractometer shall have a visual, analog, or digital readout with an accuracy of 0.5%. A standard solution shall be used to calibrate the refractometer for the type of alcohol used in the fountain. Alternatively, the refractometer shall be standardized with measurements performed to determine compliance, according to the procedures described in 47.5.4.1 and 47.5.4.2 of this regulation.
- 47.6.4.2 Alternatively, the owner or operator of any offset lithographic printing press shall monitor the alcohol concentration of the fountain solution with a hydrometer equipped with a temperature correction at least once per eight-hour shift or once per batch, whichever is longer. The hydrometer shall have a visual, analog, or digital readout with an accuracy of 0.5%. A standard solution shall be used to calibrate the hydrometer for the type of alcohol used in the fountain. Alternatively, the hydrometer shall be standardized with measurements performed to determine compliance, according to the procedures described in 47.5.4.1 and 47.5.4.2 of this regulation.
- 47.6.4.3 The VOC content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for the type of VOCs in the fountain solution. The conductivity meter reading for the fountain solution shall be referenced to the conductivity of the incoming water.
- 47.6.4.4 If, through recordkeeping for a period of 6 months or more, the printing process is shown to consistently meet the requirements in 47.3.2-4 and 47.5.4 of this regulation, the monitoring requirement may be waived or extended to a longer period of time upon prior approval by the Department.
- 47.6.5 Requirements for Monitoring Fountain Solution Temperature. On and after April 11, 2011:
- 47.6.5.1 The owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain solution shall install, maintain, and continuously operate a temperature monitor of the fountain solution reservoir.
- 47.6.5.2 The temperature monitor shall be attached to a continuous recording device such as a strip chart, recorder, or computer.
- 47.6.6 Requirements for Monitoring Cleaning Solution. On and after April 11, 2011, ~~for~~ any offset lithographic printing press or any letterpress printing press with continuous cleaning equipment, flow meters shall be used to monitor the water and cleaning solution flow rates. The flow meters shall be calibrated so that the VOC content of the mixed solution is accurately measured to fulfill the requirements of 47.3.3 of this regulation.
- 47.6.7 Requirements for Monitoring Other Key Parameters. On and after April 11, 2011, ~~the~~ owner or operator of any offset lithographic printing press or any letterpress printing press shall record daily,

and make available to the Department within 45 calendar days upon the Department's verbal or written request, the following key parameters:

- 47.6.7.1 The type of control device operating on ~~the~~ any heatset offset lithographic printing press or any heatset letterpress printing press and the operating parameters specified in ~~[47.5.3 47.3.1]~~ of this regulation.
- 47.6.7.2 The ~~[equipment operating]~~ standard selected to comply with the requirements listed in 47.3.2.1 through 47.3.2.4~~3~~ and 47.3.3 of this regulation.
- 47.6.7.3 The VOC content of the fountain solutions and cleaning solutions, to comply with the requirements listed in 47.5.4, 47.6.4, and 47.6.6 of this regulation.
- 47.6.7.4 The temperature of the fountain solution, to comply with the requirements listed in 47.6.5 of this regulation, if applicable.
- 47.6.7.5 For manual cleaning methods, the amount of cleaning solution and the amount of water added per batch of cleaning solution mixed.
- 47.6.7.6 For automatic cleaning methods, the flow rates of water and cleaning solution concentrate, as specified in 47.6.6 of this regulation.
- 47.6.7.7 Corrective actions taken when exceedances of any parameters monitored according to the requirements of 47.4 or 47.5 of this regulation, occur.

14 DE Reg. 628 (01/01/11)

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 1142

REGISTER NOTICE

SAN # 2010-22

1142 Specific Emission Control Requirements

1. Introduction

In November 2009, Delaware promulgated Section 2.0 of 7 **DE Admin. Code** 1142, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries. In June 2010, Section 2.0 of 1142 was approved by the Environmental Protection Agency (EPA) into Delaware's State Implementation Plan (SIP) (75 *FR* 31711).

The purpose of Section 2.0 of 7 **DE Admin. Code** 1142 is to reduce nitrogen oxides (NO_x) emissions from large industrial boilers and process heaters that are located at petroleum refineries. This reduction in NO_x emissions from the affected units would aid in the attainment and maintenance of any national ambient air quality standard (NAAQS), and any other applicable requirement that is affected by NO_x emissions. NAAQSs and applicable requirements that are affected by NO_x emissions are:

- **Ozone NAAQS.** NO_x emissions impact air quality relative to ozone. This is because ozone is formed through a reaction in the atmosphere between NO_x and volatile organic compounds (VOC) in the presence of heat and sunlight (i.e., NO_x and VOC are precursors to the formation of ozone). The air quality in Delaware is designated under Section 107 of the Clean Air Act (CAA) as not meeting the 1997 health based NAAQS of 0.08 ppm for ozone. In addition, the EPA issued a revised 8-hour ozone NAAQS of 0.075 ppm in March 2008, and has proposed to reconsider that revised NAAQS in January of 2010. The air quality in Delaware is anticipated to be designated as non-attainment under the new ozone NAAQS.

Under the 1997 ozone NAAQS the entire state of Delaware is included as part of a Philadelphia based non-attainment area (NAA). Delaware submitted to the EPA an attainment demonstration SIP in July 2007 which demonstrated that the NAA would attain compliance with that NAAQS by 2010. EPA has not yet issued area designations for the 2008 revised NAAQS, and has not yet finalized its reconsideration of the 2008 revised NAAQS.

- **Fine Particulate Matter (PM_{2.5}) NAAQS.** NO_x emissions contribute to the formation of nitrate particulates in the atmosphere, and nitrate particles are PM_{2.5} (i.e., they are particles with an aerodynamic diameter of 2.5 microns or less). The air quality in New Castle County Delaware is designated under Section 107 of the CAA as not meeting the 1997 health based NAAQS for PM_{2.5}. In addition, the EPA issued a revised PM_{2.5} NAAQS in 2006.

Under the 1997 NAAQS New Castle County Delaware is included as part of a Philadelphia based NAA. Delaware submitted to the EPA an attainment demonstration SIP in April 2008 which demonstrated that the NAA would attain compliance with the NAAQS by 2010¹. Relative to the 2006 PM_{2.5} NAAQS, New Castle County Delaware is designated as non-attainment for the daily standard, and is included as part of the Philadelphia based NAA. The attainment demonstration SIP is due in December 2012.²

- **Visibility.** NO_x emissions contribute to the formation of PM_{2.5}, and PM_{2.5} is a visibility impairing pollutant under the federal regional haze program. Visibility impairing emission from Delaware have been determined to “significantly”³ impact one (1) federal class 1 area, Brigantine National Wildlife Area, in New Jersey.

The State of Delaware submitted to the EPA in September 2009 a Visibility SIP that met the requirements of Part C to Title I of the CAA. This SIP primarily relied upon SO₂ reductions, because sulfate was determined by the Regional Planning Organizations to be the main cause of visibility impairment in Class I areas. However, the SIP also partially relied on reductions in NO_x emissions to demonstrate that Delaware has met its 2018 visibility related goals.

- **Nitrogen Dioxide (NO₂) NAAQS.** NO_x emissions, by definition, directly impact ambient NO₂ concentrations. The air quality in Delaware is designated under Section 107 of the CAA as meeting the current annual NO₂ NAAQS. In February 2010, the EPA revised the annual NO₂ NAAQS and issued a new hourly NO₂ NAAQS.

EPA has not issued designations of areas under the 2010 revised NAAQS, and State recommendations for designation of areas are due to the EPA in January 2011.

Section 2.0 of 7 **DE Admin. Code** 1142 does not limit emissions of any pollutant other than NO_x. Section 2.0 covers nine (9) emission units at the Delaware City Refinery, and imposes compliance dates between 2007 and 2012, depending on the particular emission unit.

In 2009 the operations of equipment at the Delaware City Refinery were discontinued, and in 2010 the refinery ownership changed from Premcor Refining Group Inc. to Delaware City Refining Company, LLC (“DCRC”). Two actions related to this change in ownership impact Delaware’s SIP:

- On May 28, 2010, the Delaware Department of Natural Resources and Environmental Control (the Department) reached an enforcement settlement with Premcor. This settlement, among other things, terminated

1. Based on 2007-2009 monitoring data, New Castle County has attained the 1997 NAAQS for the annual and daily standard.
2. Based on 2007-2009 monitoring data, New Castle County has already attained the 2006 PM_{2.5} NAAQS.
3. As a result of the consultation process, the Middle Atlantic and Northeast Visibility Union (MANE-VU) States defined contributions to Class I areas as “significant” if a State contributed at least 2 percent of total sulfate observed on the 20 percent worst visibility days in 2002. Based on the MANE-VU Contribution Assessment and the application of the “≥ 2% SO₂ rule,” emissions from Delaware were determined to contribute to visibility degradation exclusively to the Brigantine Wilderness Class I area (note that NO_x was not the primary pollutant of concern in this round of Regional Haze SIPs).

the 2008 FCCU NO_x Agreement which had required the Premcor fluid catalytic cracking unit CO boiler to meet a 20 parts per million (ppm) NO_x emission limitation by May 1, 2009.⁴

- On May 31, 2010 the Department and DCRC reached an agreement on DCRC's acquisition, restart and operation of the Delaware City Refinery. One element of that agreement provides that the Department will propose to revise Section 2.0 of 7 **DE Admin. Code** 1142 to provide for a facility-wide NO_x emission cap compliance alternative.

In a separate regulatory process, Delaware is proposing to revise Section 2.0 of 7 **DE Admin. Code** 1142 to (1) provide for the control of NO_x from the Fluid Catalytic Cracking Unit CO boiler to the level that was previously required by the 2008 consent agreement, and (2) provide for a facility-wide NO_x emission cap compliance alternative. The purpose of this SIP revision is to demonstrate that these revisions to Section 2.0 of 7 **DE Admin. Code** 1142 will not interfere with attainment or maintenance of any NAAQS, or any other applicable requirement of the CAA.

Questions or comments regarding this SIP revision should be addressed to Ronald A. Amirikian, Planning Branch Manager, Division of Air Quality, Delaware Department of Natural Resources and Environmental Control, at (302) 739-9402 or ronald.amirikian@state.de.us.

2. Impact Analysis

Section 2.0 of 7 **DE Admin. Code** 1142 sets emission limits only for the pollutant NO_x, and only impacts the Delaware City Refinery (i.e., the Delaware City Refinery is the only petroleum refinery within the State of Delaware). This analysis considers the effect the revisions to Section 2.0 of 7 **DE Admin. Code** 1142 have on applicable requirements for which NO_x emissions are a precursor or pollutant of interest. That is, the pollutants ozone, PM_{2.5}, visibility, and NO₂.

2.1 Baseline NO_x emissions from the Delaware City Refinery.

Ozone. 2002 is the SIP base year for planning associated with the 1997 0.08 ppm ozone NAAQS. Actual 2002 base year NO_x emissions from the Delaware City Refinery were 3,555 TPY. For the 2008 revised NAAQS, which is currently being reconsidered, a SIP planning base year has not yet been determined. The most current emission inventory is 2008, and actual 2008 NO_x emissions from the Delaware City Refinery were 2,525 TPY.

PM_{2.5}. 2002 is the SIP base year for planning associated with the 2008 PM_{2.5} 15 ug/m³ annual, and the 65 ug/m³ daily NAAQSs. Base year 2002 NO_x emissions are identical to those identified under ozone above. For the 2008 revised NAAQS, a SIP planning base year has not yet been determined. The most current emission inventory is 2008, and actual 2008 NO_x emissions from the Delaware City Refinery were those identified under ozone above.

Visibility. 2002 is the SIP base year for planning associated with Delaware's 2008 Visibility SIP. Base year 2002 NO_x emissions are those identified under ozone above.

NO₂. For the 2010 revised NAAQS, area designation has not yet occurred, and a SIP planning base year has not yet been determined. The most current emission inventory is 2008, and actual 2008 NO_x emissions from the Delaware City Refinery were those identified under ozone above.

2.2 Projected NO_x emissions from the Delaware City Refinery under current (i.e., before revision) Section 2.0 of 7 **DE Admin. Code** 1142.

Ozone. Delaware's 2007 Ozone SIP demonstrates that compliance with the 1997 0.08ppm ozone NAAQS will be achieved in 2009, based on 2009 projected emission levels. 2002 was the SIP base year, and 2002 base year NO_x emissions (see 2.1 above) were projected to 2009 by applying factors that account for projected growth and controls. The projection calculations are explained in detail in the 2007 ozone SIP.

4. 2008 Consent Decree with Premcor Refinery at Delaware City, The FCCU NO_x Agreement

The following five (5) emission units received post-2002/Pre-2009 emission controls that were relied upon in the 2007 ozone SIP calculations⁵:

- Boiler 1 (Unit 80-1) – 80% control from 7 **DE Admin. Code** 1142⁶
- Boiler 2 (Unit 80-2) – 80% control from 7 **DE Admin. Code** 1142
- Crude Unit vacuum Heater (Unit 21-H-2) – 60% control from 1142
- Fluid Catalytic Cracking Unit CO Boiler – 86.7% control from 2008 Consent Decree⁷
- Methanol Plant Heater 41-H-1 – 100% control from 2003 shut down

Resultant 2009 attainment year emissions from the Delaware City Refinery (i.e., those after the application of growth, the 41-H-1 shutdown, the control of Units 80-1, 80-2, 21-H-2, and the Cracker CO boiler) were estimated at 2,855 TPY.

PM_{2.5} Delaware's 2008 PM_{2.5} SIP demonstrates that compliance with the 1997 15 ug/m³ annual, and the 65 ug/m³ daily standards will be achieved in 2009, based on 2009 projected emission levels. 2002 was the SIP base year, and 2002 base year NO_x emissions (see 2.1 above) were projected to 2009 by applying factors that account for projected growth and controls. The projection calculations are those discussed under ozone above.

Visibility. Delaware's 2009 Visibility SIP is based on 2018 projected emission levels.

Section 2.0 of 7 **DE Admin. Code** 1142 provides for compliance dates between 2009 and 2012. In 2012 the requirements of 7 **DE Admin. Code** are fully implemented. As part of Delaware's 2009 Visibility SIP, 2002 NO_x emissions from the Delaware City Refinery were projected to be 2,761 TPY, and 2,774 TPY, for 2012 and 2018, respectively.

The 1142 related NO_x controls relied upon in the Visibility SIP were:

- Boiler 1 (Unit 80-1) – 80% control from 7 **DE Admin. Code** 1142
- Boiler 2 (Unit 80-2) – 80% control from 7 **DE Admin. Code** 1142
- Crude Unit vacuum Heater (Unit 21-H-2) – 60% control from 1142
- Fluid Catalytic Cracking Unit CO Boiler – 86.7% control from 2008 Consent Decree
- Methanol Plant Heater 41-H-1 – 100% control from 2003 shut down
- Boilers 80-3 and 80-4 – 100% control from shutdown on or before May 1, 2011.⁸

NO₂ For the 2010 revised NAAQS, area designation has not yet occurred. The 2002 and 2008 actual NO_x emissions, and the 2009, 2012 and 2018 projected NO_x emissions discussed above are used to evaluate the impact that the revisions to Section 2.0 of 7 **DE Admin. Code** 1142 would have on future NO₂ NAAQS planning.

2.3 Revision to Section 2.0 of 7 **DE Admin. Code** 1142.

Delaware is revising Section 2.0 of 7 **DE Admin. Code** 1142 to (1) provide for the control of NO_x emissions from the Fluid Catalytic Cracking Unit CO Boiler (Unit 23-H-3) that was previously required under a 2008 consent decree, and (2) provide for, as an option, compliance with a facility-wide NO_x cap as an alternative to unit specific NO_x emission limitations.

The initial facility-wide cap is being established at the level of Premcor's actual 2008 NO_x emissions (i.e., 2,525 TPY), and will decline in two step decreases, as follows:

5. Note that the Crude Unit Atmospheric Heater (Unit 21-H-701) is regulated by 7 **DE Admin. Code** 1142. 1142 imposes a limit of 0.04 lb/mmbtu, however, this limit was previously imposed in 1996 as a LAER limit pursuant to 7 **DE Admin. Code** 1125. Unit 21-H-701 will remain subject to the 0.04 lb/mmbtu limit independent of 7 **DE Admin. Code** 1142 because it was a NSR derived limitation

6. 2.0 of 7 **DE Admin. Code** 1142, Control of NO_x Emissions From Industrial Boilers and Process Heaters at Petroleum Refineries, Effective 2008. Note: this regulation was revised effective 11/11/2009, and the 11/11/2009 revision was approved into the DE SIP at 75 FR 31711 on June 4, 2010.

7. Consent Decree with Premcor Refinery at Delaware City, The FCCU NO_x Agreement.

8. Note that in the current Delaware SIP Boilers 3 and 4 are not required to shutdown, and the allowable emission rate for Boilers 1, 3 and 4 were finalized at 0.015 lb/mmbtu limit, 24-hour rolling average basis. See also footnote 4.

- 2,525 tons per year, evaluated over each twelve (12) consecutive month rolling period, for any twelve (12) month rolling period ending on or before January 2014.
- 2,225 tons per year, evaluated over each twelve (12) consecutive month rolling period, commencing with the twelve (12) month rolling period beginning on December 31, 2013 and ending on December 31, 2014.
- 1,650 tons per year, evaluated over each twelve (12) consecutive month rolling period, commencing with the twelve (12) month rolling period beginning on December 31, 2014 and ending on December 31, 2015.

Under the revised Section 2.0 of 7 **DE Admin. Code** 1142, either all of the unit specific NO_x emission limitations apply or the facility-wide cap apply at all times (i.e., there is no gap in compliance).

2.4 Impact of Revised 7 **DE Admin. Code** 1142 on ozone, PM_{2.5}, visibility and NO₂, (i.e., the requirements for which NO_x emissions are a precursor or pollutant of interest).

The addition of emission limits to Section 2.0 of 7 **DE Admin. Code** 1142 applicable to Unit 23-H-3 do not in any way change the emission limits for this unit. That is, the emissions limit for Unit 23-H-3 do not change, but only the vehicle by which these emission limits will be enforced is changing (i.e., it will be enforced through Section 2.0 of 7 DE Admin Code 1142 instead of a consent agreement). In other words, no change is being made that could upset the status quo.

With the revision to 2.0 of 7 **DE Admin. Code** 1142 described in 2.3 above, the Delaware City Refinery may comply by either (1) complying with all of the unit specific emission limitations specified in 7 **DE Admin. Code** 1142, or (2) complying with the applicable facility-wide NO_x emission cap.

- Complying with all of the unit specific emission limitations specified in 7 **DE Admin. Code** 1142. This is the current compliance mechanism in Section 2.0 of 7 **DE Admin. Code** 1142. Therefore, since overall no change is being made to the unit specific emission rates this compliance option would not impact any NAAQS or applicable requirement (i.e., no change is being made that could upset the status quo).
- Complying with the applicable facility-wide NO_x emission cap. Under this compliance option, emission units will not be subjected to the unit specific emission limitations of Section 2.0 of 7 **DE Admin. Code** 1142, and instead the entire facility will be subject to a facility-wide NO_x cap.

Compliance with the 7 **DE Admin. Code** 1142 facility-wide caps is required monthly, on a 12-month rolling basis. For standards where compliance is demonstrated on an annual or longer basis, an annual cap is generally consistent with a NAAQS with an annual averaging period.

The NO₂ and PM_{2.5} NAAQS both have a standard which is averaged on an "annual" basis. For the NO₂ annual NAAQS, this is the arithmetic average of all of the reported 1-hour values (40 CFR Part 50, Appendix S). For both of the PM_{2.5} annual NAAQSs (1997 and 2006), the annual standard design value, which is based upon 3 years of valid annual means, is compared to the NAAQS (40 CFR Part 50 Appendix N). The design value is an average of three annual means over three consecutive years. An annual mean is the average of the average values for each of the four quarters in a calendar year; the average value for each quarter is the average of the daily values for that quarter.

As long as the cap set by 7 **DE Admin. Code** 1142 is lower than a baseline condition (i.e., 7 **DE Admin. Code** 1142 before amendment), a conclusion that the revised Section 2.0 of 7 **DE Admin. Code** 1142 will cause no worsening of air quality is supported.

The table below summarizes the Delaware City Refinery NO_x emission data presented in 2.1 and 2.2 above.

| Year | NO _x (TPY) |
|------------------|-----------------------|
| 2002 (actual) | 3,555 |
| 2008 (actual) | 2,525 |
| 2009 (projected) | 2,855 |
| 2012 (projected) | 2,761 |

| | |
|------------------|-------|
| 2018 (projected) | 2,774 |
|------------------|-------|

As discussed in 2.3 above, the facility-wide NO_x cap will start at 2,525 TPY, and decline to 1,650 TPY in 2015. This declining cap option provides for emissions that are lower than the actual and projected emission levels under the current unit specific control option. This indicates that the facility-wide NO_x emission cap compliance option will not negatively impact the 1997 and 2006 annual PM_{2.5} NAAQSs, the 2010 annual NO₂ NAAQS, and visibility related goals

- Complying with the applicable facility-wide NO_x emission cap – Additional Analysis. For standards where compliance is demonstrated on a more frequent basis, additional analysis is needed. This is because a 12-month rolling total could provide for higher emissions on a seasonal or a daily basis.

The 1997 and 2008 ozone NAAQSs is directly related to the highest concentration averaged over an 8-hour period in any one (calendar) day. The 2010 daily NO₂ NAAQS is determined by comparing the 1-hour primary standard design value, which is the average of three annual 98th percentile values, to the NAAQS (40 CFR Part 50, Appendix S). Likewise, compliance with the 1997 and 2006 24-hour PM_{2.5} NAAQSs is determined by comparing the 24-hour standard design value, which is an average the annual 98th percentile values for each of three years (40 CFR Part 50 Appendix N).

In addition to the comparison between the actual and projected emissions and the facility-wide cap discussed above, seasonal variations were evaluated. The Department analyzed monthly crude oil throughputs from the crude oil tank farm, which is an indicator of the capacity factor of the refinery. Historical throughput is useful data to analyze because such data supports a conclusion that utilization will not drastically vary by month in the future. Four (4) years, 2005 through 2008, were evaluated (see table below).

| | Crude Tank Farm Throughput (%) | | | |
|------------------|---------------------------------------|-------------|-------------|-------------|
| | 2005 | 2006 | 2007 | 2008 |
| January | 8.4 | 7.6 | 8.7 | 10.2 |
| February | 7.6 | 8.0 | 6.7 | 8.3 |
| March | 6.9 | 8.1 | 8.2 | 9.8 |
| April | 8.2 | 8.5 | 8.2 | 8.3 |
| May | 9.4 | 8.7 | 8.7 | 7.8 |
| June | 9.1 | 8.4 | 8.6 | 9.4 |
| July | 9.4 | 8.6 | 9.0 | 10.0 |
| August | 8.8 | 8.8 | 8.8 | 10.0 |
| September | 9.5 | 8.5 | 7.8 | 10.0 |
| October | 8.4 | 8.5 | 8.7 | 10.1 |
| November | 6.7 | 8.2 | 8.2 | 3.9* |
| December | 7.7 | 8.3 | 8.4 | 2.2* |

*Note: November and December of 2008 are determined to be not representative of normal operations. The refinery was running as significantly reduced rates during these months because the crude unit had its turnaround in November 2008 and the Coker was down. Because of this 2008 was not evaluated further.

Based on 2005, 2006 and 2007 crude tank farm throughput, the Department concludes there is a slight bias high during the ozone season months. However, given the monthly deviation is slight (36-month average percent is 8.3, and the standard deviation from the average is 0.7), and given that the facility-wide NO_x caps are less than the recent actual and projected emissions, the Department concludes that refinery operations in the future will be essentially uniform throughout the year, and the 12-month rolling caps are consistent with NAAQS and other applicable requirements.

FINAL REGULATIONS

In addition to crude oil throughputs from the crude oil tank farm, the Department has also analyzed the variability of daily emissions from the Delaware City Refinery. This was done by analyzing actual historical NO_x emissions for the refinery units that are covered by 7 DE Admin. Code 1139, "Nitrogen Oxides (NO_x) Budget Trading Program." The NO_x emissions from units subject to 7 DE Admin. Code 1139 are monitored by continuous emission monitoring systems (CEMS). Historical NO_x emissions data for these units were obtained from EPA's Clean Air Market's Division (CAMD) at <http://camddataandmaps.epa.gov/gdm> for calendar years 2005 through 2007.

Analysis of Daily Average NO_x Emissions: The daily average NO_x emissions for all units reporting to CAMD, in TPD, for CY2005, 2006, and 2007, by month, are as follows:

| | Daily Average NO _x Emissions (TPD) | | |
|------------------|---|-----|------|
| | 2005 2 | 006 | 2007 |
| January | 8.6 | 5.7 | 7.3 |
| February | 8.7 | 8.4 | 7.4 |
| March | 8.1 | 8.3 | 6.8 |
| April | 8.2 | 8.0 | 6.7 |
| May | 8.3 | 8.3 | 6.2 |
| June | 8.8 | 7.9 | 6.8 |
| July | 7.7 | 6.2 | 7.1 |
| August | 7.0 | 5.7 | 7.6 |
| September | 7.5 | 6.3 | 6.7 |
| October | 6.0 | 8.2 | 7.2 |
| November | 5.0 | 7.9 | 7.2 |
| December | 6.2 | 6.1 | 7.5 |
| Stdev | 1.2 | 1.1 | 0.4 |
| Average | 7.5 | 7.2 | 7.0 |

The daily average NO_x emissions for each month between January 2005 and December 2007 is within one (1) standard deviation of the annual average daily NO_x emissions for each month for all three (3) years, except for June 2005 (which is 1.03 standard deviations from the average). This indicates there is little variation in daily NO_x emissions from month to month, and that operations under a 12-month rolling total facility-wide NO_x cap will not result in high daily NO_x emissions during times of bad air quality, and would not negatively impact applicable requirements.

Analysis of Highest Single Day NO_x Emissions: The highest single day's NO_x emissions for all units reporting to CAMD, in TPD, for calendar years 2005, 2006, and 2007, by month, are as follows:

| | Highest Single Day NO _x Emissions (TPD) | | |
|-----------|--|------|------|
| | 2005 2 | 006 | 2007 |
| January | 11.0 | 7.5 | 8.8 |
| February | 9.8 | 9.4 | 9.1 |
| March | 10.5 | 9.5 | 8.2 |
| April | 9.4 | 11.4 | 13.0 |
| May | 10.8 | 9.4 | 7.2 |
| June | 11.1 | 9.1 | 7.9 |
| July | 9.6 | 7.8 | 8.6 |
| August | 8.5 | 7.1 | 8.9 |
| September | 9.4 | 8.1 | 8.1 |
| October | 11.3 | 10.2 | 8.9 |
| November | 6.5 | 10.0 | 9.0 |
| December | 8.3 | 7.2 | 8.6 |
| Stdev | 1.4 | 1.3 | 1.4 |
| Average | 9.7 | 8.9 | 8.8 |

Delaware’s air quality is generally worst in the hot summer months of June, July and August. The highest single day NO_x emission from the Delaware City Refinery were generally outside of this period. In all three (3) of the years analyzed the highest daily NO_x emissions occurred during months where air quality is generally good in Delaware (i.e., October for 2005, and April for 2006 and 2007). In addition, only in three (3) months out of the thirty-six (36) months (i.e., October 2005, April 2006, and April 2007) analyzed did the highest single day NO_x emission exceed the highest single day annual average plus one (1) standard deviation. This indicates that operations under a 12-month rolling total facility-wide NO_x cap will not provide for high emissions on bad air quality days, and will not negatively impact applicable requirements.

Analysis of the Number of Days that NO_x Emissions exceed Annual Average plus 1 standard deviation: The table below shows the number of days where daily NO_x emission were greater than the annual average emissions plus one (1) standard deviation.

| | Number of Days NO _x Emissions Were Greater Than Annual Average Plus 1 Standard Deviation | | |
|-----------|---|------|------|
| | 2005 | 2006 | 2007 |
| January | 4 | 4 | 9 |
| February | 4 | 5 | 5 |
| March | 2 | 8 | 2 |
| April | 4 | 2 | 3 |
| May | 4 | 5 | 4 |
| June | 6 | 5 | 4 |
| July | 5 | 2 | 5 |
| August | 4 | 7 | 3 |
| September | 6 | 8 | 4 |
| October | 5 | 3 | 4 |
| November | 5 | 5 | 4 |
| December | 3 | 6 | 4 |

Out of these three (3) years, the maximum number of days that the daily NO_x emissions exceed the mean/average plus one (1) standard deviation was only 9 (January 2007). On only seven (7) out of these thirty-six (36) months did the daily NO_x emissions exceed one (1) standard deviation more than 5 times. And, the number of times the daily NO_x emissions exceeded one (1) standard deviation is constant from month to month.

The above analysis indicates that relative to the 1997 ozone NAAQS, the planning assumptions used in the 2007 attainment demonstration SIP would not be undermined by the revisions to Section 2.0 of 7 **DE Admin. Code** 1142. This is because refinery operations do not vary significantly from month to month, and actual emissions levels do not vary significantly over an ozone season or do not vary significantly on a daily basis within the months of the ozone season. Relative to the 2008 ozone NAAQS, planning is now underway but base year and attainment years have not yet been set. Preservation of the status quo air quality will prevent interference with Delaware's obligations to develop timely attainment demonstrations, and no interference with the ozone NAAQS (i.e., no change is being made that would upset the status quo).

Relative to the daily standard of the 2006 PM_{2.5} NAAQS (which sets a lower threshold than the 1997 daily NAAQS and would address the daily standard under the 1997 NAAQS for which New Castle County is in attainment), the above analysis also indicates that the planning assumptions used in the 2008 attainment demonstration SIP would not be undermined by the revisions to Section 2.0 of 7 **DE Admin. Code** 1142 (i.e., a 12-month rolling cap is consistent with attainment because refinery utilization and emissions do not vary significantly from month to month or from day to day).

Relative to the NO₂ NAAQS, area designations have not yet occurred. Because refinery operations do not vary significantly from month to month, and actual emissions levels do not vary significantly over the year, preservation of the status quo air quality will prevent interference with Delaware's obligations to develop timely attainment demonstrations, and no interference with the NO₂ NAAQS (i.e., no change is being made that would upset the status quo).

3. Conclusion

Delaware concludes that the revisions to Section 2.0 of 7 **DE Admin. Code** 1142 to 1) include the NO_x control requirement for the Fluid Catalytic Cracking Unit CO boiler that were previously provided for in a 2008 consent agreement and 2) provide for a facility-wide NO_x cap compliance alternative will not interfere with attainment or maintenance of any NAAQS or any other applicable requirement of the CAA

1142 Specific Emission Control Requirements

12/12/2001

1.0 Control of NO_x Emissions from Industrial Boilers

1.1 Purpose

New Castle County and Kent County are part of the Philadelphia-Wilmington-Trenton 1-hour ozone non-attainment area. All areas of Delaware impact this non-attainment area. On December 19, 1999, the EPA identified an emission reduction "shortfall" associated with this non-attainment area. Promulgation of 1.0 of this regulation is one measure that the Department is taking to mitigate this shortfall.

In determining the applicability of 1.0 of this regulation, the Department attempted to minimize the impact on facilities that recently installed NO_x controls under 7 **DE Admin. Code** 1112 (NO_x RACT) and 7 **DE Admin. Code** 1137/1139 (NO_x Budget Trading Program). The Department did this by regulating only large sources that, as of the effective date of 1.0 of this regulation, emitted NO_x at a rate greater than the rate identified in Table 3-1 of 7 **DE Admin. Code** 1112, were not equipped with NO_x emission control technology, and were not subject to the requirements of 7 **DE Admin. Code** 1139. In effect, 1.0 of this regulation regulates sources that remain high NO_x emitters after the

application of RACT and post RACT requirements, and that have not committed substantial capital funds to reduce NO_x emissions.

1.2 Applicability

1.2.1 The provisions of 1.0 of this regulation apply to any person that owns or operates any combustion unit with a maximum heat input capacity of equal to or greater than 100 million btu per hour, except that 1.0 of this regulation shall not apply to any unit that, as of the effective date of 1.0 of this regulation:

1.2.1.1 Emits NO_x at a rate equal to or less than the rate identified in Table 3-1 of **DE Admin. Code 1112**.

1.2.1.2 Is equipped with low NO_x burner, flue gas recirculation, selective catalytic reduction, or selective non-catalytic reduction technology.

1.2.1.3 Is subject to the requirements of **7 DE Admin. Code 1139**.

1.2.2 The requirements of 1.0 of this regulation are in addition to all other state and federal requirements.

1.2.3 Affected persons shall comply with the requirements of 1.3 of this regulation as soon as practicable, but no later than May 1, 2004.

1.3 Standards.

1.3.1 The NO_x emission rate from any unit subject to 1.0 of this regulation shall be equal to or less than the following:

1.3.1.1 Between May 1st through September 30th of each year, inclusive: 0.10 lb/mmBTU, 24-hour calendar day average.

1.3.1.2 During all times that gaseous fuel is being fired: 0.10 lb/mmBTU, 24-hour calendar day average.

1.3.1.3 During all times not covered by 1.3.1.1 and 1.3.1.2 of this regulation: 0.25 lb/mmBTU, 24-hour calendar day average.

1.3.2 As an alternative to compliance with the requirements of 1.3.1 of this regulation, compliance may be achieved through the procurement and retirement of NO_x allowances authorized for use under **7 DE Admin. Code 1139**, as follows:

1.3.2.1 The actual 24-hour calendar day average NO_x emission rate in pounds per million btu shall be determined for each day of unit operation, using CEMs operated in accordance with 1.4 of this regulation.

1.3.2.2 The actual heat input to each unit in million btu shall be determined for each day of unit operation, using methods proposed by the person subject to 1.0 of this regulation and acceptable to the Department.

1.3.2.3 0.10 or 0.25, as applicable and consistent with 1.3.1 of this regulation, shall be subtracted from the rate determined in 1.3.2.1 of this regulation.

1.3.2.4 To obtain the number of pounds of NO_x emitted for a particular day, the emission rate determined in 1.3.2.3 of this regulation shall be multiplied by the heat input to the unit for that day determined in 1.3.2.2 of this regulation. If the emission rate determined in 1.3.2.3 of this regulation is equal to or less than zero, then the number of pounds of NO_x emitted for that day shall be zero.

1.3.2.5 Not later than the 20th day of each month:

1.3.2.5.1 The number of pounds of NO_x emissions calculated pursuant to 1.3.2.4 of this regulation shall be summed for each calendar month, the result shall be divided by 2000, and shall be rounded to the nearest whole ton.

1.3.2.5.2 For each ton of NO_x emissions calculated pursuant to 1.3.2.5.1 of this regulation, records shall be maintained demonstrating that one NO_x allowance owned by the

person subject to 1.0 of this regulation is identified and available, by serial number, for retirement.

- 1.3.2.6 Not later than February 1 of each calendar year, the NO_x allowances identified pursuant to 1.3.2.5.2 of this regulation for the previous calendar year, shall be submitted to the Department for retirement. Such submission shall detail the calculations specified in 1.3.2.1 through 1.3.2.5 of this regulation, and shall indicate the serial number of each allowance to be retired.

- 1.4 Monitoring Requirements. Compliance with the NO_x emission standards specified in 1.0 of this regulation shall be determined based on CEM data collected in accordance with the requirements of 3.1.2 of 7 **DE Admin. Code** 1117 (Performance Specification 2), and in compliance with the requirements of 40 CFR, Part 60, Appendix F.

- 1.5 Recordkeeping and Reporting Requirements.

- 1.5.1 Not later than 180 days after the effective date of 1.0 of this regulation, any person subject to 1.0 of this regulation shall develop, and submit to the Department for approval, a schedule for bringing the affected emission unit or units into compliance with the requirements of 1.0 of this regulation. Such schedule shall include, at a minimum, all of the following:

- 1.5.1.1 The method by which compliance will be achieved

- 1.5.1.2 The dates by which the affected person commits to completing the following major increments of progress, as applicable:

- 1.5.1.2.1 Completion of engineering;
- 1.5.1.2.2 Submission of permit applications;
- 1.5.1.2.3 Awarding of contracts for construction or installation;
- 1.5.1.2.4 Initiation of construction;
- 1.5.1.2.5 Completion of construction;
- 1.5.1.2.6 Commencement of trial operation;
- 1.5.1.2.7 Initial compliance testing;
- 1.5.1.2.8 Submission of compliance testing reports;
- 1.5.1.2.9 Commencement of normal operations (in full compliance).

- 1.5.2 Any person subject to 1.0 of this regulation shall submit to the Department an initial compliance certification not later than May 1, 2004. The initial compliance certification shall, at a minimum, include the following information:

- 1.5.2.1 The name and the location of the facility.
- 1.5.2.2 The address and telephone number of the person responsible for the facility.
- 1.5.2.3 Identification of the subject source or sources.
- 1.5.2.4 The applicable standard.
- 1.5.2.5 The method of compliance.
- 1.5.2.6 Certification that each subject source is in compliance with the applicable standard
- 1.5.2.7 All records necessary for determining compliance with the standards of 1.0 of this regulation shall be maintained at the facility for a period of five years.

- 1.5.3 Any person subject to 1.0 of this regulation shall, for each occurrence of excess emissions, within 30 calendar days of becoming aware of such occurrence, supply the Department with the following information:

- 1.5.3.1 The name and location of the facility.
- 1.5.3.2 The subject source or sources that caused the excess emissions.
- 1.5.3.3 The time and date of first observation of the excess emissions.
- 1.5.3.4 The cause and expected duration of the excess emissions.
- 1.5.3.5 The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions.

1.5.3.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.

1.5.4 Any person subject to 1.0 of this regulation shall maintain all information necessary to demonstrate compliance with the requirements of 1.0 of this regulation for a minimum period of five years. Such information shall be immediately made available to the Department upon verbal and written request.

4/11/2009 04/11/2011

2.0 Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries

2.1 Purpose

2.1.1 The purpose of Section 2.0 of this regulation is to reduce NO_x emissions from Delaware's large industrial boilers and process heaters that are located at petroleum refineries.

2.1.2 Under the 8-hour ozone national ambient air quality standard (NAAQS), the state of Delaware is part of the Philadelphia-Wilmington-Atlantic City, PA-DE-MD-NJ moderate non-attainment area (NAA). The entire NAA, including Delaware, is required by the Clean Air Act (CAA) to attain the 8-hour ozone NAAQS by 2010. After attainment, the area must maintain compliance with the NAAQS. By implementing Section 2.0 of this regulation, NO_x emission reductions from the affected boilers and heaters shall contribute to (1) attainment and maintenance of the 8-hour ozone standard, and (2) improvement of the ambient air quality, in both Delaware and the entire NAA.

2.1.3 Additionally, New Castle County of Delaware is a part of the Philadelphia-Wilmington-Camden, PA-DE-NJ NAA for the annual fine particulate matter (PM_{2.5}) NAAQS, and is required by the CAA to attain the NAAQS by 2010. Since NO_x is a significant precursor to PM_{2.5} formation, reducing NO_x emissions will also assist in attainment and maintenance of the PM_{2.5} standard.

2.2 Applicability and Compliance Dates

2.2.1 Section 2.0 of this regulation applies to any industrial boiler or process heater with a maximum heat input capacity of equal to or greater than 200 million BTUs per hour (mmBTU/Hour) ~~(except for any Fluid Catalytic Cracking Unit carbon monoxide (CO) boiler)~~, which is operated or permitted to operate within a petroleum refinery facility on ~~the effective date of this section~~ July 11, 2007. This comprises the following ~~nine (9)~~ ten (10) units at the Delaware City refinery:

2.2.1.1 Crude Unit Vacuum Heater (Unit 21-H-2);

2.2.1.2 Crude Unit Atmospheric Heater (Unit 21-H-701);

2.2.1.3 Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3);

2.2.1.4 Steam Methane Reformer Heater (Unit 37-H-1);

2.2.1.5 Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1,2,3);

2.2.1.6 Boiler 1 (Unit 80-1);

2.2.1.7 Boiler 2 (Unit 80-2);

2.2.1.8 Boiler 3 (Unit 80-3);

2.2.1.9 Boiler 4 (Unit 80-4).

2.2.1.10 Fluid Catalytic Cracking Unit Carbon Monoxide (CO) boiler (Unit 23-H-3).

2.2.2 The requirements of Section 2.0 of this regulation are in addition to all other state and federal requirements.

2.2.3 The following units shall be in compliance with the requirements of Section 2.0 of this regulation on and after July 11, 2007: Crude Unit Atmospheric Heater (Unit 21-H-701), Steam Methane Reformer Heater (Unit 37-H-1) and Boiler 2 (Unit 80-2).

2.2.4 The following units shall be in compliance with the requirements of Section 2.0 of this regulation as soon as practicable, but not later than:

2.2.4.1 December 31, 2008: Boiler 1 (Unit 80-1) and Crude Unit vacuum Heater (Unit 21-H-2), and Fluid Catalytic Cracking Unit CO boiler (Unit 42-H-1, 2, 3).

- 2.2.4.2 May 1, 2011: Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4).
 2.2.4.3 December 31, 2012: Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1, 2, 3).

2.3 Standards.

2.3.1 ~~Except as provided for in 2.3.2 of this regulation, the owner or operator of any industrial boiler or process heater identified in Section 2.2.1 of this regulation shall meet~~ not operate except in compliance with the applicable NO_x emission limitation identified in the following sections:

- 2.3.1.1 For the Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3), Reserved.
 2.3.1.2 For the Steam Methane Reformer (SMR) Heater (Unit 37-H-1), Reserved.
 2.3.1.3 For Boiler 1 (Unit 80-1), Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4), 0.015 lb/mmBTU, on a 24-hour rolling average basis.
 2.3.1.4 For the Fluid Catalytic Cracking Unit CO boiler (Unit 23-H-3), 20 ppmvd @ 0 % O₂ on a 365 day rolling average basis, and 40 ppmvd @ 0 % O₂ on a 7-day rolling average basis.
 2.3.1.45 For any unit not covered by 2.3.1.1, 2.3.1.2, or 2.3.1.3, or 2.3.1.4 0.04 lb/mmBTU, on a 24-hour rolling average basis.
 2.3.1.56 The standards set out in 2.3 of this regulation shall not apply to the start-up and shutdown of equipment when emissions from such equipment during a start-up and shutdown are addressed in an operation permit issued pursuant to the provisions of ~~§2 of Regulation 7 DE Admin. Code~~ 1102.

2.3.2 ~~As an alternative to complying with one or more of the unit specific emission limitations specified in 2.3.1 of this regulation the owner or operator of any industrial boiler or process heater identified in Section 2.2.1 of this regulation shall limit the NO_x emissions, from all NO_x emission sources at the facility, to equal to or less than the applicable emission cap specified in 2.3.2.1 though 2.3.2.3 of this regulation.~~

- 2.3.2.1 ~~2,525 tons per year, evaluated over each twelve (12) consecutive month rolling period, for any e ach] twelve (12) month rolling period [ending on or be fore January 20 14 commencing with the rolling twelve (12) consecutive month period comprised by calendar year (CY) 2011 and ending with the twelve (12) consecutive month rolling period that ends on December 31, 2013].~~
 2.3.2.2 ~~2,225 tons per year, evaluated over each twelve (12) consecutive month rolling period, [commencing with the twelve (12) month rolling period beginning on December 31, 2013 and ending on December 31, 2014 comprising calendar year 2014].~~
 2.3.2.3 ~~1,650 tons per year, evaluated over each twelve (12) consecutive month rolling period, commencing with the twelve (12) month rolling period beginning on [December 31, 2014 January 1, 2015] and ending on December 31, 2015[, and continuing thereafter].~~

[2.3.3 Neither the provisions of Section 2.3.2, nor this regulation more generally, shall limit in any way the Department's authority to establish a lower NO_x emission cap and more stringent NO_x emission limitations for any source subject to this regulation.]

2.4 Monitoring Compliance Requirements.

- 2.4.1 Compliance with the NO_x emission standards specified in 2.3.1, 2.3.2, and 2.3.4 of this regulation shall be determined based on CEM data collected in accordance with the appropriate requirements set forth in 40 CFR, Part 60, Appendix B, Performance Specification 2, and the QA/QC requirements in 40 CFR Part 60, Appendix F.
 2.4.2 Compliance with the facility-wide NO_x emission cap specified in 2.3.2 of this regulation shall be determined not later than the last day of each month, as follows.
 2.4.2.1 The mass of NO_x (tons) emitted [during the prior month] from each [NO_x] emission source at the facility [during th e prior mont h sub ject to the NO_x ca p] shall be accurately determined using the methods specified in 2.4.2.1.1 through 2.4.2.1.3 of this regulation, as approved by the Department.

- 2.4.2.1.1 Continuous emission monitoring systems (CEMS) that meet the requirements of 2.4.1 of this regulation ~~[shall be used to determine the emission from any emission unit equipped or required to be equipped with NO_x CEMS, or]~~
- 2.4.2.1.2 A NO_x emission factor that is based upon the results of the most recent performance testing conducted in accordance with a protocol approved by the Department ~~[shall be used to determine the emission from any unit that has conducted or that is required to conduct such performance testing, or]~~
- 2.4.2.1.3 Published NO_x emission factors for such source or category of sources, or any other method approvable by the Department ~~[, shall be used to determine the emission from any unit not covered by 2.4.2.1.1 or 2.4.2.1.2 of this regulation. Emission factors may be adjusted by the Department to account for the degree of uncertainty or limitations in the factors' development.]~~
- 2.4.2.2 NO_x emissions from each NO_x emission source at the facility shall be determined for all periods of startup, shutdown or malfunction. To the extent that such emissions are not measured by CEMS during such periods of startup, shutdown or malfunction, and to the further extent that performance testing for such source did not establish emission factors for such equipment reflective of operations during periods of startup, shutdown or malfunction, then the owner or operator shall estimate such emission rates from such source during any periods of startup, shutdown or malfunction in accordance with best engineering judgment ~~[, provided however that the owner or operator must report to the Department the basis for the emission projections in such instance, and the Department may object to and modify the emission estimation methodology as it determines appropriate.]~~
- 2.4.2.3 The emissions calculated in 2.4.2.1 and 2.4.2.2 of this regulation shall be summed and aggregated with the calculation results for the preceding months as provided for in 2.4.2.3.1 through 2.4.2.3. ~~[34]~~ below.
- 2.4.2.3.1 For any month before January 2014, the preceding eleven (11) consecutive months shall be included. ~~[No emissions occurring before January 1, 2011 shall be included.]~~
- 2.4.2.3.2 For any month in calendar year 2014, only months in calendar year 2014 shall be included.
- 2.4.2.3.3 For any month in calendar year 2015, only months in calendar year 2015 shall be included.
- [2.4.2.3.4 For any month after December 31, 2015, the preceding eleven (11) consecutive months shall be included.]
- 2.4.2.4 Compliance shall be determined by comparing the results of the calculations in 2.4.2.3 of this regulation with the appropriate NO_x emission cap specified in 2.3.2 of this regulation. ~~[Each ton of emissions calculated under 2.4.2.3 of this regulation that is above the applicable NO_x emission cap specified in 2.3.2 of this regulation constitutes a violation of 2.0 of this regulation. Following aggregation and summation of emission in accordance with 2.4.2.3, fractions Fractions] of tons shall be rounded up to the next higher number.~~
- 2.5 Recordkeeping and Reporting Requirements
- 2.5.1 Not later than (insert the date that is 180 days after the effective date of this revised Section 2.0) of this regulation, any person subject to Section 2.0 of this regulation shall develop, and submit to the Department, a schedule for bringing the affected emission unit(s), identified in Section 2.2.4, facility into compliance with the requirements of Section 2.3 of this regulation. Such schedule shall include, at a minimum, all of the following:
- 2.5.1.1 The method by which compliance will be achieved.

FINAL REGULATIONS

- 2.5.1.2 ~~For persons subject to the requirements of 2.3.1 of this regulation, the dates by which the affected person plans to complete the following major increments of progress, as applicable:~~
- 2.5.1.2.1 Completion of engineering;
 - 2.5.1.2.2 Submission of permit applications;
 - 2.5.1.2.3 Awarding of contracts for construction and/or installation;
 - 2.5.1.2.4 Initiation of construction;
 - 2.5.1.2.5 Completion of construction;
 - 2.5.1.2.6 Commencement of trial operation;
 - 2.5.1.2.7 Initial compliance testing;
 - 2.5.1.2.8 Submission of compliance testing reports;
 - 2.5.1.2.9 Commencement of normal operations (in full compliance).
- 2.5.2 ~~For persons subject to the requirements of 2.3.2 of this regulation, the owner or operator shall submit to the Department **[an initial notice that contains]** all of the information specified in 2.5.2.1 and 2.5.2.2 of this regulation.~~
- 2.5.2.1 ~~The date that compliance with this regulation will begin pursuant to 2.3.2 of this regulation. **[A permit application submitted pursuant to 7 DE Admin. Code 1 102 or 1130 that contains this information may be used as a means to satisfy this requirement.]**~~
- ~~2.5.2.2 **A plan for achieving NO_x emission reductions consistent with the NO_x caps specified in 2.3.2 of this regulation. This plan shall include the information specified in 2.5.2.2.1 and 2.5.2.2.3 of this regulation.**~~
- 2.5.2.2[4] A list of the emission units at the facility that are required to be included in the facility-wide NO_x cap.
- ~~2.5.2.2.2 **A report of the monthly NO_x emissions from the emission units identified in 2.5.2.2.1 of this regulation, for each of the twelve (12) months that precedes the date specified in 2.5.2.1 of this regulation.**~~
- ~~2.5.2.2.3 **The current expectation of NO_x emission reductions to be achieved at specific individual sources, along with a statement of the anticipated control measures to be utilized and timelines for achieving such emission reductions.**~~
- 2.5.23 Any person subject to ~~Section 2.0~~ the requirements of 2.3.1 of this regulation shall submit to the Department an initial compliance certification by ~~the later of the following dates, or the date the unit first operates after the following date subject to the requirements of 2.3.1:~~ September 10, 2007 for units identified in Section 2.2.3 of this regulation and, for units identified in Section 2.2.4, by the compliance date specified in Section 2.2.4. The initial compliance certification shall include, at a minimum, all of the following information:
- 2.5.23.1 The name and the location of the facility;
 - 2.5.23.2 The name, address and telephone number of the person responsible for the facility;
 - 2.5.23.3 Identification of the subject source(s);
 - 2.5.23.4 The applicable standard;
 - 2.5.23.5 The method of compliance;
 - 2.5.23.6 Certification that each subject source is in compliance with the applicable standard.
- 2.5.4 ~~Any person subject to the requirements of 2.3.2 of this regulation shall submit to the Department a semi-annual report **[by January 31 and July 31 of each calendar year]** that contains all of the information specified in 2.5.4.1 through 2.5.4.5 of this regulation. **[At the request of the owner or operator, the Department may change the frequency of such reporting requirements, as may be necessary to harmonize them with reporting requirements of 7 DE Admin. Code 1130, Title V Operating Permits Program.]**~~
- 2.5.4.1 ~~The identification of owner and operator of the facility.~~

- ~~2.5.4.2~~ ~~[The total annual NO_x emissions (tons/year) from the facility based on a 12-month rolling total for each month in the reporting period recorded pursuant to 2.4.2 of this regulation. A report of the monthly NO_x emissions for each source, the basis for determination of the emissions pursuant to 2.4.2.1, and comparison of the rolling total NO_x emissions from the facility with the appropriate NO_x emission cap that was made pursuant to 2.4.2.4 of this regulation, for each month in the reporting period.]~~
- 2.5.4.3 ~~A[n updated]~~ list of the emission units at the facility that are required to be included in the facility-wide NO_x cap.
- ~~2.5.4.4~~ ~~Identification of any deviation from the monitoring provisions that were approved by the Department pursuant to 2.4.2 of this regulation, and documentation of the alternate methods used to determine emissions.~~
- ~~2.5.4.5~~ ~~A signed statement by the responsible official certifying the truth, accuracy, and completeness of the information provided in the report.]~~
- 2.5.35 Any person subject to Section 2.0 of this regulation shall, for each occurrence of excess emissions above the standards of Section 2.3 of this regulation, including periods when monitoring data was not collected in accordance with procedures approved pursuant to 2.4.2.1 of this regulation, within thirty (30) calendar days of becoming aware of such occurrence, supply the Department with the following information:
- 2.5.35.1 The name and location of the facility;
 - 2.5.35.2 The subject source(s) that caused the excess emissions;
 - 2.5.35.3 The time and date of first observation of the excess emissions;
 - 2.5.35.4 The cause and expected duration of the excess emissions;
 - 2.5.35.5 The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions;
 - 2.5.35.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.
- 2.5.46 Any person subject to Section 2.0 of this regulation shall maintain all information necessary to determine and demonstrate compliance with the requirements of this section for a minimum period of five (5) years. Such information shall be immediately made available to the Department upon verbal and written request.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

5200 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Statutory Authority: 24 Delaware Code, Section 5204(1) (24 Del.C. §5204(1))
24 DE Admin. Code 5200

ORDER

Pursuant to 29 Del.C. §10118 and 24 Del.C. §5206(1), the Delaware Board of Nursing Home Administrators issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on November 9, 2010, the Board makes the following findings and conclusions:

FINAL REGULATIONS

SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the October 1, 2010 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. The Board proposed to completely rework its regulations in an attempt to better organize and clearly establish the standards governing licensed nursing home administrators in the State of Delaware.
2. The Board received no written comments during October 2010. The Board held a public hearing on November 9, 2010 and received no public comments.
3. The Board proposed to strike its existing regulations in their entirety and replace them with the language following this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. 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. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on October 1, 2010.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on March 1, 2011.

IT IS SO ORDERED this _____ day of February, 2011.

5200 Board of Examiners of Nursing Home Administrators

***Please note that no changes were made to the regulation as originally proposed and published in the October 2010 issue of the *Register* at page 281(14 DE Reg. 281). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[5200 Board of Examiners of Nursing Home Administrators](#)

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER TWENTY-FIVE**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: Allocation And Sub-Allocation Of State Private Activity Bond Volume Cap For Calendar Year 2011 And Reallocation Of State Private Activity Bond Volume Cap For Calendar Year 2010

WHEREAS, the Internal Revenue Service issued Revenue Procedure 2010-40, which provides the State of Delaware (the "State") with \$277,820,000 in private activity bond volume cap ("Volume Cap") for 2011, and pursuant to 29 **Del.C.** §5091(a), the State's 2011 Volume Cap is to be allocated among the various State and local government issuers; and

WHEREAS, the Governor hereby confirms the initial allocation of the 2011 Volume Cap as set forth in 29 **Del.C.** §5091(a) to various State and local government issuers; and

WHEREAS, pursuant to 29 **Del.C.** §5091(b), the State's allocation of 2011 Volume Cap of \$138,910,000 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, pursuant to 29 **Del.C.** §5091(d), the Governor has the right, by Executive Order, to modify the allocations made under 29 **Del.C.** §5091(a) provided that no such modification shall cause any obligation issued prior to the date of such modification to lose its qualification for tax-exempt treatment under the Internal Revenue Code of 1986, as amended; and

WHEREAS, the allocation of Volume Cap for 2010 in Executive Order Seventeen is subject to modification by further Executive Order; and

WHEREAS, pursuant to Executive Order Number Seventeen, \$136,885,000 of 2010 Volume Cap which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, also pursuant to Executive Order Number Seventeen, \$136,890,000 of 2010 Volume Cap which had been allocated to local government issuers as described in 29 **De I.C.** §5091(a) is hereby reassigned as follows:

- New Castle County has reassigned \$47,910,000 of its unallocated Volume Cap for 2010 to the State of Delaware;
- Kent County has reassigned \$27,380,000 of its unallocated Volume Cap for 2010 to the State of Delaware;
- Sussex County has reassigned \$27,380,000 of its unallocated Volume Cap for 2010 to the State of Delaware;
- The City of Wilmington has reassigned \$10,000,000 of its unallocated Volume Cap for 2010 to the State of Delaware; and

WHEREAS, the Secretary of Finance recommends: (i) that the State's \$138,910,000 of 2011 Volume Cap be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and (ii) that the \$112,670,000 of unallocated 2010 Volume Cap reassigned to the State of Delaware by local issuers be sub-allocated to the Delaware Economic Development Authority for carry forward for use in future years; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendation of the Secretary of Finance.

NOW, THEREFORE, I, JACK A. MARKELL, by the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The \$138,910,000 allocation to the State of Delaware of the 2011 Volume Cap is hereby sub-allocated: \$69,455,000 to the Delaware State Housing Authority and \$69,455,000 to the Delaware Economic Development Authority

2. \$138,910,000 of the 2011 Volume Cap is hereby allocated to the various local government issuers as follows:

- \$48,620,000 of the 2011 Volume Cap is hereby allocated to New Castle County;

GOVERNOR'S EXECUTIVE ORDERS

- \$34,730,000 of the 2011 Volume Cap is hereby allocated to the City of Wilmington;
- \$27,780,000 of the 2011 Volume Cap is hereby allocated to Kent County; and
- \$27,780,000 of the 2011 Volume Cap is hereby allocated to Sussex County.

3. The \$112,670,000 of unallocated 2010 Volume Cap that has been reassigned by New Castle County, Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby re-allocated to the Delaware Economic Development Authority for carry forward use. In addition, the \$68,442,500 of 2010 Volume Cap previously sub-allocated to the Delaware Economic Development Authority under Executive Order Number Seventeen is to be carried forward for a total carry forward amount of \$181,112,500. Further, total carry forward of 2010 Volume Cap by the Delaware State Housing Authority is \$68,442,500 and by the City of Wilmington is \$24,220,000.

4. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

APPROVED this 2nd day of February, 2011

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)

Secretary's Order No.: 2011-A-0020

Date of Issuance: March 16, 2011

Effective Date of the Amendment: April 11, 2011

State Implementation Plan (SIP) Revision: Supplement to Delaware's September 17, 2009 CAA Section 110 "Infrastructure" State Implementation Plan (SIP) Submission.

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 State Implementation Plan (SIP) document that will be submitted by DNREC to the Environmental Protection Agency ("EPA") to supplement Delaware's September 16, 2009 CAA Section 110 "Infrastructure" State Implementation Plan (SIP) Submission. The Department's previous SIP submission of September 16, 2009, titled *State Implementation Plan for Meeting the Infrastructure Requirements of the Clean Air Act for Fine Particulate Matter*, was submitted to the EPA to satisfy the requirements of Section 110(a)(1) and 110(a)(2) of the Clean Air Act ("CAA") regarding the National Ambient Air Quality Standards ("NAAQS") for Fine Particles (PM_{2.5}) promulgated by the EPA on October 17, 2006 (71 FR61224).

Delaware's September 16, 2009 SIP revision explained, among other things, how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I) for interstate transport. The SIP revision that the Department is currently proposing supplements the September 16, 2009 SIP revision by adding a technical analysis that explains and demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources.

It should be noted that on December 8, 2010, the Department submitted the same supplemental technical analysis that it is currently proposing to the EPA, and requested that EPA process it in parallel with any rulemaking on its September 16, 2009 SIP submission while DNREC completes the public participation procedures necessary to make a formal SIP revision request. This is known as "parallel processing", and is detailed in 40 CFR Part 51 Appendix v at 2.3.1. This was done to enable EPA to consider this technical analysis in any rulemaking it takes on Delaware's September 16, 2009 submittal between now and the date the complete formal submittal of this SIP supplement is made by DNREC to EPA.

It should be noted that the Department received no public comment at any phase of this promulgation process, including, but not limited to, at the time of the public hearing on February 1, 2011. Proper notice of the hearing was provided as required by law.

The Department published the proposed supplemental SIP submission in the January 1, 2011 *Delaware Register of Regulation* and held a public hearing on February 1, 2011. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 8, 2011 (Report). The Report recommends certain findings and the adoption of the proposed supplemental SIP submission as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed supplemental SIP submission 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 expert developed the record and drafted the proposed supplemental SIP. Throughout the entire regulatory development process regarding this promulgation, the Department received no public comments from the regulated community, as noted in the Report.

I find that the Department's DAQ expert fully developed the record to support adoption of this proposed supplemental SIP submission. With this adoption of this promulgation, the Department will be enabled to supplement its September 16, 2009 SIP revision by adding a technical analysis that explains and demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources.

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 supplemental SIP submission, and provided the public with an adequate opportunity to comment on the same, including at a public hearing;
- 3.) The Department held a public hearing on February 1, 2011 on the proposed supplemental SIP submission in order to consider public comments before making any final decision, however, the Department received no public comments concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended supplemental SIP submission as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended supplemental SIP submission does not reflect any substantive change from the proposed supplemental SIP submission as published in the February 1, 2011, *Delaware Register of Regulations*;
- 6.) The recommended supplemental SIP submission should be adopted as final because Delaware will then be enabled to supplement its September 16, 2009 SIP revision by adding a technical analysis that explains and demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources. Moreover, the supplemental SIP submission is well supported by documents in the record; and
- 7.) The Department shall submit this Order approving the final supplemental SIP submission 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

1. SUMMARY AND PURPOSE

A State Implementation Plan ("SIP") is a [sS]tate plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("NAAQS"). The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled at 40 C.F.R. Part 52 Subpart I.

This document is a revision to Delaware's SIP. The purpose of this SIP revision is to supplement our September 1[76], 2009 SIP revision that was submitted to satisfy the requirements of Section 110(a)(1) and 110(a)(2) of the Clean Air Act (the Act) pursuant to the National Ambient Air Quality Standards (NAAQS) for Fine Particles (PM_{2.5}) promulgated by the United States Environmental Protection Agency (EPA) on October 17, 2006 (71 FR 61224).

Under the CAA, States are required to submit SIP revisions to satisfy Section 110(a)(1) and 110(a)(2) by no later than three years from the date EPA promulgates a new or revised NAAQS or face findings of failure to submit. Therefore, the September 1[76], 2009 SIP submission made by the Department was timely. However, on September 25, 2009, EPA issued a guidance document entitled, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," which provided guidance on addressing the "infrastructure" elements for SIPs required under Sections 110(a)(1) and 110(a)(2) of the Act for the 2006 24-hour PM_{2.5} NAAQS. According to this guidance document, any state's SIP submission to address the infrastructure element related to interstate transport found at 110(a)(2)(D)(i)(I) must be supported by an "adequate technical analysis." This guidance document further states that it is EPA's intention to complete a rule to address interstate transport in the eastern portion of the continental United States (the Transport Rule). This rule would replace the vacated Clean Air Interstate Transport Rule (CAIR) and would assist states with obligations to address interstate transport that significantly contributes to nonattainment in another state.

However, Delaware could not wait for EPA's SIP guidance or the CAIR replacement rule without facing findings of failure to submit for not meeting the October 17, 2009 due date for submittal of the 110(a)(1) and 110(a)(2) infrastructure SIP elements pursuant to EPA's October 17, 2006 promulgation of the 24-hour NAAQS for PM_{2.5}. Therefore, Delaware made a timely SIP submission in which the Department cited to its own SIP-approved regulations to reduce PM_{2.5} precursor emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) from electric generating units, industrial boilers, and peaking units to address the interstate transport requirements of 110(a)(2)(D)(i)(I).

To be clear, Delaware's September 1[76], 2009 SIP submittal did not include the "technical analysis" called for in EPA's September 25, 2009 guidance document because 1) the EPA guidance was issued too late in the process, as discussed above, and 2) because after review of the guidance Delaware believed the EPA required technical analysis was in line with an analysis of whether or not emission from the state significantly impact any area, with the result of the analysis being either they do or they do not impact. And, if they do impact then the state must take action to address the impact.

In the development of Delaware's SIP-approved regulations to reduce PM_{2.5} precursor emissions of SO₂ and NO_x from electric generating units, industrial boilers, and peaking units to address the interstate transport requirements of 110(a)(2)(D)(i)(I), Delaware started with the assumption that it did significantly impact downwind areas. With this assumption, Delaware moved forward and regulated NO_x and SO₂ emissions from its large EGU and industrial boilers, to include EGUs with small annual emission but high daily emissions (i.e., typically referred to as high energy demand day units) with Best Available Control Technology (BACT) level controls. Because of this Delaware believed it has clearly mitigated significant transport and adequately addressed CAA 110 requirements.¹

Since the time of our September 1[76], 2009 SIP submittal, EPA proposed the Transport Rule (August 2, 2010). In that proposal, EPA concluded that the State of Delaware was to be included among the states covered by the Transport Rule. Given Delaware's stringent SIP-approved EGU, peaking unit and large boiler control regulations, this was not expected. On October 1, 2010, the Department submitted timely comments to EPA's rulemaking docket for the proposed Transport Rule including extensive technical data and information to support

1. This does not imply that Delaware believes transport is limited to EGU and large boiler emissions. To the contrary, Delaware believes programs like reasonably available control technology (RACT), new source review (NSR), transportation conformity, etc. are needed in all upwind areas to mitigate transport. This position is portrayed clearly in Delaware's December 2009 CAA 126 petition. However, in the context of EPA transport rule, which is the impetus for this SIP revision, BACT level controls on EGUs are clearly adequate to mitigate significant impact on downwind states.

our contention that Delaware should not be included in the Transport Rule. It is our belief that the comments, data, and information we submitted on the proposed Transport Rule are more than sufficient to satisfy EPA's September 25, 2009 guidance that a SIP submitted to address 110(a)(2)(D)(i)(I) include an adequate technical analysis.

Despite the above, in the best interests of the State of Delaware, the Department is hereby using the comments, data, and information we submitted on the Transport Rule to form the basis of a technical analysis in support of our September 1[76], 2009 SIP revision to comply with EPA's September 25, 2009 guidance document. Upon completion of the CAA's required public participation procedures, the Department will formally submit this technical analysis as a supplement to its September 1[76], 20[4009] SIP submission to address satisfy 110(a)(2)(D)(i)(I) for interstate transport along with the associated administrative materials required by 40 CFR Part 51 Appendix v.

1.1 BACKGROUND

This document supplements our September 1[76], 2009 SIP by adding more detail as to how Delaware meets the requirements of Clean Air Act ("CAA") §110(a)(2)(D)(i)(I),² addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard which address downwind contributions (interstate transport) from Delaware sources.

Delaware's September 1[76], 2009 submittal indicated that its implementation plan and recently submitted SIP revisions presently contain adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement. Specifically, under 110(a)(2)(D)(i)(I) major stationary sources for the annual and 24-hr PM_{2.5} NAAQS are currently subject to Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) permitting programs under the PSD and EOP provisions of 7 DE Admin. Code 1125, Preconstruction Review. As provided in the PM_{2.5} NSR Implementation Rule (73 FR 28321), NNSR in New Castle County for PM_{2.5} will continue to be administered under the provisions of Appendix S until no later than May 16, 2011 when the EOP section of 7 DE Admin. Code 1125 and the Delaware SIP have been revised to reflect the provisions of 73 FR 28321. Also, in Kent and Sussex counties, PM_{2.5} PSD activities will continue to be administered using PM₁₀ as a surrogate for PM_{2.5}, without consideration of precursors, until no later than May 16, 2011 when changes to 7 DE Admin. Code 1125 and the SIP have been completed. Delaware has complied with §110(a)(2)(D) through promulgation of 7 DE Admin. Code 1146, Electric Generating Unit Multi-Pollutant Regulation; 7 DE Admin. Code 1142, Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries; and 7 DE Admin. Code 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions; which significantly reduce emissions from Delaware's largest EGUs, industrial boilers, and peaking units. These regulations impose BACT level controls, and have been approved by the EPA as revisions to Delaware's SIP.

As mentioned previously, on September 25, 2009 EPA issued a Memo³ which includes guidance on the technical analysis. The Memo discusses the analysis, elements therein and states, "*Information to support the states determination with respect to significant contribution to nonattainment might include, but not limited to, information concerning emissions in the state, meteorological conditions in the state and the potentially impacted*

2. §110(a)(2)(D)(i)(I) states, "Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement)."

3. Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),"

states, monitored ambient concentrations in the state and the potentially impacted states, the distance to the nearest area that is not attaining the standard, and air quality modeling.” Therefore, this analysis will discuss:

- Evaluation of EPA’s proposed Transport Rule (TR) modeling to help provide weight-of-evidence that Delaware is not a significant contributor to downwind states
- Delaware vs. EPA TR emissions analysis to help provide weight-of-evidence that Delaware is not a significant contributor to downwind states
- Monitoring data
- Recent and significant Delaware control measures that mitigate transport

While reading this analysis, we ask the reader to remember that:

1. Delaware EGU projections are less than the EGU budgets in the proposed TR. Since those budgets are the level of SO₂ and NO_x emissions that states must meet to remedy their “significant contribution,” based on EPA modeling, and we demonstrate Delaware EGUs will meet those budgets in 2012, it follows that Delaware has met its requirements to address downwind transport.

2. Delaware does not have the staff or resources to gather regional data, project emissions, and subsequently model downwind contributions from sources to every downwind county in the eastern U.S. Delaware further believes that expectation for such an analysis to be conducted by every state is entirely unreasonable and technically impractical. Therefore, **for purposes of this technical analysis Delaware Division of Air Quality (DAQ) will combine an EPA-Delaware emission analysis with EPA’s modeling used for the TR.**

1.2 Responsibilities.

The agency with direct responsibility for preparing and submitting this document is **[the]** Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air Quality (DAQ), under the Division Director, Ali Mirzakhaili, P.E. The working responsibility for Delaware’s air quality planning falls within DAQ’s Planning Branch, under the Program Manager, Ronald Amirikian. The Planning Branch is instrumental in completing this document. Specifically,

- Jack Sipple, M.S., is the project leader and responsible for emission projections, as well as principal author of this SIP revision;
- Ron Amirikian, Planning Branch Manager, QA[;]
- Dave Fees, P.E., Managing Engineer, DAQ Emission Inventory Program, is the supporting lead for the 2005 base year emission inventory;
- Bob Clausen, EGU analysis and projections;
- Betsy Frey, M.S., is the supporting lead for PM_{2.5} monitoring data;
- Mark Prettyman, Environmental Scientist, supporting staff and data management

2. TRANSPORT RULE MODELING AND CONTRIBUTION ASSESSMENT

On August 2, 2010 EPA proposed the TR to address downwind contributions of sulfur dioxides and nitrogen oxides. In that Rule, EPA 2012 “Base Case” emissions were modeled to determine whether States met a threshold for “linkage” and thus meet the criteria for “significant contribution to, and/or interference with maintenance” to downwind areas. The results of EPA’s modeling in Table 1 suggest that Delaware’s downwind contribution exceeds one or both of these thresholds. The “significant” thresholds are 0.20 and 0.35 ug/m³ for the annual and 24-hr NAAQS, respectively.

Table 1. Delaware’s largest contribution to downwind areas based on EPA modeling in the TR

GENERAL NOTICES

| NAAQS | Largest Downwind Contribution to Nonattainment (ug/m3) | Largest Downwind Contribution to Maintenance (ug/m3) | Affected Counties (Linkages) for Nonattainment | Affected Counties (Linkages) for Maintenance |
|--------|--|--|--|--|
| Annual | 0.20 | 0.14 | Lancaster, PA York, PA | None |
| Daily | 0.50 | 0.36 | Union, PA Dauphin, PA | Cumberland, PA New York, NY |

As we will show later in this document, the 2005 base year that EPA used in the projections was flawed, because those emissions were significantly higher than what Delaware submitted in its 2005 Periodic Emissions Inventory. Furthermore, the EPA 2012 projections were based on those EPA 2005 inflated numbers, which resulted in inflated 2012 numbers. And finally, because recent Delaware control initiatives were not included in the EPA's 2012 projections they were even further inflated. Subsequently, these inflated projections were used by EPA to model and assess whether states significantly contribute. But inflated projections used in any contribution assessment yields inflated contributions. Therefore, Delaware believes that if EPA used up-to-date and accurate emissions data (i.e. the Delaware PEI and recent Delaware control measures), EPA modeling would have shown that Delaware does not significantly contribute to downwind areas.

3. EMISSIONS

Delaware compared its 2005 Periodic Emissions Inventory (PEI) with EPA's 2005 NEI (and 2002) emissions used in their assessment of significant contributions for the TR. Delaware then projected its 2005 PEI emissions to 2012, and compared them to EPA's 2012 Base Case emissions. Delaware's sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions are significantly overstated in the TR contribution assessment. 2005 and 2012 emissions can be found in the attachments to this document (attachment 1 contains the emission summary tables).

EPA used the 2005 National Emissions Inventory (NEI), Version 2 for point sources, and 2002 emissions for a few other categories, such as nonpoint sources. Alternatively, DAQ used a more recent and refined 2005 inventory PEI for the 2005 emissions analysis. EPA also used NMIM and MOVES, which are discussed in more detail below. The results of our comparison show that 2005 emissions differences between EPA's TR 2005 emissions and DAQ's 2005 PEI are insignificant for EGUs and non-EGU point sources, but significant in the nonpoint and nonroad categories. EPA apparently used a "top-down" approach for the nonpoint and marine vessels. Delaware used state-specific data, i.e. a "bottom-up" approach. Bottom-up approaches have always been the preferred method for emission calculations. Table 2 summarizes the 2005 differences, with a discussion of each sector afterwards.⁴

Table 2 2005 Emissions

4. DAQ emission tables can be found in the attachments (summaries, EGUs, non-EGUs, marine vessels and fuel combustion).

| <i>2005 SO₂</i> | EGU | NonEGU | Nonpoint | Nonroad | Onroad | Total |
|-------------------------------------|-------------|-------------|---------------|---------------|-----------|----------------|
| Transport Rule | 32,378 | 34,859 | 5,859 | 11,648 | 422 | 85,166 |
| DE PEI Emissions | 31,745 | 34,686 | 1,034 | 2,755 | 422 | 70,642 |
| DE Emission Difference (tpy) | -633 | -173 | -4,825 | -8,893 | 0 | -14,524 |
| <i>% Difference</i> | 2% | 0% | 82% | 76% | 0% | 17% |
| | | | | | | |
| <i>2005 NO_x</i> | EGU | NonEGU | Nonpoint | Nonroad | Onroad | Total |
| Transport Rule | 11,917 | 5,567 | 3,259 | 15,567 | 22,569 | 58,879 |
| DE PEI Emissions | 11,397 | 5,999 | 2,317 | 11,728 | 22,569 | 54,010 |
| DE Emission Difference | -520 | 432 | -942 | -3,839 | 0 | -4,869 |
| <i>% Difference</i> | 4% | -8% | 29% | 25% | 0% | 8% |

3.1 2005 Source Sector Discussion

3.1.1 EGUs: EPA and Delaware PEI EGUs emission differences are insignificant for 2005.

3.1.2 Non-EGU Point: No difference in 2005.

3.1.3 Nonpoint: The nonpoint category in Table 2 shows significant differences between EPA and DAQ 2005 emissions. The large discrepancy most likely lies with differences in how the several fuel combustion categories (industrial, commercial, and residential) were calculated. EPA assumed 2002 emissions for the TR 2005 fuel combustion sources, without growth.⁵

DAQ calculated its emissions using Delaware-specific 2005 fuel sales data obtained from the US Department of Energy's Energy Information Administration (EIA) publications and emission factors obtained from AP-42 and other EPA documents. Delaware also backs out fuel usage already reported under the point source or nonroad source sectors. EPA may have double-counted the fuel combustion emissions.

Another possible reason for the difference between DAQ methods for fuel combustion and those employed by EPA, is that we concluded (since the 2002 inventory) that fuel used by industrial and commercial non-stationary equipment (forklifts, aerial lifts, floor sweepers/scrubbers, etc.) was contained in the EIA state energy industrial and commercial sector usages, instead of in the off-highway sector. Since emissions from these equipment types are included in the NONROAD model, we needed to back their fuel usage out of the EIA total. This did have a fairly significant effect.

3.1.4 Nonroad:

The nonroad 2005 emission differences were very large, particularly for SO₂ as shown in Table 2. As will be discussed later, this is due to differing methods for marine vessel calculations. However, all of the non-road categories are addressed here:

1. *Nonroad equipment (the NMIM model):* EPA used NMIM, but Delaware could not find data on EPA's website whereby we could "separate" non-road equipment emissions from marine, aircraft and locomotive (MAR). However, since DAQ also used NMIM for 2005 (and national defaults for the bigger NO_x sub-categories), we believe that 2005 EPA vs. DAQ emissions differences in nonroad equipment (NMIM) category are most likely insignificant, and thus not a key factor in the total nonroad emissions differences.

5. *Technical Support Document (TSD) for the Transport Rule Docket.* ID No. EPA-HQ-OAR-2009-0491. Table 2-1. Sectors Used in the TR Emissions Modeling Platform.

2. *Locomotives and non-C3 Marine*: EPA used 2002 emissions.⁶ Delaware has refined the 2005 PEI to use more recent emission factors and activity data.
3. *Aircraft Emissions*: EPA used the 2005 NEI version. Delaware has refined its 2005 PEI to use more recent emission factors and/or activity data.
4. *C3 Marine Vessels*: This is the sub-category likely responsible for the large differences between EPA and DAQ nonroad 2005 numbers (and thus 2012), i.e., EPA 2005 SO₂ is 11,648 tpy while DAQ is 2,755 tpy. EPA 2005 NO_x is 15,567 tpy and DAQ's is 11,728 tpy. Delaware knows from experience that this category is largely responsible for SO₂ emissions from nonroad sources, and a little less so for NO_x. In fact, marine vessel SO₂ emissions rank only behind EGUs and large industrial boilers.

EPA obtained their 2005 emissions for the TR from the EPA rule called "Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder", usually described as the Emissions Control Area (ECA) study, originally called SO₂ ("S") ECA.⁷ Because EPA relied on rule development emissions, DAQ believes EPA's method is a "top-down" approach, and does not estimate emissions to the level of detail undertaken by Delaware DAQ staff, which uses local activity data. More importantly, Delaware has learned from discussions with OAQPS that **EPA allocated C3 marine vessels to States out to 200 nautical miles**. That is well beyond our state boundaries. Below is a summary of Delaware's methods, including improvements to the methodology for 2005 as compared to Delaware's 2002 inventory.

The Delaware inventory for CMVs includes exhaust emissions from ocean-going vessels, tow and tug boats, ferries, and dredges, and is reported to EPA under the following SCCs: 2280002100, 2280002200, 2280003100, and 2280003200. Delaware accounts for vessel cruising, maneuvering, and hoteling time-in-mode and engine energy output in kilowatt-hours. For most of the length of the Delaware Bay and River, emissions are split between Delaware and New Jersey since the state boundary coincides with the shipping channel. The state boundary for the northern portion of New Castle County extends to low mean tide on the New Jersey side of the river and thus all emissions from vessel traveling this stretch of river are included in Delaware's inventory.

Delaware obtains individual ship movement data from the Maritime Exchange, and is able to use this information to determine which vessels berth at Delaware ports and which vessels transit Delaware waters on their way to ports in Philadelphia, Camden, and other ports north of the Delaware state line. The use of individual ship movement data was first obtained and used for the 2005 inventory. ***Previous inventories relied on annual ship movement data obtained from the US Army Corps of Engineers' (USACE) Waterborne Commerce of the United States publication.*** The use of the Maritime Exchange data enabled Delaware to determine vessels that made multiple berths within the Delaware River and Bay. Prior to 2005, each vessel movement provided by the USACE publication was treated as a separate transit of Delaware waters from the mouth of the Delaware Bay to the Delaware/Pennsylvania state line.

A second important change to the methodology was to eliminate the assumption that every vessel traveling up and down the Delaware River and Bay was escorted by a tug boat. In conversations with personnel at the Maritime Exchange, few vessels receive an escort the length of the bay. CMVs are met by a tug a few miles before reaching port in order to assist the vessel maneuvering into port and up to its berth.

As a result of these important changes, the 2005 emissions were reduced by 40% or more from 2002 estimates, suggesting another reason why the large discrepancies exist between the EPA TR 2005 and DAQ's PEI.

3.1.5 Onroad: Delaware does not have the ability to run MOVES in time for the comment due date. Therefore, we accept EPA's 2005 onroad emissions as-is for purposes of this analysis.

4.0 Delaware 2012 Projections (as projected by DAQ)

6. *Technical Support Document (TSD) for the Transport Rule Docket*. ID No. EPA-HQ-OAR-2009-0491. Table 2-1. Sectors Used in the TR Emissions Modeling Platform.

7. *Technical Support Document (TSD) for the Transport Rule Docket*. ID No. EPA-HQ-OAR-2009-0491. Table 2-1. Sectors Used in the TR Emissions Modeling Platform.

DAQ used our 2005 PEI as the base year for the 2012 projections. EPA used the 2005 NEI version 2, 2002 emissions, MOVES and NMIM in the base year, as described above. Because we have shown that EPA's nonroad and nonpoint emissions are significantly higher for SO₂ and NO_x in 2005, it follows that EPA's 2012 projections for those categories would likely be higher too. Table 3 illustrates the magnitude of those differences. Each source sector is discussed afterwards in more detail.

Table 3 2012 Projected Emissions

| <i>2012 SO₂</i> | EGU | NonEGU | Nonpoint | Nonroad | Onroad | Total |
|-------------------------------|--------|--------|----------|---------|--------|---------|
| Transport Rule | 7,841 | 10,974 | 5,858 | 14,193 | 98 | 38,964 |
| DE Projections | 7,356 | 5,941 | 1,034 | 2,201 | 98 | 16,630 |
| DE Emission Difference | -485 | -5,033 | -4,824 | -11,992 | 0 | -22,334 |
| <i>% Difference</i> | 6% | 46% | 82% | 84% | 0% | 57% |
| | | | | | | |
| <i>2012 NO_x</i> | EGU | NonEGU | Nonpoint | Nonroad | Onroad | Total |
| Transport Rule | 4,639 | 5,567 | 3,248 | 15,511 | 10,700 | 39,665 |
| DE Projections | 2,418 | 4,504 | 2,315 | 10,370 | 10,700 | 30,307 |
| DE Emission Difference | -2,221 | -1,063 | -933 | -5,141 | 0 | -9,358 |
| <i>% Difference</i> | 48% | 19% | 29% | 33% | 0% | 24% |

4.1 2012 Source Sector Discussion

4.1.1 EGUs

EPA used IPM, which is a tool for predicting future regional strategies and emissions. DAQ's understanding of the IPM used for the TR is that it projects current controls using an out-dated Delaware NEEDS database, regional growth as well as non-enforceable controls (ex. new units that we know won't come online or current units shutting down that we know won't shutdown, such as Unit 3 at Conectiv). DAQ EGU projections used essentially the same methods inherent to IPM, except we have state specific data and information based on discussions with Delaware sources, which we believe is better than the EPA data.

In accordance with the definition of EGU in the rule, Delaware's population of EGU's consists of the following units: Christiana Units 11 and 14, Edge Moor Units 1, 2, 3, and 4, Hay Road Units 1, 2, 3, 5, 6, and 7, VanSant 11, McKee Run Unit 3, NRG Dover Units 2 and 3, Indian River Units 1, 2, 3 and 4, and Beasley Unit 1. These units are principally comprised of municipal and merchant generating units that operate within the PJM network. Operation of the generating units is primarily on an economic dispatch basis, which includes operational incentive in the southern part of the Delmarva Peninsula that experiences transmission constraints during a significant portion of the year. The northern part of the state also suffers some transmission constraint issues, primarily during high demand periods. Delaware as a state is a net importer of electricity, typically generating less than 50% of the electric load within the Delaware borders.

For this review, 2009 was selected as the base year for two reasons; 1) 2009 represented the latest available data and included EGU operation in compliance with recent state regulatory requirements, and 2) region-specific information was available from PJM to predict 2012 generation requirements. For determining the 2009 generation and emissions data for the population of Delaware's generating units, data from EPA's CAMD database was utilized. Generation data for each of the units came from annual CAMD data. In order to be more representative of emission controls that came into effect for some of the units on May 1, 2009 in response to Delaware regulatory requirements, NO_x and SO₂ emission data was taken to be the 2009 CAMD ozone season data. To determine the electric demand increase, PJM's January 2010 Load Forecast Report was consulted. Delaware is part of PJM's DPL region. In PJM report, PJM predicted increases in annual electric consumption for the: 1.4% above 2009 for

2010, 1.4% above 2010 for 2011, and 1.5% above 2011 for 2012. These increases along with the 2009 CAMD data were utilized to estimate the 2012 generation for the Delaware EGUs on a facility and unit basis.

For the purpose of this evaluation, the 2012 generation for the Christiana Units 11 and 14 was assumed to be that grown from the 2009 data. The 2012 NO_x and SO₂ emission rates were assumed to remain the same as the 2009 data, as there are no known plans for changes in emission controls for these units through 2012.

The recent new owner of Edge Moor Unit 3 has indicated that Edge Moor Unit 3 will no longer fire coal fuel, but will operate on its current alternate fuels of residual fuel oil, natural gas, and landfill gas. Because this unit also is the normal steam supply for an adjacent industrial plant, its operation is not as directly dependent upon economic dispatch as other units in the region. As the unit will already be on line for support of the industrial facility and not subject to startup/shutdown costs, it will remain able to pick up economic dispatch/opportunity load, tending to keep the overall capacity factor at approximately historic levels in spite of a change in fuel costs. Regarding NO_x emissions, the unit was assumed to come in compliance with the requirements of Delaware's 7 DE Admin Code 1146, 0.125 lb. /MMBTU. Regarding SO₂ emissions, it was assumed that the SO₂ emission rate would be that demonstrated by Edge Moor Unit 5 during 2009, as Edge Moor Unit 5 already fired the same set of fuels that Edge Moor 3 will be utilizing with similar fuel costs and constraints.

The recent new owner of Edge Moor Unit 4 has indicated that the Edge Moor Unit 4 will no longer fire coal fuel, but will operate in its current alternate fuels of residual oil, natural gas, and landfill gas. Because of the increase in fuel costs, it is assumed that this unit's position in the economic dispatch hierarchy will change and the unit will be called on PJM less frequently. For this review, Edge Moor Unit 4's annual capacity factor was assumed to be 3%, which is similar to other oil/gas steam units in the area. Regarding NO_x emissions, the unit was assumed to come in compliance with the requirements of Delaware's 7 DE Admin Code 1146, 0.125 lb. /MMBTU. Regarding SO₂ emissions, it was assumed that the SO₂ emission rate would be that demonstrated by Edge Moor Unit 5 during 2009, as Edge Moor Unit 5 already fired the same set of fuels that Edge Moor 4 will be utilizing with similar fuel costs and constraints. The drop in generation from the 2009 level for this unit is assumed to be picked up evenly by the adjacent six Hay Road 1-6 combustion turbines and associated combined cycle steam units.

For the purposes of this evaluation, the 2012 generation for Edge Moor Unit 5 was assumed to be that grown from the 2009 data. The 2012 SO₂ emission rates were assumed to remain the same as the 2009 data, as there are no known plans for changes in SO₂ controls for this unit through 2012. Regarding NO_x emissions, the unit was assumed to come in compliance with the requirements of Delaware's 7 DE Admin Code 1146, 0.125 lb./MMBTU.

For the purposes of this evaluation, the 2012 generation for each of the six Hay Road units was the 2009 values increased for generation growth and to also include the generation dropped from Edge Moor Unit 4 as described above (the generation increase was evenly split between the six units). NO_x and SO₂ emission rates for 2012 were assumed to remain the same as the 2009 values as there are no known plans for the addition of any controls prior to 2012.

Indian River Units 1 and 2 were assumed to be mothballed prior to 2012 in compliance with an existing consent decree.

For the purposes of this evaluation, generation levels for Indian River Unit 3 and 4 were evaluated together to account for the loss in generation associated with the Indian River Units 1 and 2 due to IR 1&2 shutdown, and to account for transmission constraints during high electric demand with Indian River Units 1 and 2 out of service. Therefore the 2012 generation levels for both Indian River Units 3&4 increased noticeably due to both generation growth and to account for the makeup for the Indian River Units 1 and 2 shutdowns. The evaluation indicated that there were 1008 hours where the generation requirements appeared to exceed the ability of Indian River Units 3 and 4. It was assumed that this shortfall in generation had to be made up by Kent County units due to grid reliability, stability, and voltage control reasons. McKee Run Unit 3 was evaluated to be able to assume 80,976 MWh of the estimated shortfall, and the remaining shortfall (16,267 MWh) was assigned evenly to the two NRG Dover CT units. The 2012 generation values for McKee Run Unit 3 and NRG Dover Units 2 and 3 were revised to reflect these increases.

For the purposes of this evaluation, the 2012 Indian River Unit 3 SO₂ and NO_x emission rates were assumed to be unchanged from the 2009 values.

For the purposes of this evaluation, the 2012 Indian River Unit 4 NO_x and SO₂ emission rates were assumed to comply with an existing consent decree's emission rate limitations of 0.2 lb/MMBTU for SO₂ and 0.1 lb/MMBTU for NO_x.

For the purposes of this evaluation, the 2012 generation from McKee Run Unit 3 was assumed to increase from 2009 due to both generation growth and the shortfall related to the Indian River units, as discussed above. The 2012 NO_x and SO₂ emission rates were assumed to be the same as 2009 as there are no known plans for additional emission controls prior to 2012.

For the purposes of this evaluation, the 2012 VanSant Unit 11 generation was increased from 2009 due to generation growth, and the 2012 NO_x and SO₂ emission rates were assumed to be the same as 2009 as there are no known plans for additional emission controls prior to 2012.

For the purposes of this evaluation, the 2012 generation for NRG Dover Units 2 and 3 was increased from 2009 due to both generation growth and the shortfall from the Indian River facility as discussed above (shortfall was evenly split between the two units). The 2012 NO_x and SO₂ emission rates were assumed to remain the same as 2009 as there are no known plans for additional emission controls prior to 2012.

For the purposes of this evaluation, the 2012 generation for the Beasley Unit 1 was increased from 2009 due to generation growth. The 2012 NO_x and SO₂ emission rates were assumed to remain the same as 2009 as there are no known plans for additional emission controls prior to 2012.

2012 EGU emissions are summed in Table 3. Detailed data is available in the attachment 1 to this document. Table 4 shows that even if DAQ EGU 2012 emissions are assumed to be the same as EPA's 2012 IPM projections, which is not a good assumption given the Delaware specific data discussed above, the overall differences are still significant (The table also reflects removal of OTW NO_x CAPS at the refinery in the non-EGU sector).

Table 4 2012 Projected Emissions Substituting EPA IPM runs for DE projected EGUs

| 2012 SO ₂ | EGU | NonEGU | Nonpoint | Nonroad | Onroad | Total |
|-------------------------------|-------|--------|----------|---------|--------|----------------|
| Transport Rule | 7,841 | 10,974 | 5,858 | 14,193 | 98 | 38,964 |
| DE Projections | 7,841 | 5,941 | 1,034 | 2,201 | 98 | 17,115 |
| DE Emission Difference | 0 | -5,033 | -4,824 | -11,992 | 0 | -21,849 |
| % Difference | 0% | 46% | 82% | 84% | 0% | 56% |
| | | | | | | |
| 2012 NO _x | EGU | NonEGU | Nonpoint | Nonroad | Onroad | Total |
| Transport Rule | 4,639 | 5,567 | 3,248 | 15,511 | 10,700 | 39,665 |
| DE Projections | 4,639 | 4,934 | 2,315 | 10,370 | 10,700 | 32,958 |
| DE Emission Difference | 0 | -633 | -933 | -5,141 | 0 | -6,707 |
| % Difference | 0% | 11% | 29% | 33% | 0% | 17% |

4.1.2 Non-EGU Point Sources

DAQ followed EPA's methods and assumed zero growth for non-EGU point sources, and then applied controls as discussed shortly. There is a significant difference in SO₂ and NO_x, as shown in Table 3. This is due to control strategies which will be discussed later in this document, which presumably the EPA was unaware of when developing the Rule.

Non-EGU Point Source Controls

The following is a list of significant SO₂ and NO_x controls, which Delaware has adopted to further reduce emissions by 2012.

- A May 2010 agreement between the Department and the Delaware City Refining Company placing a facility-wide NOx cap of 2,225 tons per year (TPY). This yields a 10% reduction by 2012 and a 40% reduction by 2014.
- Dover Air Force Base - Ceased using residual fuel oil in March 2010; will replace central boiler plant with small natural gas-fired package boilers. Boilers No. 1 – 4 retired.
- DuPont Stine-Haskell Laboratory - Removed Boilers 3 and 4 (fuel oil # 6)
- DuPont Wilmington Office Building - Issued construction permits for natural gas conversion with # 6 fuel as back up (permitted up to 10% # 6 usage)
- Mountaire Farms of Delaware Inc. -Millsboro - Switching to Nat Gas
- SPI Poly-OLs - Boiler No. 1 removed
- Invista - Boilers 1 and 3 (coal) will be retired by 2012, Boiler 2 (coal/# 6) was retired on 12/09 (Consent Decree)
- Dow Reich hold Specialty Latex LLC – Shutdowns of: Flare, #6 Fuel Oil Fired Boiler, Natural Gas & #6 Fuel Oil Fired Boiler, Emergency Generator

4.1.3 Nonpoint Sources

Delaware did not grow or control nonpoint source emissions for the 2012 projections – our 2012 projections are the same as our 2005 PEI. Previously, we discussed how SO₂ and NOx were primarily from fuel combustion for Delaware area sources.

Note that DAQ has historical sales information from the U.S. Energy Information Administration (EIA) which shows 2009 distillate and residual fuel-sales in Delaware have decreased by 45% and 57%, respectively since 2000. See Figures 1 and 2. Regardless, DAQ assumed zero growth for those categories to be conservative. If we included the negative growth in our projections, the 2012 emissions would be even less. **[But we took the conservative approach.]**

Figure 1

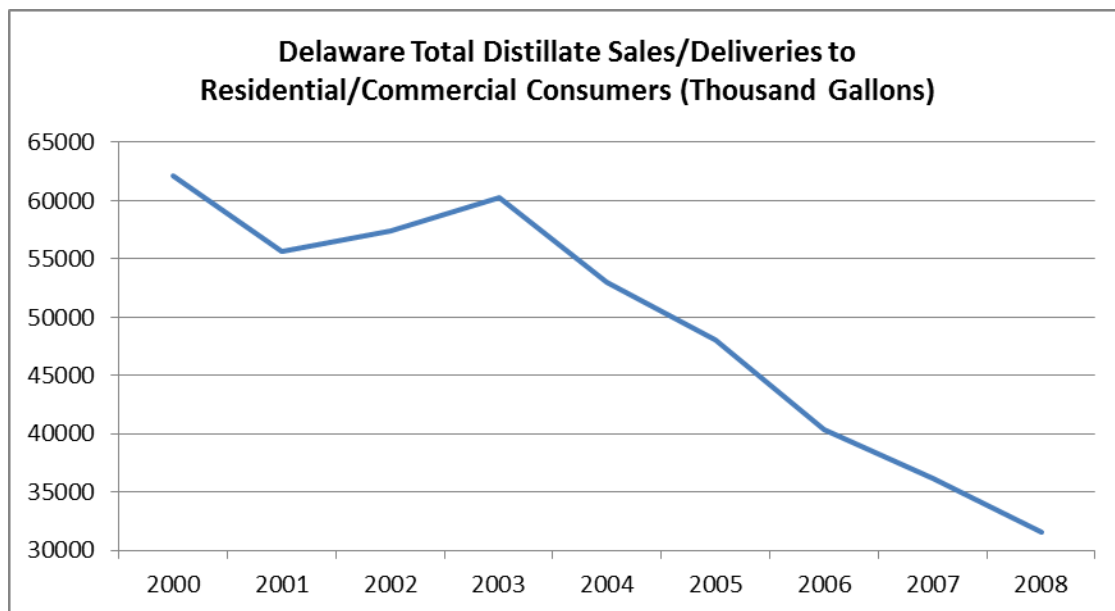
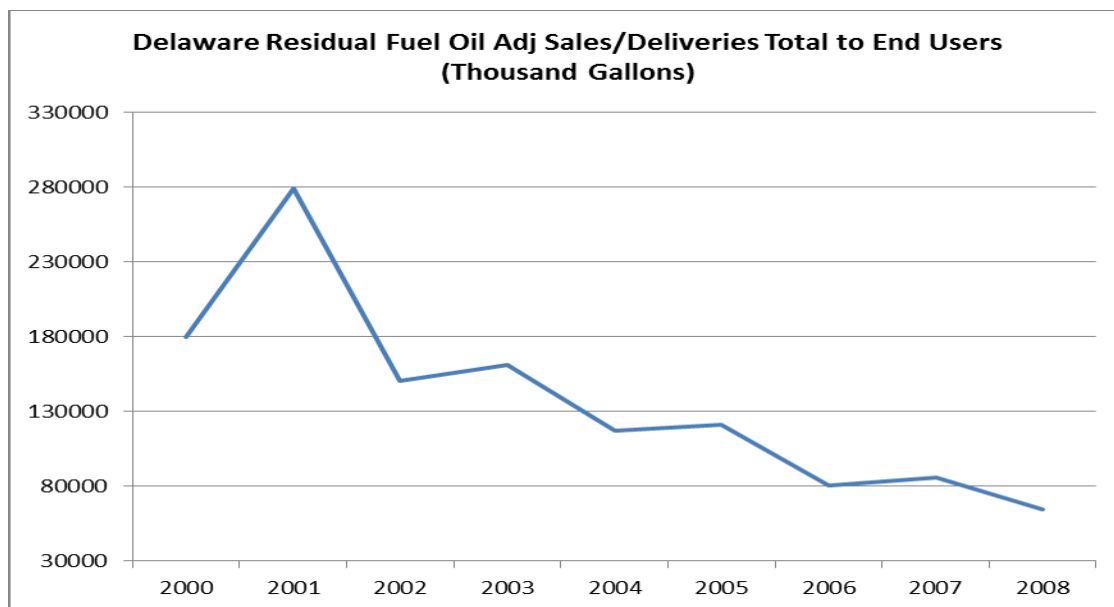


Figure 2



4.1.4 Nonroad Mobile Sources

Locomotives and non-C3 Marine: Delaware assumed no growth and controls. Therefore, the 2012 emissions are the same as 2005. This results in a conservative projection, since the Nonroad Rule is not taken into account.

Aircraft Emissions: Delaware assumed no growth and controls, because the large majority of NO_x is from Dover Air Force Base (aircraft SO₂ emissions are insignificant). We determined a 2007-2013 growth factor of 1.00 for Dover Air Force Base as part of our 2006 PM_{2.5} [NAAQs SIP] and Ozone SIP development process. Therefore, we assume 2012 emissions are the same as 2005.

Nonroad Equipment

Nonroad equipment (NMIM): Delaware relied upon 2012 projections developed as part of MANEVU's consultation process for Regional Haze SIPs for this category, due to time constraints. Those estimates were peer-reviewed by OTC/MANEVU states.

EPA's NMIM2005 model and NONROAD2005 model was used to estimate annual emission projections of non-road engines in all MANE_VU states, including Delaware as part of the Regional Haze consultation process. A Contractor was hired to facilitate the projections (MACTEC).

The controls for non-road mobile engines (except aircraft, locomotives, and marine vessels) that were applied when projecting 2012 emissions include all relevant federal rules, such as fuel sulfur content rule, gasoline Reid Vapor Pressure (RVP) requirements, and reformulated fuel programs. Controls for the 2012 emissions include all relevant federal rules and requirements, as outlined below.

(1) Phase I and Phase II Emissions Standards for Gasoline-Powered Non-Road Utility Engines, Federal Rule

This standard promulgated by the EPA applies to VOC emissions from small non-road, spark-ignition (i.e., gasoline-powered) utility engines, as authorized under 42 U.S.C. §7547. The measure affects gasoline-powered (or other spark-ignition) lawn and garden equipment, construction equipment, chain saws, and other such utility equipment as chippers and stump grinders, wood splitters, etc., rated at or below 19 kilowatts (an equivalent of 25 or fewer horsepower). Phase 2 of the rule applied further controls on hand-held and non-handheld outdoor equipment. See References 4-2, 4-3, and 4-4.

(2) Emissions Standards for Diesel-Powered Non-Road Utility Engines of 50 or More Horsepower, Federal Rule

This standard promulgated by the EPA applies to VOC and NO_x emissions from non-road, compression-ignition (i.e., diesel-powered) utility engines, as authorized under 42 U.S.C. § 7547. The measure

affects diesel-powered (or other compression-ignition) construction equipment, industrial equipment, etc., rated at or above 37 kilowatts (37 kilowatts is approximately equal to 50 horsepower). See References 4-5, 4-6, and 4-7.

(3) Emissions Standards for Spark Ignition (SI) Marine Engines, Federal Rule

This standard promulgated by the EPA applies to exhaust PM, VOC and NO_x emissions from new spark-ignition (SI) gasoline marine engines, including outboard engines, personal watercraft engines, and jet boat engines. Of nonroad sources studied by EPA, gasoline marine engines were found to be one of the largest contributors of hydrocarbon (HC) emissions (30 percent of the nationwide nonroad total).

(4) Emissions Standards for Large Spark Ignition Engines, Federal Rule

This EPA measure controls VOC and NO_x emissions from several groups of previously unregulated nonroad engines, including large industrial spark-ignition engines.

The starting point for the emission projections was Version 3 of the MANE_VU 2002 Nonroad emission inventory (*Documentation of the MANE-VU 2002 Nonroad Sector Emission Inventory, Version 3, Draft Technical Memorandum*, March 2006). MACTEC's approach to developing emission projections for these sources was to use combined growth and control factors developed from emission projections for U.S. EPA's Clean Air Interstate Rule (CAIR) development effort. MACTEC obtained emission projections developed for the CAIR rule. MACTEC then calculated the combined growth and control factors by determining the ratio of emissions between 2002 and each of the MANE-VU projection years (2009, 2012, and 2018). The CAIR emissions were available for 2001, 2010, 2015 and 2020. Thus, they developed intermediate year estimates using linear interpolation between the actual CAIR years and the MANE-VU years.

Using this approach MACTEC developed State/county/SCC/pollutant growth/control factors for use in projecting the MANE-VU base year data to the out-years. These values were then used to multiply times the base year value to obtain the projected values. Since the development of the CAIR factors included both growth and controls, no separate control factors were developed for these sources except where exceptions to this method were used for States that requested alternative growth/control methods. Because emissions from aircraft, commercial marine vessels, and locomotives are not projected by the NONROAD model, emission projections for these sources were developed separately, as described below.

Commercial Marine Vessels:

C3 Marine Vessels: EPA grew base year 2002 emissions were grown to future years without Emissions Control Area (ECA) or International Marine Organization (IMO) global NO_x and SO₂ controls.⁸ Delaware grew 2005 emissions to 2012 to include growth and controls per EPA "Regulatory Impact Analysis: Control of Emissions of Air Pollution from Category 3 Marine Diesel Engines, EPA420-R-09-019."

For the purpose of emission regulations, marine engines are divided into three categories based on displacement (swept volume) per cylinder. Category 1 and Category 2 marine diesel engines typically range in size from about 500 to 8,000 kW (700 to 11,000 hp). These engines are used to provide propulsion power on many kinds of vessels including tugboats, push boats, supply vessels, fishing vessels, and other commercial vessels in and around ports. They are also used as stand-alone generators for auxiliary electrical power on many types of vessels. Category 3 marine diesel engines typically range in size from 2,500 to 70,000 kW (3,000 to 100,000 hp). These are very large marine diesel engines used for propulsion power on ocean-going vessels such as container ships, oil tankers, bulk carriers, and cruise ships.

The majority of vessels in this category are powered by diesel engines that are either fueled with distillate or residual fuel oil blends. For the purpose of emission inventories, EPA has assumed that Category 3 vessels primarily use residual blends while Category 1 and 2 vessels typically used distillate fuels.

EPA developed regional emission inventories for Category 1 & 2 vessel and Category 3 vessels for calendar years 2002 through 2040. The data DAQ used to develop the 2012 emission projections (for both a baseline and controlled scenario) are documented in Regulatory Impact Analysis: Control or Emissions of Air Pollution from

8. *Technical Support Document (TSD) for the Transport Rule Docket*. ID No. EPA-HQ-OAR-2009-0491. Page 12.

Locomotive Engines and Marine Compression Engines Less than 30 Liters Per Cylinder, EPA420-R-08-001a (<http://www.epa.gov/otaq/regs/nonroad/420r08001a.pdf>), Regulatory Impact Analysis: Control of Emissions of Air Pollution from Category 3 Marine Diesel Engines, EPA420-R-09-019 (<http://www.epa.gov/otaq/regs/nonroad/marine/ci/420r09019.pdf>) and Proposal to Designate an Emissions Control Area for Nitrogen Oxides, Sulfur Oxides, and Particulate Matter, EPA-420-R-09-007 (<http://www.epa.gov/otaq/regs/nonroad/marine/ci/420r09007-chap2.pdf>). DAQ used the EPA data from these RIAs to develop separate growth and control factors for Category 1 & 2 vessels (diesel) and Category 3 vessels (residual).

CMV Diesel Growth Factors

EPA used a variety of data sources to project fuel consumption by Category 1 & 2 engines, account for the impact of existing engine regulations (i.e., the 2004 Clean Air Nonroad Diesel Rule that will decrease the allowable levels of sulfur in fuel used in locomotives by 99 percent) and marine vessel fleet composition to develop baseline inventory projections for all years up to 2040. Using the EPA-provided baseline inventory projections, we calculated growth factors for each pollutant based on the ratio of the future year baseline emissions (2012) to the 2005 estimated emissions (emissions data from EPA 420-R-08-001a, May 2008). *CMV Diesel Control Factors*

In March 2008, EPA finalized a three part program that will dramatically reduce emissions from marine diesel engines below 30 liters per cylinder displacement. The 2008 final rule includes the first-ever national emission standards for existing marine diesel engines, applying to engines larger than 600kW when they are remanufactured. The rule also sets Tier 3 emissions standards for newly-built engines that are phasing in from 2009.

Using the EPA-provided controlled inventory projections, we calculated controlled factors for each pollutant (emissions data from EPA 420-R-08-001a, May 2008).

CMV Residual Oil Growth Factors

EPA's Emissions TSD, states "*Class 3 commercial marine vessel sector (seca_c3): base year 2002 emissions grown to future years without Emissions Control Area (ECA) or International Marine Organization (IMO) global NOX and SO₂ controls and did not apply sulfur controls for C3 marine engines in 2012.*"⁹

DAQ re-projected this category's emissions using our 2005 PEI. EPA used a variety of data sources to project fuel consumption by Category 3 engines, to account for the impact of existing engine regulations (i.e., the 2003 Tier 1 Marine Diesel Engines rule and marine vessel fleet composition to develop baseline inventory projections for all years up to 2040. EPA projected emissions for nine U.S. regions. The East Coast Region extends roughly from the Florida Keys to the Maine/Canada border. Using the EPA-provided baseline inventory projections for the East Coast Region in EPA420-R-09-019, DAQ calculated growth factors for each pollutant based on the ratio of the 2012 East Coast baseline emissions in 2012 to the 2005 estimated emissions.

CMV Residual Oil Control Factors

On December 22nd, 2009, EPA announced final emission standards under the Clean Air Act for new marine diesel engines with per-cylinder displacement at or above 30 liters (called Category 3 marine diesel engines) installed on U.S.-flagged vessels. The final engine standards are equivalent to those adopted in the amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (a treaty called "MARPOL"). The emission standards apply in two stages: near-term standards for newly-built engines will apply beginning in 2011, and long-term standards requiring an 80 percent reduction in nitrogen dioxides (NO_x) will begin in 2016. EPA also adopted changes to the diesel fuel program to allow for the production and sale of diesel fuel with up to 1,000 ppm sulfur for use in Category 3 marine vessels. The regulations generally forbid production and sale of fuels with more than 1,000 ppm sulfur for use in most U.S. waters, unless operators achieve equivalent emission reductions in other ways.

On March 26, 2010, the International Maritime Organization (IMO) officially designated waters off North American coasts as an emissions control area (ECA) in which stringent international emission standards will apply

9. *Technical Support Document (TSD) for the Transport Rule Docket.* ID No. EPA-HQ-OAR-2009-0491. Page 12, bullet 2.

to ships. In practice, implementation of the ECA means that ships entering the designated area would need to use compliant fuel for the duration of their voyage that is within that area, including time in port as well as voyages whose routes pass through the area without calling on a port. The North American ECA includes waters adjacent the Atlantic extending up to 200 nautical miles from east coast of the United States. The quality of fuel that complies with the ECA standard will change over time. From effective date in August, 2012 until 2015, fuel used by all vessels operating in designated areas cannot exceed 1.0 percent sulfur (10,000 ppm). (Beginning in 2015, fuel used by vessels operating in these areas cannot exceed 0.1 percent sulfur (1,000 ppm). Beginning in 2016, NOx aftertreatment requirements become applicable).

Using the EPA inventory projections in EPA 420-R-09-019, we calculated 2005-2012 NO_x combined growth and control factors. The growth and control factor calculations are provided in the spreadsheets.

DAQ took a somewhat different approach for SO₂, however. DAQ contacted U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division (ASD) and learned that 10,000 ppm (1%) sulfur limits will not “enter into force” until August 1, 2012. As a result, we used EPA 420-R-09-019 to determine growth, but developed our own control factor based on existing residual fuel averages of 2.7% sulfur.¹⁰ Dividing the 1% limits that take effect on August 1, 2012 by 2.7% gives a control factor of 0.37. DAQ multiplied the growth factor by the control factor (1.00) to 2005 PEI emissions to give 1,536 tpy from January 1 through July 31, 2012, and the control factor (0.37) by the growth factor to give 406 tpy for the remainder of the year, for a total of 1,804 tpy. See

Table 5.

Table 5 C-3 Marine Engine SO₂ Emissions from residual fuel oil

| Date | 2005 Emissions | 05_12 Growth | Control Factor | Growth + Control | 2012 tpy |
|----------------------|----------------|--------------|----------------|------------------|----------|
| Jan 1 - July 31 tons | 1,100 | 1.40 | 1.00 | 1.40 | 1,536 |
| Aug 1 - Dec 31 tons | 786 | 1.40 | 0.37 | 0.52 | 406 |
| Totals | 1,886 | | | | 1,942 |

4.1.5 Onroad Mobile Sources:

EPA used the MOVES model to estimate Delaware 2005 emissions and 2012 projections. Due to time constraints, Delaware Division of Air Quality (DAQ) assumed for purposes of this study that the mobile emissions generated by MOVES are accurate for 2005 and 2012. Therefore, no differences occur as shown in Tables 2 and 3.

5. DELAWARE MEETS PROPOSED TRANSPORT RULE BUDGETS

Despite that EPA inventories for DE are inflated, EPA's TR indicates that Delaware has met its obligations to mitigate transport, i.e.:

Without variability limits, EPA proposes at 40 CFR 97.410 a 2012 Delaware NO_x budget of 6,206 TPY, and at 40 CFR 97.710 a 2012 Delaware SO₂ budget of 7,784 TPY. EPA has indicated that a state's emissions budget “...is the quantity of emissions that would remain in that state from covered sources after elimination of that portion of each state's significant contribution and interference with maintenance that EPA has identified in today's proposal, before accounting for the inherent variability in power system operations... The state emissions budget is a mechanism for converting the quantity of emissions that a state

10. U.S. Environmental Protection Agency Current Methodologies in Preparing Mobile Source Port-Related Emission Inventories, Final Report, Table 2-9. April 2009. ICF International

must reduce (i.e., the state's significant contribution and interference with maintenance) into enforceable control requirements. In other words, it provides a quantity of emissions to use in developing a remedy..."

EPA's 2012 base case emissions for Delaware EGU's are 4,639 TPY for NO_x and 7,841 TPY for SO₂. Since the EPA is establishing Delaware's EGU budgets at a level that is not less than its 2012 base case emissions, Delaware has already met its obligation to remedy downwind contributions for NO_x and SO₂, using EPA's own numbers.¹¹

Furthermore, Delaware calculated its own 201[02] EGU projections, which are more accurate than EPA's IPM method (DAQ has first-hand knowledge of our sources plans, recent permits and agreements). As can be seen in table 3, DAQ 2012 projections are 7,356 tpy and 2,418 for SO₂ and NO_x, respectively. These are less than EPA's budgets in the TR (7,784 tpy SO₂ and 6,206 tpy NO_x), and thus provide additional evidence to EPA's projections of our EGUs, that Delaware has mitigated its significant contribution to downwind sources.

6. MONITORING DATA SHOWS ATTAINMENT

The EPA Guidance Memo suggests that States include a discussion of monitors in their analysis. As can be seen from Tables 6 - 11 all monitors in DE, NJ, Southeastern PA and the NY CMSA are attainment using 2007-2009 design values,¹² including those counties for which the TR showed a linkage to Delaware.¹³ **DNREC emphasises that all of these counties are in attainment prior to:**

- Delaware's Phase II (SO₂ controls) multi-pollutant regulation taking effect in 2012
- Invista coal unit shutdown for Units 1 and 2
- Indian River Units 1, 2 and 3 coal-unit shutdowns **[(Unit 3 shuts down in 2013)]**
- Connecticut Edgemoor Power Plant – Unit 3 and 4 switching from coal to natural gas/# 6 oil backup
- Reductions from implementation of the final transport rule

Table 6 Delaware 2007-2009 annual monitoring data

| PM2.5 values | New Castle County | | | | Kent County Dover | Sussex County Seaford |
|--------------|-------------------|-------|--------|------|----------------------|--------------------------|
| | Blifte | MLK-a | Nwrk-a | Lums | | |
| 2007 | 13.4 | 14.4 | 13.4 | 12.5 | 12.1 | 13.2 |
| 2008 | 13.0 | 13.5 | 12.6 | 11.6 | 11.2 | 12.2 |
| 2009 | 10.2 | 11.2 | 10.6 | 10.0 | 9.4 | 9.7 |

Table 7 Delaware annual 3-yr design values 2007-2009

| PM2.5 design values | New Castle County | | | | Kent County Dover | Sussex County Seaford |
|---------------------|-------------------|-------|--------|------|----------------------|--------------------------|
| | Blifte | MLK-a | Nwrk-a | Lums | | |
| | | | | | | |

11. The difference between the EPA 2012 base case SO₂ inventory and the budget for Delaware is 57 TPY. By Delaware correcting the problems with the inventory 1) overall modeled contributions would be much less given that EPA's 2012 SO₂ projections are inflated on the order of 57%, and 2) Delaware's 2012 EGU projection will be less than the budget.

12. A few monitors in PA, NY and NJ were either shut down or had incomplete data for one year. However, the latest data shows those monitors in attainment nonetheless. Also, all monitors in MD are in attainment, based on discussions with MARAMA.

13. The Dauphin County, PA monitor was not operational in 2009 so DAQ averaged 2007-2008 for purposes of this analysis. NOTE: this average is not meant to mean "design value" for that monitor. Nonetheless the data shows compliance with the NAAQS for 2009 (see Tables 12 and 13).

GENERAL NOTICES

| | | | | | | | |
|-----------|------|------|------|------|------|------|------|
| 2007-2009 | 12.2 | 13.0 | 12.2 | 11.3 | 10.9 | 11.0 | 11.7 |
|-----------|------|------|------|------|------|------|------|

Table 8 Delaware 24-hr 2007-2009 monitoring data

| PM2.5 98th percentiles | New Castle County | | Nwrk-a | Lums | Kent County | | Sussex County |
|------------------------|-------------------|-------|--------|------|-------------|---------|---------------|
| | Blifte | MLK-a | | | Dover | Killens | Seaford |
| 2007 | 32.3 | 33.6 | 31.0 | 29.6 | 30.2 | 30.9 | 32.5 |
| 2008 | 30.1 | 34.8 | 28.6 | 28.1 | 28.7 | 27.6 | 27.0 |
| 2009 | 23.2 | 28.4 | 23.4 | 20.6 | 19.4 | 20.7 | 20.2 |

Table 9 Delaware 24-hr 3-yr design values 2007-2009

| PM2.5 3-yr Averages | New Castle County | | Nwrk-a | Lums | Kent County | | Sussex County |
|---------------------|-------------------|-------|--------|------|-------------|---------|---------------|
| | Blifte | MLK-a | | | Dover | Killens | Seaford |
| 2007-2009 | 29 | 32 | 28 | 26 | 26 | 26 | 27 |

Table 10 Philadelphia CMSA monitoring data – daily and annual

| PHILADELPHIA NONATTAINMENT AREA | | | | Daily PM2.5 | | | | Annual PM2.5 | | | |
|---------------------------------|------------|----------------|----------------|-------------|------|-------|--------------|--------------|------|--------------|--------------|
| State | County | Monitor Site | AQS Monitor ID | 2007 | 2008 | 2009* | 2007-09 DV** | 2007 | 2008 | 2009* | 2007-09 DV** |
| NJ | Camden | Camden Trailer | 34 007 0003 | 34 | 34 | 37 | 35 | 12.2 | 13.7 | 13.6 (no Q4) | 13.1 |
| | Camden | Pennsauken | 34 007 1007 | 35 | 28 | 25 | 29 | 14.0 | 11.8 | 9.5 | 11.7 |
| | Gloucester | Gibbstown | 34 015 5001 | 31 | 27 | 22 | 27 | 13.4 | 11.5 | 9.3 | 11.4 |
| DE | New Castle | Bellefonte | 10 003 1003 | 32 | 30 | 23 | 29 | 13.4 | 13.0 | 10.2 | 12.2 |
| | New Castle | MLK-a | 10 003 2004 | 34 | 35 | 28 | 32 | 14.4 | 13.5 | 11.2 | 13 |
| | New Castle | Nwrk-a | 10 003 1012 | 31 | 29 | 23 | 28 | 13.4 | 12.6 | 10.6 | 12 |
| | New Castle | Lums | 10 003 1007 | 30 | 28 | 21 | 26 | 12.5 | 11.6 | 10.0 | 11 |
| PA | Bucks | Bristol | 42 017 0012 | 35 | 31 | 26 | 31 | 13.0 | 13.5 | 10.8 | 12.4 |
| | Chester | New Garden | 42 029 0100 | 38 | 32 | 31 | 34 | 14.1 | 14.7 | 14.2 | 14.3 |

GENERAL NOTICES

1129

| | | | | | | | | | | | |
|--|--------------|--------------------|----------------|----|----|----|----|------|------|------|------|
| | Delaware | Chester | 42 045 0002 | 35 | 29 | 27 | 30 | 14.5 | 14.7 | 12.1 | 13.7 |
| | Montgomery | Norristown | 42 091 0013 | 30 | 24 | 27 | 27 | 13.1 | 12.1 | 10.4 | 11.9 |
| | Philadelphia | LAB | 42 101 0004 | 35 | 35 | 26 | 32 | 13.7 | 13.0 | 10.9 | 12.5 |
| | Philadelphia | NEA | 42 101 0024 | 34 | 31 | 26 | 30 | 12.9 | 12.0 | 9.9 | 11.6 |
| | Philadelphia | CHS, Broad St. | 42 101 0047 | 35 | 33 | 29 | 32 | 14.4 | 13.5 | 11.1 | 13.0 |
| | Philadelphia | RIT-F | 42 101 0055 | NA | 35 | 29 | NA | NA | 13.5 | 11.3 | NA |
| | Philadelphia | FAB-FA | 42 101 0057 | 33 | 33 | 28 | 31 | 12.0 | 13.3 | 11.1 | 12.1 |
| | Philadelphia | Elmwood, Amtrak | 42 101 0136 | 32 | NA | NA | NA | 13.3 | NA | NA | NA |
| Notes | | | | | | | | | | | |
| * = 98th percentile for the year, not final | | | | | | | | | | | |
| ** =Design Value=average of three year period, not final. Three years of annual mean concentrations for PM2.5 are used to calculate the design value at a monitor. | | | | | | | | | | | |
| NA = Data Not Available | | | | | | | | | | | |
| SD = Monitor Shutdown | | | | | | | | | | | |
| Data sources are either from the State Agency or AirData (EPA's public query system that accesses AQS) | | | | | | | | | | | |

Table 11 New York nonattainment area

| NEW YORK NONATTAINMENT AREA | | | | Daily PM2.5 | | | | Annual PM2.5 | | | |
|-----------------------------|-----------|------------------|----------------|-------------|----|-----|------------|--------------|------|------|------------|
| State | County | Monitor Site | AQS Monitor ID | 07 | 08 | 09* | 07-09 DV** | 07 | 08 | 09* | 07-09 DV** |
| CT | Fairfield | Roosevelt School | 09 001 0010 | 30 | 32 | 31 | 31 | 12.7 | 11.9 | 10.2 | 11.6 |
| | Fairfield | Danbury | 09 001 1123 | 30 | 28 | 32 | 30 | 12.0 | 11.7 | 9.6 | 11.1 |
| | Fairfield | Norwalk | 09 001 3005 | 32 | 26 | 31 | 30 | 11.9 | 11.8 | 9.9 | 11.2 |
| | Fairfield | Westport | 09 001 9003 | 29 | 31 | 34 | 31 | 10.9 | 10.2 | 9.5 | 10.2 |
| | New Haven | Woodward Avenue | 09 009 0026 | 30 | 31 | 34 | 31 | 11.6 | 11.5 | 9.8 | 11.0 |
| | New Haven | James Street | 09 009 0027 | 31 | 32 | 35 | 32 | 11.5 | 11.3 | 10.2 | 11.0 |
| | New Haven | State Street | 09 009 1123 | 31 | 32 | 35 | 32 | 12.3 | 12.1 | 10.4 | 11.6 |
| | New Haven | New Haven | 09 009 2008 | 29 | 25 | 29 | 28 | 10.8 | 10.6 | 8.9 | 10.1 |
| | New Haven | Bank Street | 09 009 2123 | 33 | 28 | 34 | 32 | 12.0 | 11.7 | 9.8 | 11.2 |

GENERAL NOTICES

| | | | | | | | | | | | |
|----|------------------|--|-------------------------|----|----|----|----|------|------|------|------|
| NJ | Bergen | Fort Lee | 34 003 0003 | 35 | 32 | 27 | 31 | 13.3 | 11.6 | 9.0 | 11.3 |
| | Essex | Newark Cultural Center | 34 013 0015 | 35 | 29 | SD | NA | 13.4 | 13.7 | SD | NA |
| | Hudson | Jersey City Primary | 34 017 1002 | 35 | 32 | 29 | 32 | 13.2 | 12.1 | 10.3 | 11.9 |
| | Hudson | Union City | 34 017 2002 | 93 | 33 | 25 | 33 | 15.1 | 13.3 | 10.7 | 13.0 |
| | Mercer | Trenton | 34 021 0008 | 33 | 31 | 23 | 29 | 12.1 | 11.2 | 9.2 | 10.8 |
| | Mercer | Washington Crossing | 34 021 8001 | 27 | 28 | 25 | 27 | 10.2 | 10.0 | 7.8 | 9.3 |
| | Middlesex | New Brunswick | 34 023 0006 | 30 | 29 | 21 | 27 | 12.3 | 10.9 | 8.0 | 10.4 |
| | Morris | Morristown | 34 027 0004 | 32 | 24 | 22 | 26 | 11.5 | 9.4 | 8.1 | 9.7 |
| | Morris | Chester | 34 027 3001 | 31 | 24 | 21 | 26 | 10.4 | 8.8 | 7.1 | 8.8 |
| | Passaic | Paterson | 34 031 0005 | 37 | 29 | 26 | 30 | 13.5 | 11.4 | 8.9 | 11.3 |
| | Union | Elizabeth Turnpike Primary | 34 039 0004 | 35 | 34 | 28 | 32 | 13.9 | 12.9 | 11.2 | 12.7 |
| | Union | Elizabeth Downtown | 34 039 0006 | 36 | 31 | 26 | 31 | 13.1 | 12.4 | 9.3 | 11.6 |
| | Union | Rahway | 34 039 2003 | 33 | 30 | 25 | 29 | 13.2 | 12.0 | 9.3 | 11.5 |
| NY | Bronx | Morrisania | 36 005 0080 | 36 | 33 | 30 | 33 | 15.6 | 13.5 | 12.7 | 13.9 |
| | Bronx | 200th Street And Southern Blvd, Botanical Garden | 36 005 0083/ 0133 | 33 | NA | 27 | 30 | 13.2 | 11.7 | 10.0 | 11.6 |
| | Bronx | E. 156th St. | 36 005 0110 | 34 | 33 | 31 | 32 | 12.7 | 11.8 | 10.8 | 11.8 |
| | Brooklyn | JHS 126 | 36 047 0122 | 34 | 31 | 27 | 31 | 13.9 | 12.0 | 10.7 | 12.2 |
| | Nassau | Cedarhurst | 36 059 0008 | 29 | 29 | 26 | 28 | 11.1 | 10.9 | 9.0 | 10.3 |
| | New York | PS 59 | 36 061 0056 | 37 | 33 | NA | NA | 16.1 | 15.9 | NA | NA |
| | New York | Post Office,350 Canal Street | 36 061 0062 | 35 | NA | NA | NA | 15.8 | NA | NA | NA |
| | New York | JHS 45 | 36 061 0079 | 34 | 33 | 29 | 32 | 13.6 | 12.4 | 10.5 | 12.2 |
| | New York | PS 19 | 36 061 0128 | 38 | 26 | 29 | 31 | 15.6 | 13.1 | 12.0 | 13.6 |
| | New York | PS 124 | 36 061 0134 | 37 | 32 | 29 | 33 | 13.3 | 13.2 | 11.6 | 12.7 |
| | Queens | Newburgh, 55 Broadway | 36 071 0002 | 30 | 31 | 21 | 27 | 10.6 | 9.6 | 7.9 | 9.4 |
| | Queens | Queens College | 36 081 0124 | 32 | 31 | 27 | 30 | 11.4 | 11.0 | 9.6 | 10.7 |
| | Staten Island | Port Richmond | 36 085 0055 | 33 | 29 | 25 | 29 | 13.0 | 12.1 | 9.8 | 11.6 |

GENERAL NOTICES

| | | | | | | | | | | | |
|--|---------------|--------------------------|-------------|----|----|----|----|------|------|-----|------|
| | Staten Island | Susan Wagner HS | 36 085 0067 | 29 | 28 | 23 | 27 | 11.5 | 10.8 | 8.5 | 10.3 |
| | Suffolk | East Farmingdale/Babylon | 36 103 0001 | 29 | 27 | 22 | 26 | 10.9 | 10.1 | 8.1 | 9.7 |
| | Westchester | Mamaroneck | 36 119 1002 | 31 | 31 | 27 | 29 | 11.7 | 11.0 | 9.1 | 10.6 |
| Notes | | | | | | | | | | | |
| * = 98th percentile for the year, not final | | | | | | | | | | | |
| ** =Design Value=average of three year period, not final. Three years of annual mean concentrations for PM2.5 are used to calculate the design value at a monitor. | | | | | | | | | | | |
| NA = Data Not Available | | | | | | | | | | | |
| SD = Monitor Shutdown | | | | | | | | | | | |
| Data sources are either from the State Agency or AirData (EPA's public query system that accesses AQS) | | | | | | | | | | | |

Table 12 Delaware Linkages 2007-2009 24-hr design values/average

| | 2007 | 2008 | 2009 | 2007-09 AVG |
|----------------|------|------|------|----------------|
| Union, NJ | | | | 32 |
| 34-039-0004 | | | | |
| Dauphin, PA | 35.6 | 34.3 | NA | 35 (07-08 avg) |
| 42-043-0401 | | | | |
| Lancaster, PA | | | | 35 |
| 42-071-0007 | | | | |
| York, PA | | | | 32 |
| 42-133-0008 | | | | |
| Cumberland, PA | | | | 33 |
| 42-041-0101 | | | | |
| New York, NY | | | | 32 |
| 36-061-0079 | | | | |

Table 13 Delaware Linkages 2007-2009 annual design value/average

| | 2007 | 2008 | 2009 | 2007-09 AVG |
|---------------|-------|-------|------|-------------|
| Union, NJ | | | | 13 |
| 34-039-0004 | | | | |
| Dauphin, PA | | | | 14 |
| 42-043-0401 | 14.28 | 13.28 | NA | (07-08 avg) |
| Lancaster, PA | | | | 14 |
| 42-071-0007 | | | | |
| York, PA | | | | 14 |
| 42-133-0008 | | | | |

GENERAL NOTICES

| | | | | |
|----------------|--|--|--|----|
| Cumberland, PA | | | | 13 |
| 42-041-0101 | | | | |
| New York, NY | | | | 12 |
| 36-061-0079 | | | | |

From Table 1, we saw that the TR says that Delaware will significantly contribute to Lancaster, PA; York, PA, Union, PA; Dauphin, PA, Cumberland, PA and New York, NY in 2012 (i.e. "Linkages"). However, these counties are already in attainment as shown in shown in Tables 13 and 14.

Futhermore, because all the monitors in Delaware, and the CMSAs for Philadelphia and New York have a 2007-2009 design value meeting both the 1997 and 2006 PM_{2.5} NAAQS, we find it difficult to believe that we would contribute 0.50 ug/m³ in 2012 per table 1 - to **any** downwind area. To do so would require our worst year (2007-2009) to be much higher than MLK's 2008 98th percentile of 34.8 ug/m³ (see Table 9).

DAQ also notes that the nearest nonattaining monitor using 2007-2009 data is in Allegheny County, PA (approximately 250 mi from central Delaware).¹⁴ However, Delaware is not "linked" to Allegheny County.

7. CONTROL MEASURES

Delaware has complied with §110(a)(2)(D)(i)(I) through promulgation of:

- 7 DE Admin. Code 1146, Electric Generating Unit Multi-Pollutant Regulation,
- 7 DE Admin. Code 1142, Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, and
- 7 DE Admin. Code 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions

Each of the above is based on Best Available Control Technology (BACT), and significantly reduces emissions from Delaware's largest EGUs, industrial boilers, and peaking units. These regulations have been approved by the EPA as revisions to Delaware's SIP.

8. SUMMARY:

EPA-IPM 2012 EGU NO_x emission projections for Delaware are less than the budgets in the EPA's proposed Transport Rule. EPA-IPM 2012 EGU SO₂ emission projections for Delaware are 57 tpy higher than the budgets in the EPA's proposed Transport Rule (but we have shown EPA 2012 SO₂ projections are also approximately 22,000 tpy over-estimated). Delaware DAQ 2012 projections for NO_x and SO₂ are less than the budgets in the proposed Transport Rule. ***The EPA TR budgets are those 2012 EGU emission levels that when met; demonstrate that States have mitigated their significant downwind contributions to nonattainment areas and/or interfere with maintenance of the NAAQS. The refore, co nsidering the tr ansport budgets alone , Delawa re ha s mitigated its significant contribution to downwind areas.***

Delaware believes that if EPA used up-to-date and accurate emissions data (i.e. the Delaware PEI), and projected recent Delaware control measures, the TR modeling would have shown that Delaware does not significantly contribute to downwind areas

The counties shown in EPA's TR that have "linkages" to Delaware have been in attainment for the last three years¹⁵. In fact, all counties in Delaware, and the New York and Philadelphia CMSAs have 2007-2009 design values that meet both the 1997 and 2006 PM_{2.5} NAAQS.

14. Based on air travel distance between Dover to Pittsburgh. Both cities are the approximate centroid to Delaware, and Allegheny County. <http://www.travelmath.com/flight-distance/from/Dover,+DE/to/Pittsburgh,+PA>

Eight (8) of nine (9) coal units operating, that were operating in 2005, will be shut down or switching to cleaner fuels during the years 2009 to 2014. The remaining unit (Indian River Unit 4) will be controlled by SCR for NO_x and scrubbers for SO₂.

Delaware has complied with §110(a)(2)(D) through promulgation of: 7 **DE Admin. Code** 1146, Electric Generating Unit Multi-Pollutant Regulation; 7 **DE Admin. Code** 1142, Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries; and 7 **DE Admin. Code** 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions; which significantly reduce emissions from Delaware's largest EGUs, industrial boilers, and peaking units. These regulations impose BACT level controls, and have been approved by the EPA as revisions to Delaware's SIP.

For the above reasons, and with the above technical analysis, Delaware believes it has demonstrated that it has mitigated its significant downwind transport and satisfied CAA 110(a)(2)(D)(i)(I) requirements.

Appendices

1.0 Emission Table Summaries, EGUs, and Projections

Fuel Combustion

- 2 a Commercial_Fuel_Combustion
- 2 b Residential_Fuel_Combustion
- 2 c Industrial_Fuel_Combustion

Nonroad (marine vessels)

- 3 a Commercial_Marine_Vessel
- 3 b Towboats_&_Tugboats
- 3 c Dredging
- 3 d Ferries

4. Permit Changes

- Croda Boiler
- Dupont Stine Haskell Blr 3
- Montaire Farms fuel switch
- Invista Permit Cancel

5 Invista Consent Decree

6 Final Agreement – DNREC and DE City Refinery 14 DE Reg. 686 (01/01/11)

15. Dauphin County did not have monitor data for 2009. However, 2007-2008 annual data was in attainment and in 2008 (latest year of data) was in attainment for the 24-hr NAAQS, with trends going downward from 2006.

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 3.2.8 entitled "Steward's List" by deleting the last sentence of rule 3.2.8.5. The Commission also proposed to change its Rule 8.3 by inserting new rule 8.3.7 entitled Anabolic / Androgenic Steroids. The Commission will hold a public hearing on the proposed rule changes on April 12, 2011. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 South 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, 2011. The proposed changes are for the purpose of updating the Rules and to more accurately 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 21, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****Cooperation with the State Protection and Advocacy Agency****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 16 of the Delaware Code, Section 1102(7), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend policies to require facilities to cooperate fully with the state protection and advocacy agency.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, by Monday, April 4, 2011.

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 LONG TERM CARE RESIDENTS PROTECTION**Dementia-Specific Training Requirement****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 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend policies to require certain persons to receive dementia specific training.

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 Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Monday, April 4, 2011.

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 MANAGEMENT SERVICES

Annual Grant Application Under Part C of the Individuals With Disabilities Education Improvement Act of 2004

PUBLIC NOTICE

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. Public Comment is being accepted from April 1 ~ April 30, 2011, and the application will be available until May 8, 2011.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of the application or e-mail Inita.joyner@state.de.us. Send your written comments to Part C/Birth to Three, DMS/DHSS, 2nd floor, Main Building, Suite 249, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Citizenship and Alienage

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 Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage, specifically, State Funded Benefits*.

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, 2011.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Long-Term Care Program

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 Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

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, 2011.

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
Health Systems Protections
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 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Public Health is proposing to amend policies regarding Health Systems Protections to require certain persons to receive dementia specific training.

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 Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Monday, April 4, 2011.

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
Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance (RCA)
Programs
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 TANF and Refugee Cash Assistance (RCA) programs specifically, *Excluded Income and Excluded Resources*.

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, 2011.

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
TANF and Transition Work Program Sanctions
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 Child Care Subsidy Program, specifically, *Sanctioning TANF and Transitional Work Program Recipients*.

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, 2011.

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
Child Care Subsidy Program
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 Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Special Needs* and *Necessity of Child Care*.

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, 2011.

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 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, E, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System. These proposals revise the Fee Schedule Instructions and Guidelines, Utilization Review, and Forms regulations; and add a 7th Practice Guideline, "Lower Extremities", to the regulations.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 2, 2011, 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 these 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 hearing.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****1300 Board of Examiners of Private Investigators & Private Security Agencies****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 1.0 – Firearms Policy; Adopted Rule 7.0 – Employment Notification; and Adopted Rule 8.0 – Criminal Offenses. The amendment to Rule 1.0 will clarify the requirement of three (3) qualifying shoots within a calendar year. The amendment to Rule 7.0 will allow the rejection of an individual for make a false statement when submitting their application. The amendment to Rule 8.0 will clarify the offenses that are included in moral turpitude. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by April 30, 2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, April 28, 2011, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**DIVISION OF MANAGEMENT AND SUPPORT SERVICES****Procedures for Drug Testing of Certain Employees****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and as required by HB 190 of the 145th General Assembly.

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 Michael Alfree, Deputy Director, Division of Management and Support Services, 1825 Faulkland Rd., Wilmington, DE 19805 or by fax to (302) 633-2735 by April 30, 2011.

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 STATE**DIVISION OF PROFESSIONAL REGULATION****1700 Board of Medical Licensure and Discipline****PUBLIC NOTICE**

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations as mandated by SB 233 (codified at 24 **Del.C.** §1713(f)). The proposal creates new Regulation 31 - Disciplinary Guidelines establishing guidelines for the imposition of disciplinary sanctions against persons certified or licensed to practice medicine or other professions or occupations regulated under the Medical Practice Act.

A public hearing will be held on May 3, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION**2500 Board of Pharmacy****PUBLIC NOTICE**

The Delaware Board of Pharmacy, pursuant to 24 **Del.C.** §2501, proposes to revise their rules and regulations. The proposed revisions to rule 5.1.13.6 expands the use of electronically transmitted prescriptions beyond just via facsimile.

The Board will hold a public hearing on the proposed rule change on May 18, 2011 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Judy Letterman, Administrator of the Delaware Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION**CONTROLLED SUBSTANCE ADVISORY COMMITTEE****Uniform Controlled Substance Act Regulations****PUBLIC NOTICE**

The Delaware Controlled Substance Advisory Committee, pursuant to 16 **Del.C.** §4700, proposes to revise their rules and regulations. The proposed revisions to the rules address the audit requirements when a pharmacy relocates, broaden the categories classes of persons who may give and accept verbal prescriptions, permit electronic transmission of prescriptions, clarify the non-resident practitioner waiver, require identification to be presented at the time a controlled substance prescription is picked up only, bar the presentation of controlled substance prescriptions at drive-through windows, and impose additional security requirements on newly constructed or renovated pharmacies.

The Board will hold a public hearing on the proposed rule change on May 25, 2011 at 9:30 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Written comments should be sent to Judy Letterman, Administrator of the Delaware Controlled Substance Advisory Committee, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DEPARTMENT OF TRANSPORTATION**DIVISION OF TRANSPORTATION SOLUTIONS****2402 Delaware Manual on Uniform Traffic Control Devices****PUBLIC NOTICE**

Under Title 17 of the Delaware Code, Sections 134 and 141, as well as 21 Delaware Code Chapter 41, the Delaware Department of Transportation (DelDOT) is seeking to adopt a revised Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). This revision of the Delaware MUTCD, will supersede any previous versions and is required by revisions to the Federal version of the MUTCD.

The Department will take written comments on the draft changes to the Delaware MUTCD from April 1, 2011 through April 30, 2011. Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/register/april2011/proposed/MUTCD.pdf>.

Questions or comments regarding these proposed changes should be directed to: Adam Weiser, P.E., PTOE, Safety Programs Manager, Division of Transportation Solutions, Delaware Department of Transportation, 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4073 (telephone) (302) 653-2859 (fax) adam.weiser@state.de.us.
