
Delaware Register of Regulations

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before June 16, 2008.



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

9 DE Reg. 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 17	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6603 (16 **Del.C.** §6603)

NOTICE OF PUBLIC HEARING**Delaware State Fire Prevention Regulations, Part IX, Fire Service Standards****Chapter 4 Minimum Requirements of the Establishment of Fire Companies and Sub Stations**

The Delaware State Fire Prevention Commission will hold a public hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** §101 on Tuesday, August 19, 2008 at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to Part IX, Fire Service Standards, *Minimum Requirements of the Establishment Fire Companies and Substations*, to update the regulation related to substations and to make the regulation applicable to the establishment of additional Emergency Medical Service (EMS) stations as well as fire substations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. You can find the meeting announcement and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf> or on the Delaware State Fire Marshal's Office webpage at www.statefiremarshal.delaware.gov under the tabs "Services" and "Proposed Changes". There will be a reasonable fee charge for copies of the proposed changes or the proposed changes may be retrieved from the webpage for free.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing. The final date to submit written comments shall be at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker may be limited.

The Commission will consider promulgating the proposed regulations immediately following the public hearing.

Chapter 4 Minimum Requirements ~~of~~ for the Establishment of Additional Stations for Existing Fire and/or EMS Companies/Departments and Sub Stations in the State of Delaware

1.0 General requirements

- 1.1 ~~Fire companies desiring to establish a new substation and/or~~ Existing fire and/or EMS companies/departments desiring to establish additional station(s) within the State of Delaware shall immediately advise the State Fire Prevention Commission of their intent by letter.
- 1.2 The Commission shall, upon receipt of the notification, send a copy of these regulations to the fire ~~company and the bordering companies and shall advise them of a date to appear before the Commission.~~ and/or EMS companies/departments. The Commission shall notify the parties in writing of the date and time to appear before the Commission. The company/department making the request will be required to appear before the Commission to make a brief presentation and answer questions concerning the proposed additional station(s). Bordering companies/departments may send a written response or a written request to appear before the Commission at the scheduled hearing.
- 1.3 It is necessary for the fire ~~and/or EMS~~ company/department desiring ~~to form a new substation and/or~~ the additional station to follow certain steps to comply with these regulations. The steps to be followed are:
 - 1.3.1 Compliance with Section 2 - Authorization of ~~substation and/or~~ additional station(s).
 - 1.3.2 Compliance with ~~3, 4, 5, 6, and 7~~ - Fire station construction and submittal of plans.
 - 1.3.3 Communications and alarm receiving and alerting equipment.
 - 1.3.4 Equipment, ambulance/rescue apparatus, and
 - 1.3.5 Waivers/Exemptions.
- 1.4 Temporary/emergency fire ~~and/or EMS~~ station
 - 1.4.1 The Commission may waive the procedures set forth herein whenever it determines that the health and safety of the public or the good of the ~~F~~ire and/or EMS ~~S~~service in general requires such a waiver.

2.0 Authorization of substation and/or additional station

- 2.1 The Commission shall determine whether any new substation and/or additional station shall be authorized in any part of the State. In making such determination, the Commission shall consider among things the ability, financial or otherwise, of the company/department seeking authorization to maintain an effective fire and/or EMS company and fire and/or EMS protection needs of the area involved. Title 16, Chapter 66, Section 6619.
- 2.2 The location of the ~~substation and/or~~ additional fire and/or EMS station(s) shall be within the requesting company/department's district boundaries. The location shall be selected, taking into account the location of high life hazards, concentrations of values, topographical conditions, bridges, man-made barriers such as railways or limited access highways, ~~traffic congestion, the number and extent of urns,~~ the locations of neighboring fire and/or EMS stations and the availability of department members.
- 2.3 A certified plot plan showing the proposed location of the station shall be submitted to the Commission ~~for approval.~~
- 2.4 Neighboring fire and/or EMS companies/departments may join together to combine resources for an additional station(s) provided all parties appear before the Commission in support of the request.

3.0 Fire/EMS station construction and submittal of plans

- 3.1 The ~~substation and/or~~ additional station(s) shall be of adequate size to provide space for at least two pieces of ~~apparatus~~ emergency equipment.
- 3.2 The ~~substation and/or~~ additional station(s) ~~within existing district~~ shall be of fire resistive or non-combustible construction in accordance with any and all building codes, fire codes and zoning requirements within the local jurisdiction and must provide proper rest room facilities.

PROPOSED REGULATIONS

- 3.3 The ~~substation and/or~~ additional station(s) shall be equipped with an emergency power supply as ~~approved by the Commission to keep the station(s) operational during a power outage.~~
- 3.4 Preliminary and final plans, specifications, etc., shall be submitted to the Commission for approval along with a copy of the appropriate permits from the County or Jurisdictional Building Department and Fire Marshal's Office before work is started.
- 3.5 A pre-existing building may be approved, providing it meets the standards and requirements set forth in this Section. Preliminary and final plans, along with a copy of the appropriate permits from the County or Jurisdictional Building Department and Fire Marshal's Office, must still be submitted and approved by the Commission.

4.0 Communications and alarm receiving and alerting equipment

- 4.1 The fire/EMS emergency phone shall be on a private phone line direct to the ~~County/local~~ dispatch call board/dispatching center.
- 4.2 Fire/EMS alerting equipment shall be sirens, and or tone activated radio receiving equipment. any of the following: siren, tone activated radio, pager or whatever might be the latest technology in use in the respective county/state at that time, such as alpha/numeric pagers, cell phone/text messaging or internet systems.
- 4.3 The station(s) shall be equipped with the proper computer, fax and printer equipment necessary to transmit and receive data from the local dispatch center, hospitals, state and county agencies including but not limited to fire and EMS reports required by the state.
- 4.4 All fire and EMS units shall be equipped with the proper radio/computer equipment to communicate with the local dispatch center and local/state agencies.
- 4.35 Fire/EMS alerting communications equipment shall be tested ~~according to county policy.~~ as agreed upon by the fire and EMS community and the respective county/state.

5.0 Equipment

- 5.1 Personal protection
 - 5.1.1 There shall be a minimum of fifteen sets of ~~running gear. Running gear shall include, but not be limited to, the following approved items: helmet, bunker coat, bunker pants, boots, gloves, and eye protection. NFPA No. 1971, 1972, 1973, 1974.~~ personal protection equipment. This equipment shall include, but not be limited to, the following items: helmet, bunker coat, bunker pants, boots, gloves, eye protection and PASS device. All equipment shall meet the appropriate NFPA standard.
 - 5.1.2 Stations that will house a BLS unit shall also provide proper protection for the BLS crew to operate safely at emergency incidents. This equipment shall include, but not be limited to, head protection, reflective outer wear, gloves and eye protection.
- 5.2 Fire apparatus
 - 5.2.1 The fire apparatus shall be that which meets the needs of the requesting company and ~~with the~~ is approved of by the Commission.
 - 5.2.2 All fire, rescue and aerial apparatus shall conform to the provisions outlined in the ~~Appropriate~~ Appropriate Chapters of NFPA No. 1901. If pumping apparatus is provided, Section 10.3 shall be complied with.

6.0 ~~Ambulance/rescue~~ apparatus

- 6.1 ~~All ambulances shall comply with Commission Regulations.~~
- 6.2 ~~All rescue apparatus shall comply with Delaware State Volunteer Firemen's Association Requirements.~~
- 6.3 ~~All ambulance and/or rescue apparatus shall be equipped with a Mobil Radio which is capable with existing County Dispatch Center.~~

~~7.0~~ 6.0 Waivers/Exemptions

- 7.1 ~~Fire~~ and/or EMS company/department requests for waivers for certain equipment will be considered.

~~76.2~~ Consideration will be given to the requesting company/department to move equipment as needed.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 603

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

603 Compliance with the Gun Free Schools Act

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to amend 14 **DE Admin. Code** 603 Compliance with the Gun Free Schools Act. Minor amendments were made to reflect: 1) the policy must be on file electronically with the Department of Education; and 2) modifications to expulsion are made on a case by case basis by the chief school officer.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses safety and does not change student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses safety issues and does not change student equity.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses safety issues related to the implementation of the Gun Free Schools Act.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses students' legal rights as part of the implementation of the Gun Free Schools Act.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation reflect the requirements of the Federal statute's reporting procedures.

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 preserves the necessary authority and flexibility of decision making at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is required by Federal statute.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There should be no additional costs related to the reporting requirements.

603 Compliance with the Gun Free Schools Act

1.0 Written Policy Required

Each school district and charter school requesting assistance under the Elementary and Secondary Education Act (ESEA) shall have a written policy implementing the Gun Free Schools Act [(20 USC §4141) (20 USC §7151)] and 11 **Del.C.** §1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

- 1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.
- 1.2 Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.
- 1.3 The definition of "**Firearm**" shall be the same as the meaning given to the term in ~~18 USC §921(a)~~ the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

2.0 Submission of the Policy to the State Department of Education

Each school district and charter school requesting assistance under the ESEA shall submit the following to the Delaware Department of Education by June 1 each year, in such form as the Department requires:

- 2.1 An assurance that its policies comply with this regulation and with 11 **Del.C.** §1457(j) or its successor statute.
- 2.2 Descriptions of the expulsions imposed under 11 **Del.C.** §1457(j) or its successor statute and under the policy implemented in accord with this regulation.

3.0 Individuals with Disabilities Act

Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

4.0 Reporting Requirements and Timelines

- 4.1 Each public school district and charter school shall have an electronic copy of its policy implementing the Gun Free Schools Act [(20 USC §4141) (20 USC §7151)] and 11 **Del.C.** §1457(j) or its successor statute on file with the Department of Education.
- 4.2 Each public school district and charter school shall provide an electronic copy of any policy implementing the Gun Free Schools Act [(20 USC §4141) (20 USC §7151)] and 11 **Del.C.** §1457(j) or its successor statute within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

1 DE Reg. 1976 (6/1/98)

7 DE Reg. 333 (9/1/03)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 745

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

745 Criminal Background Check for Public School Related Employment

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to amend 14 DE Admin. Code 745 Criminal Background Check for Public School Related Employment. The new amendments make a cross reference to a new regulation 14 DE Admin. Code 746 Criminal Background Check for Student Teaching. The authority for the Secretary of Education to promulgate this amended regulation is based in 11 Del.C., Subchapter VI. This regulation was originally in the December 1, 2007 *Register of Regulations* to address criminal background checks for student teaching. Because of comments, the Department is proposing a separate regulation to address criminal background for student teaching. There are additional minor edits.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to making a cross reference to criminal background checks for student teachers and does not directly affect the student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to making a cross reference to criminal background checks for student teachers and does not directly ensure whether students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to making a cross reference to criminal background checks for student teachers and will help ensure students' health and safety are better adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to making a cross reference to criminal background checks for student teachers and does not directly affect that students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is related to making a cross reference to criminal background checks for student teachers and preserves the necessary authority and flexibility of decision making at the local board and school levels.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to making a cross reference to criminal background checks for student teachers and does not place unnecessary reporting or administrative requirements or mandates on decision makers at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to making a cross reference to criminal background checks for student teachers and does not change any decision making authority or accountability for public employment criminal background checks.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is related to making a cross reference to criminal background checks for student teachers and is consistent with the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation has been changed with input from the higher education institutions and districts to help ensure this process is as clear and less burdensome as possible.

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

745 Criminal Background Check for Public School Related Employment

1.0 Definitions

"Continuously Employed" means having worked in the same public school district or charter school for at least ninety one (91) working days in the prior school year. Substitute teachers shall be considered Continuously Employed when they have worked forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools. Persons participating in a Student Teaching Assignment shall be considered Continuously Employed when they have participated for forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools as a student teacher.

"Covered Personnel" means the following:

- All final candidates for public school related employment for compensation;
- All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and
- All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility (EPER position) in public schools whether the person receives compensation or not.

Notwithstanding the above definition of Covered Personnel the following persons are not subject to these regulations:

- Instructors in adult corrections institutions;
- Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;
- Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts and the Delaware Institute for the Arts in Education; and
- Substitute food service workers.

"Student Teaching Assignment" means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class. Refer to 14 DE Admin. Code 746 Criminal Background Check for Student Teaching for requirements and procedures related to criminal background checks for Student Teaching Assignments.

10 DE Reg. 684 (10/01/06)

2.0 Procedures for Candidates for Employment or for Persons Providing Services Under a Contract to Obtain a Criminal Background Check

- 2.1 A final candidate for a Covered Personnel position, as defined in 1.0, in a public school shall be subject to the following procedures:
- 2.1.1 After notification by a school district or charter school that he/she is a final candidate for a Covered Personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops ~~processing~~ that possess such criminal background checks or at an on site appointment arranged by the school district or charter school. School districts and charter schools at their option may require an applicant to submit a criminal background check prior to becoming a final candidate.
 - 2.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing districts and charter schools as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
 - 2.1.3 The candidate shall have ~~the~~ an original of the completed criminal background check sent to one school district or charter school. ~~A copy~~ An original of all information sent to the school district or charter school shall be sent by the State Bureau of Identification to the candidate.
 - 2.1.4 As a part of the application for public school related employment or as a part of the contract for services, the candidate shall sign a ~~release~~ Release for Criminal Background Check Information form approved by the Department of Education. The release will allow the school district or charter school that was sent the original of the completed criminal background check to do the following:
 - 2.1.4.1 Confirm the receipt of that original and disclose its contents to the district superintendent or charter school director or district or charter school chief personnel officer of other Delaware school districts or charter schools considering the person as a candidate.
 - 2.1.4.2 Send the original criminal background check to the placing school district or charter school if the candidate is hired or placed under contract in another Delaware school district or charter school,
 - 2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s) or charter school(s).
 - 2.1.5 Each final candidate shall have a determination of suitability made by the school district or charter school and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as set forth in 5.0.
 - 2.1.6 Final candidates for employment or entering into a contract for services may have criminal background checks from other states accepted, if all of the following conditions are met;
 - 2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;
 - 2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district or charter school;
 - 2.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent directly from the candidate's most recent employer(s) to the Delaware school district or charter school which was sent the original background check.
 - 2.1.6.4 The out of state candidate shall sign a release to allow the school district or charter school receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.
 - 2.1.7 Except as described herein, all costs associated with obtaining a criminal background check shall be paid for by the person seeking a Covered Personnel position. School districts or charter schools may use funds other than state funds to pay for criminal background check costs and may

enter into consortia to pay such costs for persons covered by the law who work in more than one school district or charter school during the course of the school year.

10 DE Reg. 684 (10/01/06)

3.0 Procedures for School Districts and Charter Schools for Criminal Background Checks on Candidates for Employment or for Persons Providing Services Under a Contract

- 3.1 School districts and charter schools shall require all persons subject to the law and these regulations to complete a release as a part of the application or contract submissions process and, if they become a final candidate for a Covered Personnel position, to initiate the criminal background check process prior to entering into the Covered Personnel position.
- 3.2 The school district or charter school sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:
 - 3.2.1 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and assured that a signed release is on file in the requesting district or charter school, confirm the receipt of that original and disclose its contents to the superintendent or director or the chief personnel officer of the requesting Delaware school district or charter school considering the person for hire;
 - 3.2.2 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and sent a copy of the signed release on file in the requesting district or charter school, send the original criminal background check to the requesting Delaware school district or charter school if the candidate is placed in a Covered Personnel position; and
 - 3.2.3 If sent any subsequent criminal history information on the person hired, placed under contract or assuming an extra duty position in another district or charter school, forward such information to the school district or charter school.
 - 3.2.4 School districts or charter schools may also share and forward the above information with the Delaware Department of Education under the same conditions applicable to school districts or charter schools. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position.
- 3.3 The school district or charter school, in accordance with **11 Del.C. §8571(b), (d) and (e)**, shall make a determination of suitability for employment on each person it requested to initiate the criminal background check process. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as set forth in 5.0.
- 3.4 When a candidate is finally placed in a Covered Personnel position the district or charter school shall do the following if the original of the completed criminal background check is not yet in its possession:
 - 3.4.1 Make a written request to the school district or charter school that received the original of the completed criminal background check to forward the original copy to the placing district or charter school for placement in the employee's or contractor's file. As a part of the request, the placing district or charter school shall forward a copy of the release signed by the candidate.
 - 3.4.2 Notify the State Bureau of Identification that the candidate has become Covered Personnel in the district or charter school and is no longer associated with the school district or charter school that received the original of the completed criminal background check.
- 3.5 A school district or charter school may place the candidate in a Covered Personnel position provisionally in accordance with **11 Del.C. §8571(f)**; however, the school district or charter school shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the criminal background check prior to being hired provisionally.

10 DE Reg. 684 (10/01/06)

4.0 Length of Validity of Criminal Background Check and Exemption for "Continuous Employment"

- 4.1 A criminal background check obtained under these regulations shall only be valid for twelve (12) months. If a person is not Continuously Employed by a Delaware school district or charter school within that period, the district or charter school receiving the original criminal background check need not retain it beyond that time. If the person becomes Continuously Employed by a Delaware school district or charter school, the original criminal background check shall be kept on file for a minimum of five (5) years.
- 4.2 Each person who has been Continuously Employed in a public school district or charter school shall be exempt from the screening provisions of **11 Del.C. §8571**.
- 4.3 A person who transfers between Delaware public school districts or charter schools and is placed in a Covered Personnel position shall comply with **11 Del.C. §8570**, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, charter school or out of state school, and supplied under 2.0 and 3.0 of these regulations is one means of complying with **11 Del.C. §8570**, et seq., and these regulations.

10 DE Reg. 684 (10/01/06)

5.0 Determination of Suitability and Appeal Process

- 5.1 A person covered by **11 Del.C. §8570**, et seq., and these regulations, shall have the opportunity to respond to a school district or charter school regarding any criminal history information obtained prior to a determination of suitability for employment being made. See **11 Del.C. §8571(d)**. Such a response shall be made within ten (10) working days of the person's receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district or charter school pursuant to the factors listed in **11 Del.C. §8571(d)**.
- 5.2 The school district or charter school shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person placement in a Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in 5.3.1 through 5.3.3.
- 5.3 Appeal for Reconsideration
 - 5.3.1 An appeal for reconsideration shall be initiated by a person notified that he/she is being denied or being terminated from placement in a Covered Personnel position, pursuant to **11 Del.C. §8571**, by submitting a letter of appeal to the district superintendent or charter school director within ten (10) working days of the receipt of written notice.
 - 5.3.2 The appeal shall be reviewed by the district superintendent or charter school director and the appellant shall have the right to be heard by the district superintendent or charter school director within ten (10) working days of the receipt of the letter of appeal.
 - 5.3.2.1 Local school districts and charter schools shall develop procedures for appeals for reconsideration. The process shall be as informal and accessible as possible, but shall allow for impartial and complete review.
 - 5.3.3 A written decision shall be rendered by the district superintendent or charter school director within ten (10) working days of the hearing. A decision made by the district superintendent or charter school director under this appeal procedure is final, unless the district or charter school has made specific provisions for appeal to another entity within the district or charter school. The decision shall not be appealable to the State Board of Education or to the Department of Education.

10 DE Reg. 684 (10/01/06)

6.0 Confidentiality

- 6.1 All information and records pertaining to criminal background checks, pursuant to 11 **Del.C.** §8570, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:
 - 6.1.1 Access to criminal background check records, and letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the district superintendent or charter school director and the district or charter school chief personnel office and one person designated to assist in the processing of criminal background checks, who will receive training in confidentiality, be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential.
 - 6.1.2 All such records shall be kept in locked, fireproof cabinets;
 - 6.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Covered Personnel position.

10 DE Reg. 684 (10/01/06)

7.0 Penalties

The district superintendent or charter school director or the district or charter school chief personnel officer shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of 11 **Del.C.** §8571.

10 DE Reg. 684 (10/01/06)

8.0 Subsequent Criminal History Information

- 8.1 Subsequent criminal history on a person in a Covered Personnel position may be sent by the State Bureau of Identification to the district superintendent or charter school director or district or charter school chief personnel office and shall be used by district or charter school in making a determination about the person's continued suitability for placement in a public school environment.
- 8.2 If subsequent criminal history information is mistakenly directed to a district or charter school other than the current district or charter school of Covered Personnel, the information shall be forwarded immediately to the employing district or charter school by the receiving district superintendent, charter school director or district or charter school chief personnel officer.
- 8.3 If a person is known to be in a Covered Personnel position in more than one district or charter school, the superintendent, director or chief personnel officer of the district or charter school receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent, charter school director or district or charter school chief personnel officer of the other school district or charter school.

5 DE Reg. 865 (10/1/01)

10 DE Reg. 684 (10/01/06)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 746

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

746 Criminal Background Check for Student Teaching

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to adopt a new regulation 14 DE Admin. Code 746 Criminal Background Check for Student Teaching. This new regulation requires student teachers to have criminal background checks prior to placement in a school setting. In the December 1, 2007 *Register of Regulations* amendments were made to 14 DE Admin. Code 745 Criminal Background Checks to address student teaching criminal background checks. Based on comments, the Secretary is establishing a new regulation that addresses criminal background checks for student teaching separate from the requirement for criminal background checks for public school employment. The authority to promulgate this new regulation is based in 14 Del.C. 122(a) which vests the DOE with broad authority to adopt rules and regulations "for the maintenance, administration and supervision throughout this state of a general and efficient system of free public schools and 122(b)(22) which vests the DOE with the authority to prescribe rules and regulations relating to the public school teacher preparation, recruitment and retention. In addition, 122(b)(2) mandates that the DOE adopt regulations governing the "protection of the health and physical welfare of public school students in this state." The effective date for this requirement will be July 1, 2009 to allow time for the higher education institutions, districts, charter schools, and State Police to institute any procedural changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to criminal background checks for student teachers and does not directly affect the student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to criminal background checks for student teachers and does not directly ensure whether students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to criminal background checks for student teachers and will help ensure students' health and safety are better adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to criminal background checks for student teachers and does not directly affect that students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is related to criminal background checks for student teachers and preserves the necessary authority and flexibility of decision making at the local board and school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to criminal background

checks for student teachers and makes changes so as not to place unnecessary reporting or administrative requirements or mandates on decision makers at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to criminal background checks for student teachers and allows the higher education institutions to make the determination of suitability for placement in a public school to reduce administrative requirements at the district or school level.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation has been proposed with input from the higher education institutions to help ensure this process is as efficient and less burdensome as possible.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not a cost to the state or local school boards for compliance with this regulation.

746 Criminal Background Check for Student Teaching

1.0 Definitions

“Higher Education Institution” means the Delaware college or university that has a teacher preparation program that places candidates into Student Teaching Positions in a Delaware public school district or charter school.

“Student Teaching Position” means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class.

2.0 Criminal Background Check Requirements and Procedures for Student Teaching Position Candidates

- 2.1** Effective July 1, 2009, any person in a Student Teaching Position in a public school district or charter school shall be required to have a criminal background check as prescribed through this regulation.
- 2.2** The higher education institution where candidates for Student Teaching Positions are enrolled shall require all candidates to complete a Release for Criminal Background Check Information form approved by the Department of Education as a part of the assignment process for a Student Teaching Position in a Delaware public school district or charter school.
- 2.3** The candidate for a Student Teaching Position in a Delaware public school district or charter school shall be subject to the following procedures:
 - 2.3.1** After notification by the higher education institution that he/she is a candidate for a Student Teaching Position, the candidate shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops that processes such criminal background checks or at an on site appointment arranged by the higher education institution.
 - 2.3.2** The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to the candidate's placing higher education institution as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
 - 2.3.3** The candidate shall have an original of the completed criminal background check sent to the higher education institution. An original of all information sent to the higher education institution shall be sent by the State Bureau of Identification to the candidate.

- 2.4 All costs associated with obtaining a criminal background check shall be paid for by the person seeking a student teaching position placement.

3.0 Procedures for Higher Education Institutions, Public School Districts and Charter Schools for the Determination of Suitability for Candidates in Student Teaching Positions.

- 3.1 The higher education institution where the candidate is enrolled and that was sent an original copy of the completed criminal background check shall make the initial determination for suitability for student teaching placement. The criteria for determining the suitability for student teaching placement shall be at the discretion of the higher education institution and may vary among the various higher education institutions in Delaware.
- 3.1.1 If a determination is made to deny a candidate placement into a student teaching position based upon the higher education institution's review of the criminal history, the higher education institution may provide for an appeal process.
- 3.2 Upon the initial determination for suitability for the candidate to be placed in a public school, the higher education institution liaison responsible for overseeing Student Teaching Position placements shall confirm the receipt of the original complete criminal background check and send a copy of such to the district superintendent or charter school director of the Delaware school district or charter school considering the person as a candidate for a Student Teaching Position.
- 3.3 Each school district and charter school shall make the final determination of suitability for placement of a candidate in a Student Teaching Position in its school.
- 3.3.1 Each school district and charter school shall establish the process and criteria for determining suitability for placement of a candidate in a Student Teaching Position in its school(s).
- 3.3.2 The criteria for determining the suitability and subsequent placement of a candidate in a student teaching position may vary among the districts and charter schools. In addition, a school district or charter school may have criteria for student teaching placement that differs from the criteria for public school employment.
- 3.3.3 The school district or charter school shall provide the candidate's higher education institution the decision to place or deny a candidate in a Student Teaching Position placement in writing.
- 3.4 Candidates for student teaching may have criminal background checks from other states accepted, if all of the following conditions are met:
- 3.4.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;
- 3.4.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to the higher education institution;
- 3.4.3 The out of state candidate shall sign a release to allow the higher education institution receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

4.0 Procedures for Maintaining Criminal Background Check Information

- 4.1 All information and records pertaining to criminal background checks and this regulation shall be maintained in a confidential manner including, but not limited to, the following:
- 4.1.1 Access to criminal background check records, letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the higher education institution officer responsible for student teacher assignments and one person designated to assist in the processing of criminal background checks; and the district superintendent or charter school director and the district or charter school chief personnel officer responsible for the determination of suitability in the placing district or charter school. These persons shall be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential;
- 4.1.2 All such records shall be kept in locked, fireproof cabinets;

PROPOSED REGULATIONS

4.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Student Teaching Position.

4.2 The higher education institution may dispose of the criminal background check in a secure manner no earlier than six (6) months after the student graduates from the higher education institution.

5.0 Penalties

The higher education institution officer responsible for student teacher assignments shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates this regulation.

6.0 Subsequent Criminal History Information

6.1 Subsequent criminal history on a person in a Student Teaching Position may be sent by the State Bureau of Identification to the higher education institution.

6.2 The higher education institution where the candidate is enrolled shall be required to send any subsequent criminal history information received to the school district or charter school where the candidate is engaged in student teaching activities.

6.3 The district or charter school where the person is in a Student Teaching Position may consider any subsequent criminal history received for the person's continued suitability for the Student Teaching Position.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Pharmaceutical Services Program – Tamper-Resistant Prescription Pads

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 Delaware Medical Assistance Program (DMAP) Provider Manuals to bring the Medicaid regulations into compliance with Federal law.

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) 255-4454 by July 31, 2008.

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

SUMMARY OF PROPOSAL

The purpose of this proposal is to update implementation of the federal law that mandates the use of tamper-resistant prescriptions for all Medicaid, non-electronic prescriptions.

Statutory Authority

Public Law 110-28, *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007*, signed into law on May 25, 2007

Background

This proposal provides information regarding policy changes to the Delaware Medical Assistance Program (DMAP) Provider Manuals that outlines requirements for pharmacies that bill DMAP for prescriptions.

As previously announced [See 11 DE Reg 793, December 1, 2007], Congress passed H.R. 2206, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Public Law 110-28, regarding use of tamper-resistant prescription pads. Section 7002(b) of the Act amends the federal Medicaid statute to prevent payment of prescriptions "for which the prescription was executed in written (and non-electronic) form unless the prescription was executed on a tamper-resistant pad".

Failure of a State to enforce the tamper-resistant requirement of section 7002(b) may result in the loss of Federal Financial Participation (FFP).

The Division of Medicaid and Medical Assistance (DMMA) implemented this mandate in two phases. For the first, DMMA required that, on October 1, 2007, a prescription must contain at least one of the three tamper-resistant characteristics in order to be considered "tamper resistant". For the second, a prescription must contain all three characteristics beginning October 1, 2008.

Summary of Proposed Regulation

For a pharmacy claim to be eligible for reimbursement by DMAP, any prescription executed in written (and non-electronic format) must be executed on a tamper-resistant form. DMAP will enforce the federal implementation date, as follows:

A. To be considered tamper-resistant beginning **OCTOBER 1, 2008**, a prescription form must contain **ALL THREE** of the following characteristics:

1. One or more industry-recognized features designed **to prevent unauthorized copying** of a completed or blank prescription form;
2. One or more industry-recognized features designed **to prevent the erasure or modification** of information written on the prescription by the prescriber;
3. One or more industry-recognized features designed **to prevent the use of counterfeit** prescription forms.

B. Appropriate DMAP Provider Manuals have been updated to provide additional detail including examples of features, which comply with the above requirements.

Delaware Medical Assistance Program (DMAP) provider manuals and official notices are available for downloading from the DMAP website: **www.dmap.state.de.us** or EDS Pharmacy Services may be contacted at (800) 999-3371- Select #0, then #1.

The Delaware Medical Assistance Program (DMAP) is merely adopting the federal statute without changing content or incorporating additional state requirements concerning the use of federally mandated tamper-resistant prescriptions.

DMMA PROPOSED REGULATION #08-23

REVISION:

(Regulation Number will be assigned pending further review and analysis by Department staff)

~~Effective October 1, 2007~~, Section 1903(i) of the Social Security Act requires that written (non-electronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, DMAP will only reimburse for covered Medicaid outpatient drugs when the written (non-electronic) prescription is executed on a tamper-resistant pad, or the prescription is electronic, faxed, or verbal.

To be considered tamper-resistant beginning October 1, 2008, a prescription form must contain all three of the following characteristics:

1. One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;
2. One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber;
3. One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Food Stamp Program 9044.1 Newly-Certified Households

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 Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding newly-certified households.

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 July 31, 2008.

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

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends the Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding newly-certified households.

Statutory Authority

7 CFR §274.2, *Providing Benefits to Participants*

Summary of Proposed Changes

DSSM 9044.1, Newly-Certified Households: Remove language references to the old issuance method of mailing benefits and replacing with Electronic Benefit Transfer (EBT) processing language.

DMMA PROPOSED REGULATION #08-22

REVISION:

9044 Providing Benefits to Participants

[274.2]

DSS is responsible for the timely and accurate issuance of benefits to certified eligible households. Assist those households comprised of elderly or disabled members which have difficulty reaching issuance offices, and households which do not reside in a permanent dwelling or a fixed mailing address by finding authorized representatives to act on their behalf or by other appropriate means.

9044.1 Newly-Certified Households

All newly certified households, except those that are given expedited service, must be given an opportunity to participate no later than thirty (30) calendar days following the date the application was filed. An opportunity to participate consists of providing households with access to their benefits, ~~or having issuance facilities open and available for the households to obtain their benefits. Benefits must be mailed in time to assure that they are received, but before the 30-day standard expires.~~ A household has not been provided an opportunity to participate within the 30-day standard if the benefits are ~~mailed on the 29th or 30th day.~~ Neither has an opportunity to participate been provided if the benefits are issued on the 28th day, but no issuance facility is open on the 30th day not posted to their EBT account by the 30th day.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 2741; 21 Delaware Code, Section 2118 (18 **Del.C.** §§314 & 2741; 21 **Del.C.** §§2118)
18 **DE Admin. Code** 606

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Division of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 730.

The purpose of the proposed amendment to regulation is to eliminate the requirement that insurance identification cards be issued for periods of less than six months when the payment period is for a period of less than six months and to delete the requirement that fleet vehicles carry vehicle-specific identification cards. The text of the proposed amendment is reproduced in the July 2008 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

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

606 Proof of Automobile Insurance [Formerly Regulation 31]**1.0 Authority**

- 1.1 This regulation is adopted under the authority of 18 **Del.C.** §§314 and 2741; 21 **Del.C.** §2118 as amended by S. B. 212, and adopted in cooperation with the Division of Motor Vehicles. This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 **Del.C.**, Ch.101.

11 DE Reg. 800 (12/01/07)

2.0 Purpose

- 2.1 The purpose of this regulation is to
- 2.1.1 establish requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law;
 - 2.1.2 establish the procedure by which automobile insurers shall notify the Division of Motor Vehicles when automobile insurance coverage is terminated or when insurers pay claims for uninsured motorists; and
 - 2.1.3 provide procedures for the submission of insurance company data to the Division of Motor Vehicles for administrative efficiency.

11 DE Reg. 800 (12/01/07)

3.0 Definitions

"**Commercial auto coverage**", "**commercial vehicle coverage**" or "**commercial lines policy**" is any coverage provided to an insured, regardless of the number of vehicles or entities covered, under a commercial auto, garage, or truckers coverage form and/or rated from either a commercial manual or rating rule as filed and approved by the Delaware Department of Insurance. Vehicle type and ownership are not necessarily the primary factors in either underwriting the coverage or rating the coverage. The rating may be subject to individual risk characteristics including but not limited to experience rating, schedule rating, loss rating or deductible rating.

"**Fleet**" shall mean five or more vehicles under single ownership or lease used for commercial purposes.

"**Personal lines auto coverage**," "personal lines vehicle coverage" or "personal lines policy" shall apply to any insured or insurance policy that does not fall within commercial lines.

To the extent necessary, the definitions contained in 21 **Del.C.** §101 shall apply to all terms not otherwise defined herein.

11 DE Reg. 800 (12/01/07)

4.0 Insurance Identification Card

- 4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification Cards. At least one card must be issued for each vehicle for which liability insurance is in effect. Delaware policyholders who are members of the military and are stationed outside of Delaware may be issued a card of that state provided their coverage meets Delaware requirements.
- 4.2 Insurers may use uniform ACORD format or may prepare the ACORD format as described below:
- 4.2.1 The size, weight, and color of the card shall be as below:
 - 4.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3" x 5"
 - 4.2.1.2 Weight: Optional
 - 4.2.1.3 Color: White
 - 4.2.1.4 Each card shall be printed on paper stock which contains a clearly visible watermark, screened color, reflective ink, or laser-lock which prevents unauthorized or fraudulent reproduction. The watermark must be a company logo, or a generic insurance-specific logo which clearly identifies the watermark as issued by an insurance company. The ACORD "ghost script" anti-fraud paper with the ACORD watermark shall satisfy the watermark requirement.

5.0 Insurance Identification Cards for Personal Lines Coverage

- 5.1** The Insurance Identification Card for privately owned or leased motor vehicles and/or for vehicles that are used non-commercially but covered under commercial lines policies shall contain the following information:
- 4.2.2** The insurance card shall contain the following information:
- 4.2.2.1** 5.1.1 The statement "The ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may appear on the back of the card.
- 4.2.2.2** 5.1.2 Card shall be identified as "Identification Card."
- 4.2.2.3** 5.1.3 The insurance company name shall be printed on the face of the card. If the insurer is part of a group, the group name may be printed on the card so long as the card clearly identifies the name of the insurer issuing the insurance.
- 4.2.2.4** 5.1.4 Insurer's five digit National Association of Insurance Commissioners ("NAIC") company identification number.
- 4.2.2.5** 5.1.5 Named Insured. This name must be the named insured as carried in the insurer's records.
- 4.2.2.6** 5.1.6 The insurer may, at its option, include the address of the insured.
- 4.2.2.7** 5.1.7 Policy Number.
- 4.2.2.8** 5.1.8 Effective date of the time period the policy shall be in effect.
- 4.2.2.9** 5.1.9 Expiration Date. The insurance identification card shall be valid for no more than the term stated in the policy but not to exceed 6 months. Notwithstanding the foregoing limitation, an insurance identification card may be issued for a period of 12 months if the premium has been written on an annual basis and the premium is being paid in installments of no more than for a 12 month period. ~~Any insured who has not been continuously insured by a licensed insurance company or a qualified self-insured during the six months preceding the effective date of an ID card under this regulation shall be issued an ID card with an expiration date no longer than the date for which premium has been paid or for six months whichever is shorter; provided, however, that any insured owning five or more vehicles may be issued an ID card which is effective for a six month period.~~ The expiration date shall be stated in such manner that the exact date of expiration can be clearly identified. For purposes of this section, a policy renewed in the same company with a lapse in coverage of 30 days or less shall be considered to have been continuously insured by a licensed insurance company during the preceding six months.
- 4.2.2.10** 5.1.10 Vehicle(s) Insured. Information shall be completed by indicating any of the following, depending on the type of policy or vehicle involved:
- 4.2.2.10.1** 5.1.10.1 Year, Make, and Vehicle Identification Number ("VIN") of the vehicle(s) insured. Model of the vehicle may be shown as the Make. The Year, and Make of the vehicle may be abbreviated, but the complete VIN must be shown.
- 4.2.2.11** 5.1.11 Items which are not obvious as to meaning shall be appropriately captioned.
- 4.2.3** 5.2 The order of the information to be contained on the ID card may be rearranged at the option of the company, provided there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a company.
- 4.2.4** 5.3 At least one ID card shall be issued for each vehicle insured under the policy for which liability insurance is in effect.
- 4.2.5** 5.4 If a vehicle is specifically described on the ID card, the company must issue a new card upon either a change of vehicle or the acquisition of any additional one. If a different policy number is assigned upon renewal, a new ID Card must also be issued. The expiration date requirement of section ~~4.2.2.9~~ 5.1.9 above shall apply to an insured's replacement or additional insured vehicle in a manner similar to the previously owned or insured vehicle. The owner of the vehicle shall so inform the insurer of the additional or replacement vehicle. Only after the insurer is so informed, shall the insurer be obligated to issue an ID card to the insured for the additional or replacement vehicle.
- 4.2.6** 5.5 A letter or notification should accompany every ID card advising the insured that the card is required to register the vehicle, to obtain new tags, and to serve as evidence of insurance for the law

enforcement authorities, e.g., in cases involving accidents, moving traffic violations or road spot checks. This notification may be printed on the back of the ID card. Delaware law requires the ID card to be in the vehicle when it is being operated.

~~4.2.7~~ 5.6 The Division of Motor Vehicles will accept for registration purposes a copy of the application for insurance or the assignment notice or binder pending issuance of insurance or the assignment notice pending issuance of the ID card. However, such evidence of insurance will be accepted for registration purposes only if it has been dated prior to the date and no later than the day preceding the date of application for registration. For Assigned Risk coverage, insurers shall instruct their agents to place an insurer identification code of "99999" on applications to indicate placement with the Assigned Risk Plan.

~~4.2.8~~ 5.7 Insurance ID cards shall be issued in conformance with section ~~4.2.2~~ 5.1 above. The Insurance Commissioner may exercise his statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:

~~4.2.8.1~~ 5.7.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with section ~~4.2.2.9~~ 5.1.9 above, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.

~~4.2.8.2~~ 5.7.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of Section ~~4.2.2.9~~ 5.1.9 above, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.

~~4.2.8.3~~ 5.7.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of section ~~4.2.2.9~~ 5.1.9 above, the insurer shall be fined \$2,000.

~~4.2.9~~ 5.8 "Date of issuance" of an insurance card shall be the effective date of that card.

~~Amended Section 4 became effective May 12, 1993.~~

11 DE Reg. 800 (12/01/07)

6.0 Insurance Identification Cards for Commercial Lines Coverage

6.1 Unless otherwise covered in Section 5.0 of this regulation, the ID card for each vehicle insured under each commercial lines policy, which shall include any insurance issued for fleet vehicles, shall contain the following information:

6.1.1 the information set forth in sections 5.1.1 through 5.1.4, section 5.1.6 and section 5.1.11 of this regulation;

6.1.2 the name of the commercial entity or registrant that owns or leases the fleet as carried in the insurer's records. The insurer, at its option, may include the name of any parent company involved or, in the case of vehicles not operated by the registrant, an indication that the vehicle is "owned or operated by _____";

6.1.3 the policy number with any appropriate designations required by the insurer for commercial or fleet vehicles; and

6.1.4 the effective and expiration dates of the policy.

6.2 The expiration date for ID cards shall be no more than twelve months from the effective date of the policy and the expiration date shall be stated by day, month and year or month, day and year, so long as the exact date of expiration can be clearly identified.

6.3 ID cards subject to the requirements of this section 6 shall also be subject to the requirements set forth in sections 5.2 through 5.6 of this regulation.

6.4 Insurance ID cards shall be issued in conformance with section 6.1 above. The Insurance Commissioner may exercise his statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:

- 6.4.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with section 6.2 above, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.
- 6.4.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of Section 6.2 above, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.
- 6.4.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of section 6.2 above, the insurer shall be fined \$2,000.

6.5 "Date of issuance" of an insurance card shall be the effective date of that card.

57.0 Violations and Penalties

- 57.1 If an insurer shall violate the provisions of this regulation, the Commissioner shall give written notice to the insurer of the violation and said notice shall inform the insurer of the right to request a hearing pursuant to 18 Del.C. §323.
- 57.2 If an insurer shall be determined to be in violation by consent or after a hearing, the Commissioner may impose such penalties as permitted pursuant to the Insurance Code.

11 DE Reg. 800 (12/01/07)

68.0 Notice of Cancellation or Termination

- 68.1 When a personal lines insurance policy is cancelled or terminated and that cancellation or termination is final under 18 Del.C. §3904 (a) (1) within 6 months of the original date of issuance, the insurer must file a Notice of Cancellation with the Division of Motor Vehicles.
- 68.2 The notice shall be filed with the Division of Motor Vehicles within 30 days following the effective date on which cancellation has become final. "Final" means the date after which coverage cannot be reinstated except by the issuance of a new policy.
- 68.3 The notice shall be a form with the size, content, and format consistent with the attached forms or as otherwise approved by the Division of Motor Vehicles.

11 DE Reg. 800 (12/01/07)

79.0 Furnishing Motor Vehicle Liability Insurance Information to the Division of Motor Vehicles

- 79.1 An insurer shall furnish within 30 days of a request by the Division of Motor Vehicles prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided in the form and manner approved by the Division of Motor Vehicles.

11 DE Reg. 800 (12/01/07)

810.0 Random Selection/Verification

- 810.1 Pursuant to 21 Del.C. §2118 the Division of Motor vehicles shall periodically randomly select on an annual basis at least 10 percent of the vehicle registrations and send them to the insurers of record for verification of liability insurance.
- 810.2 All responses from the insurers shall be delivered to the Delaware Division of Motor Vehicles within 30 days of the mailing date of the verification request.
- 810.3 The random selection/verification process shall be done no more than twelve times and no less than four times annually.

11 DE Reg. 800 (12/01/07)

911.0 Notification of Uninsured Drivers

- 911.1 Each insurer licensed to write automobile liability insurance in Delaware shall notify the Division of Motor Vehicles on a form approved by the Division of Motor Vehicles the name of any person or

persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under Delaware law. The insurer shall provide the name, address, and description of the vehicle alleged to be uninsured.

11 DE Reg. 800 (12/01/07)

~~10~~12.0 Additional Required Proofs of Insurance

~~10~~12.1 Each insurer licensed to write automobile liability insurance in this State shall furnish to their insureds verification of the insurance in force at the request of the Division of Motor Vehicles by use of a form approved by the Division of Motor Vehicles. Each insurer is to utilize such measures as may be necessary to assure delivery of these forms to qualified insured drivers only.

11 DE Reg. 800 (12/01/07)

~~11~~13.0 Severability

~~11~~13.1 If any provision of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application and to this end the provisions of this regulation are declared to be severable.

11 DE Reg. 800 (12/01/07)

~~12~~14.0 Effective Date

~~12~~14.1 This Regulation shall become effective ~~January 1~~ September 11, 2008.

*Regulation No. 31 was entitled "Insurance Identification Card" under an effective date of July 1, 1979; amended July 1, 1982; amended effective January 1, 1991 and again on May 12, 1993 under present title except for the conditions specified under § 6 and § 4 of the regulation and April 12, 1993.

~~Attachments A to G accompanying Regulation No. 31 follow:~~

~~INSURANCE CERTIFICATION REQUEST
INITIAL TAP PROCESSING
LETTER OF TRANSMITTAL
RANDOM SELECTION TAPE PROCESSING
RANDOM SELECTION MANUAL PROCESSING
DELAWARE UNINSURED VEHICLE REPORT
DELAWARE INSURANCE CERTIFICATION~~

11 DE Reg. 800 (12/01/07)

11 DE Reg. 1425 (05/01/08)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT**Statutory Authority: 7 Delaware Code, Chapter 60, (7 **Del.C.** Ch. 60)**REGISTER NOTICE****1. Title of the Regulations:**

DELAWARE STATE IMPLEMENTATION PLAN: Administrative and Non-Substantive Changes to Delaware's Regulations Governing the Control of Air Pollution

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

Over the past 40 years, Delaware has adopted 32 air regulations that are approved by the US Environmental Protection Agency (EPA) as state implementation plan (SIP) revisions. Another four regulations have been submitted to EPA and are currently pending EPA approval into Delaware SIPs. The purpose of this SIP document is to update all these SIP regulations to a uniform style in accordance with the Delaware Administrative Code, "Manual for Drafting Regulations (March 2006)." In addition to this style update, several typo and misprint-type errors are also being corrected in this SIP revision.

The administrative changes, non-substantive changes and correction of errors do not alter regulatory features of any individual regulation, such as effective date, applicability, regulatory limit and requirement, compliance and monitoring schedule, enforcement procedures, etc.

3. Possible Terms of the Agency Action:

None.

4. Statutory Basis or Legal Authority to Act:

7 **Del. C.**, Ch 60, Environmental Control

29 **Del. C.**, Ch 101, Administrative Procedures

5. Other Regulations that may be Affected by the Proposal:

None

6. Notice of Public Comment:

This SIP revision and all Delaware AQM regulations under it are available for public review at offices of DNREC-DAWM Air Quality Management Section (AQMS), Dover and New Castle. A public hearing will be held on **July 31, 2008**, beginning at 6:00 pm, in AQMS Conference Room, 2nd Floor, Priscilla Building, 156 South State Street, Dover, DE 19901. Comments on this SIP revision and all regulations under it can be sent to AQMS at the above address, or presented at the hearing.

7. Prepared by:

Frank F. Gao, Project Leader Phone: (302) 323-4542, Date: June 12, 2008 E-Mail: Frank.Gao@state.de.us

Delaware State Implementation Plan**Administrative and Non-Substantive Changes in Regulations Governing the Control of Air Pollution**

Submitted To

U.S. Environmental Protection agency

By

Delaware Department of Natural Resources and Environmental Control

July 2008

Acronym List

AQM	-	Air Quality Management
AQMS	-	Air Quality Management Section of DNREC
CAA	-	Clean Air Act
CAAA	-	Clean Air Act Amendments of 1990
CFR	-	Code of Federal Regulations
DAWM	-	Division of Air and Waste Management of DNREC
DNREC	-	Delaware Department of Natural Resources and Environmental Control
EPA	-	United States Environmental Protection Agency
FR	-	Federal Register
NAAQS	-	National Ambient Air Quality Standard
NOx	-	Nitrogen Oxides
SIP	-	State Implementation Plan
VOC	-	Volatile Organic Compound

1.0 Introduction**1.1 Background**

In the past three decades or so, Delaware has developed 48 regulations for ambient air quality management. Under Section 110 of the Clean Air Act (CAA), an air quality management (AQM) regulation, when relied upon to attain or maintain the national ambient air quality standards (NAAQSS), must go through public review-comment and hearing process, and then be submitted to US Environmental Protection Agency (EPA) for approval as a state implementation plan (SIP) revision.

Title 29, Chapter 101 of the **Delaware Code** (29 **Del.C.**, Ch 101) requires that regulatory agencies in Delaware develop and adopt regulations, and publish the regulations in the *Delaware Register of Regulations* through the Registrar's Office under Division of Research of the General Assembly. The Registrar's Office has developed guidelines and drafting manuals for Delaware regulations. The latest edition of drafting and style manual, entitled "Delaware Manual for Drafting Regulations," was issued as Delaware Administrative Code in March 2006 (see Appendix A of this document, hereafter referred to as "the 2006 drafting manual" or simply as "the 2006 Manual").

Since the 2006 drafting manual was issued, several Delaware AQM regulations have been formatted to comply with the standards specified in the manual. However, a majority of the Delaware AQM regulations have not been updated.

1.2 Purpose and Scope

Among the 48 Delaware AQM regulations, 32 regulations have been approved by EPA as Delaware state implementation plan (SIP) revisions, and are listed in 40 CFR Part 52 Subpart I (hereafter referred to as SIP regulations). They are:

- Regulation 1 "Definitions and Administrative Principles";
- Regulation 1102* "Permits";
- Regulation 3 "Ambient Air Quality Standards";
- Regulation 4 "Particulate Emissions From Fuel Burning Equipment";
- Regulation 5 "Particulate Emissions From Industrial Process Operations";
- Regulation 6 "Particulate Emissions From Construction and Materials Handling";
- Regulation 7 "Particulate Emissions From Incineration";
- Regulation 8 "Sulfur Dioxide Emissions From Fuel Burning Equipment";
- Regulation 9 "Emissions of Sulfur Compounds From Industrial Operations";
- Regulation 10 "Control of Sulfur Dioxide Emissions—Kent and Sussex Counties";
- Regulation 11 "Carbon Monoxide Emissions From Industrial Process Operations New Castle County";

- Regulation 12 “Control of Nitrogen Oxide Emissions”;
- Regulation 1113* “Open Burning”;
- Regulation 14 “Visible Emissions”;
- Regulation 15 “Air Pollution Alert and Emergency Plan”;
- Regulation 16 “Sources Having an Interstate Air Pollution Potential”;
- Regulation 17 “Source Monitoring, Recordkeeping and Reporting”;
- Regulation 23 “Standards of Performance for Steel Plants: Electric Arc Furnaces”;
- Regulation 1124* “Control of Volatile Organic Compound Emissions”;
- Regulation 1125* “Requirements for Preconstruction Review” (Sections 1, 2 and 3);
- Regulation 26 “Motor Vehicle Emissions Inspection Program”;
- Regulation 27 “Stack Heights”;
- Regulation 31 “Low Enhanced Inspection and Maintenance Program”;
- Regulation 1132* “Transportation Conformity”;
- Regulation 35 “Conformity of General Federal Actions to the State Implementation Plans”;
- Regulation 37 “NOx Budget Program”;
- Regulation 39 “Nitrogen Oxides (NOx) Budget Trading Program”;
- Regulation 40 “Delaware’s National Low Emission Vehicle (NLEV) Regulation”;
- Regulation 41 “Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products”;
- Regulation 42 “Specific Emission Control Requirements (Section 1)”;
- Regulation 1144* “Control of Stationary Generator Emissions”.

[* Indicating a regulation (or a section or sections therein) that has been revised after the issuance of the 2006 drafting manual. The prefix of “11” in “11##” in a regulation title number represents Delaware administrative code for Air Quality Management Section. See 2.2 of this SIP revision.]

In addition, the following regulations have been submitted to EPA as SIP revisions and pending EPA’s approvals:

- Regulation 1143 “Heavy Duty Diesel Engine Standards”;
- Regulation 1145 “Excessive Idling of Heavy Duty Vehicles”;
- Regulation 1146 “Electric Generating Unit (EGU) Multi-Pollutant Regulation”;
- Regulation 1148 “Control of Stationary Combustion Turbine Electric Generating Unit Emissions”.

The purpose of this SIP revision is to make all Delaware SIP regulations (i.e., both listed and not-yet listed in 40 CFR Part 52 Subpart I) consistent with the 2006 Manual. In addition, some non-substantive changes and corrections of errors have been made. Exclusively for this SIP revision:

- Administrative or editorial changes are those under the administrative authority granted to Delaware Registrar’s Office by 29 **Del.C.** Ch 1134 and are applicable to all Delaware regulations for consistency purpose. Therefore, all Delaware air regulations, both existing ones and future ones, shall follow.
- Non-substantive changes are those made for clarification and consistency purposes and do not alter or amend the intent or meaning of the subject regulation.
- Editorial changes also include correction of errors due to typos or misprints when a regulation was developed or revised to its current version.

The above changes are made on the current AQM regulations, and reflected by “~~strikeouts~~” for deletions and “underlines” for additions, as required by the 2006 Manual. After the above changes are made, the regulations and relevant terms (languages, codes, styles, formats, etc.) are defined as being “revised” in this SIP revision. All revised SIP regulations are presented in Appendix B of this SIP revision.

It should be pointed out that the administrative changes, non-substantive changes and corrections of errors do not alter regulatory features of individual regulations, such as effective date, applicability, regulatory limit and requirement, compliance schedule, enforcement procedures, etc.

1.3 Exclusions

The following five SIP regulations (or sections) are not included in this SIP revision:

- Regulation 31 “Low Enhanced Inspection and Maintenance Program”;
- Regulation 37 “NO_x Budget Program”;
- Regulation 41 “Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products (Section 2)”;
- Regulation 42 “Specific Emission Control Requirements (Section 2)”.

Regulations 31 and 41 (Section 2) are not included because they are currently under substantive revision. Regulation 1142 (Section 2) is not included because it is under consideration for revision. The administrative and non-substantive changes in those regulations (or sections) will be made in their revisions. Regulation 37 is not included because it expired in 2002.

Although the above regulations are not included in this SIP revision, they shall be referenced in the future under the new title code of “7 DE Admin Code 1100.” For example, Regulation 31 will be referenced as “7 DE Admin Code 1131”, instead “Regulation 31.” The new title codes and numbers are used for consistency purpose. See discussions in 2.2 and 2.5 of this SIP document.

Many current AQM regulations have citations of the federal laws and documents (such the Clean Air Act, the Federal Register, and the Code of Federal Regulations). Some regulations contain appendixes that are adopted directly from federal documents, and documents of other state agencies, or other sources. The administrative changes, non-substantive changes and corrections under this SIP revision do not apply to contents of those citations and the appendixes directly from the aforementioned other sources.

1.4 Non-SIP Regulations

The following AQM regulations are not included in 40 CFR Part 52 Subpart I list, but have been adopted by Delaware to deal with air quality issues not directly related to NAAQSs:

- Regulation 18 “Particulate Emissions from Grain Handling Operations”;
- Regulation 19 “Control of odorous Contaminants”;
- Regulation 20 “New Source Performance Standards”;
- Regulation 21 “Emission Standards for hazardous Air Pollutants”;
- Regulation 22 “Restriction on Quality of Fuel in Fuel Burning Equipment”;
- Regulation 1125* “Requirements for Preconstruction Review” (Section 4);
- Regulation 28 “Control of Toxic Air Contaminants-Reserved”;
- Regulation 29 “Emissions from Incineration of Infectious Waste”;
- Regulation 30 “Title V State Operating Permit Program”;
- Regulation 33 “Motor Vehicle Pressure Test and Emission Control Device Inspection Program” (Replaced by Regulation 31);
- Regulation 34 “Emission Banking and Trading Program”;
- Regulation 36 “Acid Rain Program”;
- Regulation 1138 “Emission Standards for Hazardous Air Pollutants for Source Categories”;
- Regulation 47 Reserved.

The above regulations are not considered as Delaware SIP regulations. Therefore, they are not included in this SIP revision, although the administrative and non-substantive changes in those

regulations are conducted along with this SIP revision for consistency purposes. Delaware Registrar's Office is in charge of updating those regulations under 29 **Del.C.**, Ch 1134. The proposed revisions of those non-SIP regulations can be reviewed at:

<http://regulations.delaware.gov/AdminCode/title7/1000/1100/index.shtml#TopOfPage>

Comments on those non-SP regulations can be addressed to Jeffrey Hague, Registrar of Regulations, Delaware Legislative Council, at e-mail address Jeffrey.Hague@state.de.us, or sent to Office of Registrar of Regulations, P.O. Box 1401, Dover, DE 19903.

1.5 Responsibility and Contacts

The agency with direct responsibility for preparing and submitting this SIP revision is Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQMS), under Section Administrator, Ali Mirzakhali. The working responsibility for Delaware air quality planning and regulation development falls within AQMS' Planning Branch, under Program Manager Ronald A. Amirikian. Frank F. Gao, Ph.D. and P.E., of the Planning Branch, is the project leader and principal author of this SIP revision. Questions and comments should be addressed to either Ronald A. Amirikian at (302)739-9402 or Ronald.Amirikian@state.de.us, or to Frank F. Gao at (302)323-4542 or Frank.Gao@state.de.us, or sent to AQMS, 156 South State Street, Dover, DE 19901.

2.0 Administrative Changes

2.1 Font Face and Size

The 2006 Manual specifies that all Delaware regulations be drafted in Arial font face and 12-point font size. Accordingly, all AQM SIP regulations are converted to Arial font face and 12-point font size under this SIP revision. This font-change is not reflected with strikeouts and underlines in the revised regulations, since such change does not alter any meaning of the subject regulations in any aspect.

2.2 Regulation Title Coding and Numbering

Historically, Delaware AQM regulations have been grouped in "Delaware Regulations Governing the Control of Air Pollution," and numbered from 1 to 48 (Arabic numbers) without an indentifying or administrative code. Under the current Delaware administrative coding system, all AQM regulations should be under "Title 7 DNREC, 1100 Air Quality Management Section" and be coded with four digits in a format of "11###", where the first two digits "11" specify "AQMS" and the second two digits "##" are the regulation numbers. According to this requirement, titles of all Delaware AQM regulations are recoded as follows, using Regulation No. 1 as an example, with strikeouts representing deletions and underlines for additions:

Title 7 DNREC

1100 Air Quality Management Section

REGULATION NO. ~~1~~

1101 DEFINITIONS AND ADMINISTRATIVE PRINCIPLES

Under this SIP revision, all revised regulations use a bold-face text for their titles. In case that a current title used a regular-face text, this regular-to-bold change is not indicated by using strikeouts and underlines, since such change does not alter any meaning of the title in any aspect.

2.3 Format of Definitions

Various formats for definitions of terms have been used in Delaware AQM regulations. According to the 2006 Manual, the following format has been adopted as a standard format in all AQM regulations under this SIP revision, using "heat input" as an example, with strikeouts representing deletions and underlines for additions:

“Heat input” ~~HEAT INPUT:~~ The means the potential thermal energy resulting from the complete combustion of any fuel.

In some regulations, such as in Regulation No. 12, the terms to be defined are not bolded, but are in the standard format already. In those cases, the change from un-bolded terms to bold-face terms are not identified by strikeouts and underlines, since such change does not alter any meaning of the terms themselves and definitions that follow.

2.4 Section and Subsection Numbering

According to the format provided in the 2006 Manual, two changes are made with respect to sections in a regulation under this SIP revision: (1) All prefixes of “Section-” in section title lines are deleted; (2) Sections are numbered using a consistent format of Arabic numeral “#.0”.

A majority of the current AQM regulations have subsections of various levels, and use different symbols for subsections, such as lower-case letters (a, b,...), Roman numbers (i, ii,...), Arabic numbers in parenthesis [(1), (2), ...], upper-case letters (A, B, ...), and paired lower-case letters (aa, bb, ...). According to the format provided in the 2006 Manual, all those subsection symbols in the current AQM regulations are replaced by Arabic numbers under this SIP revision.

The following is an example from Regulation 24, demonstrating changes in numbering of sections and subsections, with strikeouts representing deletions and underlines for additions:

~~Section 4-~~

4.0 Compliance Certification, Recordkeeping, and Reporting Requirements for Coating Sources

4.1 ~~a-~~To establish the records...

4.2 ~~b-~~Requirements for coating sources...

4.2.1 ~~1-~~Certification. By November 15, 1993, the owner or operator of a facility... by providing all of the following:

4.2.1.1 ~~i-~~The name and location of the facility.

4.2.1.2 ~~ii-~~The address and...

According to the format provided in the 2006 Manual, the bold-face is adopted for section titles in all revised regulations. In those cases where a regular-to-bold face change is made, the change is not identified by strikeouts and underlines, since such change does not alter any meaning of the section title in any aspect.

2.5 Citations in Regulations

According to the 2006 Manual, all AQM regulations should be cited as Delaware Administration Code by title and regulation number (for code titles and numbers, see 2.2 of this SIP revision). Therefore, citations of another regulation are revised to the following standard format, using an excerpt from Regulation No. 2 as an example, with strikeouts representing deletions and underlines for additions:

... in an operation permit issued pursuant to ~~Regulation No. 30~~ 7 DE Admin. Code 1130.

In several AQM regulations, Delaware's solid waste regulation is cited. According the 2006 Manual, and the latest version of that regulation, the citation is changed to:

...~~the Solid Waste Regulations~~ 7 DE Admin. Code 1301, Regulations Governing Solid Waste.

Another common citation in the AQM regulations is the Delaware Code. According to the 2006 Manual, the following standard format is adopted in all AQM regulations under this SIP revision, using Title 29 of Delaware Code, Chapter 80 as an example:

...as defined in 29 **Del.C.**, Ch 80 ...

In cases where an un-bolded "Del.C." is changed to a bold "**Del.C.**", the strikeouts and underlines (i.e., ~~Del.C.~~ **Del.C.**) are not used in the revised regulations, since such change does not alter any meaning of the subject in any aspect. In addition, the symbol "\$" is used when a section of the Delaware Code is cited.

2.6 Other Changes

Based on the specifications in the 2006 Manual, the following changes are also made in all AQM regulations under this SIP revision, with strikeouts representing deletions and underlines for additions:

2.6.1 Changing "and/or" to "or".

Example: ...previous permit ~~and/or~~ application...

2.6.2 Changing "word(s)" to "word or words".

Example:... control device~~(s)~~ or devices...

2.6.3 Spelling out numbers from 1 to 9, except those followed by specifying symbols such as %, °C, °F, and those used for special terms such as "the 1-hour ozone standard." However, numerals between 1.0 and 9.0 are not spelled out, due to the precision meaning held by the decimal place.

2.6.4 Using Arabic numbers for 10 and greater, except when used at the beginning of a sentence.

2.6.5 Changing word "percent" following a numeral to "%".

Examples for the above three changes include:

... ~~3~~ three years after the effective date ...

... 5 ~~percent~~ % of the emissions ...

... ~~twenty percent~~ 20% of the emissions ...

2.6.6 Change "deg C and deg F" to "°C and °F", respectively.

Example: ...at 343 ~~deg-C~~ °C (650 ~~deg-F~~ °F) or higher ...

2.6.7 Change dates in the text, for example, from "12/02/94" to "December 2, 1994."

This change is made according to the 2006 Manual. For those dates in front of a section title line, see 3.4 of this SIP revision.

3.0 Non-Substantive Changes

3.1 Addition and Deletion of Words

3.1.1 Additions

In a current AQM regulation, its sections and subsections may be referenced frequently in the regulation itself. In addition, the federal Clean Air Act (the Act) may be cited frequently as well. To ensure precise citations and references, the terms "of (or in) this regulation" and "of (or in) the Act" are added wherever they seem necessary and adequate. See examples in 3.1.2 of this SIP revision.

3.1.2 Deletions

In the current regulations, terms such "section, subsection, part, subpart, paragraph, and subparagraph" are used extensively, but not consistently and properly. For example, the term "section" is used to denote not only sections, but oftentimes subsections and even sub-subsections. In addition, the term "paragraph" is used for sections and subsections which contain multiple paragraphs. Under this SIP revision, terms "section, subsection, part, subpart, paragraph, and subparagraph" are no longer used in front of section or subsection numbers. Examples include:

...pursuant to ~~section 5(a)(1)~~ A 5.1.1.1.1 of this regulation...

(See also 2.4 of this SIP revision.)

... to meet the requirements of Section 112(i)(1) of the Act...

(See also 1.3 of this SIP revision.)

3.1.3 Deleting Specific Section and Subsection Numbers

There are cases in the current regulations where there is only one subsection in a section. This single subsection is no longer numbered under this SIP revision. See example below, where “6.1” is deleted since it was to denote a single subsection in Section 6.

~~Section 6~~

6.0 RACT PROPOSALS

~~6.1~~ The RACT proposal submitted in accordance with...

3.2 Changing *Italic* Font Style to Regular Style

In some current regulations, the *italic* font is used for the purpose of identifying terms that are defined in the subject regulations. In other regulations, the italic font is used for other purposes, such as emphasis. Under this SIP revision, the *italic* font is no longer used. This change is not indicated by strikeouts and underlines (e.g., ~~emissions~~ emissions) in the revised regulations, since such change does not alter any meaning of the terms themselves and their contexts in any aspect.

3.3 Renumbering Tables and Equations

Tables or equations in the current AQM regulations are numbered in various ways. Under this SIP revision, a standard format of “X-Y” is adopted for all tables and equations, with X denoting a section and Y denoting table or equation order in that section. For example, the following changes are made in Section 7 of Regulation 17 and Section 1 of Regulation 41, for table number and equation number, respectively:

TABLE ~~7.2~~ 7-1. ESTIMATED EMISSIONS METHOD CODE

1.6.1.1 ... Determine the VOC content using equation 1-1 as follows:

$$\text{VOCContent} = \frac{Ws - Ww - Wec}{Vm - Vw - Vec} \quad (\underline{1-1})$$

When tables or equations appear in an appendix, they are also numbered with the standard format of “X-Y”, where X denoting the appendix (A, B, ...etc. See 3.5 of this SIP revision) and Y denoting table or equation order in the appendix. For example, the 3rd equation in Appendix A is numbered as “A-3”.

3.4 Dates Associated with Section Titles

Historically, all Delaware AQM regulations have placed a date, in the format of “mm/dd/yy” or “mm/dd/yyyy,” immediately in front of or after a section title, indicating the date when the subject section was adopted in its latest version. Those dates are mainly for record purpose. It is oftentimes necessary to revise or update only individual section or sections, but not the whole regulation. Therefore, new requirements and supporting data are reflected only in the newly-adopted section or sections. It is determined, under this SIP revision, that those dates are maintained in all AQM regulations, in a consistent format of “mm/dd/yyyy.”

3.5 Appendixes

3.5.1 Numbering Appendixes

Appendixes in a regulation are numbered using capital letters (A, B, ...) under this SIP revision. In Regulation 24, the current appendixes are numbered with capital letters in double quotation marks (e.g., Appendix “A”). All appendixes in Regulation 24 are renumbered with un-quoted capital letters under this SIP revision, without strikeouts and underlines (e.g., “A” A).

In addition, all appendixes of AQM regulations are identified using bold-face (i.e., Appendix) under this SIP revision, to distinguish them from appendixes of other documents cited in the AQM regulations.

3.5.2 Footnotes in Appendixes

According to the 2006 Manual, footnotes should be presented at the end of a regulation. For appendixes, however, footnotes are placed at the end of each appendix under this SIP revision. For example, footnotes used in an appendix of Regulation 24 are presented at the end of the subject appendix, instead of at the far end of the entire regulation.

3.5.3 References in Appendixes

References in an appendix are no longer denoted by superscripts (i.e., ¹, ², ...) under this SIP revision. Instead, a directing text in parenthesis "(see # of this appendix)" is used, where "#" is the order number of the reference listed at the end of the appendix.

3.6 Other Changes

Other non-substantive changes are made under this SIP revision, mainly for consistency and clarification purposes. The changes are indicated by strikeouts and underlines, and are self-explanatory. The following is an example:

~~12.8 through 12.10~~ [Reserved]

12.8 [Reserved]

12.9 [Reserved]

12.10 [Reserved]

4.0 Correction of Errors

Correction of errors under this SIP revision is self-explanatory. For example, the following correction is made in 2.3 of Regulation 9:

...shall not apply... to petroleum storage and transfer facilities.

Examples of other self-explanatory corrections under this SIP revision include:

Correcting "CO₂" to "CO₂";

Correcting "cm³" to "cm³";

Correcting "the 31st" to "the 31st".

The above superscript or subscript corrections are not indicated with strikeouts and underlines in this SIP revision, since such corrections do not alter any meaning of the subjects in any aspect.

5.0 Appendices

- A. *Delaware Manual for Drafting Regulations*, March 2006 Edition, Registrar's Office, Division of Research of the General Assembly, Dover, DE. Available at <http://regulations.delaware.gov/documents/drafting&stylemanual.pdf>
- B. Collection of Revised Delaware SIP Regulations. Available at <http://regulations.delaware.gov/register/july2008/proposed/index.shtml#TopOfPage>
Under: DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Please Note: Due to the number and size of the SIP regulations they are not being published here. Copies are available at:

<http://regulations.delaware.gov/register/july2008/proposed/index.shtml>

PROPOSED REGULATIONS

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)
7 DE Admin. Code 1138

REGISTER NOTICE

SAN#2008- 05

1. TITLE OF THE REGULATION:

Amendment to Regulation 1138 *Emission Standards for Hazardous Air Pollutants for Source Categories*

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Under Section 112(k) of the 1990 Clean Air Act Amendment, Congress mandated that the EPA identify 30 or more hazardous air pollutants (HAPs) that posed the greatest threat to public health in urban areas, to identify the small area sources that emit those pollutants and to develop regulations to reduce the emission of HAPs. In 1999, the EPA identified 33 HAPs that posed the greatest threat to public health and has, since that time, identified over 60 new area source categories for which regulations would be developed.

In July 2007, the EPA promulgated its first area source standard affecting a Delaware source; the lead acid battery manufacturing standard under 40 CFR Part 63 Subpart P.

The purpose of this proposed amendment to Regulation 1138 is to provide increased protection for children and other at-risk populations against a variety of adverse health effects, most notably the effects on the developing nervous system caused by exposure to lead. The proposed amendment will provide greater consistency between Delaware's air toxics standards and the recently promulgated federal standard (Subpart P) on which this amendment is heavily based. In addition, this amendment proposes to include several more protective requirements that currently exist in Delaware air permits.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, July 29, 2008 beginning at 6:30 PM in the DNREC Auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

7. PREPARED BY:

James R. Snead (302) 323-4542 james.snead@state.de.us May 22, 2008

1138 Emission Standards For Hazardous Air Pollutants For Source Categories

10/11/08

11.0[Reserved] Emission Standards for Hazardous Air Pollutants for Area Source Lead Acid Battery Manufacturing Plants

11.1 Applicability.

- 11.1.1 The provisions of 11.0 of this regulation apply to each lead acid battery manufacturing plant that is an area source of hazardous air pollutant emissions.
- 11.1.2 The provisions of 11.0 of this regulation apply to each new or existing affected source. The affected source is each lead acid battery manufacturing plant. The affected source includes all grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant.
 - 11.1.2.1 An affected source is existing if the owner or operator commenced construction or reconstruction of the affected source on or before April 4, 2007.
 - 11.1.2.2 An affected source is new if the owner or operator commenced construction or reconstruction of the affected source after April 4, 2007.
- 11.1.3 The provisions of 11.0 of this regulation do not apply to research and development facilities, as defined in Section 112(c)(7) of the Clean Air Act as amended in 1990.
- 11.1.4 The owner or operator of an area source subject to 11.0 of this regulation is exempt from the obligation to obtain a Title V operating permit under 7 DE Admin. Code 1130 of State of Delaware "Regulations Governing the Control of Air Pollution", if the owner or operator is not required to obtain a Title V operating permit under 3.1 of 7 DE Admin. Code 1130 for a reason other than the owner or operator's status as an area source under 11.0. Notwithstanding the previous sentence, the owner or operator shall continue to comply with the provisions of 11.0.

11.2 Definitions.

Unless defined below, all terms in 11.0 of this regulation have the meaning given them in the Act or in 3.0 of this regulation.

"Grid casting facility" means the facility which includes all lead melting pots and machines used for casting the grid used in battery manufacturing.

"Lead acid battery manufacturing plant" means any plant that produces a storage battery using lead and lead compounds for the plates and sulfuric acid for the electrolyte.

"Lead oxide manufacturing facility" means the facility that produces lead oxide from lead, including product recovery.

"Lead reclamation facility" means the facility that remelts lead scrap and casts it into lead ingots for use in the battery manufacturing process, and which is not a furnace affected under 40 CFR Part 60 Subpart L (July 1, 2007 edition).

"Other lead-emitting operation" means any lead acid battery manufacturing plant operation from which lead emissions are collected and ducted to the atmosphere and which is not part of a grid casting, lead oxide manufacturing, lead reclamation, paste mixing, or three-process operation facility, or a furnace affected under 40 CFR Part 60 Subpart L (July 1, 2007 edition).

"Paste mixing facility" means the facility including lead oxide storage, conveying, weighing, metering, and charging operations; paste blending, handling, and cooling operations; and plate pasting, takeoff, cooling, and drying operations.

"Three-process operation facility" means the facility including those processes involved with plate stacking, burning, or strap casting, and assembly of elements into the battery case.

11.3 Compliance Dates.

- 11.3.1 The owner or operator of an existing affected source shall be in compliance with the applicable provisions of 11.0 of this regulation by no later than October 11, 2008.
- 11.3.2 The owner or operator of a new or reconstructed affected source that has an initial startup on or before July 16, 2007 shall be in compliance with the applicable provisions of 11.0 of this regulation no later than October 11, 2008.
- 11.3.3 The owner or operator of a new or reconstructed affected source that has an initial startup after July 16, 2007 shall be in compliance with the provisions of 11.0 of this regulation immediately upon startup or October 11, 2008, whichever is later.

11.4 Standards.

11.4.1 Emission and opacity limitations for existing affected sources. On and after October 11, 2008, the owner or operator of an existing affected source subject to the provisions of 11.0 of this regulation shall control emissions discharged to the atmosphere from the affected source by not allowing the concentration of lead in the exhaust gas stream or the opacity of the exhaust gas stream to exceed the lead emission and opacity limitations in 11.4.3.1 through 11.4.3.8 of this regulation.

11.4.2 Emission and opacity limitations for new or reconstructed affected sources. On and after the completion date of the performance test required under 11.5.1.1 of this regulation, the owner or operator of a new or reconstructed affected source subject to the provisions of 11.0 of this regulation shall control emissions discharged to the atmosphere from the affected source by not allowing the concentration of lead in the exhaust gas stream or the opacity of the exhaust gas stream to exceed the lead emission and opacity limitations in 11.4.3.1 through 11.4.3.8 of this regulation.

11.4.3 Emission and opacity limitations for affected sources.

11.4.3.1 From any grid casting facility, emissions shall not exceed 0.40 milligram of lead per dry standard cubic meter of exhaust gas (0.000175 gr/dscf).

11.4.3.2 From any paste mixing facility, emissions shall not exceed 1.00 milligram of lead per dry standard cubic meter of exhaust gas (0.000437 gr/dscf).

11.4.3.3 From any three-process operation facility, emissions shall not exceed 1.00 milligram of lead per dry standard cubic meter of exhaust gas (0.000437 gr/dscf).

11.4.3.4 From any lead oxide manufacturing facility, emissions shall not exceed 5.0 milligrams of lead per kilogram of lead feed (0.010 lb/ton).

11.4.3.5 From any lead reclamation facility, emissions shall not exceed 4.50 milligrams of lead per dry standard cubic meter of exhaust gas (0.00197 gr/dscf).

11.4.3.6 From any other lead-emitting operation, emissions shall not exceed 1.00 milligram of lead per dry standard cubic meter of exhaust gas (0.000437 gr/dscf).

11.4.3.7 From any emission source other than a lead reclamation facility, emissions shall not exceed 0% opacity (measured according to Method 9 in Appendix A of 40 CFR Part 60 and rounded to the nearest whole percentage).

11.4.3.8 From any lead reclamation facility, emissions shall not exceed 5% opacity (measured according to Method 9 in Appendix A of 40 CFR Part 60 and rounded to the nearest whole percentage).

11.4.4 When two or more gas streams at the affected source (except the lead oxide manufacturing facility) are ducted to a common control device, an equivalent emission limitation, ELe, for the total exhaust gas stream shall be determined using equation 11-1:

$$ELe = \sum_{a=1}^n EL_a * (Q_{sda} / Q_{sdT}) \quad (11-1)$$

where:

ELe = the equivalent emission limitation for the total exhaust gas stream, mg/dscm (gr/dscf).

n = the total number of gas streams ducted to the control device.

EL_a = the actual emission limitation for each gas stream, a, ducted to the control device, mg/dscm (gr/dscf).

Q_{sda} = the dry standard volumetric flow rate of each gas stream, a, ducted to the control device, dscm/hr (dscf/hr).

Q_{sdT} = the total dry standard volumetric flow rate of all gas streams ducted to the control device, dscm/hr (dscf/hr).

11.4.5 The owner or operator of an affected source subject to 11.0 of this regulation shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction and a program of corrective actions for malfunctioning process, control devices, and monitoring equipment used to comply with 11.0. At a minimum, this plan shall include the following:

11.4.5.1 The specifications for each control device including minimum and maximum differential pressure drop readings that define the proper operating ranges.

11.4.5.2 The monitoring frequency for each control device.

11.4.5.3 The scheduled dates for performing the quarterly inspections on each control device.

11.4.5.4 The routine maintenance schedule and procedures for each control device developed in accordance with the manufacturer's recommendations.

11.4.5.5 The operational plan that describes, in detail, a program of corrective actions to be taken when monitoring results are outside proper operating ranges.

11.4.5.6 The required recordkeeping requirements associated with the startup, shutdown, and malfunction plan.

11.4.5.7 The schedule for review and update of the startup, shutdown, and malfunction plan.

11.5 Performance testing requirements.

11.5.1 Initial compliance demonstration.

11.5.1.1 Except as provided in 11.5.1.2 of this regulation, the owner or operator of an affected source subject to the provisions of 11.0 of this regulation shall conduct a performance test to demonstrate initial compliance with the emission and opacity limitations in 11.4.3 and 11.4.4 of this regulation as required in 3.7 of this regulation using the procedures and test methods provided in 3.7 and 11.7 of this regulation.

11.5.1.2 Existing sources are not required to conduct an initial performance test if a prior performance test was conducted using the same procedures and test methods specified in 3.7 and 11.7 of this regulation and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the previous performance test, with or without adjustments, reliably demonstrate compliance with 11.0 of this regulation despite process changes.

11.5.2 Ongoing performance test requirements.

11.5.2.1 The owner or operator of an affected source subject to the provisions of 11.0 of this regulation shall conduct additional performance tests to demonstrate ongoing compliance with the emission and opacity limitations in 11.4.3 and 11.4.4 of this regulation using the procedures and test methods listed in 3.7 and 11.7 of this regulation.

11.5.2.2 Frequency of ongoing performance test. Beginning on a date six (6) years after the initial compliance date and every six (6) years thereafter, the owner or operator shall conduct the performance tests required in 11.5.2.1 of this regulation on at least 50% of the exhaust gas streams subject to the emission and opacity limitations in 11.4.3 and 11.4.4 of this regulation. The selection of exhaust gas streams shall ensure that all exhaust gas streams are performance tested at least once in every 12-year period.

11.6 Monitoring requirements.

11.6.1 The owner or operator of each affected source subject to the provisions of 11.0 of this regulation shall be in compliance with the monitoring requirements in 11.6.2 and 11.6.3 of this regulation.

11.6.2 For any exhaust gas stream controlled by a scrubbing system, the owner or operator shall install, calibrate, maintain, and operate a monitoring device that measures and records the differential pressure drop across each scrubbing system at least once every 15 minutes. The monitoring device shall have an accuracy of $\pm 5\%$ over its operating range.

11.6.3 For any exhaust gas stream controlled by a fabric filter, the owner or operator shall be in compliance with the requirements in 11.6.3.1 through 11.6.3.3 of this regulation. Fabric filters

equipped with a high efficiency particulate air (HEPA) filter or other secondary filter are allowed to monitor less frequently, as specified in 11.6.3.4 of this regulation.

- 11.6.3.1 The owner or operator shall perform quarterly inspections and maintenance to ensure proper performance of each fabric filter. This quarterly inspection includes inspection for structural and filter integrity. The owner or operator shall record the results of these inspections and any maintenance performed.
- 11.6.3.2 The owner or operator shall install, maintain, and operate a pressure drop monitoring device to measure the differential pressure drop across the fabric filter during all times that the process is operating. Except as provided in 11.6.4 of this regulation, the differential pressure drop shall be recorded at least once per day. If a pressure drop is observed outside of the normal operating ranges, the owner or operator shall take immediate corrective action. The owner or operator shall also record the incident and the corrective actions taken. The owner or operator shall submit a monitoring system performance report in accordance with 3.10.5.3 of this regulation.
- 11.6.3.3 The owner or operator shall conduct a visible emissions observation at least once per week to verify that no visible emissions are occurring at the discharge point to the atmosphere from any exhaust gas stream subject to the requirements in 11.4 of this regulation. If visible emissions are detected, the owner or operator shall record the incident and conduct an opacity measurement in accordance with 11.7.4 of this regulation. The owner or operator shall record the results of each opacity measurement. If the measurement exceeds the applicable opacity standard in 11.4.3.7 or 11.4.3.8 of this regulation, the owner or operator shall submit this information in an excess emissions report required under 3.10.5.3 of this regulation.
- 11.6.3.4 If the fabric filters are equipped with a HEPA filter or other secondary filter, the owner or operator shall record the differential pressure drop at least once per week. If a pressure drop is observed outside of the normal operating ranges, the owner or operator shall take immediate corrective action. The owner or operator shall also record the incident and the corrective actions taken. The owner or operator shall submit a monitoring system performance report in accordance with 3.10.5.3 of this regulation.

11.7 Test methods and procedures.

- 11.7.1 In conducting the performance tests required in 11.5 of this regulation, the owner or operator shall use, as reference methods and procedures, the test methods in Appendix A of 40 CFR Part 60 or other methods and procedures as specified in 11.7 of this regulation, except as provided in 3.7.5.2 of this regulation.
- 11.7.2 The owner or operator shall determine compliance with the lead emission limitations in 11.4.3.1 through 11.4.3.6 of this regulation, except 11.4.3.4 of this regulation, as follows:
 - 11.7.2.1 Method 12 in Appendix A of 40 CFR Part 60 shall be used to determine the lead emission rate and, if applicable, the volumetric flow rate for each exhaust gas stream. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).
 - 11.7.2.2 When different operations in a three-process operation facility are ducted to separate control devices, the lead emission rate (Etp) from the three-process operation facility shall be determined using equation 11-2:

$$Etp = \left[\sum_{a=1}^n (Ca * Qa) \right] / \sum_{a=1}^n Qa \quad (11-2)$$

where:

Etp = lead emission rate from the three-process operation facility, mg/dscm (gr/dscf).

n = total number of control devices to which different operations in the three-process operation facility are ducted.

Ca =concentration of lead emissions in the exhaust gas stream from each control device, a, mg/dscm (gr/dscf).

Qa =volumetric flow rate of exhaust gas stream from each control device, a, dscm/hr (dscf/hr).

11.7.3 The owner or operator shall determine compliance with the lead emission limitation in 11.4.3.4 of this regulation as follows:

11.7.3.1 The lead emission rate (Elo) from a lead oxide manufacturing facility shall be determined for each run using equation 11-3:

$$Elo = \left[\sum_{i=1}^m (Ci * Qi) \right] / (P * K) \quad (11-3)$$

where:

Elo =lead emission rate from the lead oxide manufacturing facility, mg/kg (lb/ton) of lead charged.

m =total number of exhaust gas streams in the lead oxide manufacturing facility.

Ci =concentration of lead from each exhaust gas stream, i, mg/dscm (gr/dscf).

Q1 =volumetric flow rate of each exhaust gas stream, i, dscm/hr (dscf/hr).

P = average lead feed rate to the lead oxide manufacturing facility, kg/hr (ton/hr).

K = conversion factor, 1.0 mg/mg (7000 gr/lb).

11.7.3.2 Method 12 in Appendix A of 40 CFR Part 60 shall be used to determine the lead concentration and the volumetric flow rate for each exhaust gas stream in the lead oxide manufacturing facility. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

11.7.3.3 The average lead feed rate (P) in equation 11-3 shall be determined for each run using equation 11-4:

$$P = (N * W) / T(11-4)$$

where:

P = average lead feed rate to the lead oxide manufacturing facility, kg/hr (ton/hr).

N = number of lead pigs (ingots) charged.

W =average mass of a pig (ingot), kg (ton).

T = duration of run, hr.

11.7.4 Method 9 in Appendix A of 40 CFR Part 60 shall be used to determine compliance with opacity limitations in 11.4.3.7 and 11.4.3.8 of this regulation. The opacity numbers shall be rounded off to the nearest whole percentage.

11.8 Recordkeeping requirements.

11.8.1 The owner or operator of each affected source subject to 11.0 of this regulation shall fulfill all recordkeeping requirements outlined in 3.0 and 11.8 of this regulation, according to the applicability of 3.0 of this regulation as identified in Table 11-1 of this regulation.

11.8.2 At a minimum, the owner or operator of an affected source subject to the provisions of 11.0 of this regulation shall maintain the following records for such source:

11.8.2.1 Inspection records for the control devices and monitoring equipment, to document that the inspection and maintenance required by the startup, shutdown, and malfunction plan in 11.4.5 of this regulation and by 11.6.3.1 of this regulation have taken place. The record can take the form of a checklist and should identify the control device and monitoring equipment inspected, the date of inspection, a brief description of the working condition of

- the control device during the inspection, and any actions taken to correct deficiencies found during the inspection.
- 11.8.2.2 Records of all maintenance performed on the affected source, the control devices, and monitoring equipment.
- 11.8.2.3 Records of the occurrence, duration, and cause (if known) of each malfunction of process, control devices, or monitoring equipment.
- 11.8.2.4 Records of actions taken during periods of malfunction when such actions are inconsistent with the startup, shutdown, and malfunction plan.
- 11.8.2.5 Other records, which may take the form of checklists, necessary to demonstrate conformance with the provisions of the startup, shutdown, and malfunction plan in 11.4.5 of this regulation.
- 11.8.2.6 Test reports documenting results of all performance tests.
- 11.8.2.7 All measurements as may be necessary to determine the conditions of performance tests, including measurements necessary to determine compliance with the equivalent emission limitation in 11.4.4 of this regulation.
- 11.8.2.8 Records of monitoring data required in 11.6 of this regulation that are used to demonstrate ongoing compliance including the date and time the data are collected.
- 11.8.2.9 The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions, as indicated by monitoring data, that occurs during malfunction of the process, control devices, or monitoring equipment.
- 11.8.2.10 The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions, as indicated by monitoring data, that occurs during periods other than malfunction of the process, control devices, or monitoring equipment.
- 11.8.2.11 All other startup, shutdown, and malfunction plan information required in 11.4.5.6 of this regulation.
- 11.8.2.12 All documentation supporting the notifications and reports required in 11.9 of this regulation and in 3.9 and 3.10 of this regulation.
- 11.8.3 All records shall be maintained for a period of at least five years in accordance with 3.10.2.1 of this regulation.
- 11.9 Notification and reporting requirements.
- 11.9.1 The owner or operator of each affected source subject to 11.0 of this regulation shall fulfill all notification and reporting requirements outlined in 3.0 and 11.9 of this regulation, according to the applicability of 3.0 of this regulation, as identified in Table 11-1 of this regulation. These reports shall be submitted to the Administrator and to the Department, in accordance with 3.10.1.4.2 of this regulation.
- 11.9.2 At a minimum, the owner or operator of an affected source subject to 11.0 of this regulation shall submit to the Department in writing the following notifications and reports.
- 11.9.2.1 For affected sources that have an initial startup before July 16, 2007, the initial notification required by 3.9.2 of this regulation shall be submitted no later than October 11, 2008.
- 11.9.2.2 For affected sources that have an initial startup on or after July 16, 2007, the initial notification shall be submitted in accordance with 3.9.2.4 or 3.9.2.5 of this regulation, whichever is applicable.
- 11.9.2.3 For affected sources required to conduct a performance test by 11.5 of this regulation, the notification of compliance status required by 3.9.8 of this regulation shall be submitted no later than 90 calendar days following completion of the compliance demonstration required in 11.5.
- 11.9.2.4 For affected sources not required to conduct an initial performance test by 11.5 of this regulation, the notification of compliance status required by 3.9.8 of this regulation shall be submitted no later than March 13, 2009.

- 11.9.2.5 For affected sources required to conduct an initial performance test by 11.5 of this regulation, the notification of compliance status shall be submitted in accordance with 3.9.8 of this regulation.
- 11.9.2.6 The notification of a performance test shall be submitted in accordance with 3.9.5 of this regulation.
- 11.9.2.7 The notification of opacity and visible emission observations shall be submitted in accordance with 3.9.6 of this regulation.
- 11.9.2.8 The results of performance tests shall be reported in accordance with 3.10.4.2 of this regulation.
- 11.9.2.9 The results of opacity or visible emission observations performance tests shall be reported along with the results of the performance tests in accordance with 3.10.4.3 of this regulation.
- 11.9.2.10 The startup, shutdown, and malfunction reports shall be submitted in accordance with 3.10.4.5 of this regulation.
- 11.9.2.11 The excess emissions and continuous monitoring system performance report and summary report shall be submitted in accordance with 3.10.5 of this regulation.
- 11.10 Applicability of general provisions.
The owner or operator of an affected sources subject to the provisions of 11.0 of this regulation shall also be in compliance with the provisions in 3.0 of this regulation, that are applicable to 11.0 as specified in Table 11-1 of this regulation.
- 11.11 Equivalent methods of control.
Upon written application, the Department may approve the use of control technologies, other than scrubbers and fabric filters, after the owner or operator has satisfactorily demonstrated the alternative control technology is equivalent in terms of reducing emissions of lead to the atmosphere in accordance with 11.4.1 through 11.4.4 of this regulation. The application shall contain a complete description of the equipment and the proposed testing procedures to initially demonstrate equivalency. The application shall also include the operating, maintenance, monitoring, recordkeeping and reporting procedures required to demonstrate ongoing equivalency.
- 11.12 [Reserved]

Table 11-1 – Applicability of 3.0 to 11.0 of this Regulation

<u>General Provisions Reference</u>	<u>Applies to 11.0</u>	<u>Comments</u>
<u>3.1.1.1</u>	<u>Yes</u>	<u>Additional terms defined in 11.2 of this regulation; when overlap between 3.0 and 11.0 of this regulation occurs, 11.0 takes precedence.</u>
<u>3.1.1.2-3.1.1.3</u>	<u>Yes</u>	
<u>3.1.1.4</u>	<u>Yes</u>	<u>11.0 of this regulation clarifies the applicability of each paragraph in 3.0 of this regulation to sources subject to 11.0.</u>
<u>3.1.1.5</u>	<u>No</u>	
<u>3.1.1.6</u>	<u>Yes</u>	
<u>3.1.1.7-3.1.1.9</u>	<u>No</u>	
<u>3.1.1.10-3.1.1.12</u>	<u>Yes</u>	
<u>3.1.1.13-3.1.1.14</u>	<u>No</u>	
<u>3.1.2.1</u>	<u>Yes</u>	
<u>3.1.2.2</u>	<u>Yes</u>	
<u>3.1.2.3</u>	<u>Yes</u>	

PROPOSED REGULATIONS

<u>3.1.3.1</u>	<u>Yes</u>	<u>11.0 of this regulation clarifies the applicability of each paragraph in 3.0 of this regulation to sources subject to 11.0.</u>
<u>3.1.3.2</u>	<u>Yes</u>	<u>11.1.4 of this regulation exempts area sources from the obligation to obtain Title V operating permits.</u>
<u>3.1.3.3</u>	<u>No</u>	
<u>3.1.3.4</u>	<u>No</u>	
<u>3.1.3.5</u>	<u>Yes</u>	
<u>3.1.4</u>	<u>No</u>	
<u>3.1.5</u>	<u>Yes</u>	
<u>3.2</u>	<u>Yes</u>	<u>Additional terms defined in 11.2 of this regulation; when overlap between 3.0 and 11.0 of this regulation occurs, 11.0 takes precedence.</u>
<u>3.3</u>	<u>Yes</u>	
<u>3.4.1.1-3.4.1.2</u>	<u>Yes</u>	
<u>3.4.1.3-3.4.1.5</u>	<u>No</u>	
<u>3.4.2-3.4.2.2</u>	<u>Yes</u>	
<u>3.4.2.3</u>	<u>No</u>	
<u>3.4.3</u>	<u>Yes</u>	
<u>3.5.1</u>	<u>Yes</u>	
<u>3.5.2.1</u>	<u>Yes</u>	
<u>3.5.2.2</u>	<u>No</u>	
<u>3.5.2.3-3.5.2.4</u>	<u>Yes</u>	
<u>3.5.2.5</u>	<u>No</u>	
<u>3.5.2.6</u>	<u>Yes</u>	
<u>3.5.3</u>	<u>No</u>	
<u>3.5.4.1.1-3.5.4.1.2.8</u>	<u>Yes</u>	
<u>3.5.4.1.2.9</u>	<u>No</u>	
<u>3.5.4.1.2.10</u>	<u>Yes</u>	
<u>3.5.4.1.3</u>	<u>Yes</u>	
<u>3.5.4.2-3.5.4.4</u>	<u>Yes</u>	
<u>3.5.5</u>	<u>Yes</u>	
<u>3.5.6-3.5.6.1.1</u>	<u>Yes</u>	
<u>3.5.6.1.2-3.5.6.1.4</u>	<u>No</u>	
<u>3.5.6.2</u>	<u>Yes</u>	
<u>3.6.1</u>	<u>Yes</u>	
<u>3.6.2-3.6.2.5</u>	<u>Yes</u>	
<u>3.6.2.6</u>	<u>No</u>	
<u>3.6.2.7</u>	<u>Yes</u>	
<u>3.6.3.1-3.6.3.2</u>	<u>Yes</u>	
<u>3.6.3.3-3.6.3.4</u>	<u>No</u>	
<u>3.6.3.5</u>	<u>Yes</u>	
<u>3.6.4</u>	<u>No</u>	
<u>3.6.5-3.6.5.1</u>	<u>Yes</u>	
<u>3.6.5.2</u>	<u>No</u>	
<u>3.6.5.3</u>	<u>Yes</u>	<u>Except that 11.4.5 specifies the minimum that the startup, shutdown, and malfunction plan shall contain.</u>
<u>3.6.6</u>	<u>Yes</u>	

<u>3.6.7</u>	<u>Yes</u>
<u>3.6.8-3.6.8.2.1</u>	<u>Yes</u>
<u>3.6.8.2.2</u>	<u>No</u>
<u>3.6.8.2.3-3.6.8.2.3.4</u>	<u>Yes</u>
<u>3.6.8.3</u>	<u>No</u>
<u>3.6.8.4-3.6.8.5.3</u>	<u>Yes</u>
<u>3.6.8.5.4</u>	<u>No</u>
<u>3.6.8.5.5-3.6.8.9.4</u>	<u>Yes</u>
<u>3.6.9-3.6.9.5</u>	<u>Yes</u>
<u>3.6.9.6.1.1-</u>	<u>Yes</u>
<u>3.6.9.6.1.2.1</u>	
<u>3.6.9.6.1.2.2</u>	<u>No</u>
<u>3.6.9.6.1.2.3-</u>	<u>Yes</u>
<u>3.6.9.6.1.2.4</u>	
<u>3.6.9.6.1.3-</u>	<u>No</u>
<u>3.6.9.6.1.4</u>	
<u>3.6.9.6.2-3.6.9.7</u>	<u>Yes</u>
<u>3.6.9.8</u>	<u>Yes</u>
<u>3.6.9.9</u>	<u>Yes</u>
<u>3.6.9.10.1-3.6.9.10.4</u>	<u>Yes</u>
<u>3.6.9.10.5.1</u>	<u>Yes</u>
<u>3.6.9.10.5.2-3.6.9.14</u>	<u>Yes</u>
<u>3.6.9.15</u>	<u>No</u>
<u>3.6.9.16</u>	<u>Yes</u>
<u>3.6.10</u>	<u>Yes</u>
<u>3.7.1.1</u>	<u>Yes</u>
<u>3.7.1.2-3.7.1.2.8</u>	<u>No</u>
<u>3.7.1.3</u>	<u>Yes</u>
<u>3.7.2.1-3.7.2.2</u>	<u>Yes</u>
<u>3.7.3</u>	<u>No</u>
<u>3.7.4</u>	<u>Yes</u>
<u>3.7.5-3.7.7.1</u>	<u>Yes</u>
<u>3.7.7.2</u>	<u>No</u>
<u>3.7.7.3-3.7.8.5</u>	<u>Yes</u>
<u>3.8.1.1-3.8.1.2</u>	<u>Yes</u>
<u>3.8.1.3</u>	<u>No</u>
<u>3.8.1.4-3.8.7</u>	<u>Yes</u>
<u>3.9.1-3.9.1.3</u>	<u>Yes</u>
<u>3.9.1.4.1</u>	<u>No</u>
<u>3.9.1.4.2-3.9.2.2.4</u>	<u>Yes</u>
<u>3.9.2.2.5</u>	<u>No</u>
<u>3.9.2.3</u>	<u>No</u>
<u>3.9.2.4-3.9.2.4.1</u>	<u>Yes</u>
<u>3.9.2.4.2-3.9.2.4.4</u>	<u>No</u>
<u>3.9.2.4.5-3.9.8.3</u>	<u>Yes</u>
<u>3.9.8.4</u>	<u>No</u>

<u>3.9.8.5-3.9.10</u>	<u>Yes</u>	
<u>3.10.1-3.10.1.3</u>	<u>Yes</u>	
<u>3.10.1.4.1</u>	<u>No</u>	
<u>3.10.1.4.2-3.10.3.1</u>	<u>Yes</u>	
<u>3.10.3.2-3.10.3.4</u>	<u>No</u>	
<u>3.10.3.5-3.10.3.8</u>	<u>Yes</u>	
<u>3.10.3.9</u>	<u>No</u>	
<u>3.10.3.10-3.10.4.4</u>	<u>Yes</u>	
<u>3.10.4.5</u>	<u>Yes</u>	
<u>3.10.5-3.10.5.3.1.2</u>	<u>Yes</u>	
<u>3.10.5.3.1.3</u>	<u>No</u>	
<u>3.10.5.3.2-3.10.6.6</u>	<u>Yes</u>	
<u>3.11</u>	<u>No</u>	<u>11.0 of this regulation does not require flares.</u>
<u>3.12-3.15</u>	<u>Yes</u>	

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509)
24 DE Admin. Code 2500

PUBLIC NOTICE

The Delaware Board of Pharmacy, in accordance with 24 Del.C. §2509, proposes amendments to its regulation **11.0 Pharmaceutical Services in Nursing Homes**. Specifically, the Board has proposed changes to regulation 11.3 Emergency Use Medications. The proposed changes are to address Board of Pharmacy concerns with interim use medications available in nursing homes. The Board is also proposing adding a new section **18.0 Pharmaceutical Services for Medical Gases**. This new section is in response to federal laws making oxygen a prescriptive item and the recently passed sunset amendment of the Pharmacy Act.

A public hearing is scheduled for Wednesday, August 20, 2008, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments may be submitted to the Board prior to the hearing care of Judy Letterman at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

The Board will consider promulgating the proposed changes immediately following the public hearing.

2500 Board of Pharmacy

(Break in Continuity of Sections)

11.0Pharmaceutical Services in Nursing Homes

11.1 Definition: A nursing home is an institution licensed by the Division of Public Health that provides permanent facilities that include in-patient beds and medical services, including continuous nursing services, to provide treatment for patients who do not currently require continuous hospital services. Rest-Residential and Assisted Living beds in licensed nursing homes are exempt from this regulation. They are considered under Health Care Facilities.

11.2 General Requirements

11.2.1 Each facility shall provide a cabinet or medication carts for individual patient medications. These storage units shall be of sufficient size and located where easily accessible. They shall be locked when not in use and the key and/or code for the storage unit shall be carried by or be accessible only to registered nurses, licensed practical nurses, or pharmacists. Controlled substances storage shall be in compliance with State and Federal statutes and regulations.

11.2.2 Internal medications must be stored separately from external medications.

11.2.3 Medications requiring refrigeration must be stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.

11.2.4 Medications which require room temperature storage must be maintained at either USP/NF ranges of 59 to 86 degrees Fahrenheit or the manufacturer's labeled range.

11.2.5 No persons except properly authorized personnel shall handle or administer medications.

11.2.6 Schedule II substances shall be secured under two locks in securely fixed boxes or drawers in the medication storage area, medication cart, or emergency use medication supplies.

11.2.7 There shall be accountability procedures for all controlled substances present. There shall be readily retrievable records maintained showing the receipt and disposition of all controlled substances. These records must be maintained for 2 years.

11.3 Emergency Use Medications

11.3.1 Emergency use medications ~~are~~ for the purposes of this Regulation shall be those injectable medications which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

~~11.3.2 Interim use medications for the purposes of this Regulation shall be those non-injectable medications which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.~~

~~11.3.23~~ It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication and interim use medication that are to be stocked as well as documenting ~~their~~ the number of boxes and location(s) within the facility. Stock supply of interim use medication shall not exceed sixty (60) medications without the prior review and approval of the Board or its designee. A list Emergency use and interim use medication lists of current contents must be attached to the medication supply.

~~11.3.34~~ Accountability for emergency use medications and interim use medications.

~~11.3.34.1~~ The pharmacy provider must be contacted within 24 hours after medication is used from the supply and the pharmacy must restock the supply within a reasonable time to prevent harm to patients.

~~11.3.34.2~~ The provider pharmacy is responsible for the accuracy of all emergency use and interim use medications at the time of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication or interim medication must be kept for a minimum of 2 years at the provider pharmacy with a copy at the facility and must be readily available for inspection by the Board.

~~11.3.34.3~~ Failure to comply with these procedures can result in the suspension or denial of the use of emergency use and/or interim use medications.

~~11.3.34.4~~ Violations of accountability procedures for emergency use and/or interim use medications may result in review proceedings before the Board.

~~11.3.45~~ There must be an accountability procedure at the facility for needles and syringes.

11.4 Return Medication Procedures.

11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated. Non-controlled medication shall be destroyed or returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of disposition. The notation shall include the date, quantity, and name and strength of the medication.

11.4.2 Medications for hospitalized patients must be isolated, and may be held until the patient's return or permanent discharge.

11.4.3 Destruction of discontinued controlled patient medication and discharged or deceased patient's controlled medication shall be jointly performed by two authorized licensed personnel within 72 hours of

the discontinuation of the medication or discharge of the patient. A record of the destruction must be signed by both parties and kept at the facility for 2 years.

11.5 Labeling

11.5.1 Labels on controlled substances must show the actual refill date and amount of medication dispensed.

11.5.2 The provider pharmacy must maintain prescription records required by State and Federal law in addition to a readily retrievable record of the actual refills, amount dispensed and accountability of the amounts used.

11.5.3 A pharmacy providing prescriptions for use in a nursing home may label the prescription, "to be administered according to current physician's orders.

11.5.4 A change in a medication order that involves a direction change must be communicated to the pharmacy within 24 hours, and the labeling on medication currently in the facility may be handled in the following ways:

11.5.4.1 A licensed nurse or pharmacist may apply an accessory label to the medication which denotes that there has been a direction change.

11.5.4.2 A label(s) with new directions may be requested from the pharmacy and applied to the current medication supply by a licensed nurse or pharmacist.

11.6 Duties of Consultant Pharmacist

11.6.1 A consultant pharmacist to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision of the nursing home pharmaceutical services and the direct supervision of registered pharmacy interns, who may assist in chart reviews. Supervision of chart reviews by a pharmacy intern must be documented by the supervising pharmacist.

11.6.2 The consultant pharmacist shall provide the administrator of a nursing home with a statement indicating those minimum professional services that will be provided. This statement shall be incorporated into the nursing home Pharmacy Policy and Procedure Manual.

11.6.3 The consultant pharmacist must notify the Board in writing within ten days of starting as a consultant in the State.

11.6.3.1 If the consultant pharmacist has not served in that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming that position.

11.6.4 The consultant pharmacist shall be responsible for written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing practitioner medication orders, medication errors, automatic stop orders, medications for patient discharge and leave of absence.

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs through out the nursing home in compliance with State and Federal laws.

11.6.4.4 Policies and procedures outlining the destruction of wastage for all controlled medications.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure and labeling of all prescription drugs and biologicals in accordance with State and Federal requirements. For registered out-of-state providers an additional labeling requirement is having the toll-free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen review, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all practitioners' orders to be reviewed with the information on the patient profiles.

11.6.5 If the nursing home has a pharmacy or quality related committee the consultant pharmacist shall serve on that committee.

11.6.6 The consultant pharmacist or designated pharmacy staff shall make inspections of each nursing station and related drug storage areas at least monthly. A pharmacy support person may assist with inspection under the direct supervision of a pharmacist.

11.6.6.1 Nursing station inspections must include, but are not limited to,

documentation of the following:

11.6.6.1.1	medication storage area(s) (59 to 86 degrees Fahrenheit)
and refrigerator temperatures (36 to 46 degrees Fahrenheit);	
11.6.6.1.2	security of all drugs;
11.6.6.1.3	proper labeling, including any accessory or cautionary
instructions;	
11.6.6.1.4	proper expiration dating;
11.6.6.1.5	cleanliness;
11.6.6.1.6	emergency use medication supplies are properly
maintained.	

11.6.6.2 A copy of these inspection reports must be maintained at the facility for two years.

11.6.7 The consultant pharmacist shall review the drug regimen of each patient monthly at the facility. Documentation of the review is accomplished in the following manner:

11.6.7.1 If the pharmacist determines that there are no irregularities in the patient's drug regimen, he/she must note in the patient's chart that he/she has reviewed the drug regimen, found no irregularities, and sign and date this notation. This documentation must remain on the patients' charts for a minimum of 12 months.

11.6.7.2 If the pharmacist determines that there are irregularities, he/she must prepare a drug regimen review report which includes any pertinent information such as the patient's diagnosis(es), the drug regimen, any pertinent laboratory findings, dietary considerations, etc., and his/her recommendations for improving the drug therapy of the patient. This written recommendation shall be forwarded to the attending practitioner, with the original documentation maintained in the patient chart.

11.6.7.3 Nursing unit inspections and a summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator monthly.

11.6.8 The consultant pharmacist is responsible for the accountability of all medications. A random sample will be done monthly to identify overages or shortages of any medications. Documentation will be made of irregularities and will include date of audit, patient identification, a listing of overages or shortages, and an explanation if known. A plan for correction will be included in the documentation where appropriate. Documentation will be maintained for a period of 12 months at the facility.

11.6.9 The consultant pharmacist shall be responsible for providing information to the nursing home staff, as may be appropriate or required, to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy-related activities and concerns.

11.6.10 The consultant pharmacist shall assume all other responsibilities required of a consultant pharmacist as set forth in any State or Federal statutes or regulations as enacted or amended or may be enacted or amended.

7 DE Reg. 914 (01/01/04)

(Break in Continuity of Sections)

18.0Pharmaceutical Services for Medical Gases

18.1 Definitions

"Medical gas" means those gases and liquid oxygen intended for human consumption as per the standards of the U.S.P.

"Medical gas dispenser" A person or entity who sells medical gases directly to a patient in Delaware. A medical gas dispenser may refill cylinders for a patient provided that the licensee is registered by the FDA.

"Medical gas distributor" A person or entity who is licensed to distribute medical gases to another facility that is authorized to possess medical gases.

"Order" means an order issued by a licensed practitioner legally authorized to order medicinal gases.

18.2 Licensure Requirements

18.2.1 Any person, company, agency, business or entity of any kind which dispenses medical gas directly to patients by sale shall obtain a medical gas dispenser license from the Board of Pharmacy pursuant to 24 **Del.C.**

§2523. Applications for licensure under this Regulation shall be on a form supplied by the Board and accompanied by a fee determined by the Board. The licensure shall be renewed bi-ennially as determined by the Board. Nursing homes and emergency service related personnel are exempted from this licensure.

18.2.2 Distributors of medical gas who distribute to non-patient entities shall obtain a distributor license from the Board of Pharmacy pursuant to 24 Del.C. §2540.

18.3 Order Requirements

18.3.1 Medical gas dispensers shall not provide any medical gas to a patient without a valid order.

18.3.1.1 Verbal orders reduced to writing are limited to medical oxygen and can only be taken by those employees properly trained as outlined in this Regulation. Verbal orders shall be reviewed by a licensed healthcare professional authorized to administer oxygen to a patient. This review shall be performed within 72 hours.

18.3.1.2 The order is valid for the length of time authorized by the prescriber. If the duration is not specified the order is valid for one year.

18.4 Policy and Procedure Requirements

18.4.1 Written policy and procedures must be available for review and shall include but not be limited to the following areas:

18.4.1.1 Training and documentation

18.4.1.2 Storage and handling

18.4.1.3 Oxygen Safety

18.4.1.4 Orders

18.4.1.5 Labeling

18.4.1.6 Record keeping

18.4.1.7 Patient education

18.4.1.8 Security

18.4.1.9 Recall

18.4.1.10 Quarantine

18.4.1.11 Loss/theft

18.5 Training Requirements

18.5.1 Personnel shall be trained in areas to comply with standards dictated by the United States Pharmacopoeia, the Food Drug Administration, the Department of Transportation, the Occupational Safety and Health Administration, the Board of Pharmacy, any other applicable requirement under State and Federal law and any rules or regulations promulgated there under regarding storage, packaging, labeling, shipping, dispensing, transfilling, distributing and repackaging of medical gas.

18.5.2 Training documentation shall be readily available for inspection. The documentation shall be kept for three years from the date of last employment.

18.6 Storage and Handling Requirements

18.6.1 Storage and handling of medical gas shall follow the manufacturer's labeling requirements.

18.6.2 Labeling shall include the manufacturer's label and a lot number on the cylinder in accordance with Federal law.

18.7 Record Keeping Requirements

18.7.1 The original order shall be kept and be readily retrievable for a minimum of three years after the date of the last dispensing.

18.7.2 Records shall include but not be limited to:

18.7.2.1 Name, address and telephone number of the patient

18.7.2.2 Name, address and telephone number of licensed practitioner

18.7.2.3 Item and quantity dispensed

18.7.2.4 Date of dispensing

18.8 Inspections

18.8.1 Inspections of pharmaceutical establishments are conducted unannounced, during normal business hours, in accordance with 24 Del.C. §2534.

4 DE Reg. 1502 (03/01/01)

7 DE Reg. 1666 (06/01/04)

8 DE Reg. 879 (12/01/04)

11 DE Reg. 689 (11/01/07)

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

<http://regulations.delaware.gov/register/july2008/proposed/12 DE Reg 48 07-01-08.htm>

DIVISION OF PROFESSIONAL REGULATION

2600 Examining Board of Physical Therapists and Athletic Trainers

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 Del.C. §2604(a)(1))
24 DE Admin. Code 2600

PUBLIC NOTICE

Pursuant to 24 Del.C. §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers has proposed revisions to its rules and regulations.

A public hearing was held on May 27, 2008. As the result of the public comment, the Board has decided to make substantive revisions to the proposed amendments originally published in the *Delaware Register of Regulations* on May 1, 2008 at 11 Del. Reg. 1445.

A second public hearing is scheduled for Tuesday, July 22 at 5:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

2600 Examining Board of Physical Therapists and Athletic Trainers

1.0 Definitions

1.1 Consultation (24 Del.C. §2612)

- 1.1.1 Consultation in direct access. A licensed health practitioner who has been granted prescriptive authority must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal licensed health practitioner. If the patient does not have a personal licensed health practitioner, the Physical Therapist is to offer the patient at least three licensed health practitioner from which to choose. The referral to a licensed health practitioner after the initial thirty day period must not be in conflict with 24 Del.C. §2616(a)(8) which deals with referral for profit. If no licensed health practitioner consult has been

made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a licensed health practitioner consult.

- 1.1.2 Consultation with written prescription from a licensed health practitioner. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

1.2 Direct Supervision (24 **Del.C.** §2611(a))

- 1.2.1 Direct supervision in connection with a Physical Therapist or Athletic Trainer practicing under a temporary license means:

- 1.2.1.1 a licensed Physical Therapist or Athletic Trainer supervisor shall be on the premises when the individual with a temporary license is practicing and

- 1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

- 1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

- 1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a the supervising Physical Therapist must see the patient at least once every sixth treatment day, and the Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth twelfth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

- 1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant or the Athletic Trainer when under his/ her supervision. All supervision must be documented.

- 1.2.5 Direct supervision in connection with an Athletic Trainer treating an injury not defined as an 'athletic injury', which must be a musculoskeletal disorder if seen for physical therapy when the athletic trainer has one (1) year or more of continuous experience means that an Athletic Trainer must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be accessible by telecommunications to the Athletic Trainer during all work hours of the Athletic Trainer.

Direct supervision in connection with an Athletic Trainer treating an injury not defined as an 'athletic injury' which must be a musculoskeletal disorder if seen for physical therapy, when the Athletic Trainer has less than one (1) year of continuous experience means a Physical Therapist shall be on the premises at all times and see each patient.

- 1.2.6 Direct supervision in connection with an Athletic Trainer with a temporary license treating an 'athletic injury' is that the licensed Athletic Trainer supervisor shall be on the premises when the individual with a temporary license is practicing and all evaluations and progress notes shall be co-signed by the Athletic Trainer supervisor.

- 1.2.7 Direct supervision in relation to an Athletic Trainer with one (1) year or more experience means that an Athletic Trainer must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The Supervising Athletic Trainer must have at least one (1) year experience. The Supervising Athletic Trainer must be available and accessible by telecommunications to the Athletic Trainer during all working hours.

- 1.2.8 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site.

- 1.2.9 Direct supervision in connection with support personnel means a licensed Physical Therapist, Physical Therapist Assistant or Athletic Trainer shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed. On site or on premises (24 **Del.C.** §2602(5)), means that the supervising professional is located on the same physical property where the supervision is occurring.

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- 1.3 Support personnel (24 **Del.C.** §2615) means a person(s) who performs certain routine, designated physical therapy tasks, or athletic training tasks, under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant or Athletic Trainer. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.
- 1.4 Unprofessional Conduct (24 **Del.C.** §2616(7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established 24 **Del.C.** §2616(7). Such unprofessional conduct shall include, but not be limited to, the following:
- 1.4.1 Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.
 - 1.4.2 The Physical Therapist or Athletic Trainer who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.
 - 1.4.3 The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.
 - 1.4.4 The Physical Therapist, Athletic Trainer, or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.
 - 1.4.5 Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.
 - 1.4.6 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.
 - 1.4.7 Inaccurately recording, falsifying, or altering a patient or facility record.
 - 1.4.8 Committing any act of verbal, physical, mental or sexual abuse of patients.
 - 1.4.9 Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.
 - 1.4.10 Failing to supervise individuals to whom physical therapy or athletic training tasks have been delegated.
 - 1.4.11 Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.
 - 1.4.12 Violating the confidentiality of information concerning the patient.
 - 1.4.13 Failing to take appropriate action in safeguarding the patient from incompetent health care practice.
 - 1.4.14 Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.
 - 1.4.15 Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.
 - 1.4.16 Diverting drugs, supplies or property of a patient or a facility.
 - 1.4.17 Allowing another person to use his/her license.
 - 1.4.18 Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.
 - 1.4.19 Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.
 - 1.4.20 A Physical Therapist, who initiated a physical therapy plan of care without a referral, continuing to treat a patient for longer than thirty days without a licensed health practitioner consult. An Athletic Trainer continuing to treat a patient, who initiated treatment for a minor strain, sprain, or contusion for longer than thirty days without a licensed health practitioner consult; preventative taping, padding, bandaging, icing and conditioning excluded.

- 1.4.21 Substantially modifying a treatment prescription without consulting the referring licensed health practitioner.
 - 1.4.22 Failing to comply with the mandatory continuing education requirements of 24 **Del.C.** §2607(a) and Section 7 of these rules and regulations.
- 4 DE Reg. 1114 (1/1/01)
5 DE Reg. 2101 (5/1/02)
8 DE Reg. 1587 (5/1/05)

****Please Note:** As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:
<http://regulations.delaware.gov/register/july2008/proposed/12 DE Reg 53 07-01-08.htm>

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 134, 141 and 21 Delaware Code Chapter 41
(17 **Del.C.** §§134,141 and 21 **Del.C.** Ch. 41)

PUBLIC NOTICE

Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6

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), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to Parts 2, 3, and 6 of the Delaware MUTCD. Other portions of the Delaware MUTCD, previously drafted and adopted, will likely go through a similar revision process.

DelDOT MUTCD Parts 2, 3, and 6

Figure Number/ Table Number/ Section Number	Proposed Revision
Part 2	
Table 2B-1	Revise to include RIGHT TURNS YIELD TO BIKES (R4-4-DE) sign.
Figure 2B-1, Table 2B-1, and Section 2B.04	Revise to include ALL WAY (R1-4) plaque, previously deleted from the DelDOT MUTCD.
Figure 2B-22, Table 2B-1, and Section 2B.54	Revise to include NOTICE MOVE OVER OR REDUCE SPEED FOR STOPPED EMERGENCY VEHICLES (SR1-18-DE) sign.
Figure 2C-9, Table 2C-1, and Section 2C.40	Revise to include EMERGENCY VEHICLE (W11-8-DE) warning sign.
Figure 2C-11, Table 2C-1, and Section 2C.53-DE	Revise to include the use of the Supplemental Warning (W3-9-DE) plaque to draw attention to regulatory signs.
Part 3	

Figure 3A-1	Revise figure to include two separate figures: Figure 3A-1A, "Black Contrast Marking Patterns on Interstates, Freeways and Expressways" showing white on black ("wet tape") application and Figure 3A-1B "Black Contrast Marking Patterns on All Other Roads (NON Interstates, Freeways or Expressways)."
Figure 3B-7C	Revise figure to match guidance in the DeIDOT Subdivision Manual.
Figure 3B-12A	Revise figure title to "45 mph or More." Add 45 mph option to table.
Figure 3B-12B	Revise figure title to "45 mph or More." Add 45 mph option to table. Change "line lane markings" to "lane line markings."
Figure 3B-12C	Revise figure title to "Less than 45 mph." Delete 45 mph option from table.
Figure 3B-13B	Revise figure to extend RPMs through the dotted lines and define RPM spacing through dotted line.
Figure 3B-13C	Clarify placement of RPMs at lane drops vs. deceleration lanes and spacing of RPMs with 3'/9' dotted striping. Revise 42 m (140 ft) dimension to 30 m (100 ft) and relocate leader to end of solid white line.
Figure 3B-13F	Revise figure title. Add note "RPM spacing for dotted 150 mm (6 in) lane lines consisting of 0.9 m (3 ft) line segments and 2.7 m (9 ft) gaps shall be 7.2 m (24 ft)." Insert space after "144" in Table "A."
Figure 3B-13G	Revise figure to match guidance in the DeIDOT Subdivision Manual.
Figure 3B-13H	Revise title. Revise figure to extend RPMs through dotted lines. Add note "RPM spacing for dotted 150 mm (6 in) lane lines consisting of 0.9 m (3 ft) line segments and 2.7 m (9 ft) gaps shall be 7.2 m (24 ft)."
Figure 3B-16A	Revise width of median opening to "W 9 m (30 ft)" in Notes 1 and 2.
Figure 3B-21A	Revise the minimum distance from the stop line to the first approach arrow on the figure on the right side of the page from 40 ft to 410 ft. Relocate figure titles to above (rather than below) the two figures. Add note regarding placement of LEFT LANE MUST TURN LEFT sign on undivided roadways.
Part 6	
Appendix	Include AHEAD and 1 MILE options in the BRIDGE WORK AHEAD (W5-3-DE) sign to match the sign shown in Case 12.
Case 12	Delete the black-on-white TWO WAY TRAFFIC AHEAD sign and install two Two Way Traffic (W6-3) temporary warning signs and the DO NOT PASS (R4-1) sign similar to Typical Application 39 in the Federal MUTCD (see page 6H-83).
Case 15	Revise the DETOUR (M4-10) sign shown in the figure to be black-on-orange. Revise the ROAD CLOSED (R11-2) sign to be black-on-white.
Case 20A, Table 6H-1	Change title to: MOVING DAYTIME OPERATIONS OR SHORT DURATION (1 HOUR OR LESS) STATIONARY - ON SHOULDER. Add a note stating that the case is applicable to both two-lane, two-way and multilane roadways. TMA is not required on Vehicle #1; revise figure to delete TMA.
Case 20B, Table 6H-1	Change title to: MOVING DAYTIME OPERATIONS OR SHORT DURATION (1 HOUR OR LESS) STATIONARY - LANE CLOSURE. Add a note stating that the case is applicable to both two-lane, two-way and multilane roadways.
Case 21	Vehicle #6 is not shown; revise figure to include.
Figure 6F-3, Table 6F-1, Section 6F.10	Delete all references to the Weight Limit (R12-2) sign.
Figure 6F-3, Table 6F-1, Section 6F.10	Delete all references to the Weight Limit (with Symbols) R12-5 sign; replace with R12-5-DE.
Section 6E.02	Revise to include clarification on vest background to match current standards.

PROPOSED REGULATIONS

Section 6F.03	Revise text to: "Signs mounted on portable supports shall not be used for operations exceeding 24 hours in duration, unless approved by the Chief Traffic Engineer or designee." (Make this a standard and delete the double negative). Revise to include option: "If utility conflicts or concrete sidewalks/medians prevent the installation of permanent signs in the appropriate location, portable sign supports may be used."
Section 6F.63	Delete "Option: Type III Barricades used at a road closure may be placed completely across a roadway or from curb to curb." This statement conflicts with the standard "Type III Barricades used at road closure shall be placed completely across a roadway or from curb to curb." (see Page 6F-36)
Table 6F-1 and Appendix	Revise the KEEP LEFT (R4-8-DE) sign to delete the RIGHT option.
Table 6F-1 and Appendix	Insert the KEEP RIGHT (R4-7-DE) sign.
Table 6F-1 and Appendix	Insert LANE CLOSED (W9-3-DE2) temporary warning sign.

Note: Revisions to the Table of Contents will be made to accommodate proposed revisions

Public Comment Period

The Department will take written comments on the draft changes to the Delaware MUTCD from July 1, 2008 through July 31, 2008.

Copies of the Draft Delaware MUTCD Revisions to Parts 2, 3, and 6 can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/july2008/proposed/MUTCD236>.

Questions or comments regarding this document should be directed to:

Donald Weber, P.E.

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Division of Transportation Solutions

Delaware Department of Transportation

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***Please Note:** Due to the size of the proposed regulation, the DelDOT Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6, is not being published here. A PDF version is available at the website listed below:

<http://regulations.delaware.gov/register/july2008/proposed/MUTCD236.pdf>

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 MANUFACTURED HOME RELOCATION AUTHORITY

Statutory Authority: 25 Del.C. §7011(f) and 7013(c)(2)

ORDER NO. 3

201 Delaware Manufactured Home Relocation Trust Fund Regulations

AND NOW, this 11th day of June, 2008, the Delaware Manufactured Home Relocation Authority (the "Authority"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the *Delaware Registrar of Regulations*:

1. Pursuant to its statutory authority, the Authority has proposed for adoption proposed revisions to the Authority's Regulations that would set the maximum payment available to a landlord for a single section home and a multi-section home that has been abandoned or that has been determined to be non-relocatable at \$500.00 and \$1,000.00 respectively (the "Proposed Regulations"). Ralph Durstein, Deputy Attorney General (the "Hearing Examiner") was designated as the Hearing Examiner to conduct a public hearing for the purpose of receiving comments from the public on the Proposed Regulations.

2. The public hearing was held on Monday, December 10, 2007. A copy of the Proposed Regulations and notice of the public comment session was published in the *Delaware Register* on November 1, 2007, and notice of the hearing was published in both the *Delaware State News* and the *News Journal* on November 9, 2007.

3. The public hearing was presided over by the Hearing Examiner. On or about May 19, 2008, the Hearing Examiner submitted his Report.

4. The Authority considered the Proposed Regulations and Report of the Hearing Examiner at its regularly scheduled Board meeting held on June 11, 2008. At its June 11, 2008 Board meeting, the Authority adopted a resolution pursuant to which the Authority adopted the proposed regulation as a final regulation.

5. A summary of the evidence and public comments submitted on the Proposed Regulations is set forth in the Report of the Hearing Examiner attached hereto as Exhibit A.

6. For the reasons set forth herein, the Authority, by this Order, adopts as final regulations the Regulations attached to this Order as Exhibit B.

7. At the public hearing, no members of the public voiced any significant opposition to the proposed

regulation. While several speakers did not believe landlords should be entitled to any benefits, by statute, a landlord is entitled to benefits, at a maximum rate to be set by the Authority.

8. The Authority believes that the maximum benefits set forth in the Proposed Regulations are reasonable under the circumstances. The Authority reaffirms its decision to set the maximum landlord reimbursement rate at \$500.00 for single section homes and \$1,000 for multi-section homes, as reflected in the Proposed Regulations.

NOW THEREFORE, for the reasons set forth above, **IT IS ORDERED**:

1. That the Amendment to "Delaware Manufactured Home Relocation Trust Fund Regulations" attached hereto as Exhibit B is adopted pursuant to 25 **Del.C.** §7011, et. seq. The Proposed Regulations adopted herein shall become effective ten (10) days after their publication in the *Delaware Register of Regulations*.

2. That pursuant to 29 **Del.C.** §1134, the Authority shall transmit a copy of this Order and the Regulations to the *Delaware Register of Regulations* for publication in the next issue of the *Delaware Register of Regulations*.

3. That a copy of this Order and the Regulations shall be mailed to each entity or persons that previously filed written comments to the Proposed Regulations and to each person who has made a timely request for advance notice of the Authority's regulation making proceedings.

4. That the Authority reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

5. That the Authority reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE AUTHORITY:

Stevan D. Class, Chairperson
Terri Rock, Vice Chairperson
Derek Strine, Board Member
William Reed, Board Member
Ken Fuchs, Board Member
Raymond L. Paylor, Board Member
Edwin Speraw, Board Member

Dated: June 11, 2008

***Please note that no changes were made to the regulation as originally proposed and published in the November 2007 issue of the *Register* at page 548 (11 DE Reg. 548). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 59 07-01-08.htm>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 410

REGULATORY IMPLEMENTING ORDER

410 Satellite School Agreements

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 410 Satellite School Agreements to clarify the process by which a local school district or charter school can establish a satellite school. Pursuant to Title 14, Section 2005 of **Delaware Code** "a 'satellite school' is defined as a public school that operates in physical facilities leased from, donated by or located on property that is owned or leased by a private sector or governmental employer which is not the school district or charter school operating the satellite school."

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, May 5, 2008, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 410 Satellite School Agreements in order to clarify the process by which a local school district or charter school can establish a satellite school.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 410 Satellite School Agreements. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 410 Satellite School Agreements attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 410 Satellite School Agreements 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** 410 Satellite School Agreements amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 410 Satellite School Agreements 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 June 13, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 13th day of June 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

*Please note that no changes were made to the regulation as originally proposed and published in the May 2008 issue of the *Register* at page 1401 (11 DE Reg. 1401). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 60 07-01-08.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 608

REGULATORY IMPLEMENTING ORDER

608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony and rename the regulation, 608 Unsafe School Choice Option Policy. The amended regulation adds another definition and requires each school district and charter school to have an electronic copy on file with the Department of Education of the current policies and procedures describing school choice options to a student who is the victim of a violent felony, including the process for notifying parents and provide any new or revised policies and procedures to the Department of Education within ninety (90) days of any revision(s). In addition, the amended regulation clarifies suspension and expulsion data used for the determination of persistently dangerous schools.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday May 5, 2008, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens endorsing the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony in order to add another definition, a requirement that each school district and charter school have an electronic copy of the current policies and procedures on file with the Department of Education within ninety (90) days of any revision(s) and clarifies suspension and expulsion data.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony 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** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony 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 June 13, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 13th day of June 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

***Please note that no changes were made to the regulation as originally proposed and published in the May 2008 issue of the *Register* at page 1404 (11 DE Reg. 1404). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 62 07-01-08.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 915

REGULATORY IMPLEMENTING ORDER

915 James H. Groves High School

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 915 James H. Groves High School by adding the requirement in 4.4.1 that students enrolled in the James H. Groves High School must successfully complete and receive credit for a minimum of one Groves course in order to receive a State of Delaware diploma.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, May 5, 2008, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School in order to add the requirement that students enrolled in the James H. Groves High School must successfully complete and receive credit for a minimum of one Groves course in order to receive a State of Delaware diploma.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 915 James H. Groves High School attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 915 James H. Groves High School 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** 915 James H. Groves High School amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 915 James H. Groves High School 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 June 19, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of June 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of June 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Jorge L. Melendez

Dennis J. Savage

Richard M. Farmer, Jr., Vice President

Barbara Rutt

Dr. Terry M. Whittaker

*Please note that no changes were made to the regulation as originally proposed and published in the May 2008 issue of the *Register* at page 1414 (11 DE Reg. 1414). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 63 07-01-08.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

DRA 2005 - Third Party Data Exchange

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to comply with the third party data exchange provision mandated by Section 6035(b) of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171). 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 May 2008 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Amendment

The proposed amends the Title XIX Medicaid State Plan to document compliance with Section 6035 of the Deficit Reduction Act of 2005 (DRA). Section 6035 requires States to have laws which mandate that third parties comply with all of the provisions of section 1902(a)(25)(I) of the Social Security Act (the Act).

Statutory Authority

- Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006, Section 6035, *Enhancing Third Party Identification and Payment*
- House Bill 101, 144th General Assembly, *An Act to Amend Title 18 of the Delaware Code Relating to the Insurance Code*

Background

Third Party Liability (TPL) refers to the legal obligation of third parties, i.e., certain individuals, entities, or programs, to pay all or part of the expenditures for medical assistance furnished under a State plan. The Medicaid program by law is intended to be the payer of last resort; that is, all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual eligible for Medicaid. Examples of third parties which may be liable to pay for services include private health insurance, Medicare, employment-related health insurance, court-ordered health insurance derived by noncustodial parents, court judgments or settlements from a liability insurer, workers' compensation, first party probate-estate recoveries, long-term care insurance, and other State and Federal programs (unless specifically excluded by Federal statute).

Individuals eligible for Medicaid assign their rights to third party payments to the State Medicaid agency. States are required to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the State plan. Once States have determined that a potentially liable third party exists, the State is required to either "cost avoid" or "pay and chase" claims. Cost avoidance is where the provider of services bills and collects from liable third parties before sending the claim to Medicaid. Pay and chase is utilized when the State Medicaid agency pays the medical bills and then attempts to recover from liable third parties.

Section **6035(b)** of the Deficit Reduction Act of 2005 (DRA) created a new subsection (I) in section 1902(a)(25) of the Act. Under that new subsection, States are required to have laws that mandate health insurers or other parties that are legally responsible for payment of a claim for a health care item or service to provide the State with information that enables State Medicaid agencies to determine the existence of third party coverage for Medicaid recipients. States must amend their State plans to include an attestation that the required State law is in place.

The provisions of section 6035 of the DRA were effective January 1, 2006, except where States must pass new laws to comply with the DRA. States that already have the requisite laws should submit an amendment to their State plan as soon as practicable. States that do not currently have the required laws in place should enact the required legislation during their next legislative session and submit a State Plan amendment as soon as the legislation has been enacted.

Summary of Proposed Amendment

House Bill (HB) 101 was signed into law by the Governor on February 4, 2008. HB 101 implements the requirement in the DRA mandate that states have laws in place to require that, as a condition of conducting business in the State, all health insurers provide eligibility and coverage information to the State Medicaid Agency, when the State requests such information. This information exchange will guarantee that third party insurance coverage is exhausted before Medicaid pays for a service for Medicaid recipients who also have third party coverage.

The Division of Medicaid and Medical Assistance (DMMA) will amend the Title XIX Medicaid State Plan to provide assurances, satisfactory to the Secretary, that it has laws in effect requiring health insurers (including parties that are legally responsible for payment of a claim for a health care item or service), as a condition of doing business in the state:

- (1) To provide, upon request of the state, eligibility and claims payment data with respect to individuals who are eligible for or receiving Medicaid;
- (2) To accept an individual's or other entity's assignment of rights (i.e., rights to payment from the parties) to the state;
- (3) To respond to any inquiry from the state regarding a claim for payment for any health care item or service submitted not later than three years after the date such item or service was provided; and,
- (4) To agree not to deny a claim submitted by the state solely on the basis of the date of submission of the claim.

DMMA will also, amend the state plan regarding the frequency of data exchange for health insurance carriers from "biannually" to "No less than once every two (2) months, unless permission is given in advance by the agency."

Summary of Comments Received with Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows.

As background, the Deficit Reduction Act (DRA) of 2005 requires states to have laws to facilitate Medicaid's role as the payor of last resort. Such laws must include provisions mandating that health insurers and other legally responsible parties provide the State with information to enable the State to determine the existence of third party coverage for Medicaid recipients. In February 2008, the Governor signed H.B. 101 into law. That legislation authorizes DHSS to require health insurers to provide specific information on Medicaid recipients. The information is characterized as "Plan Eligibility Data Elements". The Department can require insurers to provide data electronically in a format specified by DHSS at least every two (2) months. DMMA is now issuing proposed Medicaid Plan amendments certifying compliance with the DRA. SCPD did not identify any concerns with the technical amendment which essentially confirms the adoption of H.B. 101.

Agency Response: Your participation is appreciated. Thank you for your comments.

Findings of Fact:

The Department finds that the proposed changes as set forth in the May 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan to comply with the third party data exchange provision mandated by Section 6035(b) of the Deficit Reduction Act (DRA) of 2005 is adopted and shall be final effective July 10, 2008.

Vincent P. Meconi, Secretary, DHSS, June 16, 2008

*Please note that no changes were made to the regulation as originally proposed and published in the May 2008 issue of the *Register* at page 1417 (11 DE Reg. 1417). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 65 07-01-08.htm>

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF WORKERS' COMPENSATION

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

ORDER

1341 Workers' Compensation Regulations

A public hearing was held on May 12, 2008 to receive public comments relating to the Fee Schedule Rules and Instructions ("Rules and Instructions"), Drug Formulary ("Formulary"), Health Care Practice Guidelines ("Practice Guidelines"), and Utilization Review and Accompanying Form ("UR" and "UR Form") for adoption by the Delaware Department of Labor. The members of the Health Care Advisory Panel ("Panel") present recommend that the Secretary of Labor adopt this proposal as it was published in the Register of Regulations, Vol. 11, Issue 10 (April 1, 2008).

Summary of the Evidence and Information Submitted

Exhibits Admitted:

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

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

No written comments were received by the Delaware Department of Labor. After the Panel concluded with their introductions, personnel from Ingenix introduced themselves. Susan Seare, Ingenix Senior Director of Data Collection, stated for the record that she was available to assist with the data collection component of the Workers' Compensation Act without charge.

The following comments were made during the Public Meeting:

Rules and Instructions:

First, Dennis Menton, Esquire addressed the Panel questioning the effective date of the Health Care Payment System and the Health Care Payment System's effect on current/ongoing cases. Second, Scott Mondell, Esquire questioned when the Health Care Provider Certification information (list of certified providers) would be available to the public via the Delaware Department of Labor's website.

Formulary:

Third, Dr. Frank Falco commented that the opioids, as listed on the Formulary, indicated an "inappropriate use."

Practice Guidelines:

Fourth, Lorna Lee, an acupuncturist, recommended that the list of providers include professional acupuncturists. Further, Ms. Lee stated that House Bill No. 377, a bill currently before the House seeks to license and include acupuncturists in the list of Health Care providers. Dr. Falco also addressed the Panel on the issue of Practice Guidelines, first by complimenting the Panel on the work they had done in drafting the Practice Guidelines and next by discussing in detail areas where he believed the Practice Guidelines needed further revisions or modifications. Dr. Falco was asked by the Panel to provide his comments in writing so that they could be reviewed in detail at a later date. Dr. Falco did submit his written comments to John Kirk, Deputy Director of Industrial Affairs,

the night of the Public Meeting and the following day. Mr. Menton, again addressed the Panel regarding the applicability of the Practice Guidelines and whether the statute's effective date applied to cases already in the workers' compensation system.

Utilization Review:

No public comment.

The Panel voted:

- (1) 13 to 1 in favor of recommending approval of the Fee Schedule Rules and Instructions;
- (2) unanimously to recommend approval of the Drug Formulary and the Health Care Practice Guidelines; and
- (3) 12 to 2 in favor of recommending approval of Utilization Review and UR Form.

Therefore, the Panel agreed to submit and recommend the Fee Schedule Rules and Instruction, Drug Formulary, Health Care Practice Guidelines and Utilization Review and accompany form for adoption by the Delaware Department of Labor.

Recommended Findings of Fact with Respect to the Evidence and Information

The Panel is persuaded that the proposals are consistent with administrating the statutory directives in the new workers compensation law.

Recommendation

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 13th day of May, 2008.

HEALTH CARE ADVISORY PANEL

Bruce Rudin, M.D., Chair	George B. Heckler, Esquire, Vice-Chair
Wayne Smith	Linda Cho
Matthew Eppley, M.D.	Walter Powell, M.D.
Glenn Brown	Josette Covington, M.D.
Joseph Rhoades, Esquire	Barry Baskt, D.O.
Richard Hefron	Harry Gravell
Douglas Briggs, D.C.	James Downing, M.D.

Decision and Effective Date

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt the Fee Schedule Rules and Instructions, Drug Formulary, Health Care Practice Guidelines, and Utilization Review and Accompanying Form. The Fee Schedule Rules and Instructions, Drug Formulary, Health Care Practice Guidelines, and Utilization Review and Accompanying Form are hereby adopted by the Delaware Department of Labor and made effective **May 23, 2008**.

Text and Citation

The Fee Schedule Rules and Instructions, Drug Formulary, Health Care Practice Guidelines, and Utilization Review and Accompanying Form notice appeared in the Register of Regulations, Vol. 11, Issue 10 (April 1, 2008). The Fee Schedule Rules and Instructions, Drug Formulary, Health Care Practice Guidelines, and Utilization Review and Accompanying Form are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: www.delawareworks.com.

DEPARTMENT OF LABOR

Thomas B. Sharp
Secretary of Labor

*Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1337 (11 DE Reg. 1337). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 67 07-01-08.htm>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 102(a) (7 **Del.C.** §102(a))
7 DE Admin. Code 3901

Secretary's Order No.: 2008-F-0028

Withdrawal of Proposed New Regulation, 19.0: Bald Eagle Protection

Date of Issuance: June 23, 2008

Effective Date: June 23, 2008

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 et seq., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On April 8, 2008, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2008-04 to promulgate a regulation which would ensure that the Bald Eagle population here in Delaware persists after protection from the federal Endangered Species Act was terminated on August 8, 2007. Eagles are a significant non-consumptive wildlife resource, which require protection in order to persist. Bald eagles are very sensitive to disturbance, which may result in failure of nests or abandonment of nest sites. In Delaware, the acreage of development in proximity to current nest sites is proposed to double in the next five years. Scientific studies from this region show eagles require significant no-disturbance buffers around their nests in order to persist. The proposed regulation would have maintained the same level of protection to eagle nest sites that was in place under the Endangered Species Act prior to August 2007. **Delaware Code** currently protects eagles from disturbance, but does not define disturbance. The new regulation proposed would have adopted the same protection to eagle nest sites that was formerly provided under the Endangered Species Act of 1973 prior to the eagle's removal from the federal Endangered Species List in August of 2007.

The aforementioned proposed regulation was published in the May 2008 edition of the *Delaware Register of Regulations*. Subsequently, the Department held a public workshop on May 28, 2008, in order to enhance public awareness of this proposed new regulation concerning Bald Eagle protection in the State of Delaware. A formal public hearing regarding the proposed new regulation was scheduled to be held by the Department on June 4, 2008, and the public comment period was open for written comments from May 1, 2008 through June 14, 2008. As a result of the public comments the Department received during that time period, the Department decided to significantly revise the proposed regulation and publish the revised proposed regulation, once completed, at a later date in the *Delaware Register of Regulations*. In order to not have two proposed regulations simultaneously pending consideration for adoption as a final regulation, the Department will continue to move forward with its plan to substantively revise the proposed regulation concerning Bald Eagle protection here in Delaware, and at this time withdraw the current proposed regulation previously published in the May 2008 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on May 1, 2008;

2. The Department will allow its proposed rulemaking commenced with Start Action Notice No. 2008-04 to continue with a new, substantively revised proposed regulation to be published in the *Delaware Register of Regulations* once all revisions have been made, and the Department may rely on the portions of the administrative record already developed to the extent that the Department determines that they are relevant to the proposed new regulation to be published in a future edition of the *Delaware Register of Regulations*; and

3. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

John A. Hughes
Secretary

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

300 Board of Architecture

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))
24 DE Admin. Code 300

ORDER

After due notice in the *Register of Regulations* for public comment on the Board's Draft Regulations, the board voted to adopt the final regulations in the form attached, which does not vary in substance from the Draft Regulations, 24 **DE Admin. Code 300**.

This regulation shall go into effect as provided in the applicable provisions of the Administrative Procedures Act, 29 **Del.C.** Chapter 100.

SO ORDERED THIS 4TH DAY OF JUNE, 2008.

Arden Bardol

Sandra C. Mifflin

C. Terry Jackson

Kenneth M. Freemark, Jr.

Julia Hopkins

Alvin French

Jean McCool

Approved as to form: Andrew Kerber, Deputy Attorney General

300 Board of Architects

(Break in Continuity of Sections)

5.0 IDP Training Requirements

5.1 The IDP is a requirement for all applicants for initial registration in the State of Delaware. Applicants holding a current registration in good standing in another United States jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the date of the application that is acceptable to the Board may obtain a waiver of the IDP requirement. A request for waiver shall be made on a form prescribed by the Board

5.2 The IDP, which is administered by the National Council of Architectural Registration Boards (NCARB), will be initiated by completing an application for NCARB/IDP Council Record and submitting required application fees. This application may be obtained from NCARB, 1801 K Street NW, Suite 1100, Washington, D.C.

20006-1310 or www.ncarb.org. Preparation of all components of the IDP record for references, transcripts, training, etc., will be done in accordance with current NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.

[5.3 Reciprocity

5.3.1 Registration through reciprocity applications shall be governed by 24 Del.C. §309.

5.3.2 Applicants for registration through reciprocity who were previously registered as architects in Delaware and had the Certificate of Registration cancelled or lapsed shall be required to certify that they have satisfied the minimum Continuing Education Requirement for Renewal provided in Regulation 6.2 and 6.3 for the two year period preceding the new registration, notwithstanding that the Certificate of Registration was cancelled or lapsed.

6.0 Registration

6.1 Duration- Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.

6.2 Continuing Education Requirements For Renewal: ~~For license or registration periods beginning August 1, 2003, and thereafter, each holder of a Certificate of Registration shall complete sixteen (16) hours of continuing education (Professional Development Units or PDUs) acceptable to the Board during each biennial licensing period. Completion of required continuing education is a condition for renewal of a Certificate of Registration. Each Registered Architect shall be exempt from the continuing education requirement in his or her initial biennial licensing period, or any portion thereof, in which he or she is licensed or registered to practice. Each Registered Architect shall be required to complete and submit forms prescribed by the Board certifying compliance with the continuing education requirement for renewal of registration. Required documentation may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity, as well as proof of attendance. The Board reserves the right to require additional information or documentation regarding continuing education compliance from a Registered Architect.~~

6.2.1 For registration periods beginning August 1, 2007 and thereafter, each holder of a certificate of registration shall complete twenty four (24) contact hours of continuing education acceptable to the Board during each biennial registration period.

6.2.2 All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.

6.2.3 Completion of required continuing education is a condition for renewal of a certificate of registration.

6.2.4 One (1) contact hour is defined as one hour or one unit of acceptable continuing education in accordance with the standards of NCARB for NCARB monograph programs and the AIA for health, safety and welfare programs approved by the AIA.

6.2.5 An Architect who has been registered for less than one year in Delaware on July 31 biennial renewal shall be exempt from the continuing education requirement for the preceding two (2) year period.

6.2.6 Each registered architect shall be required to attest to the satisfactory completion of twenty four (24) contact hours of continuing education within the immediately preceding two (2) year period. No continuing education credits may carryover over into a later biennial period.

6.3 Content: ~~All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are deemed acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.~~ Continuing Education Rules:

6.3.1 Random audits of compliance will be performed by the Board. All registrants shall maintain documentation of continuing education, which shall include proof of attendance and verification that the education was an NCARB monograph course or a health, safety and welfare course approved by AIA.

6.3.2 Attestation of compliance may be completed electronically if the renewal is accomplished online. Alternatively, paper renewal documents that contain the attestation of compliance may be submitted.

6.3.3 Attestation of continuing education shall be submitted to the Division of Professional Regulation prior July 31 of the reporting year.

6.4 Hardship Extension: The Board may, in its discretion, grant an extension of time within which the continuing education requirement must be completed for reasons, including, but not limited to, illness, disability, military service, and exceptional family responsibilities. The period of hardship extension granted shall be

determined by the Board. Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period.

6.5 Late Renewal

~~6.5.1 A licensee that has failed to renew on or before the renewal date may apply to renew their expired registration within six (6) months following the renewal date; provided however, that those licensees with a pending renewal from the 2003 biennial registration period may submit such application within six months of the effective date of this Rule, unless otherwise required by law. A registrant that has failed to renew on or before July 31 renewal date may apply to the Board to renew their registration within six (6) months following the renewal date.~~

6.5.2 All late renewal applications must be accompanied by:

6.5.2.1 Renewal fee

6.5.2.2 Late renewal fee

6.5.2.3 Documentation of compliance with the continuing education requirement

prior to the renewal date.

~~6.5.3 A licensee who has failed to complete the continuing education requirement by the renewal date may request an extension of time of up to six (6) months following the renewal date to satisfy the prior license period continuing education requirement; provided however, that those licensees with a pending renewal from the 2003 biennial registration period may satisfy such continuing education requirement with 6 months of the effective date of this Rule, unless otherwise required by law. A registrant who has failed to complete the continuing education requirement by the August 1 renewal date may request, in writing, an extension of time of no more than six (6) months following the renewal date to satisfy the immediately preceding two (2) year requirement.~~

6.5.4 No continuing education completed during the late period may be used to satisfy future renewal requirements.

6.6 Not Transferable - A certificate of registration shall not be transferable.

6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or nonrenewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board.

[5-3 6.8 Reciprocity

~~5-3-1 6.8.1~~Registration through reciprocity applications shall be governed by 24 Del.C. §309.

~~5-3-2 6.8.2~~Applicants for registration through reciprocity who were previously registered as architects in Delaware and had the Certificate of Registration cancelled or lapsed shall be required to certify that they have satisfied the minimum Continuing Education Requirement for Renewal provided in Regulation 6.2 and 6.3 for the two year period preceding the new registration, notwithstanding that the Certificate of Registration was cancelled or lapsed.]

9 DE Reg. 1764 (5/1/06)

***Please Note:** As the rest of the sections were not amended since the proposal in the April 2008 issue, they are not being published here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 70 07-01-08.htm>

DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners

Statutory Authority: 24 Del.C. §1406(a)(1)

24 DE Admin. Code 1400

ORDER

1400 Board of Electrical Examiners

The Delaware Board of Electrical Examiners, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §1406(a)(1), proposed amendments to its regulation sections 1.0 through 3.0, 5.0 through 7.0, and 15.0.

Changes to section 1.0 include deleting language that unnecessarily repeats statutory language and making explicit licensees' obligation to notify the Board of a change of address. Changes to sections 2.0, 3.0, 5.0, and 6.0 are technical, including deleting language that repeats statutory language. Section 5.0 is proposed for deletion as unnecessary.

The proposed addition to **7.0 Expiration and Renewal** creates a mandatory audit of all late-renewed licensees to verify compliance with the continuing education and insurance requirements. The proposed addition to **15.0 Inspection agencies** clarifies the word "salary" as used in 24 Del.C. §1421(j).

In compliance with 29 Del.C. §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 11, at page 1441 on May 1, 2008.

Summary of the Evidence and Information Submitted

No written or verbal comments were received at the hearing.

Findings of Fact

The Board finds that adoption of the proposed amendments is necessary to provide for automatic audit of all late renewing licensees and to clarify its regulations.

Decision and Effective Date

The Board hereby adopts the proposed amendment to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendment. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 4th day of June 2008, by the **Board of Electrical Examiners of the State of Delaware**.

Ronald Marks

James Anderson

Joseph Sparco, Sr.

Robert Sharp

Dess Stokes

***Please note that no changes were made to the regulation as originally proposed and published in the May 2008 issue of the *Register* at page 1441 (11 DE Reg. 1441). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 73 07-01-08.htm>

DIVISION OF PROFESSIONAL REGULATION

2925 Real Estate Commission Education Committee

Statutory Authority: 24 Delaware Code, Sections 2905(a)(1) and 2911(b) (24 Del.C. §§2905(a)(1) and 2911(b))
24 DE Admin. Code 2925

ORDER

2925 Real Estate Commission Education Committee

The Delaware Real Estate Commission was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Commission was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Commission is authorized, by 24 **Del.C.** §2911(b), to adopt guidelines as to acceptable courses of instruction for licensees. The Commission is further authorized, by 24 **Del.C.** §2905(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate its statutory objectives.

Pursuant to 24 **Del.C.** §§2911(b) and 2905(a)(1), the Delaware Real Estate Commission has proposed several changes to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements.

First, Rule 6.1.1.7 will be added to provide that courses addressing the use of technology in delivering real estate services may be considered eligible for continuing education credits. Rule 6.3 will be added to provide that continuing education programs must be a minimum of one hour and delivered in one hour increments. Finally, Rule 8.2 will be amended to state that a student who arrives at a continuing education program after the instruction begins shall not receive continuing education credit.

Pursuant to 29 **Del.C.** §10155, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 11, Issue 10 on April 1, 2008.

Summary of the Evidence and Information Submitted

No written comments were received.

At the public hearing, Ruth Briggs King, Executive Vice President of the Sussex County Association of Realtors ("SCAOR"), stated that she supported Rule 6.1.1.7 and that SCAOR would offer classes on the use of technology in the real estate profession.

Andrew Taylor, Esquire, inquired as to the purpose of the provision of Rule 6.3 pertaining to the requirement that courses must be delivered in one hour increments. Mr. Taylor was advised that this provision does not really present a change but clarifies what is set forth in the Appendix to the Real Estate Education Guidelines.

Findings of Fact

The Commission finds that the proposed amendments, which address standards for continuing education, will serve to both protect the public and enhance practitioner competence.

Decision and Effective Date

The Commission hereby adopts the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 12th day of June, 2008.

DELAWARE REAL ESTATE COMMISSION

John R. Giles, Professional Member
Chairperson, Presiding

Ricky H. Allamong, Professional Member
Secretary

Denise R. Stokes, Public Member

Gilbert Emory, Public Member

Patricia O'Brien, Public Member

Christopher J. Whitfield, Professional Member
Vice Chairperson

Harry W. Kreger, Professional Member

James L. Givens, Professional Member

James C. Brannon, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1354 (11 DE Reg. 1354). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 74 07-01-08.htm>

DIVISION OF PROFESSIONAL REGULATION

5300 Board of Massage and Bodywork

Statutory Authority: 24 Delaware Code, Section 5306(a)(10) (24 **Del.C.** §5306(a)(1))
24 **DE Admin. Code** 5300

ORDER

5300 Board of Massage and Bodywork

The Delaware Board of Massage and Bodywork, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §5306(a)(1), proposed amendments to its regulation sections 1.0, 2.0, and 7.0. Specifically, the proposed additions to section 1.0 Definitions divide allowable continuing education into two categories: Core and Elective. The changes to section 2.0 Filing of Application for Licensure as Massage/Bodywork Therapist clarify the language of that section but do not alter the substance of the provision.

The changes to 7.0 Continuing Education provide for online licensure renewal, allow half of continuing education requirements to be fulfilled online, clarify the categorical restrictions on continuing education, and provide for the automatic approval of the content of continuing education courses approved by either the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") or the American Massage Therapy Association ("AMTA").

In compliance with 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 11, Issue 11, at page 1453 on May 1, 2008.

Summary of the Evidence and Information Submitted

Two written comments were received prior to the hearing. The first was submitted by the Associated Bodywork & Massage Professionals (ABMP) and marked as "Exhibit C." ABMP wrote to ask that continuing education (CE) courses approved by it be automatically accepted by the Board. Although not related to the currently proposed changes, ABMP encouraged the Board to accept the Massage & Bodywork Licensing Examination (MBLEx) and to cut the required CE hours in half. The second comment was submitted by Linda S. Lowry and marked as "Exhibit D." Ms. Lowry expressed her opposition to the new "Core" and "Elective" CE categories and asked that ABMP-approved course be automatically approved by the Board. Although not related to the currently proposed changes, Ms. Lowry opined that Massage Therapists and Technicians should be required to complete the same number of CE hours, she suggested deleting section 4.2.1, proposed accepting additional exams for licensure, and she suggested a change to section 8.0.

No verbal comments were received at the hearing.

Findings of Fact

The Board finds that adoption of the proposed amendments is necessary to provide for online renewals, clarify CE requirements, and streamline the audit process.

Decision and Effective Date

The Board hereby adopts the proposed amendment to the regulations to be effective 10 days following final publication of this order in the Register of Regulations.

Text and Citation

The text of the final regulations is attached hereto as "Exhibit A" and is formatted to show the amendment. A non-marked up version of the regulations as amended is attached hereto as "Exhibit B."

IT IS SO ORDERED this 19th day of June 2008, by the Delaware Board of Massage and Bodywork.

David Patterson, President	Clayton Yocum
Diane Langston	Gordon Gelley
Cindy Horsman	Barbara Uniatowski

*Please note that no changes were made to the regulation as originally proposed and published in the May 2008 issue of the *Register* at page 1453 (11 DE Reg. 1453). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/july2008/final/12 DE Reg 75 07-01-08.htm>

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302, and 29 Delaware Code, Section 10115 (21 Del.C. §302; 29 Del.C. 10115)
2 DE Admin. Code 2221

ORDER

2221 Use of Translators

Proposed Regulation 2221 establishes procedures regarding the use of translators for driver license applicants who cannot read or speak English. The regulation also addresses how a translator may assist an applicant during the Division's written and road tests. The proposed regulation was published in the *Delaware Register of Regulations* on May 1, 2008. The comment period remained open until May 30, 2008. There was no public hearing on proposed Regulation 2221.

Summary of the Evidence and Information Submitted

The Department received essentially the same comments on the proposed regulation from the State Council for Persons with Disabilities, the Council on Deaf and Hard of Hearing and the Governor's Advisory Council for Exceptional Citizens. The comments from these agencies involved how the proposed regulation will apply to customers who are deaf or hard of hearing. The agencies felt the regulation was a change to the Division's current policy of providing sign language interpreters free of charge to customers who are deaf or hard of hearing. This change would have put the Division in violation of Title II of the Americans with Disabilities Act. The agencies also had some concerns with the Division not providing driver license oral and written tests in a variety of languages and how a road test would be performed for customers who are deaf or hard of hearing under the proposed regulation.

The Division has no intention of applying the proposed Administrative Code 2221 to individuals who are deaf or hard of hearing and for whom, when requested, the Division supplies a sign language interpreter. The proposed regulation concerns translators for individuals who cannot read or speak English. The comments indicated there was some confusion concerning who is covered under this regulation. The following sentence shall be added at the end of Section 2.0 to help clarify this concern:

"This regulation does not apply to individuals, who are deaf or hard of hearing, and who are currently provided a sign language interpreter by the Division or who use their own sign language interpreter."

Currently, the Division provides a driver license written test in Spanish and is in the process of providing the written test in three more languages. The Division also has a Spanish driver manual that we are in the process of updating. The above addresses the agencies' concerns about the written tests.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation as amended addresses the comments received on this regulation.
2. The proposed regulation meets the requirements of the Administrative Procedures Act and is not in conflict with Delaware law.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302 and the record in this docket, I hereby adopt Regulation 2221 as amended and as may more fully and at large appear in the version attached hereto to be effective on June 15, 2008.

Text and Citation

IT IS SO ORDERED THIS _____ day of June 2008.

Carolann Wicks, Secretary of Transportation

2221 Use of Translators**1.0 Authority**

The authority to promulgate this regulation is 21 **Del.C.** §302 and 29 **Del.C.** §10115.

2.0 Purpose

This regulation establishes procedures regarding the use of translators for driver license applicants who cannot read or speak English. This regulation also establishes procedures on how a translator may assist an applicant during the Division's written and road tests.

[This regulation does not apply to individuals, who are deaf or hard of hearing, and who are currently provided a sign language interpreter by the Division or who use their own sign language interpreter.]

3.0 Applicability

This regulation will enable the Division of Motor Vehicles to maintain the integrity of the driver license written and road test process. This regulation also ensures compliance with Delaware law on the written test portion of the driver license application process and federal law on commercial driver license road tests.

4.0 Delaware Law

Delaware Title 21, Section 2707(b)(5), prohibits the Division from issuing an operator's or chauffeur's license to any person who is unable to understand highway warning or directional signs in the English language.

5.0 Substance of Regulation

5.1 Translation services may be provided by any individual the applicant selects.

5.2 Translators may read the questions and answers to the applicant as shown on the Division's automated test system but will not provide any other assistance during the test. The highway warning and directional sign portion of the test on the automated test system must be taken and passed without any assistance from the translator. Those applicants who fail the automated sign test twice on separate occasions shall be given a paper sign test. The signs shall be shown to the applicant who shall explain the answers to the translator who, in turn, shall provide the answers to the DMV technician. This will ensure the applicant is able to understand highway warning and directional signs in English.

5.3 Translators may provide assistance during the road test portion of Class D road tests by providing a brief overview of the road test requirements and by relaying instructions to the applicant from the DMV technician. Translators will sit in the rear of the vehicle and relay instructions to the applicant from the

DMV technician but will not provide any other assistance unless directed to do so by the DMV technician. Federal law prohibits translators for commercial driver license road tests. Translators will provide applicants a brief overview of the parallel parking portion of the road test. The translator will stand next to the DMV technician during the parallel parking portion of the road test and will not provide any other instructions unless directed to do so by the DMV technician.

6.0 Non-compliance

Any applicant whose translator is found speaking during a road test at any time other than when directed by the DMV technician will automatically fail the road test. Translators who assist applicants by providing answers to questions or by pointing out the correct answers will be prohibited from providing translator services in Division facilities.

7.0 Payment of Translator Service Fees

All fees associated with an applicant using a translator shall be the responsibility of the applicant requesting the service and paid for by the applicant.

8.0 Scheduling

An applicant requiring a translator is responsible for scheduling a translator for both the written and road tests.

9.0 Video and Audio Monitoring

The Division may use video and audio devices to monitor translators during the written and road tests. This is done to ensure translators are not providing answers to the applicant.

10.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions of this rule shall remain in full force and effect under Delaware law.

11.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed, and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. §10118(e).

11 DE Reg. 1459 (05/01/08)

DIVISION OF TRANSPORTATION SOLUTIONS

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

ORDER

Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 1, 7, 8, and 9

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 Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department drafted changes to Parts 1, 7, 8, and 9 of the Federal MUTCD, and published a Notice seeking public comment on these Parts in the April 1, 2008 edition of the *Delaware Register*. Other portions of the MUTCD have already been drafted and adopted.

Summary of the Evidence and Information Submitted

The comments received and the Department's reactions to those comments are summarized in the accompanying table. These comments caused certain changes to be made in the proposed MUTCD. The Department considers none of these changes to be substantive in nature, and thus causing the need for a new comment period.

Delaware MUTCD
Summary of Comments Received and Responses - Parts 1, 7, 8 and 9

Comment	Page Number(s) & Figure Number(s)	DeIDOT Response
There is an additional blank page in Chapter 7 after the cover page that should be removed.	N/A	Revised per comment
Do not like the school zone S4-2 "When Children Are Present" supplemental plaque, (or the proposed S5-1-DE "SCHOOL SPEED LIMIT XX WHEN CHILDREN ARE PRESENT" assembly or the school zone S4-1 "from X:XX to X:XX AM/PM" supplemental plaque. The first is difficult to enforce and the second may cause motorists to look away from traffic to check the time.	Table 7B-1 Figures 7B-1, 7B-3 Pages 7B-3, 7B-5, 7B-7, 7B-9 and 7B-10	The S4-1 and S4-2 supplemental plaques are approved for use by FHWA in the Federal MUTCD. The proposed S5-1-DE simply condenses several federally approved sign panels on to a single sheet of aluminum.
School zones are treated differently throughout the state, with some receiving flashing lights, and others just signing.	Page 7D-1	As noted in Section 7D.02, flashing beacons are only justified when specific conditions are fulfilled. Not all school zones meet these conditions.
The hyperlink to the proposed document was not valid in March.	N/A	Since the comment period ran from April 1, 2008 through April 30, 2008, the link had not been activated yet by the registrar's office. It was activated in April.
The term "local" on truck restriction signs continues to be problematic for law enforcement officials. Need a definition of the term "local"	N/A	This comment does not apply to Parts 1, 7, 8 or 9.
A modified version of the R4-4 "Right Turns Yield to Bikes" sign was suggested by DeIDOT for use where right turning vehicles may conflict with bikes yet an exclusive right-turn lane with a taper and storage is not provided (e.g., channelized right-turn lanes without storage (a.k.a. "slip" rights) and shared through/right-turn lanes).	Table 9B-1 Figures 9B-2, 9C-5 Page 9B-3	Revised per comment
Figure 8B-6 shows the double yellow centerline extending beyond the RR pavement markings to prohibit passing in both directions. This should also be reflected in Figure 8B-7 (both drawings). Also, there is a missing period at the end of the paragraph in Section 8B-21.	Figure 8B-7 Page 8B-10	Revised per comment
The "SCHOOL BUS STOP AHEAD" S3-1p-DE plaque needs to be added to Figure 7B-1.	Figure 7B-1	Revised per comment

Findings of Fact

Based on the record in this docket, I make the following findings of fact:

1. The proposed amendments to Parts 1, 7, 8, and 9 of the Federal MUTCD are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.
2. The adoption of these proposed changes to the MUTCD for Delaware is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Parts 1, 7, 8, and 9 of the Federal MUTCD, as set forth in the version attached hereto, to be effective on July 21, 2008.

IT IS SO ORDERED this 12th day of June, 2008.

Carolann Wicks, Secretary
Delaware Department of Transportation

***Please Note:** Due to the size of the final regulation, the DeIDOT Manual on Uniform Traffic Control Devices, Parts 1, 7, 8 and 9, is not being published here. A PDF version is available at the website listed below:

<http://regulations.delaware.gov/register/july2008/final/MUTCD.pdf>

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)

GENERAL NOTICE

Secretary's Order No. 2008-W-0022

Withdrawal of Proposed "Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware," as Published in the May 2007 Delaware Register of Regulations

Date of Issuance: May 20, 2008

Effective Date: May 20, 2008

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 et seq., 29 Del.C. §§10111 et seq. and 7 Del.C. §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On February 13, 2006, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2002-006 to promulgate a regulation to control non-point sources of nutrient pollutants from entering the waters of the Inland Bays, which consist of the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay and their tributaries. The proposed regulation would have established nutrient removal requirements for stormwater management and on-site waste water treatment and disposal system standards within the watersheds. The Inland Bays are vitally important to Delaware's economy and to overall environment within the Inland Bays and the public health based upon the recreational uses of the Inland Bays. The Department determined in a series of studies and total maximum daily load ("TMDL") regulations that the Inland Bays have impaired water quality based upon their classification and under the Federal Water Pollution Control Act, or Clean Water Act.

The Department conducted numerous meetings and workshops during the development of the proposed regulation, which was published May 2007 in the Delaware Register of Regulations. The Department held two public hearings on June 13, 2007 and June 14, 2007 and the public comment period was open for written comments from May 1, 2007 through June 29, 2007. As a result of the public comments the Department received, the Department decided to significantly revise the proposed regulation and publish the revised proposed regulation in the June 2008 *Delaware Register of Regulations*. In order to not have two proposed regulations pending consideration for adoption as a final regulation, the Department will move forward with the revised proposed regulation to be published in the June 2008 *Delaware Register of Regulations* and withdraw the proposed regulation that was published in the May 2007 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary and 29 Del.C. §10118(d), hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on May 1, 2007; and

The Department will allow its proposed rulemaking commenced with Start Action Notice No. 2002-06 to continue with a new, revised proposed regulation to be published in the June 2008 *Delaware Register of Regulations*, and the Department may rely on the portions of the administrative record already developed to the extent that the Department determines that they are relevant to the proposed regulation to be published in the June 2008 *Delaware Register of Regulations*. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

John A. Hughes, Secretary, DNREC

DELAWARE RIVER BASIN COMMISSION **NOTICE OF PUBLIC HEARING AND BUSINESS MEETING**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, July 16, 2008 beginning at 10:30 a.m. at the Commission's office building located at 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DELAWARE STATE FIRE PREVENTION COMMISSION **NOTICE OF PUBLIC HEARING**

Delaware State Fire Prevention Regulations, Part IX, Fire Service Standards **Chapter 4 Minimum Requirements for the Establishment of Fire Companies and Sub Stations**

The Delaware State Fire Prevention Commission will hold a public hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** §101 on Tuesday, August 19, 2008 at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to Part IX, Fire Service Standards, *Minimum Requirements of the Establishment Fire Companies and Substations*, to update the regulation related to substations and to make the regulation applicable to the establishment of additional Emergency Medical Service (EMS) stations as well as fire substations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. You can find the meeting announcement and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf> or on the Delaware State Fire Marshal's Office webpage at www.statefiremarshal.delaware.gov under the tabs "Services" and "Proposed Changes". There will be a reasonable fee charge for copies of the proposed changes or the proposed changes may be retrieved from the webpage for free.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing. The final date to submit written comments shall be at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker may be limited.

The Commission will consider promulgating the proposed regulations immediately following the public hearing.

DEPARTMENT OF AGRICULTURE **HARNESS RACING COMMISSION** **PUBLIC NOTICE**

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission's public hearing originally scheduled for July 8, 2008 to discuss rule changes for DHRC Rules 6 and 8 has been cancelled until further notice.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, July 17, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Pharmaceutical Services Program – Tamper-Resistant Prescription Pads**

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 Delaware Medical Assistance Program (DMAP) Provider Manuals to bring the Medicaid regulations into compliance with Federal law.

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) 255-4454 by July 31, 2008.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Food Stamp Program****9044.1 Newly-Certified Households**

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 Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding newly-certified households.

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 July 31, 2008.

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

DEPARTMENT OF INSURANCE**PUBLIC NOTICE**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Division of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 730.

The purpose of the proposed amendment to regulation is to eliminate the requirement that insurance identification cards be issued for periods of less than six months when the payment period is for a period of less than six months and to delete the requirement that fleet vehicles carry vehicle-specific identification cards. The text of the proposed amendment is reproduced in the July 2008 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

REGISTER NOTICE

Title of the Regulations:

DELAWARE STATE IMPLEMENTATION PLAN: Administrative and Non-Substantive Changes to Delaware's Regulations Governing the Control of Air Pollution

Brief Synopsis of the Subject, Substance and Issues:

Over the past 40 years, Delaware has adopted 32 air regulations that are approved by the US Environmental Protection Agency (EPA) as state implementation plan (SIP) revisions. Another four regulations have been submitted to EPA and are currently pending EPA approval into Delaware SIPs. The purpose of this SIP document is to update all these SIP regulations to a uniform style in accordance with the Delaware Administrative Code, "Manual for Drafting Regulations (March 2006)." In addition to this style update, several typo and misprint-type errors are also being corrected in this SIP revision.

The administrative changes, non-substantive changes and correction of errors do not alter regulatory features of any individual regulation, such as effective date, applicability, regulatory limit and requirement, compliance and monitoring schedule, enforcement procedures, etc.

Notice of Public Comment:

This SIP revision and all Delaware AQM regulations under it are available for public review at offices of DNREC-DAWM Air Quality Management Section (AQMS), Dover and New Castle. A public hearing will be held on **July 31, 2008**, beginning at 6:00 pm, in AQMS Conference Room, 2nd Floor, Priscilla Building, 156 South State Street, Dover, DE 19901. Comments on this SIP revision and all regulations under it can be sent to AQMS at the above address, or presented at the hearing.

Prepared by:

Frank F. Gao, Project Leader Phone: (302) 323-4542, Date: June 12, 2008 E-Mail: Frank.Gao@state.de.us

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)

7 DE Admin. Code 1138

REGISTER NOTICE**Title of the Regulations:**Amendment to Regulation 1138 *Emission Standards for Hazardous Air Pollutants for Source Categories***Brief Synopsis of the Subject, Substance and Issues:**

Under Section 112(k) of the 1990 Clean Air Act Amendment, Congress mandated that the EPA identify 30 or more hazardous air pollutants (HAPs) that posed the greatest threat to public health in urban areas, to identify the small area sources that emit those pollutants and to develop regulations to reduce the emission of HAPs. In 1999, the EPA identified 33 HAPs that posed the greatest threat to public health and has, since that time, identified over 60 new area source categories for which regulations would be developed.

In July 2007, the EPA promulgated its first area source standard affecting a Delaware source; the lead acid battery manufacturing standard under 40 CFR Part 63 Subpart P. The purpose of this proposed amendment to Regulation 1138 is to provide increased protection for children and other at-risk populations against a variety of adverse health effects, most notably the effects on the developing nervous system caused by exposure to lead. The proposed amendment will provide greater consistency between Delaware's air toxics standards and the recently promulgated federal standard (Subpart P) on which this amendment is heavily based. In addition, this amendment proposes to include several more protective requirements that currently exist in Delaware air permits.

The purpose of this proposed amendment to Regulation 1138 is to provide increased protection for children and other at-risk populations against a variety of adverse health effects, most notably the effects on the developing nervous system caused by exposure to lead. The proposed amendment will provide greater consistency between Delaware's air toxics standards and the recently promulgated federal standard (Subpart P) on which this amendment is heavily based. In addition, this amendment proposes to include several more protective requirements that currently exist in Delaware air permits.

Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, July 29, 2008 beginning at 6:30 PM in the DNREC Auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

Prepared by:James R. Snead(302) 323-4542james.snead@state.de.usMay 22, 2008

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2500 Board of Pharmacy**PUBLIC NOTICE**

The Delaware Board of Pharmacy, in accordance with 24 Del.C. §2509, proposes amendments to its regulations by adding new regulation sections to 1) **11.0 Pharmaceutical Services in Nursing Homes**; and 2) **18.0 Pharmaceutical Services for Medical Gases**. Specifically, the Board has proposed changes to regulation 11.3 Emergency Use Medications. The proposed changes are to address Board of Pharmacy concerns with interim use medications available in nursing homes

A public hearing is scheduled for Wednesday, August 20, 2008, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments may be submitted to the Board prior to the hearing care of Judy Letterman at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

The Board will consider promulgating the proposed changes immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION

2600 Examining Board of Physical Therapists and Athletic Trainers

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers has proposed revisions to its rules and regulations.

A public hearing was held on May 27, 2008. As the result of the public comment, the Board has decided to make substantive revisions to the proposed amendments originally published in the *Delaware Register of Regulations* on May 1, 2008 at 11 Del. Reg. 1445.

A second public hearing is scheduled for Tuesday, July 22 at 5:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

NOTICE OF PUBLIC COMMENT PERIOD

Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6

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), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to Parts 2, 3, and 6 of the Delaware MUTCD. Other portions of the Delaware MUTCD, previously drafted and adopted, will likely go through a similar revision process.

The Department will take written comments on the draft changes to the Delaware MUTCD from July 1, 2008 through July 31, 2008.

Copies of the Draft Delaware MUTCD Revisions to Parts 2, 3, and 6 can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/july2008/proposed/MUTCD236>.

Questions or comments regarding this document should be directed to:

Donald Weber, P.E.

Assistant Director of Transportation Engineering

Division of Transportation Solutions/Delaware Department of Transportation

169 Brick Store Landing Road

Smyrna, DE 19977

(302) 659-2002 (telephone) (302) 653-2859 (fax) don.weber@state.de.us