
Delaware Register of Regulations

Issue Date: November 1, 2010

Volume 14 - Issue 5, Pages 333 - 499



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

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

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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
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 17	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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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.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(14) (11 **Del.C.**, §8404(a)(14))

PUBLIC NOTICE
801 Regulations of the Delaware Council on Police Training

Training for Law Enforcement Officers on Child Sexual and Physical Abuse, Exploitation and Domestic Violence and the Mandatory Reporting Thereof

Nature of the Proceedings

This emergency regulation is being promulgated to amend the mandatory training requirements for law enforcement officers certified in the State of Delaware to bring the Council on Police Training (COPT) Regulations into compliance with a new State law, H.B. 457 (effective August 1, 2010). The COPT must take this action on an emergency basis to ensure that certified law enforcement officers in Delaware have the training required by this law. The COPT has determined that a threat to the public welfare exists if this regulation is not implemented without prior notice or hearing.

Nature of Proposed Amendment

This emergency regulation amends the current COPT regulations to mandate training for all persons seeking permanent or seasonal appointment as a law enforcement officer in the detection, prosecution, and prevention of child sexual and physical abuse, exploitation and domestic violence, and the obligations imposed by Delaware law, including Section 903 of Title 16 of the *Delaware Code*, and federal law in the prompt reporting thereof.

Summary of the Proposed Amendment:

This emergency regulation amends the current COPT regulations to add a new subsection 5.3.3:

Effective January 1, 2011, any person seeking certification as a law enforcement officer in Delaware must complete 1.5 hours of training in the detection, prosecution, and prevention of child sexual and physical abuse, exploitation and domestic violence, and the obligations imposed by Delaware and federal law in the prompt reporting thereof, such training to be approved or offered by the Delaware Department of Justice as meeting the requirements of H.B. 457.

Any person already certified as law enforcement officer in Delaware must complete 1.5 hours of the such training by March 1, 2011 in order to maintain his or her certification.

Any person certified as a law enforcement officer in Delaware must complete at least one (1) hour every three years of such training.

Findings of Fact

The Council on Police Training finds that a compelling public interest exists which necessitates promulgation of an emergency regulation in order to comply with H.B. 457 and the recommendations of Dean Linda Ammons and the Delaware Department of Justice concerning additional training for law enforcement officers on the prevention of child sexual and physical abuse and mandatory reporting obligations.

THEREFORE, IT IS ORDERED that the proposed amendments to the COPT Regulations be adopted on an emergency basis without prior notice or hearing, and shall become effective January 1, 2011.

Dated: October 19, 2010
Lewis D. Schiliro, Chair
Council on Police Training

801 Regulations of the Delaware Council on Police Training***(Break in Continuity of Sections)*****5.0 Minimum Standards For Training****5.1 Police Basic Training Course**

5.1.1 In order for training to be accepted by Council on Police Training the training must be instructed by Certified Instructors as set forth in II-12.

5.1.1.1 Each applicant for the position of police officer in the State of Delaware must satisfactorily complete the Police Basic Training Course as prescribed in 11 **Delaware Code** §8405(a) (Amended 07/08/93) prior to being given or accepting an appointment as a police officer.

5.1.1.2 The Council on Police Training has certified six agencies as approved police basic training academies. Those agencies are: The Delaware State Police; New Castle County Police; Wilmington Department of Police; Newark Police Department; Dover Police Department; and Delaware River and Bay Authority Police Department.

5.1.1.3 Any arrest for criminal and/or traffic offense, the Council on Police Training should be notified within 5 days.

5.1.1.4 Person must meet PT standards of the academy to which they will be attending.

5.2 Waiver of Equivalent Training – RECIPROCITY

- 5.2.1 The Council on Police Training may waive the requirement of attending an approved Delaware Police Training Academy for those officers seeking Delaware certification of training after having completed equivalent training out-of-state, and having met all training considered indigenous to Delaware.
- 5.2.2 The Chief of Police of the municipality seeking waiver of training obtained in Delaware must submit to Council an application for Exemption from Mandatory Training. (See Section IV. Forms)
- 5.2.3 The application must be completed in its entirety and submitted to the Administrator prior to appointment by the requesting agency. The officer must enclose a copy of the certificate of training from the police academy, which provided police basic training. The officer must also enclose a copy of the curriculum from that academy which must include: description of courses taught; hours assigned to each course; and, a brief synopsis of the material taught in each course.
- 5.2.4 The Administrator will examine the equivalent training records and make a comparison with the Delaware Mandatory Requirements. Any areas not meeting Delaware Standards will be required, prior to submission of the waiver application to Council for consideration
- 5.2.5 If an applicant has completed a non-out-of-state Academy but has not worked full time in law enforcement during the five years immediately prior to the date of application, that Applicant must attend an approved Academy in its entirety. If the Council should determine that the out-of-state training was in the main, deficient, it may deny the waiver in its totality and require attendance at an approved Delaware police training academy.
- 5.2.6 If an applicant, upon review of their training, needs to take more than 40% of the minimum number of hours of training in the state of Delaware, then they must attend a Delaware approved Academy in its entirety.
- 5.3 Annual required training to maintain certification
- 5.3.1 Each police officer, certified by the Council, will be required to complete 16 hours of in-service career related training annually.
- 5.3.2 In addition to the above 16 hours, the officer must also recertify in C.P.R., AED, and First Responders recertification as noted in Section II-16
- 5.3.3 Effective January 1, 2011, any person seeking certification as a law enforcement officer in Delaware must complete 1.5 hours of training in the detection, prosecution, and prevention of child sexual and physical abuse, exploitation and domestic violence, and the obligations imposed by Delaware and federal law in the prompt reporting thereof, such training to be approved or offered by the Delaware Department of Justice as meeting the requirements of H.B. 457.
- 5.3.3.1 Any person already certified as law enforcement officer in Delaware must complete 1.5 hours of the such training by March 1, 2011 in order to maintain his or her certification.
- 5.3.3.2 Any person certified as a law enforcement officer in Delaware must complete at least one (1) hour every three years of such training.

13 DE Reg. 840 (12/01/09)

***Please Note:** As the rest of the sections are not being amended they are not being published. The complete regulation is available at:

801 Regulations of the Delaware Council on Police Training

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE**DELAWARE STANDARDBRED BREEDERS' FUND**Statutory Authority: 29 **Del.C.** Section 4815(b)(3)b.2.D(29 **Del.C.** §4815(b)(3)b.2.D)3 **DE Admin. Code** 502**PUBLIC NOTICE****502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed amended regulation constitutes a modification of one existing regulation. The proposed amendment of regulation 13.8 adds two words which clarify the qualification requirement for horses earning a place in finals at each racetrack.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulation. The deadline for the filing of such written comments will be thirty days (30) after this proposed amended regulation is promulgated in the *Delaware Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by December 1, 2010.

502 Delaware Standardbred Breeders' Fund Regulations**(Break in Continuity of Sections)****13.0 Races**

- 13.1 The purses for all races under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Walkovers receive 50% of the purse. Points to qualify for the finals shall be

PROPOSED REGULATIONS

distributed on the same percentage basis. In fields with more than five horses, places six through eight shall receive 4-3-2 points, respectively.

- 13.2 In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in one elimination in order to start in the final. All horses shall be on the gate in eliminations and the final.
- 13.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.
- 13.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Program.
- 13.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:
- 13.5.1 Age;
 - 13.5.2 Sex; and
 - 13.5.3 Gait.
- 13.6 Beginning in 2004, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$ 15,000.00 and the finals shall be \$100,000.00. The Board of the Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit, or decrease purses in the event of insufficient funds.
- 13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

2 Year Olds		3 Year Olds	
Pacers	Trotters	Pacers	Trotters
2:10	2:14	2:06	2:12

- 13.8 Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs ~~and the consolation and~~ final at that racetrack.
- 13.9 The Administrator of the Program shall be responsible for races conducted under the Program and shall ensure that:
- 13.9.1 each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.
 - 13.9.2 entry for races run under the Program is required to be received by the Racing Office at the date and time specified on the track condition sheet.
 - 13.9.3 The eligibility and class of all horses participating in races is carefully screened.
 - 13.9.4 The Administrator, or his/her designee, is present for the race draw by the Judges for all races conducted under the Program.

6 DE Reg. 1497 (5/1/03)

7 DE Reg. 497 (10/01/03)

8 DE Reg. 336 (8/1/04)

***Please Note:** As the rest of the sections are not being amended they are not being published. The complete regulation is available at:

502 Delaware Standardbred Breeders' Fund Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

103 Accountability for Schools, Districts and the State

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 103 Accountability for Schools, Districts and the State related to the Comprehensive Success Review requirement for schools Under Improvement Phase I. The Department in response to recent feedback from the intended participants is proposing to change the requirements around this review. All LEAs are currently engaged in Change Management work that is similar, albeit not synonymous, to the intention of the planned Comprehensive Success Review work. In addition, the Department with input from LEAs proposes additional flexibility in determining which schools would most benefit from the process. This is also in line with our federal requirements to provide support to schools that are not performing as well as others. Additionally, there is a resource concern and this added flexibility will allow for limited resources to be used in the most beneficial manner.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 6, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is not intended to affect student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is not intended to affect whether students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not affect the health and safety of students.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not affect students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation preserves the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject does not change.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is not an impediment to other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation assists in flexibility for allocation of limited resources at the local and State levels.

103 Accountability for Schools, Districts and the State

(Break in Continuity of Sections)

7.0 Accountability for Schools that are Under Improvement

- 7.1 Under Improvement Phase 1 -- A school that meets the definition of "Under Improvement" found in 2.11.5 shall, in the first school year after meeting the definition of Under Improvement, be considered in "Under Improvement Phase 1." A school that is in Under Improvement Phase I shall:
- 7.1.1 Review and modify its current School Improvement Plan, outlining specific school improvement activities to be implemented; and
 - 7.1.2 Utilize the Department's Comprehensive Success Review process, which includes an audit tool, an on-site visit, and feedback on strengths and opportunities for improvement; and
 - ~~7.1.3~~ A school designated as Title I shall offer ESEA Choice.
- 7.2 Under Improvement Phase 2 - A school that is identified as Under Improvement Phase 1 pursuant to 7.1 and fails to meet AYP for an additional year shall be considered "Under Improvement Phase 2." Such schools shall:
- 7.2.1 Amend the School Improvement Plan to add, at a minimum, one or more of the following options deemed appropriate, if permitted by State law; and that should be closely aligned with the areas in which the school failed to make AYP. Districts and charter schools may use federal, state or local funding, as permitted by State law, and may request funding from the Department to implement these initiatives:
 - 7.2.1.1 Development of community partnerships for after school opportunities/tutoring, increasing parental involvement;
 - 7.2.1.2 Educator professional development or mentoring;
 - 7.2.1.3 Supplemental services as defined in 7.2.2 or other nontraditional services such as credit recovery programs;
 - 7.2.1.4 Performance incentives for Highly Effective Teachers, as defined in 14 DE Admin Code 106A;
 - 7.2.1.5 Use of family crisis therapists and/or counseling and support programs for students;
 - 7.2.1.6 Technical assistance to assist with budget development/usage, professional development and evaluation, engaging parents and the community;
 - 7.2.1.7 Attendance and school climate initiatives.
 - 7.2.2 Schools designated as Title I shall continue to provide school choice as defined by ESEA and shall offer students supplemental services, defined as tutoring and other supplemental academic enrichment services that are designed to increase the academic achievement of students, and are offered in addition to instruction provided during the school day and are of high quality and research-based.
- 7.3 Corrective Action Phase 1 - A school that is identified as Under Improvement Phase 2 pursuant to 7.2 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 1" status. Districts having schools in this category and charter schools in this category shall:
- 7.3.1 Develop and implement a Corrective Action Plan for the school that should be closely aligned with the areas in which the school failed to make AYP and that includes at least one of the following, if permitted by State law:
 - 7.3.1.1 Extend the school year or school day for the school;
 - 7.3.1.2 Significantly decrease management authority at school level;
 - 7.3.1.3 Appoint outside expert to advise school on its progress toward making AYP based on its school plan;

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- 7.3.1.4 Restructure internal organizational structure of school;
 - 7.3.1.5 Replace school staff relevant to failure to achieve AYP; or
 - 7.3.1.6 Adopt and fully implement new curriculum including providing appropriate professional development for all relevant staff that is based on scientifically based research and offers substantial promise of improving educational achievement for low-achieving students.
- 7.3.2 In addition, districts and charter schools shall examine and include one or more of the following items in their Corrective Action Plan as they deem appropriate, if permitted by State law. Districts and charter schools may use federal, state or local funding, if permitted by State law and may request funding from the Department to implement these initiatives:
- 7.3.2.1 Institute flexible funding at school level to the extent authorized by applicable law;
 - 7.3.2.2 Provide performance incentives for teachers and principals based in significant part on student achievement;
 - 7.3.2.3 Renegotiate collective bargaining agreements to permit hiring without regard to seniority;
 - 7.3.2.4 Decrease class size;
 - 7.3.2.5 Implement comprehensive instructional reform, including improved instructional program and differentiated instruction;
 - 7.3.2.6 Make changes to scheduling to increase learning time for students and maximize collaboration time for teachers - consider extended learning time, modified or block scheduling; and
 - 7.3.2.7 Increase community-oriented supports, create partnerships with community services programs providing assistance to students outside of school hours, and implement a community-based school model, by which the school would partner with community groups in utilizing school facility to provide extended services to students and the community, which may include permitting student activities at the school after the end of the school day and offering services and support to parents.
- 7.3.3 Schools designated as Title I shall continue to offer supplemental services (as defined in 7.2.2) and choice as required by ESEA.
- 7.4 Corrective Action Phase 2 -- A school that is identified as Corrective Action Phase 1 pursuant to 7.3 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 2" status. Districts with schools and charter schools Corrective Action Phase 2 shall, if permitted by State law:
- 7.4.1 Continue with the activities of Corrective Action Phase 1 at the school; and
 - 7.4.2 Provide retention incentives for effective educators at the school, subject to funding availability; and
 - 7.4.3 Develop a Restructuring Plan pursuant to 7.5. The district shall select from the category of options based on the school's outcome on the DOE Achievement Metric based on the assessments taken during Corrective Action Phase 1.
 - 7.4.4 Schools designated as Title I shall continue to offer supplemental services and choice as required by ESEA.
- 7.5 Restructuring - A school that is identified as Corrective Action Phase 2 pursuant to 7.4 and that fails to make AYP for an additional year shall be considered in "Restructuring," unless that school falls within the category of Partnership Zone schools addressed in 7.6. Districts having schools in Restructuring shall work with the schools to implement the Restructuring Plan developed pursuant to 7.4.3. Charter schools in this category shall implement the Restructuring Plan developed pursuant to 7.4.3. The District or charter school may request funding from the Department for implementation of the provisions. The Restructuring Plan shall include one of the following, if permitted by State law:
- 7.5.1 For district schools, reopening the school as a public charter school;
 - 7.5.2 Entering a contract with a private management company approved by the Department to operate the school;
 - 7.5.3 Closing the school

- 7.5.4 Replacing all or most of the school staff (which may include, but may not be limited to, replacing the principal) who are relevant to the school's failure to make AYP; or
- 7.5.5 Implementing a major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance and longer school days, to improve student academic achievement in the school and that has a substantial promise of enabling the school to make AYP. Whether or not a particular school is showing growth on the DOE Achievement Metric shall be a significant factor in the determination of what type of major restructuring is required pursuant to this provision.
- 7.6 Partnership Zone Schools - A school that is a Persistently Low-Achieving School and that is determined by the Secretary as likely to benefit from assignment to Partnership Zone Schools status shall be designated as a Partnership Zone School by the Secretary. The Secretary shall determine which Persistently Low-Achieving Schools would benefit from Partnership Zone School status through consideration of the academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined, (ii) the school's lack of progress on those assessments over a number of years and qualitative measures as determined by the Secretary, in consultation with the State Board of Education, Chief School Officers Association, and Delaware State Education Association.
- 7.6.1 Districts with a Partnership Zone school and Partnership Zone charter schools shall enter a memorandum of understanding ("MOU") between the Department and the district or the charter school. The Partnership Zone MOU shall include the following provisions:
- 7.6.1.1 Selection of one of the models outlined in section 7.6.2;
- 7.6.1.2 Provisions for regular oversight of the Partnership Zone school by the Department or its designee;
- 7.6.1.3 For schools at which a collective bargaining agreement governs its employees, a further agreement between and among the district or charter school, the collective bargaining unit, and the Department addressing those subjects, if any, that may inhibit the schools' successful implementation of its model, including but not limited to:
- 7.6.1.3.1 Limitations on hiring, reassigning and transferring covered employees into and out of the Partnership Zone school, such as seniority limitations;
- 7.6.1.3.2 The methodology for determining which teachers will be transferred or reassigned as part of the model;
- 7.6.1.3.3 Work rules relating to the educational calendar and scheduling of instructional time and non-instructional time,
- 7.6.1.3.4 Instructional reform;
- 7.6.1.3.5 Professional development requirements and other specialized training;
- 7.6.1.3.6 Retention and employment incentives, including performance incentives for effective teachers and principals; and
- 7.6.1.3.7 Any other subject required by these regulations to be addressed in the Partnership Zone school's selected model.
- 7.6.1.4 In the event the parties are not able to reach the agreement required by 7.6.1.3 within seventy-five (75) days of notice as a Partnership Zone school, each party shall present its last best offer on the areas of disagreement along with a draft agreement, to the Secretary of the Department, who shall accept one of the last best offers, or reject all of them. Should the Secretary reject all offers, the parties shall have thirty (30) days to confer and present the Secretary revised offers for re-consideration pursuant to this section.
- 7.6.1.5 Other provisions required by the model or mutually agreed upon by the Department and the district or charter school, which may include the following:
- 7.6.1.5.1 Instituting flexible funding at school level and oversight of same;
- 7.6.1.5.2 Engagement of a partner, consultant, education management organization or other alternative leadership structure; and

- 7.6.1.5.3 Extending learning time and community-oriented supports, including more learning time for students, collaboration time for teachers, enrichment activities, and mechanisms for family and community engagement.
- 7.6.1.6 Schools designated as Title I shall continue to offer supplemental services and choice as required by ESEA.
- 7.6.1.7 Partnership Zone schools that are not making AYP by the end of the second school year following implementation of the restructuring plan shall renegotiate the MOU or select one of the other available models under 7.6.2.
- 7.6.2 Districts having Partnership Zone schools and Partnership Zone charter schools shall work with the Department to implement a plan from the list below. The District may request funding from the Department for implementation of these provisions.
 - 7.6.2.1 School Closure Model, in which a district closes a school and enrolls the students who attended that school in other schools in the district that are higher achieving that are within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available;
 - 7.6.2.2 Restart Model, in which a district converts a school into a public charter school pursuant to the requirements of Chapter 5 of Title 14 of the Delaware Code, or closes and reopens a school under a charter school operator, a charter management organization or an education management organization that has been selected through a rigorous review process. A restart model shall enroll, within the grades it serves, any former student who wishes to attend the school.
 - 7.6.2.3 Turnaround Model, in which
 - 7.6.2.3.1 A district or charter school shall:
 - 7.6.2.3.1.1 Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;
 - 7.6.2.3.1.2 Using the Delaware Performance Appraisal system II or any locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students, (a) screen all existing staff and rehire no more than 50 percent; and (b) select new staff;
 - 7.6.2.3.1.3 Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;
 - 7.6.2.3.1.4 Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;
 - 7.6.2.3.1.5 Adopt a new governance structure, which includes, but is not limited to, requiring the school to report to a liaison of the Department or directly to the Secretary;
 - 7.6.2.3.1.6 Use data to identify and implement an instructional program that is research-based and "vertically aligned" from one grade to the next as well as aligned with State academic standards;
 - 7.6.2.3.1.7 Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;
 - 7.6.2.3.1.8 Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and provide appropriate social-emotional and community-oriented services and supports for students.
 - 7.6.2.3.2 A district may implement other strategies, such as:

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- 7.6.2.3.2.1 Any of the required and permissible activities under the transformation model; or
- 7.6.2.3.2.2 A new school model (e.g., themed, dual language academy).
- 7.6.2.4 Transformational Model, in which
 - 7.6.2.4.1 A district or charter school shall:
 - 7.6.2.4.1.1 Replace the principal who led the school prior to commencement of the transformation model;
 - 7.6.2.4.1.2 Use rigorous, transparent, and equitable evaluation systems for teachers and principals that-
 - 7.6.2.4.1.2.1 Take into account data on student growth (as defined in this notice) as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduations rates; and
 - 7.6.2.4.1.2.2 Are designed and developed with teacher and principal involvement;
 - 7.6.2.4.1.3 Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high-school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, pursuant to the Delaware Performance Appraisal System II or any successor thereto, have not done so;
 - 7.6.2.4.1.4 Provide staff with ongoing, high-quality, job-embedded professional development (e.g., regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;
 - 7.6.2.4.1.5 Implement new financial incentives and increase opportunities for promotion and career growth of effective teachers, and provide more flexible work conditions designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school;
 - 7.6.2.4.1.6 Use data to identify and implement an instructional program that is research-based and "vertically aligned" from one grade to the next as well as aligned with State academic standards;
 - 7.6.2.4.1.7 Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;
 - 7.6.2.4.1.8 Establish schedules and implement strategies that provide increased learning time, which means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects, including English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects;
 - 7.6.2.4.1.9 Provide ongoing mechanisms for family and community engagement;
 - 7.6.2.4.1.10 Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates;

- 7.6.2.4.1.11 Ensure that the school receives ongoing, intensive technical assistance and related support from the district, the Department, or a designated external lead partner organization.
- 7.6.2.4.2 A district may:
 - 7.6.2.4.2.1 Provide additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;
 - 7.6.2.4.2.2 Institute a system for measuring changes in instructional practices resulting from professional development;
 - 7.6.2.4.2.3 Ensure that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority;
 - 7.6.2.4.2.4 Conduct periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;
 - 7.6.2.4.2.5 Implement a schoolwide "response-to-intervention" model;
 - 7.6.2.4.2.6 Provide additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills to master academic content;
 - 7.6.2.4.2.7 Use and integrate technology-based supports and interventions as part of the instructional program;
 - 7.6.2.4.2.8 In secondary schools-
 - 7.6.2.4.2.8.1 Increase rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;
 - 7.6.2.4.2.8.2 Improve student transition from middle to high school through summer transition programs or freshman academies;
 - 7.6.2.4.2.8.3 Increase graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills;
 - 7.6.2.4.2.8.4 Establish early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.
 - 7.6.2.4.2.9 Extend learning time and create community-oriented schools, by
 - 7.6.2.4.2.9.1 Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;
 - 7.6.2.4.2.9.2 Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;
 - 7.6.2.4.2.9.3 Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or
 - 7.6.2.4.2.9.4 Expanding the school program to offer full-day kindergarten or pre-kindergarten.
 - 7.6.2.4.2.10 Allowing the school to be run under a new governance arrangement; or

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- 7.6.2.4.2.11 Implementing a per-pupil school-based budget formula that is weighted based on student needs.
- 7.6.2.5 If a school identified as a Persistently Low-Achieving School has implemented within the last two years an intervention that meets the requirements of the Turnaround, Restart, or Transformation models, the school may continue or complete the intervention being implemented.
- 7.6.2.6 If elements of the model adopted by a Partnership Zone school with the approval of the Department require funding and are not funded or require statutory authorization and are not so authorized, the school may apply to the Department for an annual waiver of said requirement, and such waiver shall be granted only insofar as compliance with said requirement is rendered impracticable thereby.

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

***Please Note:** As the rest of the sections are not being amended they are not being published. The complete regulation is available at:

103 Accountability for Schools, Districts and the State

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

1582 School Nurse

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

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

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

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

C. Impact Criteria

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

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

instruct a particular category of students.

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

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

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

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

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

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

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

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

1582 School Nurse

1.0 Content

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

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for School Nurse. This certification is required for all School Nurses providing services to children within the Delaware public school system.

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

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

3.0 Standard Certificate

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

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

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

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

4.0 Induction Requirements

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

4.0 Additional Requirements

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

5.0 Revocation

- ~~5.1 A Standard Certificate; or a Limited Standard, Standard or Professional Status Certificate as a School Nurse issued prior to August 31, 2003 may be revoked in accordance with 14 Del.C. §1514 for:~~
 - ~~5.1.1 Making a materially false or misleading statement in a certificate application; or~~
 - ~~5.1.2 Revocation of a license issued under 14 Del.C. c.12; or~~

- ~~5.1.3 Failure to maintain a current license as a registered nurse in the State of Delaware; or~~
- ~~5.1.4 Failure to maintain valid and current certification in CPR.~~

5.0 Expiration

- 5.1 A Standard Certificate shall expire if the educator:
 - 5.1.1 ~~Fails to maintain a current Registered Nurse license, recognized by the Delaware Board of Nursing; or~~
 - 5.1.2 ~~Fails to maintain valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED), or~~
 - 5.1.3 ~~Fails to complete within eighteen (18) months of hire, ninety (90) clock hours of training consisting of school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children.~~

6.0 Verification of Eligibility and Reporting

- 6.1 An educator holding a School Nurse certificate shall do the following:
 - 6.1.1 Notify the Department immediately if they fail to meet the qualifications as a School Nurse.
 - 6.1.2 Annually notify the Department and affirm their continued eligibility for certification and if requested, provide documentation verifying their continued eligibility.
 - 6.1.3 If employed in the public school system, provide documentation to their employer of their current credentials including a valid nursing license, and CPR and AED certification.
 - 6.1.4 If not employed in the public school system, provide documentation to the Department of their current credentials including a valid nursing license, and CPR and AED certification.
- 6.2 Upon employment of a School Nurse, a district or charter school is responsible for verifying that the School Nurse continues to meet the requirements in Sections 4.1.1 through 4.1.3.
 - 6.2.1 The district or charter school must maintain documentation of the verification of initial credentials and maintain documentation of current credentials including a valid nursing license, and CPR and AED certification.
- 6.3 Districts and charter schools shall report information to the Department when they receive information that would result in the expiration of a School Nurse Standard Certificate.

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

Renumbered effective 6/1/07 - see Conversion Table

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE** Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C., §512)

PUBLIC NOTICE

Medicaid-Related General Assistance (GA) Program and Temporary Assistance for Needy Families (TANF) Program Changes

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 Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Medicaid-related General Assistance and TANF changes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy

Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by November 30, 2010.

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

SUMMARY OF PROPOSAL

The proposal amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to comply with the Department's decision to eliminate the General Assistance (GA) payment for children living in the home of a non-relative adult and replace it with a payment under Temporary Assistance for Needy Families (TANF). This changes the category of Medicaid eligibility for these children.

Statutory Authority

1902(a)(10)(A)(ii) of the Social Security Act
 1905(a)(i) of the Social Security Act
 Omnibus Budget Reconciliation Act 1990 (OBRA 90), Public Law 101-58
 42 CFR §435.222, *Individuals under age 21 who meet the income and resource requirements*

Background

The American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5, provides eligible States with an increased Federal Medical Assistance Percentage (FMAP) through 12/31/2010. This increased FMAP was extended through 06/30/2011 under the Education, Jobs and Medical Assistance Act, Public Law 111-226.

To access the additional funds associated with the increased FMAP, each State must ensure that the eligibility standards, methodologies, or procedures under its Medicaid State Plan are not more restrictive during this period than those in effect on July 1, 2008. The Centers for Medicare and Medicaid Services (CMS) issued guidance about the maintenance of effort requirements in State Medicaid Director Letter (SMDL) #09-005. As noted in the guidance, "CMS would consider changes in State eligibility policies to be more restrictive if the changes result in determinations of ineligibility for individuals who would have been considered eligible as of July 1, 2008".

Although this proposed regulation and State Plan Amendment will eliminate the General Assistance unrelated child category ("reasonable classifications of children"), no child will lose Medicaid eligibility. The income limit under the poverty-level related group is much higher than the income limit under the General Assistance unrelated child category.

Summary of Proposal

Children under age 18 in the care of a non-relative adult will no longer receive a General Assistance cash benefit. The receipt of a General Assistance cash benefit provided Medicaid coverage under 42 CFR §435.222 which allows the State to cover reasonable classifications of certain children. This is described in the State Plan at Attachment 2.2 A, pages 12-13a, and Supplement 1 to Attachment 2.2-A.

These children will no longer receive Medicaid under this "reasonable classifications" group. Instead, these children will receive Medicaid under the poverty-level related groups as mandated by the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Public Law 101-508, and described at DSSM 16000.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #10-44a

REVISION:

Revision: CMS
 OMB No.

SUPPLEMENT 1 TO ATTACHMENT 2.2-A
 Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT State/Territory DELAWARE

REASONABLE CLASSIFICATIONS OF INDIVIDUALS UNDER THE AGE OF 21, 20, 19, AND 18

~~1. Individuals under age 18 who meet the requirements of, and are in receipt of benefits from, the General Assistance Program and who also meet all the requirements of the AFDC (Title IV A) program except that they do not qualify as dependent children.~~

~~2. 1. Children for whom the Department of Services for Children, Youth and their Families (DSCYF) has custody or consent to place and who:~~

- ~~a. have been removed from their own home and are in a medical facility for temporary planning period prior to placement*, and~~
- ~~b. meet the financial eligibility standards as established by the State Plan for Title IV-A.~~

~~*The plan of care must specify placement will be made in a home or facility that is approved by DSCYF for CHILD CARE (i.e., not medical or detention facilities), to which a public agency is making payments for the specified child's care. A home approved by DSCYF may be either with a relative or non-relative, as long as public funds are paying for the child's care.~~

~~3. 2. Children who, at the time of their birth, are placed in the care of private agencies for the purpose of adoption, to be covered from the date of their birth until their placement with the prospective adoptive parent(s). These children meet the financial eligibility standards as established by the State Plan for Title IV-A.~~

DMMA PROPOSED REGULATION #10-44b

REVISIONS:

13414 General Assistance RESERVED

~~Children under age 18 who receive General Assistance (GA) would be included in these optional groups.~~

(Break In Continuity of Sections)

15100 General Assistance RESERVED

~~Any person aged 0 through 17 who is determined eligible for a General Assistance grant is also eligible for Medicaid coverage. Any individual under age 18 who is ineligible for a GA grant because of a budgeted need of \$.01 to \$9.99 is eligible for Medicaid.~~

~~GA recipients between age 18 and 19 can receive Federal Poverty Level related Medicaid. Uninsured GA recipients age 19 and over may be eligible as an adult in the expansion population under the *Diamond State Health Plan*. (See DSSM 16120.)~~

(Break In Continuity of Sections)

16120 General Assistance (GA) Recipients RESERVED

~~General Assistance is a DSS cash assistance program available to families and unemployable individuals who meet certain financial and technical eligibility requirements.~~

~~An individual age 18 and under who receives GA is categorically eligible for Medicaid. An individual between age 18 and 19 who receives GA is categorically eligible under the poverty level related program for children. An individual age 19 or over who receives GA must be uninsured as defined in this section in order to be found eligible for Medicaid. Enrollment in a MCO is a technical eligibility requirement for individuals age 19 and over who receive GA. GA recipients who are age 19 or over will not receive Medicaid benefits until they are enrolled in a MCO.~~

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Public Assistance Reporting Information System (PARIS)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual regarding the *Public Assistance Reporting Information System (PARIS)*.

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

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

SUMMARY OF PROPOSAL

The proposal amends the Delaware Title XIX Medicaid State Plan regarding the *Public Assistance Reporting Information System (PARIS)*.

Statutory Authority

- Qualifying Individual (QI) Program Supplemental Funding Act of 2008, Public Law 110-379 (Pub. L. 110-379)
- Section 19032(r) of the Social Security Act
- 42 CFR §§435.940 through 435.960, *Income and Eligibility Verification Requirements*

Background

Section 3 of the Qualifying Individual (QI) Program Supplemental Funding Act of 2008 (the QI Funding Act) amended section 1903(r) of the Social Security Act (the Act) to require that States have eligibility determination systems that provide for data matching through the Public Assistance Reporting Information System (PARIS) project or any successor system. PARIS is a system for matching data from certain public assistance programs, including State Medicaid programs, with selected Federal and State data for purposes of facilitating appropriate enrollment and retention in public programs. This provision took effect on October 1, 2009.

Based on the provisions of the QI Funding Act, all States are required to sign an agreement to participate in PARIS as a condition of receiving Medicaid funding for automated data systems (including the Medicaid Management Information System). Prior to passage of the QI Funding Act, participation in the PARIS project was voluntary. PARIS is still a voluntary program with respect to the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance For Needy Families (TANF).

PARIS, a federal and state partnership, is administered by the Department of Health and Human Services' Administration for Children and Families (ACF), which provides all fifty states, Washington D.C., and Puerto Rico with data to help them maintain program integrity and detect or deter improper payments. PARIS has three components: an interstate match, a match against the Department of Veterans Affairs (VA), and a match against federal civilian and military wage and benefit payments.

State Public Assistance Agencies (SPAAs) enroll in PARIS and sign one or more matching agreements which permit them to participate in quarterly matches of client eligibility and enrollment data files. Under those agreements, in the months of February, May, August, and November of each year, SPAA applicant and recipient data files are transmitted to the Department of Defense (DoD) Manpower Data Center. There, the data files are processed and the results transmitted to participating (SPAAs).

Delaware participates in the Interstate and Veterans Affairs matches.

Summary of Proposal

Federal law requires States to use the Public Assistance Reporting Information System (PARIS) when determining Medicaid eligibility. On June 21, 2010, the Centers for Medicare and Medicaid Services (CMS) issued State Medicaid Director Letter (SMDL) #10-009. This letter provides guidance on implementing the requirements of Section 3 of the QI Funding Act. In order to demonstrate compliance with the new requirements in section 1903 (r) of the Act, the Division of Medicaid and Medical Assistance (DMMA) will amend its Medicaid State plan to document its participation in PARIS at State plan Section 4.32(c).

The provisions of this amendment are subject to CMS approval.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #10-46

REVISION:

Revision:

OMB Approval Number:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

INCOME AND ELIGIBILITY VERIFICATION SYSTEM

435.940
through 435.960
FR 5967

4.32 Income and Eligibility Verification System

- (a) The Medicaid agency has established a system for income and eligibility verification in accordance with the requirements of 42 CFR 435.940 through 435.960. 435.960)
- (b) ATTACHMENT 4.32-A describes, in accordance with 42 CFR 435.948(a)(6), the information that will be requested in order to verify eligibility or the correct payment amount and the agencies and the State(s) from which that information will be requested.
- (c) The State has an eligibility determination system that provides for data matching through the Public Assistance Reporting Information System (PARIS), or any successor system, including matching with medical assistance programs operated by other States. The information that is requested will be exchanged with States and other entities legally entitled to verify title XIX applicants and individuals eligible for covered title XIX services consistent with applicable PARIS agreements.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Delaware Medicaid and CHIP Managed Care Quality Assessment & Improvement Strategy Draft

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 announcing a thirty (30)-day public comment period on its draft of the State's Draft Quality Strategy for healthcare services.

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

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

SUMMARY OF PROPOSAL

The proposal announces a thirty (30)-day public comment period on the draft of the Delaware Medicaid and CHIP Managed Care Quality Assessment and Improvement Strategy for healthcare services.

Statutory Authority

Section 19 32(c)(1) of the Social Security Act, *Quality Assurance Standards, Quality Assessment and Improvement Strategy*

42 CFR 438, Subpart D, *Quality Assessment and Performance Improvement*

Background

The Delaware Medical Assistance Program (DMAP) is required to develop a Medicaid Managed Care Quality Assessment and Improvement Strategy (Strategy), pursuant to 42 CFR §438.200. A separate strategy has been developed for the Managed Care Organizations (MCOs).

The DMAP Managed Care Quality Assessment and Improvement Strategy incorporates policies; procedures; contract compliance; and input from the public, stakeholder providers, recipient advocates and multiple state agencies that hold an interest in the improvement of access and of clinical and service quality received by the Medicaid recipients.

All quality activities for the DMAP population are integrated into a single Strategy, which applies throughout the Delaware Medicaid Managed Care service area. The Division of Medicaid and Medical Assistance (DMMA) oversees the Strategy to verify that the performance of quality improvement functions is timely, consistent, and effective.

The Strategy is designed with the intent that services provided to recipients meet established standards for access to care; clinical quality of care and quality of service, and that opportunities to improve these areas are identified and acted upon. The Strategy is designed to identify, document, and review access, quality of care, and service issues, and to verify that appropriate corrective actions are taken to address these issues.

The Strategy features:

- Assessment and improvement of quality of care and services through use of monitoring and national benchmarks for the Medicaid population
- Focused audits
- Studies
- Assessment of recipient and provider satisfaction
- Review of potential quality issues, recipient appeals and grievances
- Review of access to care through analysis of provider networks using contract and credentialing criteria
- Compliance with contractual operations and organizational structure.

Following the public notice, the proposed Quality Strategy will be submitted to the Centers for Medicare and Medicaid Services (CMS) for approval no later than December 3, 2010. The finalized Quality Strategy will become effective on December 6, 2010 with the execution of the new Memorandum of Agreement and will be reviewed by the state quarterly, as a standing agenda item, during regularly scheduled Quality Improvement Initiative (QII) Task Force meetings and teleconferences. The State, in turn, will provide quarterly updates to CMS with regard to the status of the State's Quality Strategy for DMAP and will provide CMS with written revisions to the Quality Strategy whenever significant revisions are made to the Strategy. A copy of the annual Work Plan will be submitted to CMS each year.

The program is reviewed, evaluated and updated annually or more often as additional information becomes

available.

Summary of Proposal

DMMA is announcing a thirty (30)-day public comment period on the draft State Quality Strategy. The strategy is designed to monitor and evaluate the quality and appropriateness of healthcare services to enrollees the Delaware Medicaid and CHIP programs.

The specific goals of the Quality Strategy are to:

- Enhance efficiency of care;
- Increase effectiveness of care;
- Promote equity of care;
- Enrich patient-centeredness;
- Ensure safety; and,
- Improve timeliness of care.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

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

[Delaware Medicaid and CHIP Managed Care Quality Assessment & Improvement Strategy Draft](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

DSSM: Citizenship and Alienage

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

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

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

SUMMARY OF PROPOSAL

The reason for this regulatory action is to amend existing rules in the Division of Social Services Manual (DSSM) necessitated by the citizenship requirements of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA).

Statutory Authority

- Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, enacted on February 3, 2009
- Section 1903(v)(4) of the Social Security Act, *Payment to States*

- Section 2107(e)(1)(J) of the Social Security Act, Application to Certain General Provisions, *Relating to Presumptive Eligibility for Children*

Background

Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3), known as CHIPRA, now allows States the option to extend coverage to all otherwise eligible children and pregnant women, at or below 100% of FPL, who are lawfully residing in the United States (U.S.). These amendments do not extend coverage to children and pregnant women who do not have documentation of their legal entry to the U.S.

Summary of Proposed Amendments

The purpose of the proposal is to comply with the guidance issued by the Centers for Medicare and Medicaid Services (CMS) about the phrase "lawfully residing in the United States" as it relates to the eligibility of certain aliens and to clarify that certain alien pregnant women may be found eligible under Medicaid only and not CHIP.

On July 1, 2010, CMS issued State Health Official (SHO) letter #10-006, CHIPRA #17 to provide guidance regarding the phrase "lawfully residing in the U.S." This guidance clarifies the immigration classifications of individuals who may be found eligible for Medicaid or CHIP. As such, DSSM 14320 and DSSM 14350 are amended, as follows:

DSSM 14320, *Lawfully Residing Nonqualified Aliens*: These immigration classifications of individuals are also used in the eligibility determinations for the state funded legal noncitizen program.

DSSM 14350, *Legal Immigrant Pregnant Women and Children under age 21*: Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, permits States to cover certain children and pregnant women in Medicaid and the Children's Health Insurance Program (CHIP) who are "lawfully residing in the U.S." as described in section 1903(v)(4) and 2107(e)(1)(J) of the Social Security Act.

CMS guidance included a revised State plan amendment template for Attachment 2.6-A, Page 2; which DMMA has submitted for approval.

Fiscal Impact Statement

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

14320 Legally Residing Nonqualified Aliens

These are aliens who do not meet the definition of a qualified alien. Individuals formerly known as PRUCOL are now considered nonqualified aliens. Nonqualified aliens have to provide a Social Security Number (SSN) if one is available, or apply for a SSN if the applicant does not have one.

Legally residing nonqualified aliens include the following:

- Aliens granted permission to remain and work in the U.S.
- Individuals who have been paroled into the U.S. for less than 1 year
- Applicants for immigration status such as applicants for asylum, adjustment to lawful permanent resident status, suspension of deportation
- Aliens in Temporary Protected Status (TPS)
- Aliens in temporary resident status
- Family unity beneficiaries
- Aliens under deferred enforced departure
- Aliens in deferred action status
- Aliens who are the spouses or children of U.S. citizens with approved visa petitions and pending adjustment of status application.

13 DE Reg. 1540 (06/01/10)

1. A citizen of a Compact of Free Association State (Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.

2. An individual described in 8 CFR section 103.12(a)(4) who does not have a permanent residence in the country of their nationality and is in a status that permits the individual to remain in the U.S. for an indefinite period of time, pending adjustment of status. These individuals include:

- a) an individual currently in temporary resident status as an Amnesty beneficiary pursuant to section 210 or 245A of the INA
 - b) an individual currently under Temporary Protected Status pursuant to section 244 of the INA and pending applicants for Temporary Protected Status who have been granted employment authorization
 - c) a family unity beneficiary pursuant to section 301 of Public Law 101-649 as amended by, as well as pursuant to, section 1504 of Public Law 106-554
 - d) an individual currently under Deferred Departure pursuant to a decision made by the President
 - e) an individual who is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status.
3. An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including the following as specified in section 101(a)(15) of the INA:
- a) a parent or child of an individual with special immigrant status under section 101(a)(27) of the INA, as permitted under section 101(a)(15)(N) of the INA
 - b) a fiancé of a citizen, as permitted under section 101(a)(15)(K) of the INA
 - c) a religious worker under section 101(a)(15)(R)
 - d) an individual assisting the Department of Justice in a criminal investigation, as permitted under section 101(a)(15)(S) of the INA
 - e) a battered alien under section 101(a)(15)(U)(see also section 431 as amended by PRWORA)
 - f) an individual with a petition pending for 3 years or more, as permitted under section 101(a)(15)(V) of the INA
4. An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.
5. An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA for less than one year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.
6. Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24).
7. Aliens currently in deferred action status.
8. A pending applicant for asylum under section 208(a) of the INA or for withholding of removal under section 241(b)(3) of the INA or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.
9. An alien who has been granted withholding of removal under the Convention Against Torture.
10. A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA.
11. An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e).
12. An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

(Break In Continuity of Sections)

14350 Legal Immigrant Pregnant Women and Children under age 21

Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) authorizes coverage under Medicaid or CHIP for certain alien pregnant women and children who are lawfully residing in the United States and are otherwise eligible. Delaware will cover these certain alien pregnant women under Medicaid and will cover these certain alien children under Medicaid or CHIP. Eligibility under this section will be implemented with the earliest effective date of July 1, 2010. Children who are in one of the legal alien groups must have their immigration status verified at each annual redetermination. The documentation provided for the initial application may be used.

The alien groups who may be determined eligible under this section are:

1. An alien who is lawfully admitted for permanent residence under the INA, who entered the U.S. on or after August 22, 1996, and is subject to the five-year bar under PRWORA.
2. An alien who is paroled into the United States under §212(d)(5) of the INA for a period of at least 1 year who, entered the U.S. on or after August 22, 1996, and is subject to the five-year bar under PRWORA.
3. An alien granted conditional entry pursuant to §203(a)(7) of the INA as in effect before April 1, 1980, who

entered the U.S. on or after August 22, 1996, and is subject to the five-year bar under PRWORA.

4. A citizen of a Compact of Free Association State (Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.

5. An individual described in 8 CFR section 103.12(a)(4) who does not have a permanent residence in the country of their nationality and is in a status that permits the individual to remain in the U.S. for an indefinite period of time, pending adjustment of status. These individuals include:

a) an individual currently in temporary resident status as an Amnesty beneficiary pursuant to section 210 or 245A of the INA

b) an individual currently under Temporary Protected Status pursuant to section 244 of the INA and pending applicants for Temporary Protected Status who have been granted employment authorization

c) a family unity beneficiary pursuant to section 301 of Public Law 101-649 as amended by, as well as pursuant to, section 1504 of Public Law 106-554

d) an individual currently under Deferred Departure pursuant to a decision made by the President

e) an individual who is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status.

6. An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including the following as specified in section 101(a)(15) of the INA:

a) a parent or child of an individual with special immigrant status under section 101(a)(27) of the INA, as permitted under section 101(a)(15)(N) of the INA

b) a fiancé of a citizen, as permitted under section 101(a)(15)(K) of the INA

c) a religious worker under section 101(a)(15)(R)

d) an individual assisting the Department of Justice in a criminal investigation, as permitted under section 101(a)(15)(S) of the INA

e) a battered alien under section 101(a)(15)(U)(see also section 431 as amended by PRWORA)

f) an individual with a petition pending for 3 years or more, as permitted under section 101(a)(15)(V) of the INA

7. An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.

8. An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA for less than one year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.

9. Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24).

10. Aliens currently in deferred action status.

11. A pending applicant for asylum under section 208(a) of the INA or for withholding of removal under section 241(b)(3) of the INA or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.

12. An alien who has been granted withholding of removal under the Convention Against Torture.

13. A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA.

14. An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e).

15. An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

13 DE Reg. 1540 (06/01/10)

DEPARTMENT OF JUSTICE DIVISION OF SECURITIES

Statutory Authority: 6 Delaware Code, Section 7325 (6 Del.C. §7325)

PUBLIC NOTICE

Rules and Regulations Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division hereby proposes numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

Peter O. Jamison, III
Securities Commissioner
Department of Justice
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the Delaware Register of Regulations.

SUMMARY OF THE PROPOSED REVISION

The proposed revision, in pertinent part, makes the following changes to the Rules and Regulations Pursuant to the Delaware Securities Act:

- (1) The language in subsections (a) through (e) of section 100 summarizing the provisions of the Delaware Securities Act is stricken.
- (2) Section 101, which describes the regulatory functions of the Delaware Securities Division, is repealed.
- (3) Section 102, which describes the general organization and operations of the Securities Division, is repealed.
- (4) A new section 102 is added to describe the process for obtaining interpretive opinions from the Securities Commissioner.
- (5) A new section 103 is added to address the vicarious liability of principals for violations of the Securities Act by their agents.
- (6) Section 202, which describes the business hours of the Securities Division, is repealed.
- (7) Section 205, which governs ex parte communications in administrative proceedings, is amended to clarify that ex parte communications with the Commissioner shall be prohibited upon the filing of a proposed decision by an administrative hearing officer.
- (8) The disclosure provisions at sections 227, 228, and 229 for administrative proceedings are repealed.
- (9) Sections 264 and 265 are amended to make clear that the Commissioner may issue summary orders sua sponte.
- (10) Section 304(b) is amended to make clear that no subpoena, except upon request by the Securities Division, may be issued to a complaining witness.
- (11) Section 402, which creates a special registration procedure for small company offerings, is repealed.
- (12) Section 500, which creates notice filing requirements for certain federal covered securities, is amended to require notice filings for offerings under SEC Rule 505.

- (13) Section 502, which imposes certain conditions on limited offerings being made under section 7309(b)(9) of the Securities Act, is repealed, and the limited offering exemption under section 7309(b)(9) is withdrawn.

Rules and Regulations Pursuant to the Delaware Securities Act

Part A Organization and Functions of the Securities Division

100 General Statement and Statutory Authority

The Securities Division was created in 1973 with the passage of the Delaware Securities Act, which is found at Chapter 73 of Title 6 of the Delaware Code. The Securities Act is administered by the Attorney General through a Deputy Attorney General designated to act as Securities Commissioner. The Securities Commissioner is the principal executive officer of the Securities Division and acts for the Attorney General in administering that statute. The purpose of the Delaware Securities Act is to prevent the public from being victimized by unscrupulous or over-reaching broker-dealers, investment advisers or agents in the context of selling securities or giving investment advice, as well as to remedy any harm caused by securities law violations. ~~The Act provides for the following:~~

- (a) ~~Public disclosure of pertinent facts concerning public offerings of securities to Delaware investors, and protection of the interests of those investors in connection with the offer and sale of securities.~~
- (b) ~~Investigation of securities frauds, manipulations and other violations, and the imposition and enforcement of legal sanctions therefor.~~
- (c) ~~Registration and the regulation of certain activities of broker-dealers, broker-dealer agents and issuer agents.~~
- (d) ~~Registration and the regulation of certain activities of state-registered investment advisers and investment adviser representatives.~~
- (e) ~~Administrative sanctions, injunctive and other equitable remedies, and criminal prosecution. There are also private rights of action for investors injured by violations of the Act.~~

101 Regulatory Functions Repealed

Following is a brief description of the Securities Division's regulatory functions under the Delaware Securities Act:

- (a) *Securities Registration and Notice Filings.*
 - (1) ~~It is unlawful for any person to sell a security in Delaware unless that security is registered; or the security or transaction is exempt under Section 7309 of the Act; or the security is a federal covered security for which a notice filing has been made pursuant to Section 7309A of the Act. Securities for which a federal registration statement has been filed under the Securities Act of 1933 may be registered by coordination under Section 7305. Any security may be re-registered by qualification under Section 7306. To the extent permitted by federal law, notice filings are required for federal covered securities offered or sold to Delaware investors. A stop order prohibiting the offering of a security, or suspending or revoking the effectiveness of a registration statement, may be issued where the offeror has made a material misstatement or omission in connection with that offer, or otherwise where the public interest so dictates and the statutory criteria of Section 7308 are met. Any registrant or offeror subject to such an order is entitled to a hearing under the Act. Registration or the filing of a notice filing is not a finding by the Commissioner as to the accuracy of the facts disclosed; and it is unlawful to so represent. Moreover, registration of securities or the filing of a notice filing does not imply approval of the issue by the Commissioner or insure investors against loss in their investment, but serves rather to provide information upon which investors may make an informed and realistic evaluation of the features and worth of the securities.~~
 - (2) ~~Persons responsible for filing false information with the Commissioner or otherwise disseminating false and misleading information in connection with the purchase or sale of securities subject themselves to the risk of fine or imprisonment or both; and the issuing company, its directors,~~

officers, and the underwriters and dealers and others may be liable in damages to purchasers of registered securities if disclosures are materially defective. In addition, the statute contains antifraud provisions which apply generally to the offer and sale of securities, whether or not registered.

- (b) ~~Registration and Licensing of Broker-Dealers, Broker-Dealer Agents and Issuer Agents.~~ The Act provides for registration with, and regulation by, the Commissioner of broker-dealers, broker-dealer agents and issuer agents. Registrations must be renewed annually. The activities of broker-dealers, broker-dealer agents and issuer agents in the conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices, and which make unlawful those practices which would constitute fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.
- (c) ~~Registration and Licensing of Investment Advisers and Investment Adviser Representatives; Notice Filings for Federal Covered Advisers.~~ The Act provides that persons who, for compensation, engage in the business of advising others with respect to securities transactions must register with the Commissioner unless they are registered with the Securities and Exchange Commission ("SEC") or otherwise exempted from registration under the Act. Federal covered advisers (those registered with the SEC) who have a place of business in Delaware or who had more than five Delaware residents as clients in the past 12 months must file a notice filing and filing fee with the Commissioner as provided by Section 7314 of the Act. All investment adviser representatives of a state-registered adviser who have a place of business in Delaware must register with the Commissioner. In addition, any investment adviser representative of a federal covered adviser must register with the Commissioner if the representative has a place of business in Delaware. As used in the Act and these rules, the terms "investment adviser representative" and "place of business" as used with respect to a representative of a federal covered adviser shall have the same meaning as found in SEC Rule 203A-3 under the Investment Advisers Act of 1940. Registrations must be renewed annually. The activities of investment advisers and investment adviser representatives in the conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices, and which make unlawful those practices which would constitute a fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.

1 DE Reg. 1978 (6/1/98)

102 **General Organization Interpretive Opinions.**

- (a) ~~The Securities Division is a unit within the Fraud Division of the State Department of Justice. In addition to the Securities Commissioner, the Securities Division has a staff which includes lawyers, a securities analyst, investigators and examiners, as well as administrative and clerical employees. The Securities Commissioner and other staff members shall perform, in addition to their duties under the Securities Act, such additional duties as the Attorney General may assign from time to time.~~
- (b) ~~The Securities Division is a statewide office with authority over all three counties in Delaware. The Securities Commissioner is located at 820 North French Street, Wilmington, Delaware, 19801. The telephone number is (302) 577-8424. The Securities Division's Kent County mailing address is 45 The Green, Dover, Delaware, 19901.~~
- (c) ~~Enforcement activities are conducted and supervised by Deputy Attorneys General assigned to the Division with the assistance of staff securities investigators. Administrative and injunctive actions may be instituted and prosecuted by a Deputy Attorney General after review and determination that there~~

exists sufficient evidence to support the allegations in any proposed complaint. Criminal charges may be presented to the Grand Jury for indictment after review by the Director of the Fraud Division and/or the State Prosecutor.

- (d) Registration and renewal of securities filings are reviewed by the Securities Division for adherence to standards of reporting and financial disclosure under the Securities Act, as well as substantive business requirements of the Act. The staff also reviews exempt securities filings for compliance with the exemptive provisions of Section 7309 and the disclosure requirements of the Act.
- (e) Registration of broker-dealers, broker-dealer agents, issuer agents, investment advisers and investment adviser representatives is conducted by staff members in the Division's Firm/Agent Registration Section, with review and oversight by the Securities Commissioner and other Deputy Attorneys General.
- (f) Compliance audits and examinations of state registered investment advisers are undertaken by the Division's investment adviser examiners on a periodic basis. Special examinations of both broker-dealers and investment advisers may also be undertaken by the staff. Access to all books and records is required in any examination pursuant to Section 7315 of the Act. The Securities Division may cooperate, by joint examination or otherwise, with the securities administrators of other states, the SEC, and any other national securities exchange or national securities association registered under the Securities Exchange Act of 1934.
- (g) The Securities Division is also responsible for the Attorney General's investor education program. The Program includes, but is not limited to:
 - (1) Presenting seminars and instructional programs to educate investors about the securities markets and the rights of investors; preparing and distributing to the public materials describing the operations of the securities markets, prudent investor behavior, and the rights of investors in disputes they may have with individuals and entities regulated by the Commissioner; and increasing public knowledge of the functions of the Securities Division.
 - (2) Providing information to investors who inquire about individuals and entities regulated by the Commissioner, the operation of the securities markets, or the functions of the Securities Division.
- (h) The Securities Division provides written interpretative opinions under the Act in response to written requests. Requests for interpretative opinions should be addressed to the Commissioner and accompanied by a fee of \$75.00 payable to the State of Delaware. Interpretations may be requested regarding any section of the Act or any rule or regulation adopted thereunder.
The Securities Division provides written interpretative opinions under the Act in response to written requests. Requests for interpretative opinions should be addressed to the Commissioner and accompanied by a fee of \$75.00 payable to the State of Delaware. Interpretations may be requested regarding any section of the Act or any rule or regulation adopted thereunder.

1 DE Reg 1978 (6/1/98)

13 DE Reg. 667 (11/01/09)

§103. Vicarious Liability for Violations of the Securities Act.

Any violation of the Securities Act, or the Rules and Regulations Pursuant to the Securities Act, by a person acting in an agency capacity shall, in any legal proceedings brought by the Division, be deemed to be a violation by both that person and the person for whom the agent is acting, provided that the agent was acting within the scope of his agency.

Part B. Practice and Procedure in Administrative Hearings General Rules

200 Construction of Rules of Practice and Procedure

- (a) Unless otherwise provided, these Rules of Practice govern proceedings before administrative hearing officers under the Delaware Securities Act. These rules do not apply to investigations by the Securities Division, which are governed by Part C of the Rules and Regulations.

- (b) The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.
- (c) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, the latter shall control.
- (d) For purposes of these rules:
 - (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;
 - (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and
 - (3) unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

201 Appearance and Practice in Administrative Proceedings

A person shall not be represented before a hearing officer except as stated in paragraphs (a) and (b) of this section or as otherwise permitted by the hearing officer:

- (a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.
- (b) *Representing others.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the State of Delaware. Attorneys who are not members of the Delaware Bar may be admitted pro hac vice pursuant to Rule 72 of the Rules of the Supreme Court of the State of Delaware.
- (c) *Requirement of Delaware Counsel.* Pursuant to Rule 72(a) of the Delaware Supreme Court Rules, attorneys who are not members of the Delaware Bar may be admitted pro hac vice in a proceeding in the discretion of the administrative hearing officer upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Pursuant to Delaware Supreme Court Rule 72(c), Delaware Counsel for any party shall appear in the matter for which admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the matter and shall attend all proceedings before the administrative hearing officer, unless excused by that hearing officer.
- (d) *Designation of address for service; notice of appearance; power of attorney; withdrawal.*
 - (1) *Representing oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before a hearing officer in a proceeding, he or she shall file with the Commissioner or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.
 - (2) *Representing others.* When a person first makes any filing or otherwise appears in a representative capacity before a hearing officer in a proceeding, that person shall file with the Commissioner, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.
 - (3) *Power of attorney.* Any individual appearing or practicing before a hearing officer in a representative capacity may be required to file a power of attorney with the Commissioner showing his or her authority to act in such capacity.
 - (4) *Withdrawal.* Withdrawal by any individual appearing in a representative capacity shall be permitted only by written order of the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal.
- (e) *Public Hearings.* All hearings shall be public unless otherwise ordered by the hearing officer on his own motion or after considering the motion of a party.

202 Business Hours Repealed

~~The office of the Securities Division, at 820 North French Street, Wilmington, Delaware, 19801, is open each day, except Saturdays, Sundays, and State legal holidays, from 8:30 a.m. to 5:00 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Wilmington, Delaware. State legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr.; Presidents' Day; Good Friday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday by the Governor or the State Legislature.~~

1 DE Reg 1978 (6/1/98)

203 Repealed

13 DE Reg. 667 (11/01/09)

204 Disqualification and Recusal of Administrative Hearing Officer

- (a) Notice of disqualification. At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.
- (b) Motion for Withdrawal. Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding.

205 Ex Parte Communications

Unless on notice and opportunity for all parties to participate, or to the extent required for the disposition of ex parte matters as authorized by Sections 7308(c), 7309(c), 7316(c) and/or 7325(c) of the Act:

- (a) No party, or counsel to or representative of a party, shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to the administrative hearing officer with respect to that proceeding, nor, subsequent to the filing of an administrative complaint a proposed decision by the administrative hearing officer, shall any party, or counsel to or representative of a party, make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to the Commissioner.
- (b) No administrative hearing officer with respect to a proceeding shall make or knowingly cause to be made to a party, or counsel to or representative of a party, an ex parte communication relevant to the merits of that proceeding, nor, subsequent to the filing of an administrative complaint a proposed decision by the administrative hearing officer, shall the Commissioner make or knowingly cause to be made to a party, or counsel to or representative of a party, an ex parte communication relevant to the merits of the proceeding.

13 DE Reg. 667 (11/01/09)

206 Orders and Decisions of Administrative Hearing Officer

- (a) *Availability for inspection.* Each order, decision, and proposed decision of a hearing officer shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.
- (b) *Date of entry of orders.* The date of entry of an order shall be the date the order is signed. Such date shall be reflected in the order.

1 DE Reg 1978 (6/1/98)

13 DE Reg. 667 (11/01/09)

207 Motions.

- (a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 210, be filed in accordance with Rule 211, meet the requirements of Rule 212, and be signed in accordance with Rule 213. The Commissioner (or hearing officer, if the proceeding has been delegated to one) may order that an oral motion be submitted in writing. Unless otherwise ordered by the Commissioner (or designated hearing officer), if a motion is properly made, the proceeding shall continue pending the determination of the motion. No oral argument shall be heard on any motion unless the Commissioner (or designated hearing officer) otherwise directs.
- (b) *Opposing and reply briefs.* Briefs in opposition to a motion shall be served and filed within ten days after service of the motion. Reply briefs shall be served and filed within three days after service of the opposition.
- (c) *Length limitation.* A brief in support of or opposition to a motion shall not exceed ten pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of ten pages are disfavored.

13 DE Reg. 667 (11/01/09)**(Break In Continuity of Sections)****227 ~~Prehearing Submissions Repealed~~**

- (a) ~~*Submissions generally.* The hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the Securities Division, to furnish such information as deemed appropriate, including any or all of the following:~~
 - ~~(1) An outline or narrative summary of its case or defense;~~
 - ~~(2) The legal theories upon which it will rely;~~
 - ~~(3) Copies and a list of documents that it intends to introduce at the hearing; and~~
 - ~~(4) A list of witnesses who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.~~
- (b) ~~*Expert witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.~~

228 ~~Disclosure of Evidence by the Parties Repealed~~

- (a) ~~*Disclosure of Evidence by the Securities Division.* Upon request of a respondent, the Securities Division shall disclose to respondent and make available for inspection, copying or photographing:~~
 - ~~(1) Any relevant written or recorded statements made by the respondent or co-respondent, or copies thereof, within the possession, custody or control of the Securities Division, the existence of which is known, or by the exercise of due diligence may become known, to the Securities Division; and that portion of any written record containing the substance of any relevant oral statement made by the respondent in response to interrogation by any person then known to the respondent to be a state agent. Where the respondent is a corporation, partnership or association, the Securities Division shall disclose any written or recorded statements of any witness who (i) was, at the time of that testimony, so situated as an officer or employee as to have been able legally to bind the respondent in respect to conduct constituting the offense, or (ii) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the respondent in respect to that alleged conduct in which the witness was involved.~~
 - ~~(2) Documents and tangible objects. Upon request of the respondent the Securities Division shall permit the respondent to inspect and copy or photograph books, papers, documents, photographs,~~

PROPOSED REGULATIONS

~~tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Securities Division, and which are intended for use by the Securities Division as evidence in chief at the hearing, or were obtained from or belong to the respondent.~~

- (3) ~~Reports of examinations and tests. Upon request of a respondent, the Securities Division shall permit respondent to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Securities Division, the existence of which is known, or by the exercise of due diligence may become known, to the Securities Division, and which are intended for use by the Securities Division as evidence in chief at the hearing.~~
- (4) ~~Expert witnesses. Upon request of a respondent, the Securities Division shall disclose to the respondent any evidence which the Division may present at the hearing, which if presented at a court proceeding would be submitted pursuant to Rules 702, 703, or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witness and the substance of the opinions to be expressed.~~
- (5) ~~Information not subject to disclosure. Except as provided in Rule 228(a)(1), (2) and (3), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the Securities Division or its agents in connection with the investigation or prosecution of the case, or of statements by Division witnesses or prospective Division witnesses.~~
- (b) *Disclosure of evidence by the respondent.*
- (1) ~~Documents and tangible objects. Upon request of the Securities Division, the respondent shall permit the Division to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the respondent and which the respondent intends to introduce as evidence in chief at the hearing.~~
- (2) ~~Reports of examination and tests. The respondent, on request of the Securities Division, shall permit the Division to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the respondent, which the respondent intends to introduce as evidence in chief at the hearing or which were prepared by a witness whom the respondent intends to call at the hearing when the results or reports relate to that witness' testimony.~~
- (3) ~~Expert witnesses. The respondent, on request of the Securities Division, shall disclose to the Division any evidence the respondent may present at the hearing, which if presented at a court proceeding would be submitted pursuant to Rules 702, 703 or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witnesses and the substance of the opinions to be expressed.~~
- (4) ~~Information not subject to disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the respondent or the respondent's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the respondent, or by Division or respondent witnesses, or by prospective Division or respondent witnesses, to the respondent, the respondent's agents or attorneys.~~
- (c) *Procedure.* ~~Any party may serve a request for disclosure after filing of respondent's answer or, if no answer has been filed, after expiration of the period for filing an answer. The request shall set forth the items sought with reasonable particularity and shall specify a reasonable time, place and manner of compliance with the request. The party upon whom the request is served shall serve a response within 20 days after service of the request or at such other time as ordered by the hearing officer. The response shall comply with the request or specify any objection to it. The response may specify a reasonable alternative time, place and manner of compliance.~~
- (d) *Continuing duty to disclose.* ~~If, prior to or during an administrative hearing, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under~~

~~this rule, such party shall promptly notify the other party or that other party's attorney or the hearing officer of the existence of the additional evidence or material.~~

(e) ~~Regulation of disclosure.~~

- (1) ~~Protective and modifying orders. Upon a sufficient showing the hearing officer may at any time order that the disclosure or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the hearing officer may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the hearing officer alone. If the hearing officer enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the proceeding to be made available to the Chancery Court in the event of an appeal.~~
- (2) ~~Failure to comply with a request. If at any time during the course of the proceedings it is brought to the attention of the hearing officer that a party has failed to comply with this rule, the hearing officer may order such party to permit the disclosure or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or he may enter such other order as he deems just under the circumstances. The hearing officer may specify the time, place and manner of making the disclosure and inspection and may prescribe such terms and conditions as are just.~~

13 DE Reg. 667 (11/01/09)

229 ~~Production of Witness Statements Repealed~~

~~Any party may file a motion requesting that any other party produce for inspection and copying a statement in its possession, custody or control of any person called or to be called as a witness that pertain, or is expected to pertain, to his or her direct testimony, including statements that would be required to be produced pursuant to Rule 26.2 of the Delaware Superior Court Criminal Rules. The production shall be made at a time and place fixed by the hearing officer and shall be made available to all parties.~~

230 Repealed

13 DE Reg. 667 (11/01/09)

231 Motion for Summary Disposition on the Pleadings

- (a) After a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 228, the respondent or the Division may make a motion for summary disposition of any or all allegations of the complaint with respect to that respondent. Any motion for summary disposition on the pleadings shall be filed within 30 days after the filing of the respondent's answer unless otherwise ordered by the hearing officer. Notwithstanding the provisions of Rule 207, any opposition or response to a motion for summary disposition shall be filed within 14 days after service of the motion. Reply briefs shall be filed within five days after service of the opposition or response.
- (b) A motion for summary disposition pursuant to paragraph (a) shall be accompanied by a supporting memorandum of points and authorities. The motion for summary disposition and supporting memorandum of points and authorities shall not exceed 25 pages in length.
- (c) Unless the hearing officer decides to defer decision on the motion, he or she shall promptly file with the Commissioner and serve on the parties a proposed opinion and order (with supporting rationale) regarding the motion for summary disposition. Upon receipt of the hearing officer's proposed opinion and order, the Commissioner may grant the motion for summary disposition if, considering the facts in a light most favorable to the nonmoving party, there is no material issue of fact and the moving party is entitled to a summary disposition as a matter of law. Otherwise, the Commissioner shall deny or defer the motion.

1 DE Reg. 1978 (6/1/98)

13 DE Reg. 667 (11/01/09)

232 Repealed
13 DE Reg. 677 (11/01/09)

Administrative Hearings

(Break In Continuity of Sections)

264 Application Procedure for Issuance of Summary Order

- (a) *Procedure.* A summary order may be issued sua sponte by the Commissioner or by request of the Division. A request for entry of a summary order shall be made by application to the Commissioner in the form of an administrative complaint filed by the Division.
- (b) *Information required with application.* The administrative complaint shall set forth a statement of the facts upon which the application is based, together with supporting documentation; cite to the relevant statutory provision or rule that each respondent is alleged to have violated; and, state the summary relief sought against each respondent. The application shall include a proposed order imposing the summary relief sought and notifying respondent of his right to a hearing as provided in Rule 265.
- (c) *Record of proceedings.* A record from which a verbatim transcript can be prepared shall be made of all hearings, including ex parte presentations made by the Division.

1 DE Reg. 1978 (6/1/98)

13 DE Reg. 667 (11/01/09)

265 Procedure After Issuance of Order

- (a) *Notice.* Any person who is the subject of a summary order shall promptly be given notice of that order and of the reasons therefor. Notice shall be given by means reasonably calculated to give actual notice of issuance of the order, including telephone notification and service of the order pursuant to Rule 210. Such notice shall include notification that the subject of the order may request a hearing and that if such a request is made in writing the hearing shall be scheduled within 15 days from the date the written request is received.
- (b) *Request for hearing.* Any person who is the subject of a summary order may request a hearing before an administrative hearing officer on an application to set aside, limit or suspend the summary order. The request for hearing is to be filed with the Commissioner and served on the Division within 25 days of service of the ~~administrative complaint~~ notice of the order. If a hearing is requested, the Commissioner shall forthwith provide notice of the request to the Attorney General (or his or her designee). Upon receipt of a notice from the Commissioner that a party has requested a hearing, the Attorney General (or his or her designee) shall issue an Order delegating the responsibility for conducting the hearing to a hearing officer selected by the Attorney General (or his or her designee) from the Register of Administrative Hearing Officers. The Order shall grant to the hearing officer all powers that are reasonably necessary to adjudicate the matter before him or her, provided, however, that the hearing officer's powers shall not include any power that these rules and regulations specifically limit to the Attorney General or the Commissioner.
- (c) *Procedure at hearing.* The procedure at a hearing on a summary order shall be determined by the hearing officer, with the understanding that each party shall be entitled to be heard in person or through counsel. The hearing officer shall rule on the admissibility of evidence and other matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs and/or proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submissions.
- (d) *Final Decision After Hearing.*
 - (1) After hearing evidence pursuant to subsection (c) of this Rule, the hearing officer shall, within fifteen (15) days of the hearing, file with the Commissioner and serve upon the parties a proposed decision containing the following matter arranged in the following order:

- (A) A summary of the evidence;
 - (B) Proposed findings of fact and the evidentiary bases therefor;
 - (C) Proposed conclusions of law and the legal bases therefor; and
 - (D) Proposed relief, if any.
- (2) Upon the filing of his or her proposed decision, the hearing officer shall certify the administrative record and submit the record to the Commissioner, who shall, at that time, have exclusive jurisdiction over the proceeding.
- (3) Upon receipt of the record and the hearing officer's proposed decision, the Commissioner shall forthwith give notice to the parties of receipt of the record and proposed decision and afford the parties, including the Securities Division, the opportunity to submit, within ten (10) days of the Commissioner's receipt of the record and proposed decision, exceptions to the proposed decision.
- (4) After review of the record, the hearing officer's proposed decision, and the parties' exceptions (if any), the Commissioner shall, no later than forty five (45) days from the end of the hearing, issue a final decision in the matter.
- (e) *Duration.* Unless set aside, limited or suspended, either by the Commissioner or a court of competent jurisdiction, a summary order shall remain in effect until the completion of the proceedings on whether a permanent order shall be entered or, if no such proceedings occur, until otherwise modified or vacated by the Commissioner.

1 DE Reg. 1978 (6/1/98)

13 DE Reg. 667 (11/01/09)

266 Violation of Cease and Desist Orders

If any person who is the subject of a cease and desist order, or any agent or employee of such person, subsequent to the issuance of the order engages in the prohibited conduct, the Commissioner may certify the facts and apply for a contempt order to any Judge of the Superior Court, who shall upon such application hear the evidence as to the acts complained of. If the evidence warrants, the Judge shall punish such person, in the same manner and to the same extent as for a contempt committed before the Superior Court, or shall commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the Superior Court.

Appeal to the Court of Chancery

(Break In Continuity of Sections)

304 Subpoenas

- (a) For the purpose of any investigation or proceeding under the Act, the Commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner deems relevant or material to the inquiry. The Commissioner's authority to subpoena witnesses and documents outside the State shall exist to the maximum extent permissible under federal constitutional law.
- (b) Subpoenas may be issued to any person (provided, however, that no subpoena shall issue, except upon request by the Division, to any complaining witness) and may require that person among other things, to:
- (1) Testify under oath;
 - (2) Answer written interrogatories under oath;
 - (3) Produce documents and tangible things; and
 - (4) Permit inspection and copying of documents.
- (c) Content of subpoena. A subpoena shall:

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- (1) Describe generally the nature of the investigation;
 - (2) If the subpoena requires testimony under oath, specify the date, time and place for the taking of testimony;
 - (3) If the subpoena requires answers to written interrogatories, contain a copy of the written interrogatories;
 - (4) If the subpoena requires the production of tangible things or documents: (a) describe the things and documents to be produced with reasonable specificity, and (b) specify a date, time, and place at which the things and documents are to be produced;
 - (5) Notify the person to whom the subpoena is directed of the obligation to supplement responses under Section 60.0;
 - (6) Advise the person to whom the subpoena is directed that the person may be represented by counsel; and
 - (7) Identify a member of the Securities Division who may be contacted in reference to the subpoena.
- (d) Subpoenas to corporations and other entities.
- (1) A subpoena directed to a corporation, partnership, or other entity that requires testimony under oath shall describe with reasonable particularity the subject matter of the testimony.
 - (2) An entity that receives a subpoena to answer written interrogatories or to testify under oath shall designate one or more of its officers, agents, employees, or other authorized persons familiar with the subject matter specified in the subpoena to respond to the subpoena on its behalf.
 - (3) The persons designated by an entity to respond to a subpoena on its behalf shall answer the interrogatories or testify as to all matters known or reasonably available to the entity.
 - (4) A subpoena directed to an entity that requires testimony under oath or answers to written interrogatories shall advise the entity of its obligations under this regulation.
- (e) Service of subpoena.
- (1) A subpoena may be served by personal service or by mail.
 - (2) The person who serves a subpoena shall complete a certificate of service attesting to the method and date of service.
- (f) Effect of other proceedings. The pendency or beginning of administrative or judicial proceedings against a person by the Commissioner does not relieve the person of his obligation to respond to a subpoena issued under this regulation.
- (g) Refusal to testify or produce documents.
- (1) No person is excused from attending and testifying or from producing any document or record before the Commissioner, or in obedience to the subpoena of the Commissioner or any officer designated by him or in any proceeding instituted by the Commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
 - (2) In case of contumacy by, or refusal to obey a subpoena issued to, any person registered under Section 7313 of the Act, the Commissioner may suspend or revoke that registrant's license pursuant to the provisions of Section 7316 of the Act.
- (h) Petition to modify or quash subpoena.
- (1) A person served with a subpoena under this regulation may request that the subpoena be modified or quashed.
 - (2) A petition to modify or quash a subpoena issued under this regulation shall be filed with the administrative hearing officer within ten days of service of the subpoena or by the date specified for compliance with the subpoena, whichever is earlier. The petition shall set forth good cause why the subpoena should be modified or quashed.

- (i) Application to Court of Chancery upon refusal to obey subpoena. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Court of Chancery, upon application by the Commissioner, may issue to the person an order requiring him to appear before the Court of Chancery or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the Court may be punished by the court as a contempt of court.

Part D. Securities Registration and Notice Filings

(Break In Continuity of Sections)

402 ~~Small Company Offering Registrations Repealed~~

- (a) ~~Availability of Small Company Offering Registration ("SCOR").~~
 - (1) ~~An issuer may register securities by qualification under Section 7306 of the Act by using the Form U-7 (Small Company Offerings Registration Form) if the conditions set forth in this regulation and in the instructions to Form U-7 are satisfied.~~
 - (2) ~~In general, a company may do a SCOR offering if it is relying upon an exemption from registration with the SEC under the Federal Securities Act of 1933 provided by SEC Regulation A (17 C.F.R. §§230.251-263); Rule 504 of SEC Regulation D (17 C.F.R. §230.504); or by Section 3(a)(11) of the Securities Act of 1933 and Rule 147 promulgated thereunder (17 C.F.R. §230.147).~~
 - (3) ~~Under SEC Regulation A, the aggregate amount of the offering cannot exceed \$5,000,000.00. Under Rule 504 of SEC Regulation D, the aggregate offering amount can not be more than \$1,000,000.00. An offering under Section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147 may be in any amount but, among other requirements, all securities must be offered and sold only to Delaware residents. The company also must be resident and doing business in Delaware and eighty percent of the net proceeds of the offering must be used in the operation of the company's business in Delaware.~~
- (b) ~~Prospectus. A completed Form U-7 that has been declared effective by the Commissioner shall serve as the prospectus for an offering registered under this regulation.~~
- (c) ~~Eligibility of Issuer. To be eligible to register securities under this regulation, the issuer must satisfy the following conditions:~~
 - (1) ~~The issuer is a corporation or centrally managed limited liability company organized under the law of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia and have its principal place of business in one of the foregoing;~~
 - (2) ~~The issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§78m, 78o(d);~~
 - (3) ~~The issuer is not an investment company registered or required to be registered under the Investment Company Act of 1940, 15 U.S.C. §§80a-1 to 80a-52;~~
 - (4) ~~The issuer is not engaged in and does not propose to be engaged in petroleum exploration and production, mining, or other extractive industries;~~
 - (5) ~~The issuer is not a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; and~~
 - (6) ~~The issuer is not disqualified under subsection 64.9 of this regulation.~~
- (d) ~~Minimum price. The offering price for common stock or common ownership interests (hereinafter, collectively referred to as common stock), the exercise price for options, warrants, or rights to common stock, or the conversion price for securities convertible into common stock, must be greater or equal to \$5.00 per share or unit of interest. The issuer must agree with the administrator that it will not split its common stock, or declare a stock dividend for two years after the effective date of the registration if such action has the effect of lowering the price below \$5.00.~~

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- (e) Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering in the state are only paid to persons who, if required to be registered or licensed, the issuer believes, and has reason to believe, are appropriately registered or licensed in the state.
- (f) Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided, however, that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:
- (1) the company shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailing, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;
 - (2) the company has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;
 - (3) the aggregate amount of all previous sales of securities by the company (exclusive of debt financing with banks and similar commercial lenders) shall not exceed \$1,000,000.00; and
 - (4) the amount of the present offering does not exceed \$1,000,000.00.
- (g) The offering shall be made in compliance with Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933.
- (h) Filing Requirements and Fees. The issuer shall file an executed Form U-1, Form U-2, Form U-2A, Form U-7 with exhibits, and shall include the fee required by Rule 66.0. In addition, if the offering is made pursuant to Rule 504 of Regulation D, the issuer shall file a copy of its Form D as part of its SCOR application; if the offering is made pursuant to Regulation A, the issuer shall file a copy of its Form 1-A as part of its SCOR application. That filing shall be made with the Commissioner at the same time it is filed with the SEC.
- (i) Disqualification. Unless the Commissioner determines that it is not necessary under the circumstances that the disqualification under this section be applied, application for registrations under this regulation shall be denied if the issuer, any of its officers, directors, ten per cent or greater stockholders, promoters, or selling agents, or any officer, director or partner of any selling agent:
- (1) has filed an application for registration which is subject to a currently effective stop order entered pursuant to any state or provincial securities laws within ten years prior to the filing of the registration statement;
 - (2) has been convicted, within ten years prior to the filing of the current application for registration, of any felony or misdemeanor in connection with the offer, purchase, or sale of securities, or of any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;
 - (3) is currently subject to any state or provincial administrative enforcement order or judgment entered by that state's or province's securities administrator within ten years prior to the filing of the current application for registration;
 - (4) is subject to any state or provincial administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found, and the order or judgment was entered within ten years prior to the filing of the current application for registration;
 - (5) is subject to any state or provincial administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;
 - (6) is currently subject to any order, judgment, or decree of any court of competent jurisdiction that temporarily, preliminarily, or permanently restrains or enjoins such party from engaging in or

~~continuing any conduct or practice in connection with the purchase or sale of any security, or involving the making of any false filing with the state, entered within ten years prior to the filing of the current application for registration; or~~

(7) ~~has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking or, within the past ten years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker dealer, agent, investment adviser or investment adviser representative, or is the subject of an action of any securities exchange or self regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self regulatory organization.~~

(j) Waiver of disqualifications. Any of the disqualifications listed in subsection 64.9 of this Regulation may be waived if the Commissioner in the exercise of his discretion should find good cause for such waiver.

Part E. Exemptions from Registration

500 Registration Not Required of Federal Covered Securities

~~Federal covered securities, as defined in Section 7302(a)(17) of the Act, are not required to be registered under Section 7304 of the Act. Notwithstanding this rule, however, notice filings are required for registered investment company offerings under Rule 403; and for offers or sales of securities in Delaware pursuant to SEC Rule 506, 17 C.F.R. §230.506. Federal covered securities, as defined in Section 7302(a)(17) of the Act, are not required to be registered under Section 7304 of the Act. Notwithstanding this rule, however, notice filings are required for registered investment company offerings under Rule 403; and for offers or sales of securities in Delaware pursuant to SEC Rule 505 (17 C.F.R. sec. 230.505), and SEC Rule 506 (17 C.F.R. sec. 230.506).~~

1 DE Reg 1978 (6/1/98)

501 Designated Exchange Exemption

Any security listed or approved for listing upon notice of issuance on the Boston Stock Exchange or the Chicago Board Options Exchange is exempted from Sections 7304, 7309A and 7312 of the Act pursuant to Section 7309(a)(8) of the Act.

1 DE Reg 1978 (6/1/98)

502 Limited Offering Exemption

(a) ~~Any offer or sale of securities made in compliance with SEC Rule 505, 17 C.F.R. §230.505 (Exemption for Limited Offers and Sales of Securities Not Exceeding \$5,000,000) of Regulation D under the Securities Act of 1933 and the provisions of this Rule is exempt from registration under Section 7309(b)(9) of the Act.~~

(b) ~~To qualify for the limited offering exemption under Section 7309(b)(9), the following conditions and limitations must be met:~~

(1) ~~No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered under the Act. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered under the Act.~~

(2) ~~The limited offering exemption is not available if the issuer, any of its directors, officers, general partners, trustees, beneficial owners of ten percent or more of a class of its equity interests, promoters currently connected with it in any capacity, or any person (other than a broker dealer currently registered under the Act) that has been or will be paid or given, directly or indirectly, a~~

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commission or similar remuneration for the solicitation of a prospective purchaser or in connection with sales of securities under this exemption:-

- (i) ~~within ten years before the first sale of securities in an offering under this exemption has filed a registration statement or application for exemption from registration that is currently subject to a stop order under any state's securities laws;-~~
 - (ii) ~~within ten years before the first sale of securities in an offering under this exemption has been convicted of or has pleaded nolo contendere to a felony or misdemeanor in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or with a state securities administrator, or a felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or theft;-~~
 - (iii) ~~is subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment, or decree of a court of competent jurisdiction entered within ten years before the first sale of securities in an offering under this exemption permanently restraining or enjoining, that person from engaging in or continuing any conduct or practice in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or a state securities administrator;-~~
 - (iv) ~~is the subject of any order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;-~~
 - (v) ~~is subject to a state administrative order entered by a state securities administrator in which fraud or deceit was found, if the final order was entered within ten years before the first sale of securities in an offering under this exemption.~~
- (3) ~~Not later than 15 days after the first sale of securities under this regulation, the issuer shall file with the Commissioner a manually signed notice on a completed SEC Form D (Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption), as filed with the SEC and as that form may be amended from time to time. That filing shall constitute an affirmation by the issuer that it has complied with SEC Rule 505 and that upon written request the issuer shall furnish to the Commissioner any and all information furnished by the issuer or its agents to the offerees.-~~
- (4) ~~An issuer relying on the exemption from registration under Section 7309(b)(9) of the Act and this regulation that is not filing SEC Form D with the SEC shall file with the Commissioner, not later than 15 days after the first sale of securities under this regulation, or within six months of commencement of the offering (whichever occurs first), a Delaware Form D-1 (Notice of Sale of Securities Pursuant to Delaware Securities Act Section 7309(b)(9)).~~
- (5) ~~In all sales to nonaccredited investors in Delaware, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions are satisfied:~~
- (i) ~~The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs.~~
 - (ii) ~~The purchaser either alone or with his or her purchaser representative(s) has such knowledge and experience in financial and business matters that he or she is or they are capable of evaluating the merits and risks of the prospective investment.-~~
- (c) ~~Neither this regulation nor the Act provide an exemption from the provisions of Section 7303 of the Act.~~
- (d) ~~The burden of proving an exemption under this regulation is on the person claiming the exemption.~~
- (e) ~~The Commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption. The exemption under section 7309(b)(9) of the Act is withdrawn as to any security offered or sold in Delaware.~~

(Break In Continuity of Sections)

***Please Note:** As the rest of the sections are not being amended they are not being published. The complete regulation is available at:

Rules and Regulations Pursuant to the Delaware Securities Act

VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL

Statutory Authority: 11 Delaware Code, Section 9004 (11 Del.C. §9004)
1 DE Admin. Code 301

PUBLIC NOTICE

301 Victims' Compensation Assistance Program Rules and Regulations

1. Title of Regulations:

Amend 1 DE Admin. Code 301 Victims Compensation Assistance Program Rules and Regulations.

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

The Department of Justice Victims Compensation Assistance Program proposes to add an additional section, 28.0, to Regulation 301 relating to payment of claims. The VCAP currently pays medical claims for approved crime victims when they do not have other insurance which covers the medical expenses. The VCAP is the payer of last resort for these medical claims and other health insurance. Medicaid and/or Medicare must pay first before VCAP pays. In 1992 the Violent Crimes Compensation Board (now VCAP) developed letters of agreement with most local hospitals to pay 80% of the billed amount; and the hospitals agreed to accept this as payment in full.

This regulation would require that VCAP pay all medical providers at 80% of the usual and customary charge for services. This amount would be considered payment in full, and the medical provider would be unable to collect any additional monies from the victim, or from third parties. Enactment of this regulation would help preserve and extend the Victims Compensation Assistance Program funds and bring VCAP more in line with other companies who pay medical claims.

The VCAP Advisory Council considered applying this formula to mental health and dental claims, as well; but deferred action on that pending further study and comment.

3. Statutory Basis or Legal Authority to Act:

Title 11 Delaware Code, Chapter 90

4. Notice of Public Comment:

The Department of Justice Victims Compensation Assistance Program will hold public hearings on these proposed amendments on Monday November 22 beginning at 5pm in the Carvel State Office Building Auditorium and on Tuesday November 23 beginning at 3pm at the Tatnall Building Room 113, Dover Delaware. Interested persons may submit comments in writing to Barbara Brown, VCAP, 900 King Street, Suite 4, Wilmington Delaware. Statements and testimony may be presented either orally or in writing at the public hearings.

5. Prepared by:

Barbara Brown
302 255-1770
September 30, 2010

301 Victims' Compensation Assistance Program Rules and Regulations

(Break In Continuity of Sections)

28.0 Payment of Claims

- 28.1 Medical expenses shall be paid on behalf of the victim to a hospital or other licensed health care facility or provider at a rate set by VCAP. If VCAP accepts a claim, the hospital or other licensed health care facility or provider shall accept the VCAP payment as payment in full, and may not attempt to collect from the victim or third parties any amount exceeding the amount of reimbursement made by VCAP. In the absence of an existing provider agreement, VCAP payments may be accompanied by a notice that provider acceptance constitutes acknowledgement of payment in full.
- 28.2 VCAP will pay a hospital or other licensed health care facility or provider at the rate of 80% of the usual and customary charge for such services. The VCAP may pay a lesser amount if payment under this section would exceed a statutory or regulatory cap.
- 28.3 If the usual and customary charge cannot readily be established, or in special circumstances, VCAP may, in its discretion, determine the reasonable charge for the procedure performed or the services rendered.

***Please Note:** As the rest of the sections are not being amended they are not being published. The complete regulation is available at:

301 Victims' Compensation Assistance Program Rules and Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 1302

REGISTER NOTICE SAN # 2010-09

1302 Delaware Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Hazardous Waste (RGHW)

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to the *RGHW* that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations. Some of the changes DNREC is proposing to make are already in effect at the federal level. Additionally, DNREC is proposing to adopt required federal regulations and miscellaneous changes to correct errors and add consistency or clarification.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

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

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to RGHW will be held on Wednesday December 1, 2010 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

1302 Delaware Regulations Governing Hazardous Waste

ID #	Description
1	Adopt federal requirements for the export of batteries to OECD countries
2	Adopt federal corrections to the Uniform Manifest rules
3a	Add clarification regarding subsequent notifications (§262.12)
3b	Strike confusing date regarding Recordkeeping deadline (§262.40)
3c	Allow use of amended SPCC plan as a Contingency Plan (§264.52)
3d	Clarify TSD submittal of manifest copies to the generator State (§264/265.71)
3e	Strengthen secondary containment by adding requirement for coating and water stops for tanks (§264/265.193)
3f	Add requirement regarding written record of shipments of used oil (§279.24)

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the *Delaware Regulations Governing Hazardous Waste* are not affected and are unchanged.

AMENDMENT 1: Export of batteries to OECD Countries

Delaware is proposing to adopt the following amendment which is required by the federal EPA. The original federal amendment is described in Federal Register volume 75 pages 1236-1262 (January 8, 2010).

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUSWASTE

§ 262.10 Purpose, scope, and applicability.

(d) Any person who exports or imports ~~hazardous waste subject to the manifesting requirements of Part 262, or subject to the universal waste management standards of Part 273,~~ wastes that are considered hazardous under U.S. national procedures to or from the countries listed in §262.58(a)(1) for recovery must comply with Subpart H of this part. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in §261.3 and is subject to either the RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of part 273, or the export requirements in the spent lead-acid battery management standards of part 266, subpart G.

§ 262.55 Exception reports.

In lieu of the requirements of §262.42, a primary exporter must file an exception report with both the EPA Administrator Of fice of Enforcement and Compliance Assurance, Of fice of Federal Activities, In ternational

Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and with a copy to the Secretary if any of the following occurs:

- (a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty five (45) days from the date it was accepted by the initial transporter.
- (b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;
- (c) The waste is returned to the United States.

* * * * *

§ 262.58 International agreements.

(a) Any person who exports or imports ~~hazardous waste subject to manifest requirements of Part 262, or subject to the universal waste management standards of Part 273,~~ wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to Subpart H of this part. The requirements of Subparts E and F do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in §261.3 and is subject to either the RCRA manifesting requirements at part 262, subpart B, the universal waste management standards of part 273, or the export requirements in the spent lead-acid battery management standards of part 266, subpart G.

(1) For the purposes of ~~this~~ subpart H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, ~~South Korea~~ the Republic of Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of ~~this~~ subpart H, Canada and Mexico are considered OECD member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD Member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of Subparts E and F of this part, and is not subject to the requirements of subpart H of this part.

Subpart H is replaced to read as follows:

Subpart H—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

Sec.

- 262.80 Applicability.
- 262.81 Definitions.
- 262.82 General conditions.
- 262.83 Notification and consent.
- 262.84 Movement document.
- 262.85 Contracts.
- 262.86 Provisions relating to recognized traders.
- 262.87 Reporting and recordkeeping.
- 262.88 Pre-approval for U.S. recovery facilities [Reserved].
- 262.89 OECD waste lists.

§ 262.80 Applicability.

(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in §262.58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

- (1) Meets the definition of hazardous waste in §261.3; and
- (2) Is subject to either the manifesting requirements at part 262, subpart B, the universal waste management standards of part 273, or the export requirements in the spent lead-acid battery management

standards of part 266, subpart G.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

The following definitions apply to this subpart.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

Country of export means any designated OECD Member country listed in §262.58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any designated OECD Member country listed in §262.58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

Country of transit means any designated OECD Member country listed in §262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, *exporter* is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in §262.58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area. **OECD** means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include: R1 Use as a fuel (other than in direct incineration) or other means to generate energy. R2 Solvent reclamation/regeneration. R3 Recycling/reclamation of organic substances which are not used as solvents. R4 Recycling/reclamation of metals and metal compounds. R5 Recycling/reclamation of other inorganic materials. R6 Regeneration of acids or bases. R7 Recovery of components used for pollution abatement. R8 Recovery of components used from catalysts. R9 Used oil re-refining or other reuses of previously used oil. R10 Land treatment resulting in benefit to agriculture or ecological improvement. R11 Uses of residual materials obtained from any of the operations numbered R1–R10. R12 Exchange of wastes for submission to any of the operations numbered R1–R11. R13 Accumulation of material intended for any operation numbered R1–R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in §262.80(a). The OECD Green and

PROPOSED REGULATIONS

Amber lists are incorporated by reference in §262.89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to the Amber control procedures set forth in this subpart.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to the Amber control procedures set forth in this subpart.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in §262.80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in §262.58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in §262.80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to Paragraph (a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in §262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to Paragraph (a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to Paragraph (a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in §262.80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in §262.80(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to transboundary movements of hazardous waste:

(1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement must be in compliance with applicable international transport agreements; and

Note to Paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974),

IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country:

(1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in §262.58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in §262.83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in §262.58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in paragraph (c)(1) of this section, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures.

When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of paragraph (c) of this section apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in §262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with §262.87(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in §262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with

§ 262.87(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in § 262.83 and for the movement document as set forth in § 262.84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.

(2) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by mail, email without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1–R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

(h) Notification and Copies to the State of Delaware. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary at the same time.

§ 262.83 Notification and consent.

(a) Applicability. Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to this subpart. Hazardous wastes subject to the Amber control procedures are subject to the requirements of paragraph (b) of this section; and wastes not identified on any list are subject to the requirements of paragraph (c) of this section.

(b) Amber wastes. Exports of hazardous wastes from the United States as described in § 262.80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words “Attention: OECD Export Notification” prominently displayed on the envelope. This notification must include all of the information identified in paragraph (d) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may

submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to §262.84.

(ii) *Tacit consent.* If no objection has been lodged by any countries concerned (i.e., exporting, importing, or transit) to a notification provided pursuant to paragraph (b)(1)(i) of this section within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; re-notification and renewal of all consents is required for exports after that date.

(iii) *Written consent.* If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country's consent unless otherwise specified; re-notification and renewal of each expired consent is required for exports after that date.

(2) *Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:*

(i) *Notification.* The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a preapproved facility. The notification must indicate that the recovery facility is preapproved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words 'OECD Export Notification—Pre-approved Facility' prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to §262.84.

(ii) *Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.*

(c) *Wastes not covered in the OECD Green and Amber lists.* Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in §262.89(d), but which are considered hazardous under U.S. national procedures as defined in §262.80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in §262.89(d), and are not considered hazardous under U.S. national procedures as defined by §262.80(a) are subject to the Green control procedures.

(d) *Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:*

(1) *Serial number or other accepted identifier of the notification document;*

(2) *Exporter name and EPA identification number (if applicable), address, telephone, fax numbers, and email address;*

(3) *Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;*

(4) *Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and email addresses; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;*

(5) *Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;*

(6) *Country of export and relevant competent authority, and point of departure;*

(7) *Countries of transit and relevant competent authorities and points of entry and departure;*

(8) *Country of import and relevant competent authority, and point of entry;*

(9) *Statement of whether the notification is a single notification or a general notification. If general, include*

period of validity requested:

(10) Date(s) foreseen for commencement of transboundary movement(s):

(11) Means of transport envisaged:

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in §262.89(d), description(s) of each waste type, estimated total quantity of each, RCR A waste code, and the United Nations number for each waste type:

(13) Specification of the recovery operation(s) as defined in §262.81.

(14) Certification/Declaration signed by the exporter that states: I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement. Name: ||| Signature: ||| Date: |||

Note to Paragraph (d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) Certificate of Recovery. As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under §262.85.

(f) Notification and Copies to the State of Delaware. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary at the same time.

§ 262.84 Movement document.

(a) All U.S. parties subject to the contract provisions of §262.85 must ensure that a movement document meeting the conditions of paragraph (b) of this section accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in paragraphs (a)(1) and (2) of this section.

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at §262.23(c)).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in §262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document must include all information required under §262.83 (for notification), as well as the following paragraphs (b)(1) through (b)(7) of this section:

(1) Date movement commenced;

(2) Name (if not exporter), address, telephone, fax numbers, and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows: I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; OR

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR

3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD

area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

(Delete sentences that are not applicable)

Name: ||| Signature: ||| Date: |||

(7) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

(c) Exporters also must comply with the special manifest requirements of §262.54(a), (b), (c), (e), and (i) and importers must comply with the import requirements of part 262, subpart F.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under §262.81, the facility shall retain the original of the movement document for three (3) years.

(f) Notification and Copies to the State of Delaware. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary at the same time.

§ 262.85 Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (b)(1) through (b)(4) of this section:

- (1) The generator of each type of waste;
- (2) Each person who will have physical custody of the wastes;
- (3) Each person who will have legal control of the wastes; and
- (4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts must specify that the importer will provide the notification required in §262.82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Paragraph (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations can not be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to

ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in §260.2.

Note to Paragraph (g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

§ 262.86 Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal and State laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this subpart associated with being an exporter or importer.

§ 262.87 Reporting and recordkeeping.

(a) *Annual reports.* For all waste movements subject to this subpart, persons (e.g., exporters, recognized traders) who meet the definition of primary exporter in §262.51 or who initiate the movement documentation under §262.84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under § 262.84 is required to file an annual report for waste exports that are not covered under this subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include all of the following paragraphs (a)(1) through (a)(6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in § 262.89(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to §262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement document under §262.84 that states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and

complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) *Exception reports.* Any person who meets the definition of primary exporter in §262.51 or who initiates the movement document under §262.84 must file an exception report in lieu of the requirements of §262.42 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) *Recordkeeping.*

(1) Persons who meet the definition of primary exporter in §262.51 or who initiate the movement document under §262.84 shall keep the following records in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (i.e., movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(3) A copy of the annual and/or exception reports must be sent to the DNREC Secretary.

§ 262.88 Pre-approval for U.S. recovery facilities [Reserved].

§ 262.89 OECD waste lists.

(a) *General.* For the purposes of this subpart, a waste is considered hazardous under U.S. national procedures, and hence subject to this subpart, if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR §261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of part 273, or the export requirements in the spent lead-acid battery management standards of part 266, subpart G.

(b) If a waste is hazardous under paragraph (a) of this section, it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in §262.81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in §262.82.

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre' Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or

go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR Part 262, or subject to the waste management standards of Part 273, that is being imported from or exported to any of the countries listed in §262.58(a)(1) for purposes of recovery is subject to this Subpart and to all other relevant requirements of Subpart H of Part 262, including, but not limited to, §262.84 for tracking movement documents.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

§ 264.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Part 262, Subpart H must provide a copy of the tracking movement document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460 the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three (3) working days of receipt of the shipment. The original of the signed tracking movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

(3) A copy of the signed tracking movement document must also be submitted to the DNREC Secretary. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.

* * * * *

§ 264.71 Use of manifest system.

(a) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(d)(1) Within three working days of the receipt of a shipment subject to Part 262, Subpart H, the owner or operator of the facility must provide a copy of the tracking movement document bearing all required signatures to the notifier exporter, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking movement document must be maintained at the facility for at least three (3) years from the date of signature.

(2) A copy of the signed tracking movement document must also be submitted to the DNREC Secretary. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

§ 265.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Part 262, Subpart H must provide a copy of the tracking movement document bearing all required signatures to the notifier foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and to the competent authorities of all other concerned countries within three (3) working days of receipt of the shipment. The original of the signed tracking movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

(3) A copy of the signed tracking movement document must also be submitted to the DNREC Secretary. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.

* * * * *

§ 265.71 Use of manifest system.

(a) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within 30 days of delivery: International Compliance Assurance Division, OPA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(d)(1) Within three (3) working days of the receipt of a shipment subject to Part 262, Subpart H, the owner or operator of the facility must provide a copy of the tracking movement document bearing all required signatures to the notifier exporter, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC

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~~20460~~ Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC ~~20460~~, and to competent authorities of all other concerned countries. The original copy of the tracking movement document must be maintained at the facility for at least three (3) years from the date of signature.

~~(2) A copy of the signed tracking movement document must also be submitted to the DNREC Secretary. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.~~

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

In § 266.80(a) the table is revised to read as follows:

§ 266.80 Applicability and requirements.

(a) ***

If your batteries ***	And if you ***	Then you ***	And you ***
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).		are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 268, 122, 124 of these regulations, and the notification requirements at <u>sections 6306 and 6307</u> of Del.C., Chapter 63.	are subject to Parts 261 and 262.11 of these regulations.
(2) Will be reclaimed other than through regeneration.	generate, collect, and/or transport these batteries.	are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 122, 124 of these regulations, and the notification requirements at <u>sections 6306 and 6307</u> of Del.C., Chapter 63.	are subject to Parts 261 and 262.11, and applicable provisions under Part 268.
(3) Will be reclaimed other than through regeneration.	store these batteries but you aren't the claimer.	are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 122, 124 of these regulations, and the provisions under notification requirements at <u>sections 6306 and 6307</u> of <u>Del. C.</u> , Chapter 63.	are subject to Parts 261, 262.11, and applicable Part 268.
(4) Will be reclaimed other than through regeneration.	store these batteries before you reclaim them.	must comply with §266.80(b) and as appropriate other regulatory provisions described in §266.80(b).	are subject to Parts 261, 262.11, and applicable provisions under Part 268.
(5) Will be reclaimed other than through regeneration.	don't store these batteries before you reclaim them.	are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 122, 124 of these regulations, and the notification requirements at <u>sections 6306 and 6307</u> of Del.C., Chapter 63.	are subject to Parts 261, 262.11, and applicable provisions under Part 268.

<p>(6) Will be reclaimed through regeneration or any other means.</p>	<p>export these batteries for reclamation in a foreign country.</p>	<p>are exempt from parts 263, 264, 265, 266, 268, 122, 124 of these regulations, and the notification requirements at sections 6306 and 6307 of Del.C., Chapter 63. You are also exempt from part 262, except for 262.11, and except for the applicable requirements in either: (1) part 262 subpart H; or (2) 262.53 "Notification of Intent to Export, 262.56(a)(1) through (4)(6) and (b) "Annual Reports," and 262.57 "Recordkeeping".</p>	<p>are subject to part 261 and § 262.11, and either must comply with part 262, subpart H (if shipping to one of the OECD countries specified in § 262.58(a)(1)), or must: (a) Comply with the requirements applicable to a primary exporter in 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57; and (b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and (c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.</p>
<p>(7) Will be reclaimed through regeneration or any other means.</p>	<p>Transport these batteries in the U.S. to export them for reclamation in a foreign country.</p>	<p>are exempt from parts 263, 264, 265, 266, 268, 122, 124 of these regulations, and the notification requirements at sections 6306 and 6307 of Del.C., Chapter 63.</p>	<p>must comply with applicable requirements in part 262, subpart H (if shipping to one of the OECD countries specified in 262.58(a)(1)), or must comply with the following: (a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent; (b) you must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and (c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.</p>

AMENDMENT 2: Uniform Manifest corrections

Delaware is proposing to adopt the following amendment which is required by the federal EPA. The original federal amendment is described in Federal Register volume 75 pages 12989-13009 (March 18, 2010).

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

§ 262.23 Use of the manifest.

* * * * *

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of §§264.72(f) or §§265.72(f)), the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

* * * * *

§ 262.42 Exception reporting.

* * * * *

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of §§264.72(e)(1) through (6) or §§265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) and (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

§ 264.72 Manifest discrepancies.

* * * * *

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from

the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offoror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a facility-signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

* * * * *

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. ~~If the designated facility's site address is different, then write the site address in the space in Item 5.~~ If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offoror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), ~~and (6),~~ and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a) and (b).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

§ 265.72 Manifest discrepancies.

* * * * *

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(e) * * *

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a facility-signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the designated facility's site address is different, then write the site address in the space in Item 5. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 1 8a and 1 8b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), ~~and (6)~~, and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a) and (b).

* * * * *

AMENDMENT 3a: Subsequent Notification clarification

Section 262.12 EPA Identification Numbers.

* * * * *

(d) A generator must submit a subsequent "RCRA Subtitle C Site Identification Form", EPA Form 8700-12 whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity (for example, generator status), or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the DNREC Secretary no less than 10 days prior to implementation of the change(s).

AMENDMENT 3b: Exception Report clarification

Section 262.40 Recordkeeping.

* * * * *

(b) A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report ~~(March 1)~~.

* * * * *

AMENDMENT 3c: 264/265.52(b) alignment

Section 264.52 Content of contingency plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with §§264.51 and 264.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part.

~~(b)(c)~~ The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency services, pursuant to §264.37.

~~(e)(d)~~ The plan must list names, addresses (office and home), and telephone numbers (office and home) of all persons qualified to act as emergency coordinator (see §264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. For new facilities, this information must be provided to the DNREC Secretary at the time of certification, rather than at the time of permit application.

~~(e)(e)~~ The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up-to-date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

~~(e)(f)~~ The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

AMENDMENT 3d: TSD Mail Manifest Copy to Generator State

Section 262.22 Number of copies.

The manifest consists of the number of copies, which provide a copy for each transporter, the generator state, facility state and the copy which is mailed from the facility to the generator.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

This process is discussed in detail in the instructions for manifest preparation Appendix II of this part.

Note: ~~Photocopies of this form will be necessary for the generator and the facility to meet the requirements of §262.23(a)(3); §264.71(a)(5); §265.71(a)(5); or if necessary §262.23(c) and (d)~~ The designated facility is to mail a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary.

* * * * *

Section 264.71 Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his/her agent, must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

- (i) Sign and date, by hand, each copy of the manifest;
- (ii) Note any discrepancies (as defined in § 264.72(a)) on each copy of the manifest;
- (iii) Immediately give the transporter at least one copy of the manifest;
- (iv) Within 30 days of delivery, send a copy of the manifest to the generator and a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary; and
- (v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a

copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/ OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in §264.72(a) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

[Comment: The Department does not intend that the owner or operator of a facility whose procedures under §264.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator and a copy to the DNREC Secretary; and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of these regulations.

[Comment: The provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

(d)(1) and (2): see amendments to these paragraphs in Amendment 1, page 15 above.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states (note: for hazardous waste generated in Delaware, send a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary).

* * * * *

Section 265.71 Use of Manifest System.

(a) * * * * *

(2) * * * * *

(iv) Within 30 days of delivery, send a copy of the manifest to the generator and a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary; and

* * * * *

(b) * * * * *

(4) Within thirty (30) days after delivery send a copy of the signed and dated manifest/shipping paper (if the manifest has not been received within 30 days after delivery) to the generator and a copy to the DNREC Secretary; and

* * * * *

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the

manifest to these states (note: for hazardous waste generated in Delaware, send a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary).

AMENDMENT 3e: tank secondary containment coating and water stops

Section 265.193 Containment and detection of releases.

(e) In addition to the requirements of paragraphs (b), (c), and (d) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25- year, 24 hour rainfall event;

(iii) Free of cracks or gaps; ~~and~~

(iv) Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste);

(v) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of wastes into the concrete; and

(vi) For systems installed after January 1, 2011, constructed with chemical-resistant water stops in place at all joints (if any). Documents demonstrating compliance with this requirement must be retained in the facility record.

Section 264.193 Containment and detection of releases.

(e) In addition to the requirements of paragraphs (b), (c), and (d) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25- year, 24 hour rainfall event.

(iii) Free of cracks or gaps; ~~and~~

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste);

(v) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of wastes into the concrete; and

(vi) For systems installed after January 1, 2011, constructed with chemical-resistant water stops in place at all joints (if any). Documents demonstrating compliance with this requirement must be retained in the facility record.

AMENDMENT 3f: Oil Records

Section 279.24 Off-site shipments.

Except as provided in paragraphs (a) through (c) of this section, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers and a Delaware Waste Transporter Permit.

(a) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; ~~and~~

(3) The generator transports the used oil to a used oil collection center that is authorized by the state to manage used oil; and

(4) The generator maintains onsite, for a minimum of three (3) years, a written record of all shipments of used oil. The record may take the form of a log or other shipping document.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 2701

(7 Del.C. §2701)

7 DE Admin. Code 3214

REGISTER NOTICE SAN# 2012-21

3214 Horseshoe Crab Annual Harvest Limit

1. TITLE OF THE REGULATIONS:

3214 Horseshoe Crab Annual Harvest Limit

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

This action extends the effective date of Delaware's annual horseshoe crab quota allocation through April 30, 2013. This regulatory modification is required for Delaware to be compliant with Addendum VI to the Atlantic State's Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab. Addendum VI extends the provisions of Addendum V through April 30, 2013. The addendum prohibits the directed harvest and landing of all horseshoe crabs in Delaware from January 1 through June 7, and female horseshoe crabs from June 8 through December 31. Delaware's annual harvest is restricted to 100,000 male horseshoe crabs per year. If Delaware's annual horseshoe crab quota allocation is exceeded in any calendar year, the over age is deducted from the following year's quota allocation.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 27 §2701 (7 Del. C. §2701)

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

This would represent an amendment to the existing Horseshoe Crab Annual Harvest Limit (No. 3214). No other regulations are affected.

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendments will be held on November 23, 2010 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, November 30, 2010.

7. PREPARED BY:

Stewart Michels 735-2970 stewart.michels@state.de.us 28 September 2010

3214 Horseshoe Crab Annual Harvest Limit

(Penalty Section 7 Del.C. §2705(b))

- 1.0 The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be 100,000 male horseshoe crabs for a period of ~~one year beginning January 1, 2009~~ extending from November 1, 2010 through April 30, 2013 or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, ~~whichever number is less. The annual harvest limit of 100,000 male horseshoe crabs may be extended for a second year if approved by the Atlantic States Marine Fisheries Commission.~~ No female horseshoe crabs may be taken/landed at any time.
- 2.0 When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

7 DE Reg. 220 (8/1/03)

10 DE Reg. 1029 (12/01/06)

11 DE Reg. 685 (11/01/07)

12 DE Reg. 975 (01/01/09)

DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Chapter 47 (7 Del.C., Ch. 47)
7 DE Admin. Code 9202

REGISTER NOTICE SAN # 2010-18

9202 Regulations Governing Natural Areas and Nature Preserves**1. TITLE OF THE REGULATIONS:**

Regulations Governing Natural Areas and Nature Preserves

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

To clarify processes associated with nominating and delisting Natural Areas and dedicating Nature Preserves. The current regulations are confusing and erroneous in some sections, and focus on Nature Preserve management plans. A total rewrite of the regulations provide a better focus on identifying Natural Areas and dedicating Nature Preserves. There is no cost associated with the proposed regulation.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

The Natural Areas Preservation System Act of 1978 (7 Del.C. Ch. 73)

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

None

6. NOTICE OF PUBLIC COMMENT:

Oral or written comments may be presented at a public hearing to be held on Wednesday, December 1, 2010 beginning at 5:00 PM in the DNREC Richard and Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Eileen M. Butler, DNREC Parks and Recreation, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Eileen M. Butler (302) 739-9235 Eileen.Butler@state.de.us October 15, 2010

~~REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, DIVISION OF PARKS AND RECREATION GOVERNING NATURAL AREAS AND NATURE PRESERVES~~

~~In accordance with Title 7, Chapter 47, subsection 4702 (c) of the Delaware Code, the Department of Natural Resources and Environmental Control will effect at midnight July 1, 1981 the following regulations:~~

~~1.00 Purpose of the Regulations and the Registration and Dedication Process.~~

~~1.10 The purpose of the Regulations contained herein is to further the implementation of Delaware's Natural Areas Preservation System set forth in 7 Del. C., Chapter 73.~~

~~2.00 Identification and Registration of Natural Areas.~~

~~2.10 The Office of Nature Preserves shall make periodic surveys of sites located in the State to identify Natural Areas. The Office of Nature Preserves may also receive information leading to identification of Natural Areas from any party.~~

~~2.20 Identification of Natural Areas by the Office of Nature Preserves shall be based on at least the following criteria:~~

- ~~(1) Unusualness; and~~
- ~~(2) representativeness.~~

~~2.30 Any site located in the State may be nominated to become identified as a Natural Area by any person.~~

~~2.40 Nomination of a site to become a registered Natural Area shall be made to the Office of Nature Preserves on forms provided by the Department. Persons making nominations shall also provide the Office of Nature Preserves with the following information:~~

- ~~(1) Name, address and phone number of the property owner;~~
- ~~(2) the location of the site;~~
- ~~(3) a description of the site characteristics;~~
- ~~(4) a description of the site and use;~~
- ~~(5) a description of the significance of the site; and~~
- ~~(6) the landowner's signature.~~

~~2.50 A site that has been nominated to become a registered Natural Area shall receive priority consideration by the Office of Nature Preserves whenever one or more of the following circumstances exists: (1) the site is threatened by commercial, industrial, residential or governmental development, or (2) the site contains thereon or therein any endangered, scarce or unusual animal or plant species, or unusual geological or archeological features.~~

~~2.60 The Office of Nature Preserves shall advise the Department whether a nominated site shall be placed on the Registry of Natural Areas within one hundred and twenty (120) days after receipt of any nomination form and any other information that may be required by the Office of Nature Preserves.~~

~~2.70 After the Office of Nature Preserves determines that a site may be placed on the Registry of Natural Areas the signatures of the following persons shall be in place on the application form: 1) Chairman, Natural Areas Advisory Council, 2) Chief, Office of Nature Preserves, and 3) Secretary, Department of Natural Resources and Environmental Control.~~

~~2.80 Only sites registered in the Registry of Natural Areas shall be considered to become Nature Preserves.~~

3.00 Dedication of Nature Preserves

3.10 A Natural Area registered in the Registry of Natural Areas shall be dedicated to the State as a Nature Preserve pursuant to the provisions of 7 Del. C. Chapter 73 and the Regulations.

3.20 If a Natural Area is dedicated as a Nature Preserve by way of granting either a conservation easement or placing restrictions in a deed, the Articles of Dedication for said Nature Preserve shall include specific management practices developed pursuant to 7 Del. C. §7306(d) and the Regulations.

3.30 The Articles of Dedication for said Nature Preserve shall provide for the State's right of access onto said Nature Preserve. The State's right of access shall include, but not be limited to the right to inspect any part of a Nature Preserve to verify whether it is being preserved and maintained according to the management practices set forth in the Articles of Dedication for said Nature Preserve.

4.00 Natural Areas Management Review Committee

4.10 There is established a Natural Areas Management Review Committee for the purposes of:

(1) Developing and recommending management practices for the long term preservation of Natural Areas as Nature Preserves; and/or

(2) developing and recommending management practices for specific Nature Preserves, which shall be defined and compatible with both the restoration and protection of the primary values contained on or within a specific Nature Preserve.

4.20 The Committee shall be comprised of at least nine (9) representatives from the following state resource management agencies:

(1) The Department's Division of Parks and Recreation;

(2) The Fisheries, Wildlife and Mosquito Control Sections of the Department's Division of Fish and Wildlife;

(3) The Department of Agriculture's Division of Forestry;

(4) The Department of State's Division of Historical and Cultural Affairs;

(5) The Beach Preservation Section of the Department's Division of Soil and Water Conservation;

(6) The Wetlands Section of the Department's Division of Environmental Control;

(7) The Technical and Community Recreation Services Section of the Department's Division of Parks and Recreation; and in addition to the foregoing state agencies;

(8) Any other state agency or academic group as necessary.

4.30 The Office of Nature Preserves shall give each member of the committee written notice of the time and place of any meeting of the Committee.

4.40 The development of management practices for Nature Preserves by members of the Committee shall be based on the expertise of each representative on the Committee, and the provisions of 7 Del. C. Chapter 73 and the Regulations.

4.50 Each application to have a site declared a Nature Preserve that is received by the Office of Natural Areas shall be submitted to the Committee for review and recommendations within thirty (30) days after receipt of said application by the Office of Natural Areas.

4.60 The Natural Areas Management Review Committee shall develop and issue its recommendations for management practices to the Office of Nature Preserves within ninety (90) days after the Committee has held its first meeting to consider any Nature Preserve application.

4.70 The Committee in developing management practices that will protect the primary values that make a site worthy of Nature Preserve status shall consider each natural area on a case by case basis. The management practices recommended by the Committee shall be specific guidelines which the owner of operating agency of the Nature Preserve can follow for maintaining the site as a Nature Preserve.

4.80 The Committee and the Office of Nature Preserves shall consider the following guidelines when developing management practices for the long term preservation of a Nature Preserve.

(1) Physical alteration of any Nature Preserve should be discouraged. However, physical alteration of any Nature Preserve may be approved if the function of the Nature Preserve and its resources are maintained in a condition that is similar to the conditions that existed before any physical alteration is completed.

(2) Any physical alteration to the natural resources of any Nature Preserve that is recommended by the Committee, or provided for in the Articles of Dedication, may include, in full or in part, any of the following restrictions that further the purpose of 7 Del. C. Chapter 73, and the Regulations.

A. No construction or placing of buildings, roads, signs, billboards, or other advertising, utilities or other structures on, above or under the ground.

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B. No dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials.

C. No removal or destruction of trees, shrubs, or other vegetation except as may be necessary for the control of disease, pest or insect infestation or the like.

D. No excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to substantially or adversely affect or alter the surface or topography of the area except for archaeological investigations authorized by the Division of Historical and Cultural Affairs and legitimate mosquito control activities as authorized by 16 Del. C. Chapter 19.

E. No surface use except for compatible agriculture, forestry, or outdoor recreational purposes permitting the land or water area to remain predominantly in its natural condition as defined in the articles of dedication.

F. No activities adversely affecting drainage, flood control, water conservation, erosion control or soil conservation as defined in the articles of dedication.

G. No activities adversely affecting the fish and wildlife habitat as defined in the articles of dedication.

H. No other acts or uses adversely affecting the preservation of water or land areas or the improvements of appurtenances thereto.

(3) Where the dedication of a Natural Area as a Nature Preserve involves cultural resources the following restrictions may apply:

A. No alteration in exterior or interior features of the structure.

B. No changes in appearance or condition of the site.

C. No uses not historically appropriate.

D. No other acts or uses detrimental to appropriate preservation of the structure or site.

(4) Introductions of exotic plant and animal species will not be permitted where the presence of such species threatens the essential character of a Nature Preserve.

(5) The re-introduction of extirpated species on natural areas shall be undertaken only after careful consideration and evaluation of the environmental and socio-economic effects by experienced ecologists and resource managers.

(6) In the rare instance where the natural balance of a biological area is seriously upset by predators or pests, control measures shall be employed (compatible with the maintenance of the natural features).

(7) There shall be no collecting of plants and animals where such collecting threatens indigenous species in a Nature Preserve. Otherwise, collecting of plants, animals, fossils, minerals, or artifacts should be permitted for scientific and natural study purposes only, subject to existing regulations.

(8) Recreational activities may include but not be limited to: hiking, photography, nature study and canoeing. Hunting, fishing, and trapping are permissible when consistent with regulations designed to conserve the species while maintaining the character of the Nature Preserve.

(9) Educational uses shall be passive in nature. Observational and nature study activities should use existing trails. In nature study, going beyond provided trail is often necessary to carry out this activity. In this case off trail use will occur only when extreme care is taken with respect to the function of Nature Preserves.

(10) Non-destructive research and scientific activities shall be passive in nature and shall be compatible with the function of the Nature Preserve. Scientific uses such as baseline studies are permissible and will be considered, case by case, but will not violate the conditions regarding physical alterations which are stated herein.

(11) Where public access becomes problematic in the protection of a Nature Preserve the managers/owners thereof will institute immediate control procedures which effectively protect the Nature Preserve and allow for its rejuvenation. Options in this regard are:

A. The Nature Preserve may remain open to public use, but access may be restricted through a permitting control, e.g., a limited number of permits would be issued for a given time period, thereby holding the maximum number of entrants to a constant level.

B. The Nature Preserve may be temporarily closed to public use. The duration of closure must be sufficient to allow for rejuvenation of the area.

C. Permanently close the Nature Preserve. This option, though not feasible on public land, may be a responsible alternative to private owners.

D. Another option may be a combination of 1 and 2 above over an extended period of time.

4.90 The Office of Nature Preserves shall review and then submit the management practice recommendations of the Committee to the Natural Areas Advisory Council for review and approval at the Council's first meeting

following the Committee's promulgation of recommendations.

~~4.91 Management practices approved by the Office of Nature Preserves and the Council shall become part of the Articles of Dedication used in establishing a Natural Area as a Nature Preserve.~~

~~4.92 If a need arises to have a management practice for a specific Nature Preserve changed, the Committee and Office of Nature Preserves may recommend in writing to the Council that the Articles of Dedication for the Nature Preserve in issue be amended. Said recommendations shall state the reasons why the amendment is needed, and include the status of the Nature Preserve before such amendment, the purpose of the amendment, and the expected effect of the amendment on the Nature Preserve. The Council shall either accept, reject or modify the Committee's recommendation.~~

~~4.93 All deviations from, or violation of any management practice set out in the Articles of Dedication for any Nature Preserve shall be reported to the Office of Nature Preserves.~~

~~5.00 Restoration of Natural Areas on the Registry and Nature Preserves.~~

~~5.10 If any privately owned registered Natural Area or Nature Preserve is either damaged or destroyed, the owner thereof shall notify the Office of Nature Preserves of the cause and extent of the damage or destruction within twenty four (24) hours after the damage or destruction has been caused.~~

~~5.20 The Department may assist in the restoration of any registered Natural Area or a Nature Preserve that is damaged or destroyed by an Act of God, including but not limited to, fire, rain, wind, snow, ice, hail or lightning.~~

~~5.30 If the Department does not assist in the restoration of a damaged or destroyed registered Natural Area or Nature Preserve, or, if it is determined by the Department that restoration thereof is not feasible, the damaged or destroyed Natural Area or Nature Preserve shall be removed from the Registry of Natural Areas, or the Nature Preserve System.~~

~~6.00 Coordination of Management Services for Registered Natural Areas and Nature Preserves.~~

~~6.10 The Department shall encourage Departments of the State, and the divisions thereof, to provide extension and technical services to parties establishing and maintaining registered Natural Areas and Nature Preserves.~~

~~6.20 The Office of Nature Preserves shall be responsible for assuring that management services of the State are extended to persons involved with registered Natural Areas and Nature Preserves. This responsibility shall include making referrals to appropriate Departments of the State whenever the Office of Nature Preserves is unable to provide the services requested.~~

~~7.00 SEVERABILITY: If any section, subsection, sentence, phrase or word of these regulations shall be declared unconstitutional under the Constitution of the State of Delaware or of the United States or by a State or Federal Court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.~~

~~8.00 EFFECTIVE DATE: These Rules and Regulations are to take full force and effect at midnight, July 1, 1981.~~

~~9.00 ADOPTION: I, John E. Wilson III, Secretary of the Department of Natural Resources and Environmental Control, hereby adopt and establish for the Division of Parks and Recreation, the foregoing Rules and Regulations of the Department pursuant to Title 7, Delaware Code, Chapter 47, Sub Section 4702 (c).~~

9202 Regulations Governing Natural Areas and Nature Preserves

1.0 Purpose of the Regulations

1.1 The purpose of the Regulations contained herein is to further the implementation of Delaware's Natural Areas Preservation System set forth in 7 Del.C. Ch 73.

1.2 The Natural Areas Preservation System law and Natural Areas Program is a voluntary State land protection program which shall not usurp any land use authority at the State/County/Municipal level. The Program is intended solely for the purpose of identifying Natural Areas and promoting voluntary protection of said Areas.

2.0 General Definitions

As used in these Regulations, the following terms shall have the meanings set forth here:

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“Articles of Dedication” means the writing by which any estate, interest or right in an area is formally dedicated as a Nature Preserve as permitted by 7 Del.C. §7306. Articles of Dedication are legally recorded documents that permanently preserve the property.

“Conservation Values” means natural, geological, or archaeological features specific to each Nature Preserve which are protected and preserved through Articles of Dedication.

“Council” means the Natural Areas Advisory Council – a Governor-appointed advisory body as established by 7 Del.C. §7305 to advise the Secretary of the Department on the preservation of Natural Areas and on the administration of Nature Preserves.

“Dedication” means the transfer to the Department, for and on behalf of the State, of an estate, interest or right in an area in any manner permitted by 7 Del.C. §7306.

“Delisting” means a process whereby the landowner or the ONP can request a specific site for removal from the State Registry of Natural Areas. Using a form obtained from the ONP.

“Department” means the Department of Natural Resources and Environmental Control.

“Guidelines for Natural Area Selection” defines criteria and standards necessary in selecting a State-registered Natural Area based on vegetation community, species rarity, and geological and/or archaeological features. These Guidelines are periodically reviewed by the NAAC and ONP and are available for review from the ONP.

“Management Practices” means activities that may or may not take place within a Nature Preserve to carry out the uses and purposes for which the land is dedicated.

“Nature Preserve” means a Natural Area, any estate, interest or right in which has been formally dedicated under 7 Del.C. §7306. Dedicating Natural Areas as a Nature Preserve is a voluntary process entered into by the landowner or, in the case of public lands, by voluntary act of the agency having jurisdiction over said lands.

“Nature Preserve Management Guidelines” means a list of Management Practices considered when crafting Articles of Dedication for a Nature Preserve as permitted by 7 Del.C. §7306. The Management Guidelines are periodically reviewed by the NAAC and ONP and are available for review from the ONP.

“Natural Area” means an area of land or water, or of both land and water, whether in public or private ownership, which either retains or has re-established its natural character (although it need not be undisturbed), or has unusual flora or fauna, or had biotic, geological, scenic or archaeological features or scientific or educational value.

“Nomination” means a process whereby a person or entity can submit a nomination form provided by the ONP to request a specific site for consideration as a State-registered Natural Area.

“ONP” means the Office of Nature Preserves, located within the Department and authorized to implement the Natural Areas Preservation System law.

“Registration” means the act of accepting a site as a State-registered Natural Area by the Secretary.

“Registry” means a list identifying all State-registered Natural Areas accompanied by a map on file at the ONP.

“Secretary” means the Secretary of the Department of Natural Resources and Environmental Control.

3.0 **Natural Areas.**

- 3.1 Any site located in the State may be nominated as a Natural Area by a person or entity.
- 3.2 Request for nomination or delisting of a site as a State-registered Natural Area shall be made to the ONP on a nomination/delisting form provided by the Department. The form requires, at a minimum, the following information:
- Name, address and phone number of the property owner;
 - The location of the site;
 - A description of the site characteristics;
 - A description of the significance, or lack thereof, of the site;
 - The person or entity proposing the nomination/delisting.

- 3.3 It is the responsibility of the ONP to notify the landowner if an application for nomination or delisting of a site for the State Registry of Natural Areas is submitted to the Department. The ONP will notify the landowner as to when the Council and the Secretary of the Department will consider the nomination/delisting request so as to provide the landowner opportunity to participate in the nomination/delisting process.
- 3.4 The ONP shall consider the ecological, geological, and archeological significance of a nominated site or a site proposed for delisting according to Guidelines for Natural Area Selection developed by the Department and in consultation with a Technical Committee comprised of, but not limited to, resource professionals from the following, or their successor:
- 3.4.1 Division of Fish & Wildlife's Natural Heritage and Endangered Species Program;
- 3.4.2 Department of State's Division of Historical and Cultural Affairs;
- 3.4.3 Delaware Geological Survey.
- 3.5 The Technical Committee shall be convened by the ONP. The composition of the Committee may change as various sites are considered for registration on or removal from the State Registry of Natural Areas.
- 3.6 Within one hundred and twenty (120) days after receipt of any nomination or delisting form and any other information that may be required by the ONP, the Technical Committee will provide its analysis of the attributes of the site to the ONP. The ONP shall then advise the Council whether a nominated site is appropriate for inclusion on or delisting from the State Registry of Natural Areas.
- 3.7 The Council and the ONP shall provide their respective recommendations to the Secretary as to whether the site should be included on or delisted from the Registry.
- 3.8 After the Secretary determines that a site may be placed on or removed from the State Registry of Natural Areas, he/she will sign a Registration form or Delisting form.
- 3.9 For purposes of implementing the Natural Areas Preservation System law, the existing State Registry of Natural Areas, and the associated map approved by the Secretary of the Department dated September 26, 2006 is in full effect and considered to be the State Registry of Natural Areas at the time of adoption of these regulations.
- 3.10 Only sites on the State Registry of Natural Areas shall be considered for Nature Preserve dedication.

4.0 Nature Preserves

- 4.1 Using Nature Preserve Management Guidelines, the ONP, in cooperation with the landowner, shall determine the Management Practices for the long term preservation of a Nature Preserve, such as physical alteration, introduction of exotic plant/animal species, passive recreational activities, and public access.
- 4.2 The ONP shall submit the Management Practices identified in the Articles of Dedication for a specific Nature Preserve to the Council for review.
- 4.3 If a Natural Area is dedicated as a Nature Preserve through Articles of Dedication, approved Management Practices developed pursuant to 7 Del.C. §7306(d) shall be identified therein.
- 4.4 If a need arises to have a Management Practice for a specific Nature Preserve amended, the ONP may recommend in writing to the Council that the Articles of Dedication for that Nature Preserve be amended. Said recommendations shall state the reasons why the amendment is needed, the status of the Nature Preserve before such amendment, the purpose of the amendment, and the expected effect of the amendment on the Nature Preserve. The Council and ONP shall provide their respective recommendations to the Secretary. The Secretary will accept, reject, or modify the amendment.
- 4.5 Enforcement of the Articles of Dedication shall be the responsibility of the Department.
- 4.5.1 In the event that a violation of the Articles of Dedication comes to the attention of the Department, the Department shall give written notice to the landowner of such violation and demand corrective action sufficient to cure the violation and restore the Nature Preserve.
- 4.5.2 If the violation is not cured within thirty (30) calendar days of the receipt of written notice from the Department, or where the required corrective action can not be completed within thirty (30) calendar days and the landowner fails to commence such cure within said thirty (30) calendar day

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period and fails to continue diligently to cure the violation until finally cured, then the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of the legal agreement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages for the loss of Conservation Values, and to require the restoration of the Nature Preserve to its prior condition.

4.5.3 Such enforcement timelines are in effect from the date of the approval of these regulations. Where this provision is inconsistent with the provisions of existing Articles of Dedication signed prior to the effective date of these regulations, enforcement provisions of those Articles of Dedication shall control.

4.6 The Articles of Dedication shall be signed by the landowner and the Secretary and shall be recorded at the appropriate county Office of the Recorder of Deeds.

5.0 Severability

If any section, subsection, sentence, phrase or word of these regulations shall be declared unconstitutional under the Constitution of the State of Delaware or of the United States or otherwise invalidated by a State or Federal Court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE SECRETARY

Statutory Authority: 20 Delaware Code, Sections 3116(b)(12) and 3121
(20 Del.C., §§3116(b)(12), 3121)
2 DE Admin. Code 1206

PUBLIC NOTICE

1101 Regulations Governing Travel Restrictions During A State Of Emergency

A. Type of Regulatory Action Required

Promulgation of Rules and Regulations pursuant to 20 Del. C. Sections 3116(b)(12) and 3121

B. Synopsis of Subject Matter of the Regulation

The Secretary of Safety and Homeland Security intends to promulgate rules and regulations as they relate to travel restrictions during a State of Emergency.

The proposed regulation develops a system and structure for the activation of travel restrictions during a State of Emergency and creates an avenue for the Secretary of Safety and Homeland Security to grant waivers to persons and/or entities which have a valid significant health, safety or business necessity.

Any person may submit their views, comments, concerns and recommendations by close of business on or before November 30, 2010 to Elizabeth Olsen, Deputy Secretary, at the Department of Safety and Homeland Security, 303 Transportation Circle, P.O. Box 818, Dover, Delaware 19903. A copy of the proposed regulations is available from the above address.

1101 Regulations Governing Travel Restrictions During A State Of Emergency

It is the intent of the Department, pursuant to 20 Del.C. §3116(b)(12) and §3121, to establish rules and regulations which will ensure that any driving restriction imposed in Delaware during a declared state of emergency will be conducted in a manner and under conditions that will reduce the risk of physical harm to persons and property, and to first responders, while minimizing any limitation of movement throughout the State. It is the intent of these regulations to provide the most expeditious means to ensure the safety of the State's public roadways.

1.0 Purpose.

- 1.1 To provide specific direction to both the people and first responders in Delaware during a declared state of emergency by clearly defining the three tiers of driving restrictions;
- 1.2 To provide the people in Delaware with a adequate notice prior to a ny driving ban or restriction being issued;
- 1.3 To ensure that the State provides the best mechanisms for people to get back on the roads in the most expeditious manner possible while ensuring the safety of people on the State's public roadways;
- 1.4 To issue a driving restriction in the most efficient and least restrictive manner possible in an effort to balance the needs of maintaining the public safety and the needs of people to freely and safely travel upon Delaware roadways;
- 1.5 To ensure that the first responders are not placed in a situation of undue risk; and
- 1.6 To encourage and educate organizations, entities and individuals to develop and maintain shelter-in-place contingency plans for use during the most severe conditions.

2.0 Scope and Applicability

- 2.1 Authority. These regulations are enacted pursuant to 20 Del.C. §§ 3116(b)(12) and 3121. These regulations shall be known as "Regulations Governing Travel Restrictions during a State of Emergency".
- 2.2 Applicability. These regulations apply to persons operating a motor vehicle on public roadways during a declared state of emergency.
- 2.3 Exemptions: The following persons/entities are exempted from these regulations:
 - 2.3.1 First responders: "First responders" shall mean federal, state and local governmental and non-governmental police, fire, and emergency personnel, including, but not limited to, other skilled personnel such as emergency management, public health and public works staff as defined in the State emergency response plans promulgated pursuant to 20 Del.C. Ch. 31 and by federal regulation, who are responsible for the protection and preservation of life, property, evidence, and the environment;
 - 2.3.2 Operators of snow removal equipment employed or contracted by a public or private entity;
 - 2.3.3 Public utilities as defined in 26 Del.C. § 102(2).
 - 2.3.4 Individuals identified by providers of Voice Over IP service, as defined in 26 Del.C. § 202(i)(2) or Cellular telephone service, who are necessary to maintain the integrity of such providers' networks or assist first responders and essential personnel as specified in these regulations.
 - 2.3.5 Persons or entities identified as essential in State emergency response plans set forth pursuant to 20 Del.C. Ch. 31 of the Delaware Code. Those entities who have been pre-determined by the first responders as necessary for supporting their services and those government employees designated by federal, state, and/or local governmental agencies as essential to maintaining core governmental functions.
 - 2.3.6 Constables as defined by Title 10, Chapter 27 of the Delaware Code.

3.0 Definitions.

The following words, phrases, and terms as used in these regulations have the meanings given below:

"Essential Personnel" shall mean the following during the declaration of the driving restrictions listed below:

1. Level 3 Driving Ban: those employees and/or personnel listed under section 2.3 of these rules and regulations.
2. Level 2 Driving Restriction: those employees and/or personnel who:
 - a. are exempt under the definition of "Essential Personnel, Level 3 Driving Ban" and under section 2.3 of these regulations;
 - b. are necessary to maintain the core functions of a governmental body or entity;

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- c. are necessary to maintain the health and safety of the people of Delaware by providing healthcare services, food deliveries, and fuel deliveries, during a state of emergency, regardless of whether they are employed by a public or private entity;
- d. have received a waiver as defined in section 3.0 and under section 8.0.

“Exempt/Exemption” shall mean any person or entity which has been specifically identified in sections 2.3, 5.1.1, 7.1 and 7.2.

“Food Deliveries” shall mean the delivery of any perishable food items to prevent spoilage and for the purpose of restocking inventory in anticipation of the expiration of the travel ban. For purposes of these regulations, “food deliveries” shall not include deliveries to a retailer, taproom or tavern, as those terms are defined in 4 Del.C. § 101.

“Fuel Deliveries” shall mean any delivery of fuel to include propane, oil, natural gas, or motor fuel for the purpose of maintaining heat and fueling vehicles permitted to operate during the state of emergency.

“Healthcare service” for the purposes of this regulation shall mean the following:

1. Hospitals
2. Healthcare facilities licensed primarily as emergent or critical care facilities
3. Skilled nursing facilities
4. Private ambulance services primarily used for emergency medical transport. This shall mean any privately owned vehicle, as certified by the Delaware State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded or otherwise incapacitated or helpless; or any ambulance service which provides routine transport for persons who are sick, convalescent, incapacitated and non-ambulatory but do not ordinarily require emergency medical treatment while in transit.
5. Pharmacies
6. Facilities primarily licensed to provide dialysis services.

It shall not include any routine outpatient services related to healthcare maintenance or managed care.

“Incident” shall mean an occurrence, natural or human-caused, that may require an emergency response to protect life or property.

“Public Utilities” shall mean any public utility as defined in 26 Del.C. § 102(2).

“Response” shall mean activities that address the short term, direct effects of an incident, to include immediate actions to save lives, protect property, and meet basic human needs, as well as the execution of emergency operations plans.

“Shelter in Place” shall mean sheltering those individuals essential to maintain core functions of an organization for the duration of a Level 3 Driving Ban:

1. within the confines of the requisite facility necessary to maintain business continuity; or,
2. within a contracted shelter located within a 2 mile radius of the requisite facility necessary to maintain business continuity upon the following conditions being met:
 - a. the entity has obtained a health, safety or business necessity waiver as defined by sections 3.0 and 8.0; and,
 - b. the entity is authorized to provide transportation and assumes responsibility for providing safe and appropriate transportation of essential employees to and from the shelter and requisite facility.

“Significant health, safety or business necessity” shall mean the following:

1. Health: A “significant health necessity” means all other healthcare related services that are not expressly exempted in these regulations or by the state emergency response plans pursuant to 20 Del.C. Ch. 31. It shall also mean activities by the commercial poultry or dairy industry that are necessary to maintain their operations, including but not limited

to the delivery of feed, in order to minimize or eliminate the risk of death or injury to poultry or livestock, which could result in conditions hazardous to human health.

2. Safety: A “significant safety necessity” means activities by persons or entities which seek to minimize or to eliminate hazardous conditions where there is a real and significant impact on risk of death or injury.
3. Business Necessity: A “significant business necessity” means that a business may suffer irreparable financial or economic harm during the pendency of a driving ban or restriction. As a practical matter, because clientele/customers are restricted from driving during the pendency of a driving ban or restriction, a loss of retail sales is not sufficient, in and of itself, to constitute an irreparable financial or economic loss or harm.

“Waiver” shall mean a written release to all persons and entities meeting the criteria under section 8.10, not otherwise expressly exempted under section 2.3, 5.1.1, 7.1 and 7.2 or the state emergency response plans pursuant to 20 Del.C. Ch. 31.

4.0 General Provisions.

- 4.1 The Governor may issue separate levels of driving restrictions throughout the State based on the severity of conditions in any given area of the State.
- 4.2 As a result of conditions which could impact the State’s roadways, DEMA, to the extent possible, shall inform the public and businesses to begin initiating contingency plans. Such plans could encompass shelter-in-place provisions in response to the potential severity in road conditions in the event a State of Emergency is issued.

5.0 Level 3 Driving Ban or Level 2 Driving Restriction.

- 5.1 Unless otherwise modified by executive order issued by the Governor, in the event of a Level 3 Driving Ban or a Level 2 Driving Restriction, the following shall apply:
 - 5.1.1 Level 3 Driving Ban. No person shall operate a motor vehicle on Delaware roadways when a Level 3 Driving Ban has been activated, except for the following:
 - 5.1.1.1 Persons designated as first responders and essential personnel as specified in the Delaware Emergency Operations Plans pursuant to Title 20, Chapter 31 of the Delaware Code;
 - 5.1.1.2 Persons designated as first responders and essential personnel by executive order of the Governor;
 - 5.1.1.3 Operators of snow removal equipment employed or contracted by a public or private entity;
 - 5.1.1.4 Persons designated as essential personnel for a public utility as defined in 26 Del.C. §102(2).
 - 5.1.1.5 Individuals identified by providers of Voice Over IP service, as defined in 26 Del.C. §202(i)(2) or Cellular telephone service who are necessary to maintain the integrity of such providers’ networks or assist first responders and essential personnel as specified in these regulations.
 - 5.1.1.6 Constables as defined in Title 10, Chapter 27 of the Delaware Code.
 - 5.1.2 All businesses, professional offices, organizations, entities, individuals, etc., not otherwise exempted under subsection 5.1.1 shall take appropriate protective actions to protect themselves, their customers, their employees and the people in Delaware by:
 - 5.1.2.1 Temporarily terminating all travel for the duration of a Level 3 Driving Ban and providing shelter-in-place to their employees as defined in section 3.0; or
 - 5.1.2.2 Temporarily shutting down operations for the duration of the Level 3 Driving Ban.
 - 5.1.3 To the extent possible, a Level 3 Driving Ban shall only be issued in an area where the conditions are most severe for a limited duration, with the limited purpose of clearing the restricted area to allow for safe travel through that area.

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5.1.4 Level 2 Driving Restriction. No person shall operate a motor vehicle on Delaware roadways when a Level 2 Driving Restriction has been activated, except for the following:

5.1.4.1 Any entity or person exempted from the Level 3 Driving Ban in section 2.3, 5.1.1, 7.1 and 7.2;

5.1.4.2 Organizations, entities and/or persons that have obtained a waiver pursuant to section 8.0 of these regulations.

6.0 Level 1 Driving Warning.

6.1 All persons operating a motor vehicle when a Level 1 Driving Warning has been activated shall exercise extra caution in the operation of their motor vehicle.

6.2 Non-essential personnel, regardless of whether employed by a public or private entity, are encouraged not to operate a motor vehicle on public roadways when a Level 1 Driving Warning has been activated, unless there is a significant health, safety or business necessity reason for doing so.

7.0 Exemptions.

7.1 Pursuant to Section 3.0, essential employees with valid employee identification from the following healthcare services shall be exempt from these regulations:

7.1.1 Bayhealth Medical Center;

7.1.2 Beebe Medical Center;

7.1.3 Nanticoke Memorial Hospital, Inc.;

7.1.4 VA Medical & Regional Office Center;

7.1.5 St. Francis Hospital;

7.1.6 Alfred I. DuPont Hospital for Children;

7.1.7 Christiana Care;

7.1.8 Rockford Center;

7.1.9 Dover Behavioral Health System;

7.1.10 Delaware Hospice.

7.2 Any person, organization or entity that provides healthcare services, or provides food delivery services or fuel delivery services as defined in Section 3.0 shall apply to have the name or the person, organization or entity placed on a list exempting that person, or organization or entity from these regulations. Application shall be made to the Delaware Emergency Management Agency.

7.3 All persons, organizations and entities listed as exempt from these regulations pursuant to this subsection shall provide their essential personnel with appropriate employment identification.

7.4 All other persons or entities not otherwise included in this section shall first apply for a waiver pursuant to 20 Del.C. § 3116(b)(12) and section 8.0 of these regulations.

8.0 Waivers and Administrative Procedures:

8.1 No person or entity shall operate a motor vehicle during a Level 2 Driving Restriction unless expressly exempted from these regulations, without first obtaining a waiver from the Secretary of the Department of Safety and Homeland Security.

8.2 Any organization, entity or person subject to these regulations that violates 20 Del.C. § 3116(12) and/or these regulations shall be sanctioned pursuant to 20 Del.C. § 3125 and/or cited for a violation of 21 Del.C. § 4176(C).

8.3 All persons and entities receiving a waiver from these regulations shall abide by the conditions of their waiver issued by the Department.

8.4 Application: All applications for waivers shall be submitted to the Department of Safety and Homeland Security beginning on October 1st of each year. Applications may be completed and downloaded on the State of Delaware Emergency Management Agency website.

8.5 Approval/Denial: The Department shall act upon an application for a waiver within 15 days after receipt of the application for waiver. When a final determination has been made on an application, the Department shall issue a notification of approval or denial via email. If the Department issues a letter

of denial, the letter shall explain the reasons for such denial. The Department shall maintain a record of the notification of approval or denial for a period of 2 years.

8.6 Duration of Waiver: A waiver shall be valid for one (1) year from the date of issuance.

8.7 Renewal of Waiver: Any organization, entity or person wishing to renew an existing waiver that is ready to expire shall, not less than 60 days prior to the expiration date of the existing waiver, submit to the Department, a waiver renewal application from with all supporting documentation and appropriate fees as required by these regulations.

8.8 Modification or Termination of a Waiver:

8.8.1 Any request for a modification of the waiver must be made in writing to the Department.

8.8.2 The Department may terminate a waiver if it finds that it does not meet the standard as set forth in section 8.10

8.9 Waivers are non-transferable.

8.10 Standard. Any person who has authority to legally bind an organization or entity, or a person representing him or herself as an individual or sole proprietorship, may apply for a waiver to be exempt from these regulations when a significant health, safety or business necessity as defined in section 3.0 of these regulations is shown for issuing such a waiver.

8.11 All persons or entities that receive a waiver from these regulations shall provide in their application for a waiver to the Delaware Emergency Management Agency the number of essential personnel pursuant to these regulations. Persons and entities applying for a waiver shall also provide in their application the essential functions necessary to maintain core operations and the allocation of their essential personnel to those operations.

8.12 Persons or entities that receive a waiver under these regulations shall provide appropriate employee identification indicating that the employee is essential under a significant health, safety or business necessity.

9.0 Limitations of the Regulations.

9.1 Nothing in these regulations shall limit the power or authority of the Governor pursuant to 20 Del.C. Ch. 31.

9.2 Nothing in these regulations shall create in any person or entity additional rights against the State for a claim of damages, from civil, criminal or administrative actions resulting from the enforcement of these rules and regulations.

OFFICE OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4177D (21 Del.C., §4177D)
2 DE Admin. Code 1201 & 1204

PUBLIC NOTICE

1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees; 1204 Drinking Driver Programs Standard Operating Procedures

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Safety and Homeland Security intends to amend 2 DE Admin. Code 1201 and 1204 for the purpose of increasing the fees DU I Evaluation, Education, and Referral programs a re pe rmitted to cha rge offenders. These programs are fee-for-service and are governed by the Department of Safety and Homeland

Security, Office of Highway Safety.

These providers were last permitted to increase their fees in 2001. Proposed fee increases are below the fair market value of these services in the private sector.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 30, 2010 to Lisa Shaw, Deputy Director, Office of Highway Safety, PO Box 1321, Dover, DE 19903. A copy of this regulation is available from the above address.

1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §4177(D) and 29 **Del.C.** §10115.

2.0 Purpose

A program is hereby established which involves an evaluation and referral to appropriate courses of instruction and/or rehabilitation for an alcohol related violation/offense.

3.0 Applicability

This policy regulation concerns the following sections found in Title 21 : §4177, §4177A, §4177B, §4177C, §4177D, 4177E, §4177F, §2742, §2743, and §4175(b).

4.0 Substance Of Policy

4.1 The Delaware Evaluation & Referral Program, (DERP)

4.1.1 All persons who have been ordered to, or have volunteered to, enter a course of instruction or program of rehabilitation, shall first be evaluated by the Delaware DUI Evaluation & Referral Program. All evaluations completed by any other agencies (for out of state clients) are subject to a review and approval by DERP.

4.1.2 The minimum fee for DERP is ~~\$75.00~~ \$100.00. The minimum fee for processing an out of state evaluation and referral is ~~\$50.00~~ \$125.00. These fees shall be the responsibility of the clients.

4.2 The Education Program

4.2.1 A course of instruction shall be administered by any State of Delaware contracted education program provider. Any agency providing an instructional course must submit notice of completion to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of instruction administered by State of Delaware contracted education program providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.

4.2.2 The minimum fee for the Education program is not to exceed the maximum fine imposed for the offense as set forth in 21 **Del.C.**, §4177. These fees shall be the responsibility of the clients.

4.2.3 Persons with more than one alcohol related violation must enter treatment and cannot be referred to an educational program.

4.3 The Out Patient Treatment Program

4.3.1 The program of rehabilitation shall be administered by any State of Delaware contracted treatment provider. Any agency providing rehabilitation treatment must submit a discharge summary for each client to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of rehabilitation administered by State of Delaware contracted treatment program providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.

4.3.2 The minimum fee for this program is not to exceed the maximum fine imposed for the offense as set forth in 21 **Del.C.**, §4177. These fees shall be the responsibility of the clients.

4.3.3 The program of rehabilitation may be required for persons who have one alcohol related violation, and shall be required for persons who have two or more alcohol related violations. Further, this

rehabilitation program may be required for persons regardless of blood alcohol content or refusal to submit to the chemical test and shall be required for persons with a blood alcohol content greater than ~~1 1/2~~ times the legal limit of 0.15 or greater.

- 4.4 Alternative Treatment Programs. Programs shall be made available through existing contracted agencies to provide treatment services for those clients with alternative needs. Programs shall administer programs for those individuals under the age of 21 years, as well as for those individuals with mental health issues. In addition, if the treatment providers reach a clinical determination that the client needs further services not available at the providers' level, the client may be referred outside the network for those necessary services. (i.e. residential treatment services) Monitoring of additional treatment services and satisfactory completion/release from the program shall be made by the designated contracted agency.
- 4.5 Failure To Appear. Additional fees may be charged by the evaluation unit, the educational program, and the treatment program for those clients failing to keep scheduled appointments or classes. If clients are unable to keep scheduled appointments, they must contact the evaluation unit or treatment unit, present an acceptable excuse, and request a rescheduling of their appointment or class. The fee for failure to appear shall not exceed ~~\$25.00~~ \$35.00. All fees shall be the responsibility of the clients.
- 4.6 Non Compliance. The absence of client contact within a 30 day period is cause for non compliance. More specifically, clients who miss two subsequent appointments, or miss three appointments over the course of treatment, are subject to non compliance processing as well. The fee for a client to be reinstated in the program (within a 2 year period) shall not exceed ~~\$25.00~~ \$35.00. Any clients waiting longer than 2 years to re enter the program will be required to pay all DERP fees in full as indicated in Section 1.
- 4.7 Program Evaluation. The Secretary of Public Safety or designee retains the authority to evaluate, whenever he/she deems appropriate, the above courses of instruction, programs of rehabilitation, and alcohol evaluation agency.
- 4.8 Schedule Of Fees. The schedule of fees for the courses of instruction, programs of rehabilitation, and alcohol evaluation agency shall be established by the Secretary of the Department of Public Safety and shall be posted within the standard operating procedures manual for the programs. All changes to the schedule of fees must be approved by the Secretary of Public Safety, and such fees not exceed the maximum fine imposed for the offense as set forth in 21 Del.C., §4177.
- 4.9 Definition Of Alcohol Related Violations And Offenses. For purposes of this policy regulation, alcohol related violation/offense shall mean any violation under Title 21 of the Delaware Code, Sections 2740, 2742, 4177, 4177B, 4175 and all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

5.0 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.

6.0 Effective Date

The following regulations 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).

7.0 Dui Service Provider Fees (Effective ~~OCTOBER 1, 2004~~ January 1, 2011)

Service	Current Fee
Screening by DERP	\$75.00 <u>\$100.00</u>
Out of State Processing	\$100.00 <u>\$125.00</u>
No Show (DERP)	\$25.00 <u>\$35.00</u>
Administrative Reentry* (DERP)	\$25.00 <u>\$35.00</u>

Education Program	\$200.00 <u>\$250.00</u>
No Show (Education)	\$25.00
Outpatient Treatment	\$600.00 <u>\$750.00</u>
No Show (Treatment Group)	\$25.00
No Show (Treatment Individual)	\$25.00
Administrative Reentry (Programs)	\$25.00
Urinalysis	\$25.00 <u>\$35.00</u>
Hardcore Program	\$25.00
<u>Administrative Re Screening**</u>	<u>\$65.00</u>

*This is an administrative fee for non-compliant clients that do not require a new evaluation, but must be re-entered and referred to a program. The client will also be charged this fee at the Provider Agency for administrative costs associated with processing the client referral.

**This is an administrative fee for clients who tamper with their urine specimens to achieve diluted readings, which results in the need for further urine drug testing and further clinical evaluation.

1204 Drinking Driver Programs Standard Operating Procedures

1.0 Nature and Purpose.

Pursuant to 21 Del.C. §4177D, this is a policy of the Department of Public Safety, Office of Highway Safety. The purpose of this document is to provide a written operating procedure that shall apply to all Department of Public Safety contracted treatment, education and assessment providers. The Secretary of Public Safety or his/her designee must approve any changes to this document.

6 DE Reg. 1361 (4/1/03)

2.0 Definitions

"Administrative Discharge" The client has evidenced a need for services other than those available through the program. For example, worsening alcoholism that results in admission to detoxification or residential treatment services. This status is also assigned for clients who cannot attend the program for reasons beyond their control (i.e., permanent disability occurring after enrollment).

"Case Management" The process of coordinating and monitoring the services provided to a client both within a program and in conjunction with other providers. In the context of the Delaware DUI System, Case Management Services will only be provided by the Department of Public Safety contracted evaluation and referral provider.

"Discharge Status"

"Discharge at Risk" This category indicates that the client has completed the program's attendance requirements and paid the required fee, but has not demonstrated sufficient change to indicate responsible behavior in the community.

"Non-Compliance" The client has failed to comply with the rules and regulations associated with program entry and has also failed to comply with the conditions and expectations as outlined in the initial sessions.

"Satisfactory" This category indicates that the client has completed the program and that he/she has evidenced positive behavioral change, which indicates the capacity for responsible future behavior.

"Enrollment" The point at which the intake process has been completed, the client has paid the full Education Program fee or half of the Outpatient Program fee, and the program begins to provide clinical service.

"In-State Clients" The Delaware Evaluation and Referral Program will be responsible for coordinating services to address the client's DUI incident, for monitoring compliance with Delaware law regarding DUI, and updating client information and disposition status in the online tracking system. For those

clients discharged at-risk, DERP is responsible for coordinating a referral for continuing treatment. DERP will also monitor the client's status for compliance with discharge requirements and update their disposition in the online tracking system.

"No Show" Defined as when a client fails to show for a scheduled appointment; is late for a scheduled appointment; calls to cancel a scheduled appointment without adequate notice; arrives for an appointment without the needed documentation; or arrives for an appointment under the influence of alcohol as evidenced by a positive breathalyzer.

"Out-of-State Clients" DERP is responsible for referring out-of-state clients to an approved provider in their area. DERP will continue to monitor the client's progress and status through communications with the out-of-state agency. Once the offender has completed the program in their area, DERP will review the evaluation results for compliance with the Delaware DUI program requirements. DERP will also be responsible to update the online tracking system with regard to the client's disposition status.

6 DE Reg. 1361 (4/1/03)

3.0 Applicability

These standard operating procedures apply to all Department of Public Safety contracted DUI treatment, education, and assessment providers, as well as to all clients referred to this program whether they reside in or out of the State of Delaware.

6 DE Reg. 1361 (4/1/03)

4.0 Client Flow

4.1 Referral to the Delaware Evaluation and Referral Program (DERP). The court is the organization that generally makes the referral to DERP by providing them with the client's name and referral information. DERP will then process this information according to the following procedures:

4.1.1 For a DUI client residing in Delaware or seeking treatment services through a Delaware contracted provider:

4.1.1.1 Sources of Referral

- 4.1.1.1.1 Court System
- 4.1.1.1.2 Probation and Parole
- 4.1.1.1.3 Client Self-Referral
- 4.1.1.1.4 Out-of-State DMV
- 4.1.1.1.5 Delaware DMV

4.1.1.2 Intake and Referral Process (at DERP)

- 4.1.1.2.1 DERP will enter client information into the online tracking system upon receipt.
- 4.1.1.2.2 The client has ~~72 hours~~ 10 days from the court appearance time and date to contact DERP and schedule an interview. DERP will send an introduction letter (Attachment A) to the client, typically within 24 hours of receipt of the referral.
- 4.1.1.2.3 DERP will contact each client by telephone on the evening prior to his or her scheduled appointment.*

*Please note: Should the client fail to contact DERP and schedule the appointment with ~~72 hours~~ 10 days of their court appearance, the staff at DERP may issue a non-compliance discharge (Attachment C). Referral agency will be notified, the tracking system will be updated, and the process now stops.

Should the client fail to keep an appointment or arrive at the appointment without the fee or required paperwork, the staff at DERP will apply a no-show fee of ~~\$25.00~~ \$35.00 to the client's account, and the scheduling process will begin again.

Should the client fail to reschedule within 24 hours of the missed appointment, the staff at DERP may issue a non-compliance discharge. Referral agency will be notified, the tracking system will be updated, and the process now stops until the client takes the necessary steps to re-entry (Attachment D).

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- 4.1.1.2.4 DERP will conduct a screening of the client and make a recommendation for program level of treatment, provide a supervisory clinical review (CADC), and make a referral (Attachment B) to a Delaware contracted DUI provider agency, as selected by the client.
- 4.1.1.2.5 A DERP screening is valid for ~~two years~~ one year. Education referrals, however, must be re-screened after each non-compliance discharge.
- 4.1.1.2.6 The Delaware contracted DUI provider agency selected should be county-appropriate, or by client request, and the referral shall be made within five business days of the client's assessment appointment.
- 4.1.1.3 Reasons for and Process of a DERP Non-Compliance
 - 4.1.1.3.1 Client fails to contact DERP within ~~72 hours~~ 10 days of court appearance.
 - 4.1.1.3.2 Client fails to show for a scheduled appointment and does not contact DERP to reschedule within 24 hours of the missed appointment.
 - 4.1.1.3.3 Client fails to keep two scheduled appointments per referral episode.
- 4.1.1.4 Completion Process (In-State Clients at DERP)
 - 4.1.1.4.1 ~~Update the tracking system with a notification date to the court (in-state or out-of-state court) of completion.~~
 - 4.1.1.4.2 ~~Advise Delaware, or other state's DMV, of completion.~~
 - 4.1.1.4.3 ~~Notify referring organization of discharge status.~~
 - 4.1.1.4.4 Close case and maintain file.
- 4.1.1.5 Fees (In-State Clients)
 - 4.1.1.5.1 Screening - ~~\$75.00~~ \$100.00
 - 4.1.1.5.2 No-Show - ~~\$25.00~~ \$35.00 per missed appointment
 - 4.1.1.5.3 Administrative Re-Entry Processing - ~~\$25.00~~ \$35.00
- 4.1.2 For a DUI client not residing in Delaware:
 - 4.1.2.1 Sources of Referral
 - 4.1.2.1.1 Court System
 - 4.1.2.1.2 Probation and Parole
 - 4.1.2.1.3 Client Self-Referral
 - 4.1.2.1.4 Out-of-State DMV
 - 4.1.2.1.5 Delaware DMV
 - 4.1.2.2 Intake and Referral Process (at DERP)
 - 4.1.2.2.1 Enter the client information into the online tracking system upon receipt.
 - 4.1.2.2.2 Send to and receive back from the client a complete release of information (Attachment E) and a letter regarding the process to reach completion (Attachment F).
 - 4.1.2.2.3 If necessary, direct the client to a facility in their area for an evaluation.
 - 4.1.2.2.4 If required paperwork is incomplete, or not received within 15 days of the date DERP sent the letter, DERP may issue a non-compliance discharge and close the case. The Administrative Processing Fee would then be applicable for the client to re-enter the system.
 - 4.1.2.2.5 Refer the client to a facility in their area for the appropriate program as determined by the evaluation.
 - 4.1.2.2.6 Maintain contact with the client until all client information is received.
 - 4.1.2.3 Completion Process (Out-of-State Clients at DERP)
 - 4.1.2.3.1 Update the tracking system with a notification date to the court (in-state or out-of-state court) of completion.
 - 4.1.2.3.2 Advise Delaware, or other state's DMV, of completion.
 - 4.1.2.3.3 Notify referring organization of discharge status.

- 4.1.2.3.4 Close case and maintain file.
- 4.1.2.4 Fees (Out-of-State Clients)
 - 4.1.2.4.1 Out of State Client Processing - ~~\$100.00~~ \$125.00
 - 4.1.2.4.2 Administrative Re-Entry Processing - ~~\$25.00~~ \$35.00
- 4.2 Referral from DERP is made to a Delaware Department of Public Safety DUI contracted provider.
 - 4.2.1 Intake and Referral Process (at Provider Agency)
 - 4.2.1.1 Check the DUI tracking system and extract new referrals daily.
 - 4.2.1.2 Print the new referral information and establish a client chart.
 - 4.2.1.3 Mail an appropriate introduction letter (Attachment G) to the client and update the online system indicating that the initial notification has been made.
 - 4.2.1.4 Enter data into the provider's internal client tracking system.
 - 4.2.1.5 Conduct client Orientation Meeting and schedule clients' events, client completes clinical intake and begins the program.*
 - *Please note. Should the client fail to attend an Orientation within 30 days of referral, the staff at the Provider Agency shall send a 30-day letter, issue a non-compliance discharge (Attachment H), and update the tracking system. The client seeking re-entry will be responsible for any no-show fees and the administrative processing fee.
 - 4.2.2 Program Completion and Client Disposition (at Provider Agency)
 - 4.2.2.1 Assign discharge status to client's event (s).
 - 4.2.2.2 Update the online system. For clients other than satisfactory discharge, any notes that explain the status will be helpful to DMV and the court system.
- 4.3 Re-Licensing
 - 4.3.1 Ignition Interlock Device Program
 - 4.3.1.1 First Offense Election. The IID Diversion Program is offered to DUI first offenders who qualify for the regular first offense election. This election must be made in court at the time of their plea. Eligibility requirements include enrollment in an appropriate education or treatment program and license revocation of at least one month.
 - 4.3.1.2 Refused Chemical Test. Offenders with a revoked license for refusal to submit to a chemical test may voluntarily participate in the IID program. Eligibility requirements include enrollment in an appropriate education or treatment program, license revocation for an additional two month period above and beyond their initial revocation, and their revoked license must be in the Division for a minimum period of two months (for a 12 month revocation), six months (for an 18 month revocation), or twelve months (for a 24 month revocation).
 - 4.3.1.3 Subsequent Conviction or Probable Cause Administrative Action. Offenders revoked for a subsequent DUI offense in either of these categories may voluntarily participate in the IID program. Eligibility requirements include enrollment in an appropriate treatment program, license revocation for an additional two month period above and beyond their initial revocation, and the revoked license must be in the Division for a minimum period of two months (for a 12 month revocation) or six months (for an 18 month revocation).
 - 4.3.1.4 License Validity. The IID license is valid for Class D driving privileges provided the offender is driving a vehicle equipped with an approved Ignition Interlock Device and has the IID license in their possession.
 - 4.3.2 Conditional Licensing
 - 4.3.2.1 The conditional license is only authorized for offenders with a first DUI violation who elect the First Offender Election option in court upon meeting the specific criteria.
 - 4.3.2.2 The offender must satisfactorily complete a minimum of sixteen (16) hours of alcohol education or treatment as determined by the Delaware Evaluation and Referral Program.
 - 4.3.2.3 There is a minimum 90-day hard revocation before a conditional license may be issued.
 - 4.3.2.4 The fee for a conditional license is \$10.00.

4.3.3 Reinstatement for First Offense Election

- 4.3.3.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.
- 4.3.3.2 There is a minimum six-month hard revocation before reinstatement can be made.
- 4.3.3.3 The offender must complete a favorable character background review with the Division.
- 4.3.3.4 The fee for reinstatement is \$143.75.

4.3.4 Reinstatement for DUI Conviction (without administrative action)

- 4.3.4.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.
- 4.3.4.2 There is a minimum six-month hard revocation before reinstatement can be made.
- 4.3.4.3 The offender must complete a favorable character background review with the Division.
- 4.3.4.4 The fee for reinstatement is \$143.75.
- 4.3.4.5 The offender must pass the vision, law, and road test administered by the Division, as well as pay the \$12.50 license fee. (in-state offenders only)

4.3.5 Reinstatement for Probable Cause or Refused Chemical Test (alone or with a DUI conviction)

- 4.3.5.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.
- 4.3.5.2 The offender must serve the revocation period in full.
- 4.3.5.3 The offender must complete a favorable character background review with the Division.
- 4.3.5.4 The fee for reinstatement is \$143.75.
- 4.3.5.5 The offender must pass the vision, law, and road test administered by the Division, as well as pay the \$12.50 license fee. (in-state offenders only)

6 DE Reg. 1361 (4/1/03)

5.0 Provider Programs

5.1 DUI Education Program

5.1.1 Overview

- 5.1.1.1 The DUI Education Program consists of 16 hours of drug and alcohol education.
- 5.1.1.2 This program is designed for the first time offender who is of legal age to consume alcohol in the State of Delaware and who presents for an assessment following a DUI incident without evidence of an abuse problem, and typically with a BAC of less than 0.15.
- 5.1.1.3 The client referred to the program will receive 16 hours of education services through eight 2-hour classes. The class enrollment may be open or closed as long as the client does not have to wait more than 30 days to get started. The frequency of the meetings may vary by program.
- 5.1.1.4 Typically, the client will be referred to a program in the client's county of residence, but may request a referral to any of the three counties in Delaware.
- 5.1.1.5 During the course of the 16-hour program, a urine-drug screen (UDS) will be administered to every client. A positive UDS is grounds for immediate discharge at-risk from the Education program. (Other criteria that can result in a discharge at-risk can be found on Page 14.)
- 5.1.1.6 Clients discharged at-risk from the Education program will be referred to a higher level of care, as determined by the client's counselor. This can include a referral to a DUI Outpatient treatment program, an intensive outpatient program at another agency, or an inpatient program at another agency.

5.1.2 Associated Fees

- 5.1.2.1 Education Program - ~~\$200.00~~ \$250.00
- 5.1.2.2 No Show - ~~\$25.00~~ \$35.00 per missed appointment
- 5.1.2.3 Urinalysis - ~~\$25.00~~ \$35.00

5.1.2.4 Administrative Re-Entry - ~~\$25.00~~ \$35.00

5.1.3 Discharge Criteria (Attachment I)

5.1.3.1 Satisfactory. The client must attend all scheduled classes, pay the fee, and get a passing grade (80% or greater) on a standardized content test; the client must also complete the requirements of the program within 90 days of the referral. Participation must be evident and the client must present an acceptable DUI A avoidance Plan. (Attachment J) Attendance at an addiction-focused community support group is also required.

5.1.3.2 Non-Compliance. The client will be considered non-compliant and a non-compliance discharge status will be assigned if the client meets any of the following criteria:

5.1.3.2.1 The client fails to begin the program within 30 days of referral.

5.1.3.2.2 The client fails to pay the required fee according to the program, or individually designed payment plan.

5.1.3.2.3 The client contact is lost for more than 30 days.

5.1.3.2.4 The client has failed to complete the program within 90 days of the referral.

5.1.3.2.5 A non-compliance discharge will also be assigned to clients who are disruptive to the process.

5.1.3.2.6 Clients who fail to show for two consecutive scheduled appointments, or fail to show for three scheduled appointments during the entire course of treatment, will also be non-compliant. (Attachment K)

5.1.3.3 At-Risk. A client who has failed to accomplish the goals and objectives of the Education Program will be released under an At-Risk status. (Attachment K) Specific reasons for this status include:

5.1.3.3.1 Failure of a client to remain abstinent while in the program.

5.1.3.3.2 Lack of participation in the group setting.

5.1.3.3.3 Lack of, or an unacceptable DUI Avoidance Plan.

5.1.3.3.4 Failure to achieve a passing grade on the content test.

5.1.3.3.5 Being arrested for an alcohol-related incident while in the program.

5.1.3.3.6 The presence of clinical issues that indicate the necessity of further treatment in accordance with the DSM IV diagnostic criteria.

5.1.3.4 Administrative Discharge. ~~This discharge status is reserved for clients who cannot attend the program for medical reasons, have passed away, or cannot attend for a sound reason. This status may also be used to discharge a client to the services of another. This discharge status is reserved for clients who cannot attend the program for medical reasons or cannot attend for a sound reason (such as overseas military deployment). This status may also be used to discharge a client to the services of another provider.~~

5.2 The DUI Out-Patient Treatment Program

5.2.1 Overview

5.2.1.1 This program consists of the base program and two sub-programs, all of which require a minimum of sixteen hours of drug and alcohol treatment.

5.2.1.1.1 The "21 and Under Treatment Program" provides services specifically geared to the issues most common to a population of this age.

5.2.1.1.2 The "Alternative/Mental Health Treatment Program" provides services specifically geared to the issues most common to this population.

5.2.1.2 This program is designed for the repeat offender and the first offender who presents for an assessment following a DUI incident with evidence of an abuse problem and typically with a BAC of greater than 0.15.

5.2.1.3 The client referred to the program will receive a minimum of 16 hours of treatment services. The services are provided through a variety of methods and will differ by contracted service provider. The class enrollment may be open or closed as long as the

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client does not have to wait more than thirty (30) days to get started. The frequency of the meetings may vary by program.

- 5.2.1.4 Typically, the client will be referred to a program in the client's county of residence, but may request a referral to any of the three counties in Delaware.

5.2.2 Acceptance of Prior Treatment

- 5.2.2.1 Clients having received prior treatment services will be required to attend the DUI Provider's DUI program orientation. Having completed any form of intensive substance abuse treatment indicates, in and of itself, a level of need that would typically warrant extended care and monitoring.

- 5.2.2.2 These clients will be required to submit for a detailed assessment and should bring all paperwork relating to any prior substance abuse treatment. A urine drug screen will be required at the time of assessment. Any treatment received within the last 60 days will be reviewed and a clinical decision made to determine the extent to which the treatment satisfies DUI Outpatient Treatment Program's requirements. Any treatment older than 60 days will not be considered.

- 5.2.2.3 If the clinical determination is that the substance abuse treatment was adequate, but the "drinking and driving" component of the program was missing, the client will be referred to a DUI Education Program to ensure that this component is received. If the treatment completed was an inpatient program, after-care services will be required prior to discharge from the DUI program.

5.2.3 Fees

- 5.2.3.1 Program - ~~\$600.00~~ \$750.00

- 5.2.3.2 No Show (group session) - ~~\$25.00~~ \$35.00

- 5.2.3.3 No Show (individual session) - ~~\$25.00~~ \$35.00

- 5.2.3.4 Urinalysis - ~~\$25.00~~ \$35.00

- 5.2.3.5 Administrative Re-entry (related to dilute UDS) - ~~\$25.00~~ \$65.00

5.2.4 Discharge Criteria (Attachment I)

- 5.2.4.1 Satisfactory. The client must attend all scheduled classes, pay the fee, and get a passing grade (80% or greater) on a standardized content test; and must complete the requirements of the program within 120 days of the referral. Participation must be evident, client demonstrated a change in behavior, and the client must present an acceptable DUI Avoidance Plan. Attendance at a minimum of 6 addiction-focused community support group meetings is also required.

- 5.2.4.2 Non-Compliance. The client will be considered non-compliant and a non-compliance discharge status will be assigned if the client meets any of the following criteria:

- 5.2.4.2.1 The client fails to begin the program within 30 days of referral.

- 5.2.4.2.2 The client fails to pay the required fee according to the program, or individually designed payment plan.

- 5.2.4.2.3 The client contact is lost for more than 30 days.

- 5.2.4.2.4 The client has failed to complete the program within 120 days of the referral.

- 5.2.4.2.5 A non-compliance discharge will also be assigned to clients who are disruptive to the process.

- 5.2.4.2.6 Clients who fail to show for two consecutive scheduled appointments, or fail to show for three scheduled appointments during the entire course of treatment, will also be non-complied.

- 5.2.4.3 At-Risk A client who has failed to accomplish the goals and objectives of the Treatment Program will be released under an At-Risk status (Attachment L). Specific reasons for this status include:

- 5.2.4.3.1 Failure of a client to remain abstinent while in the program.

- 5.2.4.3.2 Lack of participation in the group setting.

- 5.2.4.3.3 Failure to complete the treatment plan
- 5.2.4.3.4 Lack of, or an unacceptable DUI Avoidance Plan.
- 5.2.4.3.5 Failure to achieve a passing grade on the content test.
- 5.2.4.3.6 Being arrested for an alcohol-related incident while in the program.
- 5.2.4.3.7 The presence of clinical issues that indicate the necessity of further treatment in accordance with the DSM IV diagnostic criteria.

5.2.4.4 Administrative Discharge. This discharge status is reserved for those clients who cannot attend the program for medical reasons, have passed away, or cannot attend for a sound reason. This status may also be used to discharge a client to the service of another.

5.3 ~~Other Programs. There are other, more intensive services available for use at the discretion of the Program Managers. These include services such as residential treatment and medical detoxification. In addition, a Hardcore Program for drinking drivers is currently in the development stages. This program will target offenders with a history of DUI incidents, and offer appropriate treatment services.~~ Resolution of At-Risk Discharge. To resolve an at-risk discharge, the client must enroll in a more in-depth treatment program, and subsequently complete the program satisfactorily.

5.3.1 The client may choose to continue receiving services with the current agency, or may choose to receive the required services at a new agency (a list of accepted agencies will be provided at the time of discharge).

5.3.2 If a new agency is chosen, that agency must be licensed by the Division of Substance Abuse and Mental Health (DSAMH).

5.3.3 The client must contact the discharging agency prior to the start of the new treatment program and sign a release of information form with both agencies.

5.3.4 The client must remain drug and alcohol free for a minimum of 12 weeks prior to successful discharge.

5.3.5 The client must return to the discharging agency within 60 days of completing the new treatment services and bring the discharge summary (including prognosis), a description of services received, and the DUI at-risk discharge completion form (Attachment L). A certificate of completion is not acceptable documentation.

~~5.4 Other Programs. There are other, more intensive services available for use at the discretion of the Program Managers. These include services such as residential treatment and medical detoxification. In addition, a Hardcore Program for drinking drivers is currently in the development stages. This program will target offenders with a history of DUI incidents, and offer appropriate treatment services.~~

6 DE Reg. 1361 (4/1/03)

6.0 Appeals Process

6.1 Overview. An individual who has been discharged from a DUI Education/Treatment Program, and has unsuccessfully appealed that discharge in accordance with the duly established appeals procedures of the education/treatment agency, may appeal the discharge to the Division of Alcoholism, Drug Abuse and Mental Health (~~DADAMH~~) Substance Abuse and Mental Health (DSAMH).

6.2 Client Responsibilities. Within 10 days from the effective date on the official notice of the internal appeals decision of the education/treatment agency, the client must submit an appeal to ~~DADAMH~~ DSAMH, which includes all of the following documents:

6.2.1 Notice of Appeal of Discharge to ~~DADAMH~~ DSAMH form (Attachment M). This form should be obtained from the education/treatment agency. The client must use the form to clearly state the reason(s) for the appeal. The client must clearly cite the specific items in the discharge letter from the treatment/education agency that he/she is challenging. The client must also present objective, measurable facts that support his/her challenge to the education/treatment agency's decision.

6.2.2 Discharge letter from education/treatment agency that clearly indicates the specific reasons for discharge.

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- 6.2.3 Official notice of the internal appeals decision from the education/treatment agency verifying that the client has completed the agency's internal appeal process, and that the decision to discharge has been upheld.
- 6.2.4 A fully completed and signed "Consent for Release of Confidential Information" that complies with 42 CFR requirements allowing the education/treatment agency to provide information to the ~~DADAMH~~ DSAMH DUI Appeals Team. A copy of this form must also be given to the education/treatment agency. (This form should be obtained from the education/treatment agency.)
- 6.3 Education/Treatment Agency Responsibilities. The education/treatment agency that has discharged the client must:
- 6.3.1 Provide the client with a letter, which details the specific objective, measurable reasons why he/she has been discharged from the program. These reasons must be based upon the Criteria for Discharge that have been approved by the Office of Highway Safety (OHS) for the DUI Education/Treatment Program.
- 6.3.2 Offer the client the opportunity to appeal the discharge to the education/treatment agency following the appeals process approved by OHS and give the client an official notice of the internal appeals decision verifying that the discharge was upheld.
- 6.3.3 Explain the process to appeal further to ~~DADAMH~~ DSAMH and provide the client with the Appeal of Discharge to ~~DADAMH~~ DSAMH form.
- 6.3.4 Provide the client with the appropriate "Consent for Release of Confidential Information" form and assist the client to complete the form correctly and completely. Keep one signed original and give the client one signed copy.
- 6.3.5 Upon notification from the ~~DADAMH~~ DSAMH Appeals Team that an appeal has been received, provide the ~~DADAMH~~ DSAMH Appeals Team, within 10 working days, the specific, objective, measurable documentation to support the reasons for discharge in the letter given to the client.
- 6.4 ~~DADAMH~~ Appeals Team Responsibilities
- 6.4.1 Log in and date stamp the appeal packages received from clients
- 6.4.1.1 Appeal packages received in the ~~DADAMH~~ DSAMH Appeals Team office, or postmarked no later than ten (10) days from the effective date of the official notice of the internal appeals decision from the education/treatment program, will be scheduled to be reviewed by the ~~DADAMH~~ DSAMH Appeals Team.
- 6.4.1.2 Appeals not received in the ~~DADAMH~~ DSAMH Appeals Team office, or postmarked later than ten (10) days from the effective date of the official notice of the internal appeals decision from the education/treatment program, will be logged in and returned to the appellant without further action.
- 6.4.1.3 Appeal packages that are incomplete (i.e., do not contain all four of the items outlined in Chapter VI, Section B – Client Responsibilities above, completed inaccurately, or without appropriate signatures as required) will be logged in and returned to the appellant. If a corrected appeals package is not returned before the original ten (10) day period expires, the appeal will not be reviewed by the ~~DADAMH~~ DSAMH Appeals Team.
- 6.4.2 The ~~DADAMH~~ DSAMH Appeals Team will contact the education/treatment agency to request specific, objective, measurable documentation to support the reasons for discharge in the letter given to the client. If the documentation is not received by the ~~DADAMH~~ DSAMH Appeals Team within 10 working days from the contact date, the Team's decision will be based solely upon the documentation provided by the appellant.
- 6.4.3 The ~~DADAMH~~ DSAMH Appeals Team will meet at least monthly to review appropriately submitted appeals. All appropriately submitted appeals received by the ~~DADAMH~~ DSAMH Appeals Team three days prior to a scheduled review will be considered at the review. Appeals received after three working days before a scheduled review will be considered at the next scheduled review.
- 6.4.4 The ~~DADAMH~~ DSAMH Appeals Team will carefully consider all the required documentation provided by the client and the education/treatment provider. Decisions will be based solely on the documentation provided in writing. No in-person hearings will be conducted. No in-person

appearances by education/treatment providers will be allowed. THE TEAM WILL RENDER A DECISION REGARDING WHETHER OR NOT THE EDUCATION/TREATMENT AGENCY FOLLOWED THE CRITERIA APPROVED BY DPS/OHS FOR DISCHARGE OF CLIENTS FROM THE DUI EDUCATION/TREATMENT PROGRAM.

- 6.4.5 Within 10 days of the review, the ~~DADAMH~~ DSAMH Appeals Team will notify the client, OHS, and the education/treatment agency of the Team's decision and rationale behind the decision. **All decisions are final**, and no subsequent review will be held by DADAMH on the same appeal.
- 6.4.6 Within 10 days of the review, the ~~DADAMH~~ DSAMH Appeals Team will enter the decision into the DUI Tracking System.

6 DE Reg. 1361 (4/1/03)

7.0 Fee Schedules

Service	Current Fee
Screening by DERP	\$75.00 <u>\$100.00</u>
Out of State Processing	\$100.00 <u>\$125.00</u>
No Show (DERP)	\$25.00 <u>\$35.00</u>
Administrative Re-entry (DERP)*	\$25.00 <u>\$35.00</u>
Education Program	\$200.00 <u>\$250.00</u>
No Show (Education)	\$25.00 <u>\$35.00</u>
Outpatient Treatment	\$600.00 <u>\$750.00</u>
No Show (Treatment-Group)	\$25.00 <u>\$35.00</u>
No Show (Treatment-Individual)	\$25.00 <u>\$35.00</u>
Administrative Re-Entry (Programs)*	\$25.00 <u>\$35.00</u>
Urinalysis	\$25.00 <u>\$35.00</u>
<u>Administrative Re-screening**</u>	<u>\$35.00</u>
Hardcore Program – in development	

*This is an administrative fee is for non-complied clients that do not require a new evaluation, but must be re-entered and referred to a program. The client will also be charged this fee at the Provider Agency for administrative costs associated with processing the client referral.

**This is an administrative fee related to dilute urinalysis results. Clinicians are required to complete an in-depth case review and determine the best process forward for the individual client.

6 DE Reg. 1361 (4/1/03)

8.0 Reports

8.1 Each agency is responsible for maintaining current information in the tracking system on client activity. The information must be sufficient to permit the following reports to be generated:

- 8.1.1 The number of clients referred to any provider agency by DERP. The program the client was referred to within the provider agency must also be shown. The client referral date to the program represents the reference datum. All time related information reported must be relative to this date.
- 8.1.2 The number of calendar days from referral date to the provider agency and 1st contact with client by the provider.
- 8.1.3 The number of calendar days from referral date to the provider agency and client enrollment.

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- 8.1.4 ~~The number of clients that have been referred in the target month but have not started the program in that same month.~~
- 8.1.5 ~~The number of calendar days from referral date to the client completing the program.~~
- 8.1.6 ~~The number of clients referred during a target month by the discharge status assigned.~~
- 8.1.7 ~~It is also necessary for the agencies to report the distribution of the population by age, BAC, sex and number of DUI events.~~

~~6 DE Reg. 1361 (4/1/03)~~

8.0 Reporting

Each agency is responsible for maintaining client activity information in the online DUI tracking system. The information must be complete, accurate, and timely. The Office of Highway Safety will use the system to generate any necessary reports.

9.0 Attachments*

- 9.1 Client Introductory Letter from DERP
- 9.2 In-State Client Letter from DERP
- 9.3 Client Non-Compliance Letter from DERP
- 9.4 DERP Re-entry Letters
- 9.5 Standard Release of Information
- 9.6 Out-of-State Client Information Letters
- 9.7 Client Introductory Letter from Program
- 9.8 Client Non-Compliance Letter from Program
- 9.9 Discharge Criteria – Supporting Information
- 9.10 Sample DUI Avoidance Plan
- 9.11 ~~No Show Non-Compliance Letter~~ At-risk Letter from Program
- 9.12 ~~At-Risk Letter from Program~~ At-risk Discharge Clearance Document
- 9.13 ~~DADAMH DSAMH~~ Appeals Process and Letter

*Attachment documents can be viewed at The Office of Highway Safety and are not attached to this regulation.

~~6 DE Reg. 1361 (4/1/03)~~

OFFICE OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4185(b), and 29 Delaware Code, Chapter 101
(21 Del.C. §4185(b) & 29 Del.C., Ch. 101)

PUBLIC NOTICE

1206 Approved Motorcycle Helmets and Eye Protection

The Delaware Department of Safety and Homeland Security proposes to amend Regulation 1207 of the Office of Highway Safety's regulations to more clearly specify what motorcycle helmets and eye protection are approved for use in Delaware by the Secretary of the Department. Written comments concerning this proposed amendment should be submitted to Jana Simpler, Director, Office of Highway Safety, P. O. Box 1321, Dover, DE. 19903 on or before December 1, 2010, for consideration before a final regulation is adopted.

Regulation ~~30~~ 1206 Approved Motorcycle Helmets and Eye Protection

1.0 Types of Approved Helmets.

1.1 Pursuant to **21 Del.C., §4185**, the types of helmets approved by the Secretary of the Department of ~~Public Safety and Homeland Security~~ are ones that:

1.1.1 Helmets which meet or exceed the Federal Motor Vehicle Safety Standard (FMVSS) 218 (D.O.T.) Standard located at 49 Code of Federal Regulations Section 571.218; and meet the Federal Motor Vehicle Safety Standard 218, labeling requirements.

~~Helmets which meet or exceed the A.N.S.I. Z90.1A 1973 Standard has amended.~~

~~Helmets used in the State should be labeled so that enforcement officers can identify approved helmets. This label, indicating the helmet, manufacturer's name or brand name (where brand name is different from the manufacturer's name) and the model name or number, should be placed at the outside or inside lower rear of each helmet in letters of not less than one quarter inch in height.~~

~~All helmets are to be either reflectorized by the manufacturer, or reflectorized by material purchased by owner and applied to the helmet. It must be applied so it is legible from all angles and the helmet when being worn. It must be securely affixed to left side, right side and rear of helmet, and should cover an area of at least four square inches in each of the specified areas.~~

1.2.1 Each helmet shall be labeled permanently and legibly, in a manner such that the label(s) can be read easily without removing padding or any other permanent part, with the following:

1.2.1.1 Manufacturer's name or identification.

1.2.1.2 Precise model designation.

1.2.1.3 Size.

1.2.1.4 Month and year of manufacture. This may be spelled out (e.g., June 1988), or expressed in numerals (e.g. 6/99).

1.2.1.5 The symbol DOT, constituting the manufacturer's certification that the helmet conforms to the applicable Federal Motor Vehicle Safety Standard. This symbol shall appear on the outer surface, in a color that contrasts with the background, in letters at least three-eighths inch (one centimeter) high.

1.2.2 Each helmet shall include the following information for the purchaser:

1.2.2.1 "Shell and liner constructed of (identify type(s) of materials)."

1.2.2.2 "Helmet can be seriously damaged by some common substances without damage being visible to the user. Apply only the following: (Recommended cleaning agents, paints, adhesives, etc., as appropriate.)"

1.2.2.3 "Make no modifications to the helmet. Fasten helmet securely. If helmet experiences a severe blow, return it to the manufacturer for inspection, or destroy it and replace it."

1.2.2.4 "Any additional relevant safety information should be included at the time of purchase by means of an attached tag, brochure, or other suitable means."

1.2.2.5 "If a motorcycle helmet meeting the above federal requirements is equipped with an electronic device for transmitting sound, the speaker portion affixed to the helmet, must not enter or completely block the ear canals."

2.0 Approved Types of Eye Protection

2.1 Pursuant to **21 Del.C., §4 185**, the types of eye protection approved by the Secretary of the Department of ~~Public Safety and Homeland Security~~ are as follows:

2.1.1 Any type of goggles equipped with non-breakable lenses;

2.1.2 A face shield; or

2.1.3 Safety glasses excluding contact lenses. ~~Do NOT approve contact lens or any type of eye glasses unless the eye glasses are equipped with unbreakable lens. Windshields are highly recommended as an additional measure.~~

3.0 Reaffirming original eye protection requirement.

This Regulation reaffirms the original approval for eye protection, as issued by the Motor Vehicle Division on July 11, 1968, and updates the types of helmets which were also approved at that time.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 Del.C. §4416(b)(1))
24 DE Admin. Code 4400

PUBLIC NOTICE

4400 Delaware Manufactured Home Installation Board

Pursuant to 24 Del.C. §4416(b)(1), the Manufactured Home Installation Board has proposed revisions to its rules and regulations.

A public hearing will be held on November 22, 2010 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Manufactured Home Installation Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed revisions to Rule 9.0. The Board's licensing law, Chapter 44 of Title 24 of the Delaware Code, provides that all manufactured home installations must be performed in compliance with the requirements of the United States Department of Housing and Urban Development ("HUD"). See 24 Del.C. §4421(b). The revisions to Rule 9.0 expressly incorporate HUD's installation requirements. In particular, the rules reference specific sections of the Code of Federal Regulations. These amendments will make explicit what is already included in the Board's licensing law and will, therefore, provide greater clarity and greater protection for the public.

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

4400 Delaware Manufactured Home Installation Board

(Break in Continuity of Sections)

9.0 Manufactured Home Installation Requirements

- 9.1 ~~Manufactured homes shall be installed in accord with Section 4421(b).~~
- 9.2 ~~Footers. Manufactured homes installed in this State shall be installed on piles or concrete footers. Concrete footers shall consist of a minimum of 3000 psi concrete and shall be a minimum of 24 inches in diameter, at least eight (8) inches thick and set two (2) feet deep from final grade where soil conditions permit. Where the regulations of the Department of Housing and Urban Development, the manufacturer's installation instructions or manual, NCSB/ANSI code or the set of plans designed for the specific manufactured home under the seal of a registered professional engineer, as applicable under Section 4421(b), require more stringent standards, those standards shall apply.~~
- 9.3 ~~Anchoring. Manufactured homes installed in the State shall be anchored. Anchors shall be installed in accord with the regulations of the Department of Housing and Urban Development, the manufacturer's installation instructions or manual, NCSB/ANSI code or the set of plans designed for the specific~~

~~manufactured home under the seal of a registered professional engineer, as applicable under Section 4421(b).~~

- 9.1 Manufactured homes shall be installed, at minimum, in accordance with Section 4421(b) of this chapter and all applicable regulations of the United States Department of Housing and Urban Development ("HUD)," as set forth in the Code of Federal Regulations ("C.F.R."). HUD requirements are available online at www.dpr.gov.
- 9.2 Site suitability. Pursuant to 24 C.F.R. §3285.103, prior to the initial installation of a new manufactured home, the installer shall verify that the design and construction of the home, as indicated on the design zone maps provided with the home, are suitable for the site location where the home is to be installed.
- 9.3 Site preparation.
- 9.3.1 Soil conditions. Pursuant to 24 C.F.R. §3285.201, the manufactured home's foundation shall be constructed on firm, undisturbed soil or fill compacted to at least 90 percent of its maximum relative density, and the site shall be graded to ensure adequate drainage. Pursuant to 24 C.F.R. §3285.202, the soil classification and bearing capacity shall be determined before the foundation is constructed and anchored.
- 9.3.2 Drainage. Pursuant to 24 C.F.R. §3285.203, drainage shall be provided to direct surface water away from the manufactured home to protect against erosion of the foundation supports and to prevent water build-up under the home. All drainage shall be diverted away from the home and must slope a minimum of one-half inch per foot away from the foundation for the first ten feet.
- 9.4 Foundation construction. Foundations for manufactured home installations shall be designed and constructed in accordance with 24 C.F.R. §§3285.301 - 3285.315 and must be based on site conditions, home design features, and the loads the home was designed to withstand, as shown on the home's data plate.
- 9.4.1 Piers. Pursuant to 24 C.F.R. §3285.302, the piers used shall be capable of transmitting vertical live and dead loads to the footing or foundation. Pier materials, design, loads, configuration and location shall meet the requirements set forth at 24 C.F.R. §§3285.303 - 3285.312.
- 9.4.2 Footings. Pursuant to 24 C.F.R. §3285.312, materials approved for footings shall provide equal load-bearing capacity and resistance to decay. Footings shall be placed on undisturbed soil or fill compacted to 90 percent of maximum relative density. A footing shall support every pier. Footing materials, placement, and sizing shall meet the requirements set forth at 24 C.F.R. §3285.310.
- 9.5 Anchoring. Pursuant to 24 C.F.R. §§3285.401 - 3285.406, the manufactured home shall be secured against the wind, including wind in the longitudinal direction, by use of anchor assembly type installations or by connecting the home to an alternative foundation system, as set forth at 24 C.F.R. §3285.301. Ground anchor installations shall meet the requirements for certification and testing, specifications, number and location set forth at 24 C.F.R. §3285.402.
- 9.6 Installation of optional features. Optional features, such as expanding rooms, appliances, and skirting, shall be installed pursuant to the requirements set forth at 24 C.F.R. §§3285.501 - 3285.505.
- 9.6.1 Comfort cooling systems. Pursuant to 24 C.F.R. §3285.503, when not provided and installed by the home manufacturer, any comfort cooling systems that are installed shall be installed according to the appliance manufacturer's installation standards. Installation of any comfort cooling system shall meet the requirements set forth at 24 C.F.R. §3285.503(a).
- 9.7 Ductwork, plumbing and fuel supply systems.
- 9.7.1 Ductwork connections. Multi-section homes with ductwork in more than one section require crossover connection to complete the ductwork system of the manufactured home. All ductwork connections shall be sealed to prevent air leakage. Installation, sealing and support of ductwork shall meet the requirements set forth at 24 C.F.R. §3285.606.
- 9.7.2 Plumbing.
- 9.7.2.1 Water supply. Multi-section homes with plumbing in both sections require water-line crossover connections to join all sections of the manufactured home. Crossover design requirements are set forth at 24 C.F.R. §3280.609. When the local water supply pressure

PROPOSED REGULATIONS

exceeds 80 psi to the home, a pressure-reducing valve shall be installed. Standards for installation of the mandatory shutoff valve, freezing protection and testing procedures are set forth at 24 C.F.R. §3280.609.

- 9.7.2.2 Drainage system. Multi-section homes with plumbing in more than one section require drainage system connections to join all sections of the home. In stallation, assembly, support and testing of drainage systems shall meet the requirements set forth at 24 C.F.R. §3285.604.
- 9.7.3 Fuel supply systems. The gas piping system in the home shall be designed for pressure that is at least 7 inches of water column and not more than 14 inches of water column. In stallation, crossovers and testing shall meet the requirements set forth at 24 C.F.R. §3285.605.
- 9.8 Electrical systems. Pursuant to 24 C.F.R. §3285.701, multi-section homes with electrical wiring in more than one section require crossover connections to join all sections of the home. Pursuant to 24 C.F.R. §3285.702, exterior lighting fixtures, ceiling-suspended fans and chain-hung lighting fixtures shall be installed as required by their listings and 24 C.F.R. §3280. Installation, grounding and testing shall meet the requirements set forth at 24 C.F.R. §3285.702. Pursuant to 24 C.F.R. §3285.703, smoke alarms shall be functionally tested as required by the manufacturer instructions and shall be consistent with 24 C.F.R. §3280.208. Considerations concerning installation of telephone and cable TV are set forth at 24 C.F.R. §3285.906.
- 9.9 Exterior and interior close-up.
- 9.9.1 Exterior close-up. Pursuant to 24 C.F.R. §3285.801, exterior siding and roofing needed to join all sections of the manufactured home shall be installed according to manufacturer installation requirements consistent with 24 C.F.R. §§3280.305 and 3280.307. Weatherproofing and installation of hinged roofs and eaves shall meet the requirements of 24 C.F.R. §3285.801.
- 9.9.2 Structural interconnection of multi-section homes. Pursuant to 24 C.F.R. §3285.802, for multi-section homes, structural interconnections along the interior and exterior at the mate-line are required to join all sections of the home. Structural interconnection and closing of gaps shall meet the requirements set forth at 24 C.F.R. §3285.802.
- 9.9.3 Interior close-up. Pursuant to 24 C.F.R. §3285.803, all shipping blocking, strapping or bracing shall be removed from appliances, windows and doors. Installation of shipped-loose wall paneling shall meet the requirements of §3285.803.
- 9.9.4 Bottom board repair. The bottom board covering shall be inspected and repaired pursuant to the requirements of 24 C.F.R. §3285.804.
- 9.10 Skirting. Pursuant to 24 C.F.R. §3285.504, skirting, if installed, shall be of weather-resistant materials or provided with protection against weather deterioration at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz./ft.² Installation of skirting shall meet the requirements set forth at 24 C.F.R. §3285.504.
- 9.11 Completion of operational checks and adjustments. Upon completion of installation, installer shall check all items listed in Rule 9.0 and shall make any needed adjustments to ensure compliance with all HUD requirements.

***Please Note: As the rest of the sections are not being amended they are not being published. The complete regulation is available at:**

4400 Delaware Manufactured Home Installation Board

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 Del.C. §5106(a)(1))
24 DE Admin. Code 5100

PUBLIC NOTICE

5100 Board of Cosmetology and Barbering

Pursuant to 24 Del.C. §5106(a)(1), the Board of Cosmetology and Barbering has proposed revisions to its rules and regulations.

A public hearing will be held on November 29, 2010 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 51 of Title 24 of the Delaware Code, which went into effect on June 26, 2010. In particular, certain rules have been revised to implement the enhanced education requirements for nail technicians and aestheticians.

Further, in Rule 2.0, the requirements for temporary work permits are amended to ensure that a permanent license is obtained in a timely manner. The apprenticeship requirements, in Rule 3.0, are also revised to enable the Board to more effectively monitor apprentices and their status pertaining to completion of the required hours. Rule 11.0, pertaining to the requirements for schools, makes clear that all instructors must be licensed. Finally, Rule 14.7 specifies that nail technicians are prohibited from performing any type of hair removal.

The Board proposes striking the existing rules and regulations in their entirety and replacing them with the rules and regulations set forth herein.

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

5100 Board of Cosmetology and Barbering

4.0 Demonstrations

~~Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year. (24 Del.C. §5103 (1))~~

2.0 Temporary Work Permits

- ~~2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant's scoring of a passing grade on the examination.~~
- ~~2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.~~
- ~~2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber instructor.~~
- ~~2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technician, cosmetologist, or cosmetology instructor.~~
- ~~2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.~~

- 2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.
- 2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware. ~~24 Del.C. §5106(7)~~

~~3.0 Instructor Curriculum for Barbering and Cosmetology~~

- 3.1 ~~Course Outline—Instructor 500 Hours~~
- | Subject Matter | Minimum Clock Hours |
|--|--------------------------------|
| Orientation— | 50 |
| Practical Laboratory Management | 200 |
| Classroom Teaching and Management | 200 |
| Theory and Testing— | 50 |
- 3.2 ~~Course Outline—Instructor 250 Hours~~
- | Subject Matter | Minimum Clock Hours |
|--|--------------------------------|
| Orientation— | 25 |
| Practical Laboratory Management | 100 |
| Classroom Teaching and Management | 100 |
| Theory and Testing— | 25 |

~~(24 Del.C. §5106(13))~~

~~4.0 Instructor Requirements~~

- 4.1 ~~Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).~~
- 4.2 ~~Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.~~
- 4.3 ~~Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber. (24 Del.C. §5106 (13)).~~

~~5.0 Reciprocity Requirements~~

- 5.1 ~~Any applicant from a state with less stringent requirements than Delaware, is required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one year before making application. The work experience must have been obtained in a state or jurisdiction outside of Delaware. Unlicensed practice within the State of Delaware shall not qualify as valid work experience.~~

~~4-DE Reg. 329 (8/1/00)~~

~~Reference 2.0 for temporary work permit. (24 Del.C. §5109(a))~~

~~6.0 Equipment for Cosmetology and Barbering Schools~~

- 6.1 ~~A school enrolling up to 25 students shall have, at a minimum, the following equipment:~~
- 6.1.1 ~~(4) Shampoo basins.~~
 - 6.1.2 ~~(8) Hair dryers.~~
 - 6.1.3 ~~(4) Manicure tables and chairs.~~

- 6.1.4 (4) Dry sterilizers (sanitizers).
 - 6.1.5 (4) Wet sterilizers (sanitizers).
 - 6.1.6 (6) Dozen permanent wave rods.
 - 6.1.7 (2) Reclining chair with headrest.
 - 6.1.8 (1) Mannequin per student.
 - 6.1.9 (12) Work Stations.
 - 6.1.10 Mirrors and chairs.
 - 6.1.11 (1) Locker for each student.
 - 6.1.12 (4) Closed containers for soiled linen.
 - 6.1.13 (3) Closed waste containers.
 - 6.1.14 (1) Container for sterile solution for each manicure table.
 - 6.1.15 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
 - 6.1.16 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
 - 6.1.17 (1) Cabinet for towels.
 - 6.1.18 An arm chair or usable table and chair for each student in the theory room.
 - 6.1.19 (3) Timer clocks.
 - 6.1.20 Attendance records.
 - 6.1.21 (1) Soap machine.
 - 6.1.22 (1) Textbook for each student.
- (24 ~~Del.C.~~ §5117 (a))

7.0 Equipment for Nail Technology Schools

7.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 7.1.1 (4) Manicure tables and chairs.
- 7.1.2 (4) Manicure lights.
- 7.1.3 (1) First Aid Kit.
- 7.1.4 (1) Pedicure basin and stand.
- 7.1.5 (1) Covered Waste Container.
- 7.1.6 (1) Closed storage cabinet for soiled linen.
- 7.1.7 (1) Closed towel cabinet for clean linen.
- 7.1.8 Clean linen.
- 7.1.9 (1) Container for sterile solution for each manicure table.
- 7.1.10 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 7.1.11 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 7.1.12 Attendance Records.
- 7.1.13 Reception Desk.
- 7.1.14 Proper Ventilation.
- 7.1.15 (4) Dry Sterilizers.
- 7.1.16 (4) Wet Sterilizers.
- 7.1.17 Dispensary.

7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 ~~Del.C.~~ §5117 (a))

8.0 Equipment for Electrology Schools

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 8.1.1 (1) Epilator (Short Wave or Blend) Needle type only.

- ~~8.1.2 (1) All purpose chair or lounge.~~
- ~~8.1.3 (1) Magnifying lamp (wall mounted or on a stand).~~
- ~~8.1.4 (1) Tweezers for each student.~~
- ~~8.1.5 (1) Movable table for the epilator.~~
- ~~8.1.6 (1) Adjustable stool on wheels.~~
- ~~8.1.7 All needles used for treatment must be disposable type only.~~
- ~~8.1.8 Sterilizing materials and rubber gloves.~~
- ~~8.1.9 (1) Textbook for each student.~~

9.0 Course Outline for Aesthetician

9.1 Subject Matter	Clock Hours
Personal Development	40
Health and Science	65
Hygienic Provisions	45
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	45
Makeup and Color	30
Business Management and Sales Practice	40
Clinic and Practice	400
Total Minimum Hours	300
(24 Del.C. §5132(a))	

10.0 Equipment for Aesthetics Schools

- ~~10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:~~
 - ~~10.1.1 (1) Complete set of skin care equipment as follows: Steamer Brush Unit Vacuum Spray Galvanic High Frequency Unit.~~
 - ~~10.1.2 (1) All purpose chair or lounge.~~
 - ~~10.1.3 (1) Magnifying lamp (wall mounted or on a stand).~~
 - ~~10.1.4 (1) Adjustable stool on wheels.~~
 - ~~10.1.5 Sterilizing materials and rubber gloves.~~
 - ~~10.1.6 (1) Textbook for each student.~~
- ~~(24 Del.C. §5130(a))~~

11.0 Registration of Salons and Schools

~~A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration. (24 Del.C. §5117)~~

12.0 Apprenticeship and Supervision

- ~~12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.~~
- ~~12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.~~
- ~~12.3 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.~~

- 12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.
- 12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.
- 12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

~~(24 Del.C. §5107)~~

2-DE Reg. 1378 (2/1/99)

13.0 Transfer of Nail Technician Hours to Cosmetology Programs

Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours. ~~(24 Del.C. §5107)~~

14.0 Licensure Requirements

- 14.1 Each licensee licensed by the Board and each registered person, firm, corporation or association operating a beauty salon, barbershop, nail salon, or electrology establishment shall be responsible for ensuring that all of its employees requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.
- 14.2 A Licensee and/or registrant who employs unlicensed individuals may be subject to discipline pursuant to ~~24 Del.C. § 5113(a)(b)~~.

~~(24 Del.C. §5103)~~

2-DE Reg. 1378 (2/1/99)

15.0 Application for Licensure

- 15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.
- 15.2 Each applicant must provide proof of any required general or professional education in the form of: (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other document evidencing completion of the necessary education to the Board's satisfaction.
- 15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

2-DE Reg. 1378 (2/1/99)

16.0 Health and Sanitation; Electric Nail Files and Laser Technology

- 16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.
- 16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.
- 16.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of MMA.

- 16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.
- 16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a grounds for discipline under 24 Del.C. §§5113 (24 Del.C. §§5100, 5101(4), 5112 and 5113)
- 16.6 The United States Food and Drug Administration ("the FDA") has not approved the use of any color-additive for use in dyeing or tinting of the eyelash or eyebrow. No product shall be used in a manner that is disapproved by the Board, the Division of Health and Social Services, the FDA, or is in violation of any applicable federal or State statute or regulation.

2-DE-Reg-1378 (2/1/99)

3-DE-Reg-1197 (3/1/00)

5-DE-Reg-1260 (12/01/01)

17.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 17.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 17.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 17.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 17.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 17.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 17.8 of this section.
- 17.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 17.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 17.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's

~~designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.~~

- ~~17.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.~~
- ~~17.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.~~
- ~~17.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.~~
- ~~17.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.~~
- ~~17.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.~~
- ~~17.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.~~
- ~~17.9 If practice is restricted, the regulated professional may apply for unrestricted license upon completion of the program.~~
- ~~17.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.~~
- ~~17.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.~~
- ~~17.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.~~

~~18.0 Crimes Substantially Related to the Practice of Cosmetology, Barbering, Electrology And Nail Technology~~

- ~~18.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of cosmetology, barbering, electrology and nail technology in the State of Delaware without regard to the place of conviction:~~
 - ~~18.1.1 Criminal solicitation in the first degree. 11-Del.C. §503.~~

- 18.1.2 Conspiracy in the first degree. ~~11 Del.C. §513.~~
- 18.1.3 Aggravated Menacing. ~~11 Del.C. §602(b).~~
- 18.1.4 Reckless endangering in the first degree. ~~11 Del.C. §604.~~
- 18.1.5 Abuse of a pregnant female in the second degree. ~~11 Del.C. §605.~~
- 18.1.6 Abuse of a pregnant female in the first degree. ~~11 Del.C. §606.~~
- 18.1.7 Assault in the second degree. ~~11 Del.C. §612.~~
- 18.1.8 Assault in the first degree. ~~11 Del.C. §613.~~
- 18.1.9 Abuse of a sports official; felony. ~~11 Del.C. §614.~~
- 18.1.10 Assault by abuse or neglect. ~~11 Del.C. §615.~~
- 18.1.11 Terroristic threatening; felony. ~~11 Del.C. §621.~~
- 18.1.12 Unlawfully administering drugs. ~~11 Del.C. §625.~~
- 18.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. ~~11 Del.C. §626.~~
- 18.1.14 Murder by abuse or neglect in the second degree. ~~11 Del.C. §633.~~
- 18.1.15 Murder by abuse or neglect in the first degree. ~~11 Del.C. §634.~~
- 18.1.16 Murder in the second degree. ~~11 Del.C. §635.~~
- 18.1.17 Murder in the first degree. ~~11 Del.C. §636.~~
- 18.1.18 Abortion. ~~11 Del.C. §651.~~
- 18.1.19 Unlawful sexual contact in the second degree. ~~11 Del.C. §768.~~
- 18.1.20 Unlawful sexual contact in the first degree. ~~11 Del.C. §769.~~
- 18.1.21 Rape in the fourth degree. ~~11 Del.C. §770.~~
- 18.1.22 Rape in the third degree. ~~11 Del.C. §771.~~
- 18.1.23 Rape in the second degree. ~~11 Del.C. §772.~~
- 18.1.24 Rape in the first degree. ~~11 Del.C. §773.~~
- 18.1.25 Sexual extortion. ~~11 Del.C. §776.~~
- 18.1.26 Continuous sexual abuse of a child. ~~11 Del.C. §778.~~
- 18.1.27 Dangerous crime against a child. ~~11 Del.C. §779.~~
- 18.1.28 Female genital mutilation. ~~11 Del.C. §780.~~
- 18.1.29 Unlawful imprisonment in the first degree. ~~11 Del.C. §782.~~
- 18.1.30 Kidnapping in the second degree. ~~11 Del.C. §783.~~
- 18.1.31 Kidnapping in the first degree. ~~11 Del.C. §783A.~~
- 18.1.32 Arson in the third degree. ~~11 Del.C. §801.~~
- 18.1.33 Arson in the second degree. ~~11 Del.C. §802.~~
- 18.1.34 Arson in the first degree. ~~11 Del.C. §803.~~
- 18.1.35 Burglary in the second degree. ~~11 Del.C. §825.~~
- 18.1.36 Burglary in the first degree. ~~11 Del.C. §826.~~
- 18.1.37 Possession of burglar's tools or instruments facilitating theft. ~~11 Del.C. §828.~~
- 18.1.38 Robbery in the second degree. ~~11 Del.C. §831.~~
- 18.1.39 Robbery in the first degree. ~~11 Del.C. §832.~~
- 18.1.40 Carjacking in the second degree. ~~11 Del.C. §835.~~
- 18.1.41 Carjacking in the first degree. ~~11 Del.C. §836.~~
- 18.1.42 Extortion. ~~11 Del.C. §846.~~
- 18.1.43 identity theft. ~~11 Del.C. §854.~~
- 18.1.44 Forgery. ~~11 Del.C. §861.~~
- 18.1.45 Possession of forgery devices. ~~11 Del.C. §862.~~
- 18.1.46 Tampering with public records in the first degree. ~~11 Del.C. §876.~~

- 18.1.47 Unlawful use of credit card; felony. 11 ~~Del.C.~~ §903.
- 18.1.48 Reencoder and scanning devices. 11 ~~Del.C.~~ §903A.
- 18.1.49 Criminal impersonation of a police officer. 11 ~~Del.C.~~ §907B.
- 18.1.50 Dealing in children. 11 ~~Del.C.~~ §1100.
- 18.1.51 Endangering the welfare of a child. 11 ~~Del.C.~~ §1102.
- 18.1.52 Sexual exploitation of a child. 11 ~~Del.C.~~ §1108.
- 18.1.53 Unlawfully dealing in child pornography. 11 ~~Del.C.~~ §1109.
- 18.1.54 Possession of child pornography. 11 ~~Del.C.~~ §1111.
- 18.1.55 Sexual offenders; prohibitions from school zones. 11 ~~Del.C.~~ §1112.
- 18.1.56 Perjury in the second degree. 11 ~~Del.C.~~ §1222.
- 18.1.57 Perjury in the first degree. 11 ~~Del.C.~~ §1223.
- 18.1.58 Terroristic threatening of public officials or public servants. 11 ~~Del.C.~~ §1240.
- 18.1.59 Abetting the violation of driver's license restrictions; felony. 11 ~~Del.C.~~ §1249.
- 18.1.60 Escape in the second degree. 11 ~~Del.C.~~ §1252.
- 18.1.61 Escape after conviction. 11 ~~Del.C.~~ §1253.
- 18.1.62 Assault in a detention facility. 11 ~~Del.C.~~ §1254.
- 18.1.63 Promoting prison contraband; deadly weapon. 11 ~~Del.C.~~ §1256.
- 18.1.64 Use of an animal to avoid capture. 11 ~~Del.C.~~ §1257A(b) (1) and (2).
- 18.1.65 Sexual relations in detention facility. 11 ~~Del.C.~~ §1259.
- 18.1.66 Misuse of prisoner mail; second conviction. 11 ~~Del.C.~~ §1260.
- 18.1.67 Tampering with a witness. 11 ~~Del.C.~~ §1263.
- 18.1.68 Interfering with child witness. 11 ~~Del.C.~~ §1263A.
- 18.1.69 Tampering with physical evidence. 11 ~~Del.C.~~ §1269.
- 18.1.70 Criminal contempt of a domestic violence protective order. 11 ~~Del.C.~~ §1271A.
- 18.1.71 Hate crimes. 11 ~~Del.C.~~ §1304.
- 18.1.72 Aggravated harassment. 11 ~~Del.C.~~ §1312.
- 18.1.73 Stalking. 11 ~~Del.C.~~ §1312A.
- 18.1.74 Cruelty to animals; felony. 11 ~~Del.C.~~ §1325.
- 18.1.75 Violation of privacy. 11 ~~Del.C.~~ §1335.
- 18.1.76 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 ~~Del.C.~~ §1338.
- 18.1.77 Adulteration. 11 ~~Del.C.~~ §1339.
- 18.1.78 Promoting prostitution in the third degree. 11 ~~Del.C.~~ §1351.
- 18.1.79 Promoting prostitution in the second degree. 11 ~~Del.C.~~ §1352.
- 18.1.80 Promoting prostitution in the first degree. 11 ~~Del.C.~~ §1353.
- 18.1.81 Obscenity. 11 ~~Del.C.~~ §1361.
- 18.1.82 Unlawfully dealing with a dangerous weapon; felony. 11 ~~Del.C.~~ §1445.
- 18.1.83 Possession of a deadly weapon during commission of a felony. 11 ~~Del.C.~~ §1447.
- 18.1.84 Possession of a firearm during commission of a felony. 11 ~~Del.C.~~ §1447A.
- 18.1.85 Possession and purchase of deadly weapons by persons prohibited. 11 ~~Del.C.~~ §1448.
- 18.1.86 Giving a firearm to person prohibited. 11 ~~Del.C.~~ §1454.
- 18.1.87 Engaging in a firearms transaction on behalf of another. 11 ~~Del.C.~~ §1455.
- 18.1.88 Possession of a weapon in a Safe School and Recreation Zone; felony. 11 ~~Del.C.~~ §1457.
- 18.1.89 Removing a firearm from the possession of a law enforcement officer. 11 ~~Del.C.~~ §1458.
- 18.1.90 Organized Crime and Racketeering. 11 ~~Del.C.~~ §1504.
- 18.1.91 Victim or Witness intimidation. 11 ~~Del.C.~~ §§3532 & 3533.

- 18.1.92 ~~Violations. (Abuse, neglect, mistreatment or financial exploitation of residents or patients.) 16 Del.C. §1136.~~
- 18.1.93 ~~Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 Del.C. §4767.~~
- 18.1.94 ~~Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768.~~
- 18.2 ~~Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.~~

8 DE Reg. 1460 (04/01/05)

1.0 Application for Licensure

- 1.1 All applications for licensure must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.
- 1.2 Each applicant must provide proof of any required general or professional education in the form of a certified transcript, proof of a G.E.D. or any other document evidencing completion of the necessary education to the Board's satisfaction.
- 1.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education. Board approved credentialing agencies are listed on the Board's website, at www.dpr.delaware.gov.

2.0 Temporary Work Permits [24 Del.C. §5106(a)(7)]

- 2.1 The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice under appropriate supervision pending the applicant's scoring of a passing grade on the examination.
- 2.2 A temporary work permit may be issued to an examination applicant who meets the Board's requirements and who is eligible for a admission to the cosmetology, nail technician, barbering, electrology, or aesthetician examination, with the appropriate fees paid.
- 2.3 A temporary work permit is valid for thirty (30) days past the next available examination date. After the first temporary permit expires, a subsequent temporary permit may be issued only where the applicant submits proof that he or she did not pass the examination and that he or she is registered for the next examination date. The applicant shall be eligible for temporary permits for two years after the date of making application. If the applicant does not pass the examination within two years after making application, the applicant shall be required to wait one year from the date of the last examination and then shall make a new application and shall meet all the requirements for licensure, including repeating all educational requirements and re-taking and passing both parts of the required examination.
- 2.4 The holder of a temporary work permit for cosmetology or barbering shall practice under the supervision of a licensed cosmetologist, master barber, barber, cosmetology instructor or barber instructor.
- 2.5 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technician, nail technology instructor, cosmetologist, or cosmetology instructor.
- 2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.
- 2.7 The holder of a temporary work permit for aesthetics shall practice under the supervision of a licensed aesthetician, aesthetics instructor, cosmetologist, or cosmetology instructor.
- 2.8 The holder of a temporary instructor's work permit shall practice at all times under the supervision of a licensed instructor, pursuant to Rules 7.3 and 11.3.

2.9 Reciprocity applicant: A temporary work permit for reciprocity may be issued to an applicant subject to the requirements of 24 Del.C. §5109(a). Where the applicant comes from a state with less stringent standards than Delaware's standards, the Board shall review the applicant's experience documentation. The temporary permit shall expire 14 calendar days after the date of the Board meeting at which the Board considers the application.

3.0 Apprenticeship and Supervision [24 Del.C. §§5101(a), 5107]

- 3.1 A person applying for licensure by apprenticeship shall be supervised by a practitioner licensed in the profession that the apprentice is studying, except that a nail technician applicant and an aesthetician applicant may apprentice with a cosmetologist, and a barber applicant may apprentice with a cosmetology instructor, if the cosmetology instructor has completed 35 hours' training in shaving.
- 3.2 An apprenticeship shall be completed only in a licensed shop.
- 3.3 Apprenticeship hours shall be acquired only after the apprentice license has been issued.
- 3.4 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than thirty-six (36) months.
- 3.5 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than twelve (12) months.
- 3.6 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than twelve (12) months.
- 3.7 Any person applying for licensure as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than thirty (30) weeks and not more than twenty-four (24) months.
- 3.8 The required hours shall be completed within the specified time frame, or the applicant shall begin a new apprenticeship.
- 3.9 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.
- 3.10 The apprenticeship applicant shall submit quarterly status reports to the Board, on a Board approved form, in January, April, July and October. The status reports shall include documentation pertaining to the apprenticeship hours completed.
- 3.11 The apprenticeship license shall expire upon completion of the required hours within the specified time frame, as set forth in Rules 3.4 - 3.7.
- 3.12 The apprentice shall submit a new application to the Board upon any change in supervisor or location of the apprenticeship.
- 3.13 Where an apprentice provides services to a client, the client shall be so advised and the apprentice's license shall be displayed at the work station.

4.0 Reciprocity Requirements [24 Del.C. §5109]

Any applicant from a state with less stringent requirements than those of Delaware, shall submit a notarized statement(s) from current or previous employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware. Such experience shall have been obtained in the State where the applicant is currently licensed for a period of 5 years immediately preceding the making of application. Unlicensed practice within the State of Delaware shall not qualify as valid work experience.

5.0 Transfer of Nail Technician Hours to Cosmetology Programs

Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours.

6.0 Transfer of Aesthetician Hours to Cosmetology Programs

Apprentice aesthetician hours earned totaling 500 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student aesthetician hours earned totaling 250 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours.

7.0 Instructor Requirements [24 Del.C. §§5107(a)(3)h. - j.]

- 7.1 In addition to the requirements set forth in 24 Del.C. §§5107(a)(3)h. - j., an instructor applicant shall submit an official transcript showing completion of the teacher training course.
- 7.2 Where an instructor applicant states that he or she has obtained 2 years experience, such experience shall be documented by a notarized statement(s) from current or previous employers. If the required statement(s) cannot be obtained, the applicant must submit an explanation, with any other available documentation, such as W-2 for ms. The Board may accept or reject such explanation, at its discretion.
- 7.3 A cosmetology instructor may teach cosmetology, nail technology and aesthetics. A cosmetology instructor may teach barbering only if he or she has completed a course in shaving of at least 35 hours, as set forth in 24 Del.C. §5107(a)(3)h.

8.0 Licensure of Cosmetology Shops and Schools [24 Del.C. §§5103(e), 5118]

- 8.1 All cosmetology shops and schools shall be licensed by the Board.
- 8.2 Where the shop or school closes or has a change of name, address or ownership, the shop or school shall submit a new application to the Board.
- 8.3 A person licensed by the Board as a cosmetologist, master barber, barber, electrologist, nail technician, aesthetician or instructor shall not work in a cosmetology shop, barbershop, nail salon, electrology establishment, aesthetics shop, school of cosmetology, barbering, nail technology, electrology or aesthetics unless such establishment has been licensed by the Board.

9.0 Establishment Responsibility for Employees [24 Del.C. §5113(a)(7)]

- 9.1 Each licensee licensed by the Board and each person, firm, corporation or association operating a cosmetology shop, barbershop, nail salon, or electrology establishment shall be responsible for ensuring that all of its employees requiring licenses are licensed in Delaware prior to the commencement of employment. The licensee shall have available for inspection on premises at all time copies of the Delaware licenses of its employees.
- 9.2 An individual, licensee or licensed shop who employs unlicensed individuals may be subject to discipline pursuant to 24 Del.C. §5113(a)(7).

10.0 Instructor Curriculum for Barbering and Cosmetology

Orientation
Practical Laboratory Management
Classroom Teaching and Management
Theory and Testing

11.0 Requirements for Schools

- 11.1 Prior to admitting a student, a school shall obtain and review the school applicant's high school transcript. The school shall also provide the applicant with a copy of Board Rule 16.0 and advise the applicant that a criminal history may be a bar to licensure. The school shall maintain written acknowledgement from the student that Rule 16.0 has been received and said written acknowledgement shall be maintained in the applicant's file.
- 11.2 All schools teaching the professions regulated by this chapter shall have equipment that is necessary and appropriate for teaching of all the offered subjects.

11.3 All instructors in schools shall be licensed. A temporary instructor shall be supervised at all times by a licensed instructor.

12.0 Education Requirements for Nail Technician Applicants [24 Del.C. §5107(a)(3)e]

An applicant who can demonstrate, to the Board's satisfaction, that he or she began school prior to June 26, 2010 shall complete 125 hours of education in nail technology. An applicant who began school on or after June 26, 2010 shall complete 300 hours of education in nail technology.

13.0 Education Requirements for Aesthetician Applicants [24 Del.C. §5127(a)(2)]

An applicant who can demonstrate, to the Board's satisfaction, that he or she began school prior to June 26, 2010 shall complete 300 hours of education in aesthetics. An applicant who began school on or after June 26, 2010 shall complete 00 hours of education in aesthetics.

14.0 Health and Sanitation; Electric Nail Files, Hair Removal and Laser Technology

- 14.1 Each licensee, instructor, aesthetician, and shop or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.
- 14.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee and shop or school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.
- 14.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, school or shop shall use or permit the use of MMA.
- 14.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.
- 14.5 Where wax is used for hair removal, a new applicator shall be used with every application.
- 14.6 The United States Food and Drug Administration ("the FDA") has not approved the use of any color additive for use in permanent dyeing or tinting of the eyelash or eyebrow. No product shall be used in a manner that is disapproved by the Board, the Division of Health and Social Services, the FDA, or is in violation of any applicable federal or State statute or regulation.
- 14.7 Hair removal shall be performed by a licensed cosmetologist or licensed aesthetician only. Nail technicians are prohibited from performing any type of hair removal, including waxing, tweezing or threading.
- 14.8 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute grounds for discipline under 24 Del.C. §5113.

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on

practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

- 15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 17.8 of this section.
- 15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 15.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 15.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any

time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

- 15.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 15.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 15.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 15.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

16.0 Crimes Substantially Related to the Practice of Cosmetology, Barbering, Electrology And Nail Technology

- 16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of cosmetology, barbering, electrology and nail technology in the State of Delaware without regard to the place of conviction:
- 16.1.1 Criminal solicitation in the first degree. 11 Del.C. §503.
 - 16.1.2 Conspiracy in the first degree. 11 Del.C. §513.
 - 16.1.3 Aggravated Menacing. 11 Del.C. §602(b).
 - 16.1.4 Reckless endangering in the first degree. 11 Del.C. §604.
 - 16.1.5 Abuse of a pregnant female in the second degree. 11 Del.C. §605.
 - 16.1.6 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
 - 16.1.7 Assault in the second degree. 11 Del.C. §612.
 - 16.1.8 Assault in the first degree. 11 Del.C. §613.
 - 16.1.9 Abuse of a sports official; felony. 11 Del.C. §614.
 - 16.1.10 Assault by abuse or neglect. 11 Del.C. §615.
 - 16.1.11 Terroristic threatening; felony. 11 Del.C. §621.
 - 16.1.12 Unlawfully administering drugs. 11 Del.C. §625.
 - 16.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
 - 16.1.14 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
 - 16.1.15 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
 - 16.1.16 Murder in the second degree. 11 Del.C. §635.
 - 16.1.17 Murder in the first degree. 11 Del.C. §636.
 - 16.1.18 Abortion. 11 Del.C. §651.
 - 16.1.19 Unlawful sexual contact in the second degree. 11 Del.C. §768.
 - 16.1.20 Unlawful sexual contact in the first degree. 11 Del.C. §769.
 - 16.1.21 Rape in the fourth degree. 11 Del.C. §770.
 - 16.1.22 Rape in the third degree. 11 Del.C. §771.
 - 16.1.23 Rape in the second degree. 11 Del.C. §772.
 - 16.1.24 Rape in the first degree. 11 Del.C. §773.
 - 16.1.25 Sexual extortion. 11 Del.C. §776.

PROPOSED REGULATIONS

- 16.1.26 Continuous sexual abuse of a child. 11 Del.C. §778.
- 16.1.27 Dangerous crime against a child. 11 Del.C. §779.
- 16.1.28 Female genital mutilation. 11 Del.C. §780.
- 16.1.29 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 16.1.30 Kidnapping in the second degree. 11 Del.C. §783.
- 16.1.31 Kidnapping in the first degree. 11 Del.C. §783A.
- 16.1.32 Arson in the third degree. 11 Del.C. §801.
- 16.1.33 Arson in the second degree. 11 Del.C. §802.
- 16.1.34 Arson in the first degree. 11 Del.C. §803.
- 16.1.35 Burglary in the second degree. 11 Del.C. §825.
- 16.1.36 Burglary in the first degree. 11 Del.C. §826.
- 16.1.37 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 16.1.38 Robbery in the second degree. 11 Del.C. §831.
- 16.1.39 Robbery in the first degree. 11 Del.C. §832.
- 16.1.40 Carjacking in the second degree. 11 Del.C. §835.
- 16.1.41 Carjacking in the first degree. 11 Del.C. §836.
- 16.1.42 Extortion. 11 Del.C. §846.
- 16.1.43 Identity theft. 11 Del.C. §854.
- 16.1.44 Forgery. 11 Del.C. §861.
- 16.1.45 Possession of forgery devices. 11 Del.C. §862.
- 16.1.46 Tampering with public records in the first degree. 11 Del.C. §876.
- 16.1.47 Unlawful use of credit card; felony. 11 Del.C. §903.
- 16.1.48 Reencoder and scanning devices. 11 Del.C. §903A.
- 16.1.49 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 16.1.50 Dealing in children. 11 Del.C. §1100.
- 16.1.51 Endangering the welfare of a child. 11 Del.C. §1102.
- 16.1.52 Sexual exploitation of a child. 11 Del.C. §1108.
- 16.1.53 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 16.1.54 Possession of child pornography. 11 Del.C. §1111.
- 16.1.55 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
- 16.1.56 Perjury in the second degree. 11 Del.C. §1222.
- 16.1.57 Perjury in the first degree. 11 Del.C. §1223.
- 16.1.58 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 16.1.59 Abetting the violation of driver's license restrictions; felony. 11 Del.C. §1249.
- 16.1.60 Escape in the second degree. 11 Del.C. §1252.
- 16.1.61 Escape after conviction. 11 Del.C. §1253.
- 16.1.62 Assault in a detention facility. 11 Del.C. §1254.
- 16.1.63 Promoting prison contraband; deadly weapon. 11 Del.C. §1256.
- 16.1.64 Use of an animal to avoid capture. 11 Del.C. §1257A(b) (1) and (2).
- 16.1.65 Sexual relations in detention facility. 11 Del.C. §1259.
- 16.1.66 Misuse of prisoner mail; second conviction. 11 Del.C. §1260.
- 16.1.67 Tampering with a witness. 11 Del.C. §1263.
- 16.1.68 Interfering with child witness. 11 Del.C. §1263A.
- 16.1.69 Tampering with physical evidence. 11 Del.C. §1269.
- 16.1.70 Criminal contempt of a domestic violence protective order. 11 Del.C. §1271A.
- 16.1.71 Hate crimes. 11 Del.C. §1304.

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- 16.1.72 Aggravated harassment. 11 Del.C. §1312.
- 16.1.73 Stalking. 11 Del.C. §1312A.
- 16.1.74 Cruelty to animals; felony. 11 Del.C. §1325.
- 16.1.75 Violation of privacy. 11 Del.C. §1335.
- 16.1.76 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338.
- 16.1.77 Adulteration. 11 Del.C. §1339.
- 16.1.78 Promoting prostitution in the third degree. 11 Del.C. §1351.
- 16.1.79 Promoting prostitution in the second degree. 11 Del.C. §1352.
- 16.1.80 Promoting prostitution in the first degree. 11 Del.C. §1353.
- 16.1.81 Obscenity. 11 Del.C. §1361.
- 16.1.82 Unlawfully dealing with a dangerous weapon; felony. 11 Del.C. §1445.
- 16.1.83 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.
- 16.1.84 Possession of a firearm during commission of a felony. 11 Del.C. §1447A.
- 16.1.85 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.
- 16.1.86 Giving a firearm to person prohibited. 11 Del.C. §1454.
- 16.1.87 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.
- 16.1.88 Possession of a weapon in a Safe School and Recreation Zone; felony. 11 Del.C. §1457.
- 16.1.89 Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.
- 16.1.90 Organized Crime and Racketeering. 11 Del.C. §1504.
- 16.1.91 Victim or Witness intimidation. 11 Del.C. §§3532 & 3533.
- 16.1.92 Violations. (Abuse, neglect, mistreatment or financial exploitation of residents or patients.) 16 Del.C. §1136.
- 16.1.93 Distribution, delivery or possession of controlled substance within 1,000 feet of school property. 16 Del.C. §4767.
- 16.1.94 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768.
- 16.2 Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.
- 2 DE Reg. 1378 (2/1/99)**
- 3 DE Reg. 1197 (3/1/00)**
- 5 DE Reg. 1260 (12/01/01)**
- 4 DE Reg. 329 (8/1/00)**
- 8 DE Reg. 1460 (04/01/05)**
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Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 405

Regulatory Implementing Order
405 Minor Capital Improvement Programs
I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 405 Minor Capital Improvement Programs. This regulation was reviewed and amended as part of the 5 year cycle. The amendments are generally for clarification purposes.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Thursday, September 2, 2010, in the form hereto attached as Exhibit "A". The Department did not receive comments on the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 405 Minor Capital Improvement Programs for clarification purposes.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 405 Minor Capital Improvement Programs. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 405 Minor Capital Improvement Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14

Del.C. §122(e), 14 DE Admin. Code 405 Minor Capital Improvement Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code 405** Minor Capital Improvement Programs amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code 405** Minor Capital Improvement Programs in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C. §122** on October 21, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of October, 2010.

DEPARTMENT OF EDUCATION

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

405 Minor Capital Improvement Programs

1.0 Minor Capital Improvement Program

- 1.1 The Minor Capital Improvement Program (MCI) is a program to provide for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. Minor Capital Improvement Projects are projects that cost less than \$500,000 unless the project is for roof repair. The MCI program is ~~shall be~~ reviewed annually by the school district and should be comprised of work necessary for good maintenance practice.
- 1.2 Minor Capital Improvement Project purchase orders shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project. (One copy of the approved purchase order will be returned to the district for their information and record.)
- 1.3 Use of Funds: The following areas are authorized for the expenditure of Minor Capital Improvement Program funds: maintenance, repairs, modernization, inspections, testing, maintenance agreements and service contracts related to: roofs, heating systems, ventilation & air conditioning systems, plumbing & water systems, electrical systems, windows, doors, floors, ceilings, masonry, structural built in equipment, painting, fire suppression systems, life safety systems, maintenance of site security systems installation and maintenance, school grounds, athletic facilities and play grounds, of equipment used for instructional purposes only and renovations, alterations and modernizations that do not require major structural changes.
- 1.4 Exclusions: Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: movable equipment other than office equipment used for instructional purposes that is transported from one location to another, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or side walks, surfacing a non surfaced area for parking, completing major construction projects or specific items omitted or deleted from major construction projects or floor space allocated according to formula and used otherwise.
- 1.5 Invoices: Invoices ~~may~~ shall be sent directly to the Division of Accounting for processing. Payments may be made as the project progresses or after work has been completed and accepted, as warranted by the nature and scope of the individual project(s).

2.0 Career Technical Program Equipment Replacement Requests

- 2.1 ~~Requests for the r~~ Replacement of Career Technical Program equipment may be made under the accomplished using Minor Capital Improvement Program Requests shall be made when the equipment is within three years of its estimated life so districts can accumulate the necessary dollars to purchase the item. ~~Districts desiring to p~~ participate in the Career Technical Program equipment replacement program shall submit a request in writing to the Office of School Plant Planning at the time of the Minor Capital Improvement Program submission. ~~Districts should not include Career~~ Technical Program replacements with ~~regular Major Capital Improvement Projects, Vocational Education Replacement funds.~~
- 2.2 Career Technical Program Equipment is defined as either a movable or fixed unit but not a built in unit. In addition, the equipment shall retain its original shape and appearance with use, be nonexpendable, and represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit. Computers and computer peripheral equipment may be purchased using Minor Capital Improvement Vocational Education Equipment Replacement Funds provided such equipment purchased with such funds is used in a vocational education setting for the service life of said equipment.
- 2.2.1 In order to replace Career Technical Program equipment, the equipment must have ~~a minimum 10 year life expectancy,~~ have a unit cost of \$500 or more, be obsolete or more than five (5) years old, and be purchased with state, state and local or local funds.
- 2.3 Funds: Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for capital equipment. Career Technical Schools are 100% State funded.

3.0 Purchase Orders

Funds may be expended anytime during the life of the Act which appropriated the funds, usually, a three year period. Appropriations may be accumulated over those three years and expended for a major replacement when a sufficient balance is attained. ~~However, should funds prove insufficient after three years of appropriations, the district must supplement the program from their own or other resources.~~ Funds unexpended when the appropriating Act expires shall revert to the State unless properly and duly continued in accordance with Office of Management and Budget requirements. ~~Purchase orders shall include the reference ID system, sub-system, component and deficiency code from the correction on the facility assessment website database.~~

4.0 Cost Limitations

The maximum cost of a Minor Capital Improvement Project is \$500,000 except roof repairs and replacements which are not cost limited. Non roof projects exceeding the ceiling shall be requested in the Major Capital Improvement Program.

5.0 Temporary Employees

Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

6.0 Reporting

~~At the end of each fiscal year, s~~ School districts shall submit a list of completed projects accomplished under the Minor Capital Improvement Program account for Minor Capital Improvement summary and detailed projects in the accounting system as required by the Delaware Department of Education in order to accomplish proper control and reporting of said projects.

2 DE Reg. 1382 (2/1/99)

6 DE Reg. 1672 (6/1/03)

9 DE Reg. 970 (12/01/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 727

Regulatory Implementing Order

727 Credit for Experience for Educators and for Secretarial Staff

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to readopt 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff. This regulation was reviewed as part of the 5 year review cycle.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Thursday, September 2, 2010, in the form hereto attached as Exhibit "A". The Department did not receive comments on the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to readopt 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff as part of the 5 year review cycle.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to readopt 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff attached hereto as Exhibit "B" is hereby readopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff hereby readopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff readopted hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 21, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED the 21st day of October, 2010.

DEPARTMENT OF EDUCATION

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

727 Credit for Experience for Educators and for Secretarial Staff

1.0 Educators Graduating from a 5 Year or 4 Year Preservice Program

1.1 Definitions

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

“**Eligible Employee**” includes, but is not limited to, teachers, nurses, librarians, psychologists, therapists, and counselors paid in accordance with 14 **Del.C.** §1305 that were hired into their first professional position after June 30, 2001 and zero years of experience. The exception to the zero years of experience would be an employee who qualified for military experience credit under 14 **Del.C.** §1312(a) and 14 **DE Admin. Code** 706.

“**Five Year Pre service Program**” means a regionally accredited college or university five year planned degree program which includes an extensive clinical component or internship in the fifth year.

“**Four Year Pre service Program**” means a regionally accredited college or university four year preservice undergraduate bachelor degree program.

“**Grade Point Average (GPA)**” means the grade point average (GPA) stated on the official transcript of the regionally accredited college or university granting the bachelor’s degree in the Four Year Preservice Program.

1.2 Pursuant to 14 **Del.C.** §1312(a), a graduate of a five year preservice program, or a graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent, shall be granted one year of experience on the applicable state salary schedule.

1.3 An employee eligible for one year of credited experience shall meet the definition of Eligible Employee in 1.1 and meet the requirements of 1.2.

9 DE Reg. 396 (9/1/05)

2.0 Administrators

No credit for experience shall be given for part time employment in administrative or supervisory positions.

3.0 Teachers

3.1 Days taught as a substitute or as a paraeducator may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.

3.1.1 A "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during any 12 consecutive month period.

4.0 Secretarial Staff

Secretaries may be granted one (1) year's experience for each creditable year of experience as a secretary in private business, public or private school, or other governmental agency.

5.0 Creditable Experience

Creditable experience includes experience obtained while working outside of Delaware.

6.0 Applicability

This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination of creditable experience for pension purposes which is specified in 29 **Del.C.** Ch. 55. Laws on employment and salary for administrators, teachers, and secretaries are found in 14 **Del.C.** Ch. 13.

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

8 DE Reg. 1607 (5/1/05)

9 DE Reg. 396 (9/1/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 940

Regulatory Implementing Order

940 Early Admission to Kindergarten for Gifted Students

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students. This regulation was reviewed under the five year cycle, and a proposed amendment was published in the May 2010 Register of Regulations. The Department received comments from the Governor's Advisory Council and thereafter reviewed the regulation and proposed amendment again. Upon this further review and consideration of the comments received, the Department determined that the identification by professionally qualified persons under 14 **Del.C.** § 3101(4) and the local district's assessment of the best interest of the child under 14 **Del.C.** § 2702(b) is the better mechanism to determine early admission to Kindergarten for Gifted Students. That mechanism will allow students with all statutorily listed areas of abilities, singularly or in combination, to be assessed with the same criteria. Accordingly, the Department has determined that continued regulation in this area is unnecessary at this time.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Thursday, September 2, 2010, in the form hereto attached as *Exhibit "A"*. The Department received comments from both the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the repeal of this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students. The Department determined that the identification by professionally qualified persons under 14 **Del.C.** § 3101(4) and the local district's assessment of the best interest of the child under 14 **Del.C.** § 2702(b) is the better mechanism to determine early admission to Kindergarten for Gifted Students. That mechanism will allow students with all statutorily listed areas of abilities, singularly or in combination, to be assessed with the same criteria. Accordingly, the Department has determined that continued regulation in this area is unnecessary at this time.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students attached hereto as *Exhibit "B"* is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students hereby repealed 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** 940 Early Admission to Kindergarten for Gifted Students amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on October 21, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of October 2010.

DEPARTMENT OF EDUCATION

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

Approved this 21st day of October 2010.

STATE BOARD OF EDUCATION

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

~~940 Early Admission to Kindergarten for Gifted Students~~**4.0 Requirements for Early Admission to Kindergarten**

~~When providing early enrollment into kindergarten of children who are gifted pursuant to the provisions of 14 Del.C. §3101(3)(a) or (b), local school districts and charter schools shall comply with the following requirements:~~

- 4.1 ~~At the request of any parent, legal guardian or person acting as a caregiver pursuant to 14 Del.C. §202(f), the district or charter school shall conduct an evaluation of any such potentially gifted child by a school psychologist or other professionally qualified person, in conjunction with other appropriate personnel, to determine if the child possesses outstanding mental and cognitive abilities and to determine if the child can demonstrate the social, emotional, and physical maturity, normally expected for successful participation in kindergarten. A discussion shall be held to determine the parent, guardian or Relative Caregiver's reason for requesting the child's early admission to kindergarten prior to the legal age.~~

~~4.1.1 The evaluation shall be conducted at no cost to the parent, guardian or Relative Caregiver.~~

- 4.2 ~~In order to qualify for early enrollment, the child must achieve a measured score at least 1.5 standard deviations above the mean score for the assessment instrument used to determine the child's mental and cognitive abilities. In addition, the evaluation must indicate that the child possesses the social, emotional and physical maturity to successfully participate in kindergarten.~~

- 4.3 ~~Following the completion of the evaluation, a representative of the school district or charter school who is knowledgeable of the evaluation process and any assessments used during the evaluation shall talk with the parent, guardian or Relative Caregiver to discuss the evaluation results.~~

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Combining §1915(c) Home and Community-Based Services Waivers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance intends to seek an amendment to the Elderly & Disabled §1915(c) Home and Community-Based Services (HCBS) waiver that combines three existing §1915(c) HCBS waivers. 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 August 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Elderly and Disabled (E & D) §1915(c) Home and Community-Based Services (HCBS) Waiver that combines three existing HCBS waivers into one waiver.

Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §435.217, *Individuals receiving home and community-based services*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in accordance with §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver’s target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

Summary of Proposal

The State of Delaware is requesting approval for an amendment to the Elderly and Disabled (E & D) Medicaid Waiver under authority of §1915(c) of the Social Security Act. The purpose of this amendment is to: 1) Consolidate three existing home and community-based waivers into one waiver; 2) Add participant direction opportunities to the E & D Waiver; 3) Make changes to personal care and respite service definitions and planned service units; 4) Make changes in the budget to reflect the waiver consolidation and service adjustments; 5) Update data sources used as part of the Quality Improvement Strategy; 6) Make miscellaneous adjustments to the narrative.

Specifically, the provisions of the proposed amendment:

1) **Consolidate three existing home and community-based waivers into one waiver.**

Currently, the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) administers and operates three waiver programs: the Elderly & Disabled (E & D) Waiver, the Assisted Living (AL) Waiver, and the Acquired Brain Injury (ABI) Waiver. Because many current services and service providers are shared across waivers, the consolidation of the three waiver programs into a single waiver will result in numerous efficiencies. The administration and operation of a single waiver, for example, will cut down on redundant administrative activities related to provider enrollment and monitoring, records management, reporting, financial tracking, and other functions. In addition, the streamlining will simplify choices for participants, and will allow for easier access to waiver services. Services currently provided as part of the AL and ABI waiver will be incorporated into the E & D waiver as part of this amendment. The AL and ABI Waiver will be discontinued, but this change will not result in the loss of service to persons currently receiving services under the AL or ABI Waiver, nor will it result in a loss of service to participants in the E & D Waiver. In recognition of the inclusion of participants currently served under the ABI waiver, the amendment specifies persons with acquired brain injury as part of the service population for the E & D waiver.

2) **Add participant direction opportunities to the E & D Waiver.**

This amendment includes the option for individuals who receive personal care services to choose between service delivery methods. Specifically, individuals can choose: a) participant-directed personal care services; b) agency-managed personal care services; or c) both participant-directed and agency-managed personal care services. Individuals who choose to direct their personal care services will have the full range of employer authority for personal care. As common-law employers, they will be able to hire, fire, train, schedule and direct the work of their personal care attendants. Participants will have the option of hiring relatives to serve as their personal care attendants, including, with certain safeguards in place, legally-responsible relatives. The state will contract with one or more vendors to provide Support for Participant Direction as an administrative function to assist participants in managing their responsibilities as employers. Support for Participant Direction vendor(s) will provide financial management services and information and assistance in support of participant direction (support brokerage).

3) **Make changes to personal care and respite service definitions and planned service units.**

Currently, except for a small number of respite care hours delivered in long-term care facilities, respite and personal care services under the E & D Waiver are virtually identical. Personal care and respite care (except, as noted above, respite care in long-term care facilities) are supportive services provided in the home of waiver participants. All providers of home-based respite care also provide personal care under the E & D Waiver. With this amendment, personal care and respite services will continue to be available, but with certain changes. First, respite services will be available only in long-term care facilities (assisted living facilities and nursing homes) to provide temporary and short-term relief for caregivers. The financial resources that are currently used to provide in-home respite hours will be used instead to expand the availability of personal care hours. It is expected that this change will be virtually seamless for participants, since the current respite service providers also provide personal care services. It is expected that this consolidation of in-home care service hours will be simpler for participants to understand, and more efficient for agency staff to manage. Second, the waiver amendment will increase the number and type of entities that can provide personal care services. Personal care will be available as a participant-directed service provided by individual personal care attendants, as described above, or as a provider-managed service. Currently, only home health agencies can provide personal care services under the E & D Waiver. The amendment will allow Personal Assistance Services Agencies (PASA), licensed by the State of Delaware, in addition to home health agencies, to deliver provider-managed personal care under the waiver. It is expected that the addition of personal care attendants and licensed PASA agencies as waiver providers will afford participants more choice in providers for personal care services.

4) **Make changes in the budget to reflect the waiver consolidation and service adjustments.**

Factor D: Cost estimates for Year 1 are adjusted to reflect the most recent claims data for the E & D Waiver. Changes in Years 2-5 are made to account for the addition of services and participants from the ABI and AL Waivers (cognitive services, day habilitation, and assisted living). In addition, service amounts for respite services are reduced and those for personal care are increased as a result of service definition changes, as described above. Service unit costs for personal care services are adjusted to account for the inclusion of personal care attendants and PASA agencies as service providers. (Unit costs for personal care attendants and PASA agencies

are projected to be lower than costs for home health agencies, currently the sole provider type for personal care services.) Year 2 costs are calculated to account for the fact that new services and participants will be introduced five months into the year. (Year 2 of the renewal period begins on 7/1/10 and the amendment will take effect on 12/1/10.) Service costs are calculated at the full annual amount beginning in Year 3. Factors D', G', and G': Adjustments to Factors D', G', and G' estimates are made based on utilization data for the combined waiver populations (E & D, AL, and ABI Waiver participants). Average length of stay: Adjustments are made to the average length of stay for each of the waiver years. The new figures are derived by weighting average utilization data from the three Waiver populations (E & D, AL, and ABI) and accounting for the partial-year enrollment of AL and ABI Waiver participants during Year 2.

5) **Update data sources used as part of the Quality Improvement Strategy.**

DSAAPD, in coordination with the Division of Medicaid and Medical Assistance (DMMA), has had the opportunity to refine its quality improvement strategy for the E & D Waiver, and in the process has developed new data collection and remediation tools, including the Initial Level of Care Review Tool, the Critical Event or Incident Report, and the Provider and Payment Oversight Report. In some cases, these new tools replace less effective data collection and reporting methods. For some performance measures, the collection and/or aggregation and analysis of data is changed from monthly to quarterly to reflect adjustments to the quality improvement strategy. These updates are included in the quality improvement sections of the affected appendices.

6) **Make miscellaneous adjustments to the narrative.**

A change was made to clarify language and create consistency within the document related to the number and type of participant contacts made by DSAAPD staff each year. Throughout the narrative, reference is made to the provider relations agent. Recently, the provider relations agent for Delaware underwent a corporate name change and is now known as HP Enterprise Services. This change was made throughout the document.

The waiver will be administered by the Division of Medicaid and Medical Assistance (DMMA), the State Medicaid agency, and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The proposed waiver period is July 1, 2009 through June 30, 2014.

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

Fiscal Impact Statement

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

As background, SCPD provided the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) with preliminary comments on a May 19, 2010 version of the proposed consolidation of the waivers. DSAAPD provided a July 29 response to each of the paragraphs of the preliminary critique. SCPD is resubmitting its initial observations (with DSAAPD's italicized responses) of the proposed consolidation of waivers as its official comments on the proposed regulations. In addition, SCPD has supplemental observations which are provided subsequent to the italicized responses.

1. The "assurance" section for "Inpatients" (p. 9) recites that waiver services will not be provided to individuals who are inpatients in a nursing home. DSAAPD may wish to add a caveat about respite being offered in such settings. See, e.g., p. 13.

Agency Response: *The referenced section is part of the CMS application template and cannot be altered by the applicant.*

2. The "assurance" section for "Room and Board" (p. 9) is inconsistent with Appendix I-6 (p. 154). The assurance section would include rent and food expenses for an unrelated live-in personal caregiver while the

Appendix categorically excludes such coverage.

Agency Response: *The referenced sections are part of the CMS application template and cannot be altered by the applicant. In this case, room and board expenses are allowed under certain circumstances if claimed by the state. The state's option with regard to room and board expenses for unrelated individuals providing live-in care is specified in Appendix I.*

3. The "transition plan" section (pp. 12-13) contains an informative list of services available under the current 3 waivers and the services menu under the new consolidated waiver. One significant change for ABI waiver participants is that case management will be switched from private providers to DSAAPD staff. Based on anecdotal criticism of the private case management system, this may enhance the quality of case management services. A second change is that "respite" will be limited to short-term stays in a nursing or assisted living facility. On a practical level, if a participant is interested in "respite" within a home setting, this would be covered as a "personal care service".

Agency Response: *That is correct. The definition of respite has been narrowed, and services previously considered in-home respite will be covered under personal care.*

DSAAPD staff assuming case management duties may be familiar with the needs of persons with common physical disabilities and the elderly. However, DSAAPD staff may be less familiar with the specialized needs and services of the ABI population. Although SCPD is supportive of DSAAPD assuming case management duties, Council strongly recommends that DSAAPD commit to train all waiver case managers in the specialized needs and services related to the ABI population. DSAAPD should consider collaborating with DVR which has experience in this context. Moreover, SCPD recommends that DSAAPD require case managers working with individuals with ABI be formally trained as Certified Brain Injury Specialists (CBIS) - this could be achieved within a reasonable timeframe (e.g. 2 – 3 years). Otherwise, the consolidated waiver will be unresponsive to persons with ABI and people may be poorly evaluated.

Regarding respite care, SCPD recommends that a marketing/outreach plan be developed that will proactively inform waiver participants and family members that in-home respite is still available and will be covered under personal care. Anecdotal criticism of the waiver consolidation in this context suggests that many current waiver participants and/or family members believe that respite services will only be provided in institutional settings.

Agency Response: *DSAAPD has identified four case managers as well as one DSAAPD planner to be formally trained as Certified Brain Injury Specialists. Case managers who receive this specialized training will be responsible for providing case support for participants with brain injuries. DSAAPD is committed to making sure that its staff has the knowledge and skills necessary to appropriately respond to the unique needs of the ABI population.*

With regard to respite care, DSAAPD has incorporated outreach and information to current participants as part of its plans for the implementation of the waiver amendment. DSAAPD recognizes that the changes related to respite and personal care are most likely to cause confusion, and will be proactive in its communications to avoid unnecessary concern on the part of participants and their families.

4. Participant questionnaires/surveys will be used as part of the quality assurance process (pp. 24 and 137). This manifests respect for participants and merits endorsement.

Agency Response: *The endorsement is noted.*

SCPD recommends that the Division consider utilizing the format of surveys utilized by current waiver providers, JEVS and Easter Seals, since they have developed useful surveys which collect meaningful data.

Agency Response: *Participant questionnaires are in use for all waiver services at the present time. These questionnaires have been designed to collect information needed to ensure that participants are receiving high quality services. They have also been designed to be in compliance with all of the federally-required home and community-based waiver quality indicators.*

5. In Appendix B-1, Section a., Target Groups (p. 25), there is no "check-off" for "Brain Injury" as a subgroup. SCPD understands from the discussion with Lisa Bond at the June 21 SCPD meeting that CMS may have suggested the lack of the "check-off". SCPD reiterates the observation since the omission is not intuitive.

Agency Response: *The designation in this section is presented based on instructions from CMS. The*

structure of the application template in this section lends to confusion with regard to the target population. There should be no ambiguity, however, with regard to the inclusion of persons with brain injury as part of the service population. Narrative is presented under "additional criteria" to highlight and clarify the fact that persons with acquired brain injury are included as part of the target population served the waiver.

SCPD is still uncertain as to why CMS would have made this suggestion and once again reiterates the observation since the omission is not intuitive.

Agency Response: *DHSS agrees that the omission is not intuitive and reiterates that the problem is related to a limitation in the application form itself.*

The waiver application is a web-based electronic form. In the referenced section, the applicant is required to indicate a target group by selecting from a pre-established list using a "radio button." When a selection is made with a "radio button," represented by a dot in a circle, only one selection can be made from a list.

By law, waivers cannot serve more than one designated population group. The three designated groups are:

1) aged and/or disabled; 2) persons with mental retardation and/or developmental disabilities; 3) persons with serious mental illnesses. Persons with brain injury are a specially recognized "sub-group." They can be included in a general waiver (for example, an "aged and disabled" waiver) or can be served in a waiver exclusively designed for that population.

In the application form, "brain injury" is listed as a specialized sub-group. Based on instructions, "brain injury" should be selected from this list when waivers are designed specifically to serve that population as opposed to a broader population.

Again, narrative was included in the additional criteria section to clarify that persons with brain injury are included in the "aged and disabled" designation.

6. DHSS contemplates 1616 participants in years 1-5 of the waiver (pp. 28-29). DHSS is "reserving" 25 slots for individuals transitioning from nursing homes and 5 slots for young adults transitioning from the Children's Community Alternative Disability Program. The waiver contemplates admission of "all eligible persons" (p. 30). If oversubscribed, a waiting list based on a "first-come-first-served" approach would be established (p. 30).

Agency Response: *Based on past utilization patterns, we anticipate that a waiting list will not be needed during the five-year waiver period.*

7. DHSS ostensibly had the option of adopting a financial eligibility cap of 300% of the SSI Federal Benefit Rate (FBR). See Appendix B, "Medicaid Eligibility Groups Served in the Waiver" section (pp. 32-33). DHSS adopted a lower (250%) cap. From a consumer perspective, it would be preferable to adopt a higher income cap to encourage employment and promote implementation of the Ticket to Work legislation.

Agency Response: *The suggestion is noted. No changes to the cap are planned at this time.*

8. The minimum number of waiver services that an individual must require to be included in the waiver is "1" (p. 37). SCPD endorses this provision.

Agency Response: *The endorsement is noted.*

9. DHSS envisions using its standard "Long Term Care Assessment Tool" to determine whether an applicant meets the necessary nursing facility level of care (p. 38). This could prove problematic if the form is not adapted to identify limitations manifested by individuals with ABI.

Agency Response: *DHSS staff will consider this concern in reviewing the assessment tool.*

SCPD remains concerned that use of the standard "Long Term Care Assessment Tool" will be an invalid and unreliable tool for assessment of many individuals with ABI. Specialized assessment tools for ABI should be adopted and staff trained in their use. SCPD is reminded of DHSS use of its standard "long term care assessment tool" years ago when evaluating level of care of children for the Children's Community Alternative Disability Program. The form was not a valid tool for kids. It had a geriatric bias and did not adequately address mental health and cognition. SCPD predicts that use of a standard "Long Term Care Assessment Tool" for individuals with ABI will prove equally deficient and result in many unjustified determinations of ineligibility. Apart from the assessment tool(s) for level of care, the ABI population may also benefit from use of specialized assessment tools to determine

need for services.

Agency Response: *The specific concerns are noted and will be taken into consideration when reviewing the assessment tool. It should be pointed out that this tool has been used successfully to evaluate the level of care for applicants of the current Acquired Brain Injury Waiver, the Assisted Living Waiver, and the Elderly & Disabled Waiver as well as Delaware's long term care facilities. It includes a broad-based evaluation of physical, sensory and cognitive functions, among others, which may be salient in cases of brain injury. That being said, periodic reviews of such instruments should be conducted in such a way as to ensure that the care needs and functional deficits of sub-groups of the service population are being appropriately documented.*

10. The description of "adult day services" includes OT, PT, and ST (p. 49) and has 2 levels of service depending on need - "basic" and "enhanced". The standards are relatively liberal, i.e., the behavior justifying services need only occur weekly:

The service is reimbursed at two levels: the basic rate and the enhanced rate. The enhanced rate is authorized only when staff time is needed to care for participants who demonstrate ongoing behavioral patterns that require additional prompting and/or intervention. Such behaviors include those which might result from an acquired brain injury. The behavior and need for intervention must occur at least weekly.

Agency Response: *Standards will remain as presented. However, adjustments may be needed after utilization patterns have been established.*

SCPD recommends that the waiver include some provision for supported and competitive employment. In addition, DSAAPD should collaborate with DVR regarding pre-employment services. DVR's order of selection has resulted in hundreds of individuals being placed on a waiting list. DHSS should assess whether the waiver could include community-based adult day programs such as the TBI Clubhouse Model. Offering solely adult day care and facility-based adult habilitation is an outdated model. It would be preferable to include more robust vocational options for individuals who could benefit from something other than "day care". SCPD recommends that the waiver provide more flexibility which is not an exclusively facility based medical model that allows people to be able to utilize other community-based programs, including the TBI Clubhouse Model. If the objective of the waiver is to support people in the community and prevent deinstitutionalization, then community-based programs, meaningful employment and volunteer service should be encouraged.

Agency Response: *DHSS would be interested in exploring options for expanding and/or adjusting service options in this regard. DHSS would welcome the input of organizations such as SCPD in identifying participant needs and developing related options within the confines of waiver requirements and funding availability. An important aspect of the planning for such a service change would be to estimate costs and to secure funding. While such efforts could not be accomplished within the established timeframes for this waiver amendment, DHSS will consider the opportunities when planning for future enhancements.*

11. The description of "day habilitation service" (p. 50) also specifically mentions individuals with TBI:

Day Habilitation service is the assistance with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting separate from the participant's private residence. Activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice. Meals provided as part of these services shall not constitute a "full nutritional regimen" (3 meals per day). Day habilitation services focus on enabling the participant to attain or maintain his or her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies in the service plan. In addition, day habilitation services may serve to reinforce skills or lessons taught in other settings. This service is provided to participants who demonstrate a need based on cognitive, social and/or behavioral deficits such as those that may result from an acquired brain injury.

This description could be improved by including a reference to "reacquisition" of skills.

Agency Response: *A reference to the reacquisition of skills has been added to the definition.*

SCPD appreciates the inclusion of a reference to "reacquisition" of skills. In addition, SCPD recommends that the Division adopt reimbursement rates for adult habilitation sufficient to attract quality providers.

Agency Response: *Recommendation noted. Efforts are made to establish rates which are fair and appropriate for all of the waiver services.*

12. DHSS specifies that “personal care” can be provided by the following: legally responsible person, relative, or legal guardian (p. 52). See also p. 69. This merits endorsement. However, DHSS later contradicts this authorization by reciting that “(a) representative of the participant cannot serve as a provider of personal attendant services for that participant” (p. 105). This restriction should be deleted. First, it would literally exclude anyone authorized to act on a participant’s behalf through guardianship, a power of attorney or advance health care directive. For persons in assisted living settings who lack competency, it would exclude the closest relatives. See Title 16 **Del.C.** §§1121(34) and 1122. For other participants, close relatives would be excluded given their authority under Title 16 **Del.C.** §2507(b)(2). Finally, the Social Security Administration regulations include a preference for relatives as representative payees. See 20 C.F.R. §404.2021. The exclusion of all such representatives as providers of personal attendant services is overbroad.

Agency Response: *The application has been clarified in response to your concern. The language now reads: “A person who serves as a representative of a participant for the purpose of directing personal care services cannot serve as a provider of personal attendant services for that participant.” A guardian, power of attorney, rep payee or any other person can serve as a provider of personal attendant services, but in those cases, another individual would need to act as representative for the more narrow purpose of directing the personal care. This separation, for example, would allow for two signatures on time sheets, one from the employer (the participant or his/her representative) and one from the employee. Note that the waiver allows for non-legal as well as legal representatives for purposes of directing personal care.*

13. DHSS requires all persons providing personal care to complete a training regimen in the absence of an emergency (App. C-1/C-3; p. 52). See also p. 71. This is ostensibly overbroad. For example, it is possible that a relative has been competently providing this service to a participant for years.

Agency Response: *It is understood that experience and skill levels will vary and this will be taken into consideration in the development of training standards.*

14. The service specifications for assisted living include 9 different levels of reimbursement depending on the participant’s needs (p. 56). This merits endorsement. It should facilitate continued residency in an assisted living setting since such facilities could rely on enhanced services to deter “dumping” to nursing homes.

Agency Response: *The endorsement is noted.*

15. The service specifications for “cognitive services” (p. 57) are critical for persons with ABI. The norm of 20 annual visits may be too restrained. Moreover, the criteria could be enhanced by including some forms of AT (e.g. biofeedback equipment) and also including OT and ST supports. For example, language development could be considered a component of “cognitive services”. SCPD recognizes that DME is separately covered under the heading of “specialized equipment and supplies” (p. 61). However, the service specifications for adult day services includes OT, PT, and ST supports (p. 49). By CMS regulation, OT, PT, and ST includes equipment used to facilitate the therapy. Thus, “DME” could be incorporated into other service specifications.

Agency Response: *With regard to the number visits, it is expected that a maximum of 20 visits per year will meet the needs of most participants. Note, however, that under the Waiver, DSAAPD case managers may authorize service request exceptions above that limit. With regard to assistive technology (AT) supports, DSAAPD staff will ensure that when such needs are documented, that those needs are reflected in an individual’s care plan. When applicable, AT supports would be paid for under the Medicaid State Plan. Those AT supports which are not reimbursable under the state plan could be covered under the Waiver as Specialized Equipment and Supplies.*

16. The list of providers of cognitive services (p. 58) omits licensed professional counselors of mental health (Title 24 **Del.C.** §3030). DHSS should consider whether to add a reference. It would also be appropriate to add “advanced practice nurse” [Title 24 **Del.C.** §1902(b)(1)].

Agency Response: *These are helpful suggestions that DHSS will research and consider for inclusion in the future amendments to the waiver.*

SCPD believes DHSS has the discretion to address this section as part of the amendment to the waiver. Council believes that the recommendation is fairly “benign” and is submitting the recommendation so it could be included in this amendment to the waiver, not a future amendment.

Agency Response: *SCPD is correct that DHSS has the discretion to address this section as part of the*

amendment and acknowledges that the suggestions are good ones. Because of the nature of Medicaid waiver applications and operations, some changes that appear to be minor adjustments require a fair amount of research and forward planning, such as making changes to budgets, provider enrollment materials, quality review strategies, and claims payment systems. In addition, as part of the planning process, the State would need to recruit and enroll providers prior to project start-up. DHSS will certainly include these suggestions in planning for future amendments.

17. The criteria for personal emergency response system (PERS) allows the participant to connect not only to a response center but also “other forms of assistance” (p. 59). This is preferable since some systems allow a participant to program the system to contact relatives, friends, neighbors, and 911 in sequence rather than an expensive and impersonal call center. However, the cost tables (pp. 160-161) appear to contemplate almost exclusive enrollment (740+ participants) in monthly monitoring services.

Agency Response: *This service alternative was added in response to SCPD’s recommendation during the waiver renewal process last year. DHSS is hopeful that the expanded emergency response definition will provide more options for participants and at the same time lead to cost savings in the Waiver program. After DHSS enrolls providers of non-monitored emergency response systems in the Waiver program and participants’ utilization patterns are established, the cost projections may need to be adjusted accordingly.*

18. DHSS may wish to consider requiring maintenance of service plans beyond the minimum 3 years (App. D-1; p. 86).

Agency Response: *The referenced language is part of the application template and cannot be changed by the applicant. In actuality, plans are maintained for a longer period of time.*

SCPD is dubious that DHSS would not have discretion to include a longer time frame in the template. Therefore, Council continues to recommend requiring maintenance of service plans beyond the minimum 3 years.

Agency Response: *While DHSS understands and appreciates SCPD’s request that a higher standard be included in this section, we respectfully state again that the applicant is not able to edit that information on the application form. It is a web-based application with various form fields that the applicant must fill in. Some form fields are text boxes which enable an applicant to include narrative, some are radio buttons, and some are check boxes. Applicants have no access to the written material on the application form other than in the designated form fields. In this case, the applicant’s response is indicated in a check box. Specifically, this section, the application reads:*

Maintenance of Service Plan Forms. Written copies or electronic facsimiles of service plans are maintained for a minimum period of 3 years as required by 45 CFR §92.42. Service plans are maintained by the following (check each that applies):

- Medicaid agency
 - Operating agency
 - Case manager
 - Other
- Specify:

The applicant’s only allowable response is to fill in one or more check boxes related to the location of service plans.

19. DHSS contemplates a minimum of 4 contacts annually (2 contacts from a case manager and 2 contacts from nurse) with each participant (p. 88). This standard is arguably too infrequent.

Agency Response: *This minimum standard is established so that in times of critical staff shortages (such as those that might occur during a spending or hiring freeze), the state would not be out of compliance with waiver requirements.*

SCPD believes that adopting this minimum standard so the state would not be out of compliance with the regulations is not acceptable. It also infers that during times of economic restraint, case manager support positions

would not be filled which would negatively affect case management levels. SCPD recommends that DHSS contact OMB and solicit agreement that waiver case management support positions will be filled even during hiring freezes so the safety of individuals with disabilities and the elderly who use these waiver services is not jeopardized.

Agency Response: *DHSS will engage in research to determine best practices in this regard and will develop operational procedures that are consistent with these standards.*

20. In the “fixing individual problems” section (p. 100), it would be preferable to include a reference to involving the participant in the resolution of the concern.

Agency Response: *In this section, fixing individual problems does not typically refer to fixing an individual’s problem, but rather, fixing a single-occurrence or isolated administrative problem (as opposed to a systemic one). This language is used as part of the application template.*

21. The DHSS table for participant direction of services contemplates 0 participants directing their own services in year 1 of the waiver (App. E-1; p. 111). This should be reconsidered. DHSS envisions 1616 waiver participants in year 1 (p. 156).

Agency Response: *The E&D Waiver is currently approved for a five-year period beginning 7-1-09. This amendment has an effective date of 12-1-10, which is five months into Year 2 of the approved waiver period. Because Year 1 of the waiver concluded on 6-3-10, the table correctly indicates that no participants self-directed services during that period.*

22. In the sections on grievances, critical events, and quality assurance, DHSS may wish to consider adding a reference to CLASI. CLASI is mentioned on p. 115 as a resource in the context of fair hearings. See, e.g., Title 16 **Del.C.** §§1102(7), 1134(e)(f)(g), and 1119C(b) [applicable to nursing and assisted living facilities].

Agency Response: *This section of the application was not addressed as part of the amendment. The suggestion will be kept on file for future reference.*

SCPD believes DHSS has the discretion to address this section as part of the amendment to the waiver. Council believes that the recommendation is fairly “benign” and is submitting the recommendation so it could be included in this amendment to the waiver, not a future amendment.

Agency Response: *DHSS will look into ways that CLASI could be a resource in the specific areas referenced in this section.*

23. There are several references to the Ombudsman and DLTCRP in the quality assurance context. However, the references uniformly limit the Ombudsman to “non-abuse related complaints”. See, e.g. pp. 117 and 120. To the contrary, the Ombudsman is statutorily required to address abuse and neglect concerns. See Title 16 **Del.C.** §1152(1)(5). Although DHSS has attempted to eschew this responsibility through an MOU, the validity of the MOU could be questioned.

Agency Response: *This section of the application was not addressed as part of the amendment. The comment will be kept on file for future reference.*

SCPD believes DHSS has the discretion to address this section as part of the amendment to the waiver. Council believes that the recommendation is important and is submitting the recommendation so it could be included in this amendment to the waiver, not a future amendment.

Agency Response: *SCPD is correct that DHSS has the discretion to address this section as part of the amendment. In order to focus on the major issues at hand, however, a decision was made to not open all sections of the application for revision and review during this amendment process. It is expected that this section will be researched and addressed with the next amendment.*

24. Appendix G-2 (pp. 122 and 123) recites that “the State does not permit or prohibits the use of restraints or seclusion.” Although Council would prefer that this were accurate, the statement is inconsistent with Title 16 **Del.C.** § 1121(7) and 16 **DE Admin. Code** Part 3201, §6.3.8.4.

Agency Response: *This section of the application was not addressed as part of the amendment. The comment will be kept on file for future reference.*

SCPD believes DHSS has the discretion to address this section as part of the amendment to the waiver. Council believes that the recommendation is fairly “benign” and is submitting the recommendation so it could be included in this amendment to the waiver, not a future amendment.

Agency Response: *SCPD is correct that DHSS has the discretion to address this section as part of the amendment. In order to focus on the major issues at hand, however, a decision was made to not open all sections of the application for revision and review during this amendment process. It is expected that this section will be researched and addressed with the next amendment.*

25. The “medication administration” section (p. 126) is underinclusive. It refers to an exception to the Nurse Practice Act for assistance with medications by persons who have completed a training course. However, it fails to include a reference to Title 24 **Del.C.** §1921(19) or §1921(4); and 24 **DE Admin. Code**, Part 1900, §§7.7.1.4 and 7.9. Competent individuals can generally delegate administration of medications to personal attendants.

Agency Response: *The referenced section of the application pertains only to the administration of medication in licensed assisted living facilities.*

SCPD reviewed this section and believes that it is not clear that it literally refers only to the administration of medication in licensed AL facilities. DHSS may want to clarify that it only applies to AL facilities.

Agency Response: *SCPD is correct that the section does not literally refer only to licensed AL facilities. However, for practical purposes, assisted living (which is provided in licensed assisted living facilities) is the only services in the waiver to which this section is applicable. Specifically, the instructions indicate:*

This Appendix must be completed when waiver services are furnished to participants who are served in licensed or unlicensed living arrangements where a provider has round-the-clock responsibility for the health and welfare of residents. The Appendix does not need to be completed when waiver participants are served exclusively in their own personal residences or in the home of a family member.

26. The reimbursement rate for personal care is listed as \$7.09 per 15-minute unit (e.g. \$28.36/hr.). The reimbursement rate for respite is listed as \$6.91 per 15-minute unit (e.g. 27.34/hr.). See p. 159. Clarification would be appropriate. Council does not believe that non-agency personal attendants and respite providers are paid at these rates.

Agency Response: *Personal care costs for Year 1 are estimates based on home health agency rates. The cost estimates in subsequent years are reduced significantly to account for the fact that personal care providers may include home health agencies, personal assistance services agencies (PASA), and personal attendants.*

27. Consistent with discussions with DSAAPD, personal care service specifications provide a guideline of 25 hours per week, but that there are not necessarily any service limits. SCPD continues to recommend that the 25 hour guideline be deleted.

Agency Response: *The application itself does not specify service limits with regard to personal care. We will consider your comments when developing personal care service authorization guidelines.*

SCPD would like to be included the development of the personal care service authorization guidelines.

Agency Response: *DHSS appreciates SCPD’s offer to assist and will be in contact about this process.*

28. SCPD recommends more frequent assessment of waiver implementation, especially during the initial 12 months of implementation after December 1, 2010. Since waiver amendments can be submitted at any time, frequent data collection and assessments are critical to determine the emerging needs of participants in the waiver. For example, regular reports to the SCPD Brain Injury Committee (BIC) and/or SCPD would be appropriate. If monthly data were compiled, this information could be shared with the SCPD to facilitate review.

In addition, SCPD recommends that DHSS disaggregate the data collection/satisfaction survey responses for people with ABI because there could be an example in which, overall, people in the new consolidated waiver are very satisfied. However, there could be a subset of people with ABI in the consolidated waiver who are 100 dissatisfied and the overall survey of participants would not capture this data. Quality assurance methodology needs to capture useful and meaningful data.

Agency Response: *DHSS is interested in gaining information about the quality of care provided to individuals*

under the waiver and is willing to consider ways to aggregate and report on these data to make them as meaningful as possible. However, it is important to keep in mind that DHSS has certain reporting obligations under the waiver, and data are developed and maintained in timeframes and in a manner consistent with those requirements. That being said, DHSS shares with SCPD an interest in ensuring that the needs of persons with ABI are not overshadowed in the process of creating programmatic efficiencies through the consolidation of waiver programs.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation related to amending the Elderly and Disabled Waiver by combining the existing §1915(c) Home and Community-Based Services waivers - Elderly and Disabled, Assisted Living and Acquired Brain Injury - into one waiver is adopted and shall be final effective October 10, 2010.

Rita M. Landgraf, Secretary, DHSS

* **Please Note: The application is available in PDF format at the following link:**
[Combining §1915\(c\) Home and Community-Based Services Waivers](#)

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Chapter 22 (16 Del.C., Ch. 22)
16 DE Admin. Code 6001

ORDER

DSSM 11006.3; Child Care Subsidy Program
6001 Substance Abuse Facility Licensing Standards

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Division of Substance Abuse and Mental Health's (DSAMH) **Substance Abuse Facility Licensing Standards**. The Department's proceedings were initiated pursuant to 16 Delaware Code Section Chapter 22.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the July 2010 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposed change described below amends DSAMH **Substance Abuse Facility Licensing** policies in the Division of Social Services Manual (DSSM) regarding **the licensure of substance abuse treatment facilities**.

Statutory Authority

45 CFR §98.40, *Compliance with applicable State and local regulatory requirements*

Summary of Proposed Change

DSAMH 6001 Substance Abuse Facility Licensing Standards: This change is proposed: 1) to amend current standards; and, 2) to add information and to reformat the text to further clarify the requirements for

substance abuse licensure. The intent of the proposed amendment is to simplify language and improve readability.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Substance Abuse Facility Licensing Standards. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 79, ? 7903.

July 1, 2010 DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 30, 2010, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

Summary of Evidence

A. Melissa Gentile with Claymont Recovery Center provided the following written comment:

“...regarding 14.3.2 ‘Upon admission the program shall issue each client a photo identification card’ If a program maintains a copy of the client’s driver’s license, what is the point of issuing another photo identification card?”

Agency Response: DSAMH concurs with Ms. Gentile’s comment. The final order has been amended to say: *Upon Admission, the program shall obtain from or issue to each client a photo identification card.*

B. The Governor’s Advisory Council for Exceptional Citizens (GACEC) and the State Council For Persons With Disabilities(SCPD) provided the following written comments:

1. Section 3.0 definition of “clinical director”, recites that it is someone who meets the requirements of §6.1.2.1. However, the regulations also use the term “clinical director” in the context of co-occurring treatment facilities (Part 16.0). The qualifications of a “clinical director” under §16.2.3 are inconsistent with the qualifications of a “clinical director” under §16.1.2.1 SCPD (and GACEC) recommends that the inconsistency be resolved.

Agency Response: DSAMH concurs with SCPD’s and GACEC’s comment. The final order has been amended to read: *“...clinical director” means an individual who, by virtue of education, training, and experience, satisfies the requirements of §6.1.2.1 and/or §16.2.3 of these regulations.*”

2. Section 3.0, definition of “counseling”, categorically limits counseling to “face-to-face” interaction. There are both pros and cons to this approach. One disadvantage is that telephonic or videoconferencing communication is precluded. For example, as a practical matter, if a spouse is in treatment, it may only be possible to “tie in” the other spouse (who may live or work 80 miles away) through electronic communication. DSAMH may wish to consider some exceptions based on extenuating circumstances. Parenthetically, the definition conflicts with §11.5.1.2.1 which specifically allow counseling by phone.

Agency Response DSAMH concurs with SCPD’s and GACEC’s comment. The final order has been amended to read: *“Individual counseling is the face-to-face, video or telephone interaction between a Counselor I or Counselor II and an individual client for a specific therapeutic purpose.”*

3. Section 3.0, definition of “Nurse Practitioner”, could be improved by using the Delaware licensing terminology, “advanced practice nurse” (“APN” consistent with Title 24 Del.C § 1902 (b)(1). If amended, a conforming reference should also be added to the definition of “Qualified Psychiatric Practitioner” in §3.0.

Agency Response: The definition as written is intended to be a generic term to capture the various titles used from state to state as part of the National Licensure Compact (NLC). DSAMH appreciates the comment but will respectfully keep the standard as written.

4. Section 4.1 contemplates licensure under the regulations for “mixed” facilities (e.g. co-occurring substance abuse and mental health disorder programs). Both residential and non-residential entities are covered (§4.1.1). Unfortunately, there are major omissions throughout the regulations which ignore the application of statutory standards for facilities. For example, the residential facilities may be subject to the patient bill of rights as codified at Title 16 Del.C §1121. See Title 16 Del.C. §1102(4). Moreover, the regulations omit any reference to the

bill of rights codified in the Substance Abuse Treatment Act, Title 16 Del. C §2220. The bill of rights was co-authored by DSAMH. Moreover, with the June 29, 2010 enactment of H.B. 41, co-occurring substance abuse and mental health facilities are now subject to Community Mental Health Treatment Act. The regulations should incorporate many of the statutory standards which apply to both residential and non-residential treatment facilities. Compare 16 DE Admin Code Part 3315, Appendix B (Family Care Homes) for illustration of incorporation bill of rights into regulatory appendix. SCPD (and GACEC) will include some specific recommendations below:

Agency Response: DSAMH is in partial agreement with the comment. Section 7.1.2.1 has been amended as follows: *“All agencies shall ensure that clients’ rights are fully protected as enumerated in Del.C. §2220 and , including the following:”* The other sections of 16 Del.C. mentioned fall under sections of the code that are specific to facilities that would not be considered residential or non-residential entities under these standards and regulatory activity does not fall under the purview of DSAMH (e.g. “Family Care Homes”, MH Group Homes etc...) DSAMH appreciates the comment and will amend §7.1.2.1 as described above.

5. Section 4.3.3 reflects a \$15.00 application fee for a facility license. The Division may want to consider whether the fee is unduly modest.

Agency Response: DSAMH will keep the application fee at \$15.00 at this time but appreciates the suggestion and will consider raising the fee to come closer to covering the actual cost of the licensing process.

6. Sections 4.5.3 and 4.9 address the Division’s access rights, cross referencing federal laws. The Division should consider including specific State law references such as Title 16 De I.C. § 1107 (residential facilities.)

Agency Response: As commented on under suggestion # 4, this section of 16 Del.C falls under sections of the code that is specific to facilities that would not be considered residential or non-residential entities under these standards and regulatory functions do not fall under the DSAMH’s purview (e.g. “Family Care Homes”, MH Group Homes etc...) DSAMH appreciates the comment but will respectfully keep the standard as written.

7. Sections 4.6 and 4.7.1 could be problematic. By communication “deficiencies” solely through “recommendations”, the Division may be inviting facilities to consider such notices as hortatory and encouraging but not binding.

Agency Response: Section 4.7.1 specifically states: *“Within ten (10) working days after the receipt of a survey summary report, the program shall submit a corrective action plan to the Division, addressing all areas where recommendations were made, unless otherwise directed by the Division.”* The word “shall” indicates that the standard is not hortatory. DSAMH appreciates the comment but will respectfully keep the standard as written.

8. Section 4.12.1.6 authorizes suspension or revocation of a license for violations of Title 16 Del.C Ch. 22. DSAMH should consider adding a reference to violations of Title 16 Del. C Ch. 22 (for residential facilities) and Title 16 Del.C. §5191 (for co-occurring facilities). See, e.g., Title 16 Del.C. §1138.

Agency Response: As commented on under suggestion # 4, this section of 16 Del.C falls under sections of the code that is specific to facilities that would not be considered residential or non-residential entities under these standards and regulatory functions do not fall under the DSAMH’s purview (e.g. “Family Care Homes”, MH Group Homes etc...) DSAMH appreciates the comment but will respectfully keep the standard as written.

9. The citation in §4.14.5 is incorrect. The citation should be to 29 Del.C. Chs. 100 and 101.

Agency Response: DSAMH concurs with SCPD’s and GACEC’s comment. The final order has been amended to read: *“...29 Del.C. Chs. 100 and 101.”*

10. The Division proposes to delete the following sentence in 4.15.1: *“The waiver request shall be posted in a prominent place in the facility and outline a process approved by the Division whereby clients can offer comments and feedback specific to the waiver request.”* This provision has been inserted at the behest of the Council based on past commentary. The deletion is highly objectionable and demeans the value of input from consumers. A facility can simply avoid the application of any regulation through an ex parte to the Division. The consumers who are the protected class under the regulations would be “clueless” that their rights are being

undermined through a waiver request. Consumer input on waiver request is authorized in analogous regulations. See, e.g. 16 DE Admin Code 3301, §9.1.5 (group homes for persons with AIDS).

Agency Response: DSAMH concurs with SCPD's and GACEC's comment. The final order has been amended to remove the strike through from §4.15.1

11. Section 5.1.1.1 contemplates each community-based agency including "representatives of the population it serves" on its "governing body and/or advisory council". This could be interpreted to mean 1 "token" representative or, since plural 2 representatives (e.g. 1 on a governing board and 1 on advisory council.) The Division may wish to clarify its expectations in this context.

Agency Response: The standard is intended to support and encourage the participation of consumers and their families on governing bodies and/or advisory councils as well as stakeholders who are familiar with the area the program serves. DSAMH appreciates the comment but will respectfully keep the standard as written.

12. Section 5.1.4.4.1.16 requires the facility policy and procedures manual to contain a protocol for making child abuse/neglect reports. The regulations contain no analogous requirements for a protocol to report adult abuse/neglect. There is a mandatory reporting duty for adults subjected to abuse/neglect. (Title 31 Del. C §3910, §1132, §2224, §5194 and newly enacted H.B. 41) PM 46 also requires "each Division that has, or contracts for operations of, residential facilities" to have standardized reporting procedures. The only reporting references in the regulations pertain to licensing boards.

Agency Response: DSAMH concurs with SCPD's and GACEC comment. The final order has been amended to say: 16 Del.C. §§902 through 904, 3910, 1132, 2224, 5194 and 42 CFR § 2.12(c)(6)

13. Section 5.1.6 could be improved by requiring facilities to include a recital that there will be no retaliation against persons who report abuse, neglect, financial exploitation or mistreatment and reminding employees that there are penalties for failure to report.

Agency Response: DSAMH concurs with SCPD's and GACEC's comment. The final order has been amended to say in 5.1.7.1.1 "Program policies and procedures regarding the reporting of cases of suspected child abuse or neglect in compliance with 16 Del.C. §§ 902 through 904, (3910, 1132, 2224, 5194) and 42 CFR § 2.12(c)(6) including non-retaliation policies when personnel report abuse and neglect."

14. Section 5.1.7.1.1.2 requires staff training in reporting child abuse but not a dult abuse. The training requirement should be expanded to cover reporting of adult abuse.

Agency Response: DSAMH concurs with SCPD's and GACEC's comment. The final order has been amended to say: "Program policies and procedures regarding the reporting of cases of suspected child abuse or neglect and adult abuse/neglect in compliance with 16 Del.C. §§902 through 904, 3910, 1132, 2224, 5194 and 42 CFR § 2.12(c)(6)."

15. In § 6.1.3.1.2, the Division is deleting a requirement that the 5 years experience for a "clinical supervisor" be "clinical experience. This is odd since it would allow someone who has been a janitor in a facility for 5 years to meet the experience standards to be a "clinical supervisor."

Agency Response: Section 6.1.3.1.2 states: "...and five (5) years of documented experience in the substance abuse treatment field." "Treatment" is of a clinical nature and would preclude activities such as janitorial responsibilities from meeting the minimum criteria of 5 years of experience in the treatment field. DSAMH appreciates the comment but will respectfully keep the standard as written.

16. In §7.1.1.1, the extraneous words "unless such disability makes" should be deleted. There should be no exceptions.

Agency Response: DSAMH concurs with SCPD's and GACEC's comment. The final order has been amended by removing: unless such disability makes treatment offered by the program non-beneficial or hazardous.

17. In §7.1.1.3, a reference to the Equal Accommodations Act should be added.

Agency Response: Section 7.1.1.2 provides for equal access. DSAMH appreciates the comment but will respectfully keep the standard as written.

18. Section 7.1 titled “Client Rights” would be a logical place to insert information about the applicable bills of rights referenced above. Another option would be to include the bills of rights as an appendix to the regulations.

Agency Response: Section 7.1.2.1 has been amended as follows: “All agencies shall ensure that clients’ rights are fully protected as enumerated in Del.C. §2220 and, including the following:” The other sections of 16 Del.C mentioned fall under sections of the code that are specific to facilities that would not be considered residential or non-residential entities under these standards and do not fall under DSAMH’s purview (e.g. “Family Care Homes”, MH Group Homes etc...) D SAMH appreciates the comment and will amend §7.1.2.1 only as described above.

19. Section 7.1.2.1.7 only provides an assurance that child abuse will be reported, not adult abuse.

Agency Response: DSAMH concurs with SCPD’s and GACEC’s comment. The amendment to the final order as stated in item #12 will include reporting adult abuse, neglect and mistreatment.

20. The grammar in §8.1.1.1.5.15 should be corrected to read: “Results of the client’s diagnostic assessment, including the client’s...Indicates what issues and areas of clinical concern are to be...”

Agency Response: DSAMH concurs with SCPD’s and GACEC’s comment. The final order has been amended to say: (§8.1.2.1.7.15) “...Indicates what issues and areas of clinical concern are to be:”

21. The grammar in §8.1.1.1.5.17 should be corrected and reference “signed”, “reviewed”, and “is completed.”

Agency Response: §8.1.1.1.5.17 does not occur in the Summary of Proposed Changes (the standard referred to does not exist.) DSAMH is unable to comment on this suggestion.

22. In §8.1.2.1.8.1 delete the extraneous “and” after the word “counselor.”

Agency Response: §8.1.2.1.8.1 does not occur in the Summary of Proposed Changes (the standard referred to does not exist.) DSAMH is unable to comment on this suggestion.

23. Section 8.1.4 requires facilities to maintain records for 12 months which would be subject to review by DHSS audit. DSAMH may wish to consider a longer time frame. Current records may reveal an on-going problem dating back more than a year and facilities could simply destroy or not produce older records.

Agency Response: Section 8.1.4 states: “...Programs shall develop a policy that clearly outlines timelines for record retention and storage for all records beyond the required audit period.” This standard requires 12 months of records available in house for the purpose of audit with a policy that discusses how the program will store records beyond the 12 month audit period and compels programs to present a policy that describes the retention of records beyond 12 months. DSAMH appreciates the comment but will respectfully keep the standard as written.

24. The grammar in §11.2.1.1.3.2.6 should be corrected to state: “A physical examination by qualified medical personnel that shall: ... completed at admission.”

Agency Response: §11.2.1.1.3.2.6 does not occur in the Summary of Proposed Changes (the standard referred to does not exist.) DSAMH is unable to comment on this suggestion.

25. Substitute “advice” for “advise” in §11.4.1.1.2.1 and §14.4.1.1.5.

Agency Response: The wording suggested does not exist in §11.4.1.1.2.1 and §14.4.1.1.5 does not occur in the Summary of Proposed Changes (does not exist), however the error does occur in §§11.3.1.2.1 and 14.3.1.1.5 and has been amended as suggested in the final order.

26. In §11.6.1.6.2.3.1, substitute “rationale” for “rational”.

Agency Response: §11.2.1.1.3.2.6 does not occur in the Summary of Proposed Changes (the standard referred to does not exist) however the error does occur in §§11.5.1.6.2.3.1 and 14.14.8.2 and has been amended as suggested in the final order.

27. In §12.1.1.7 there is a typographical error “eeach”.

Agency Response: The error referred to in §12.1.1.7 does not occur in the Summary of Proposed

Changes. The correction is not indicated.

28. Section 1 2.2.4 would disallow clinical supervision meetings being conducted by videoconferencing unless “face-to-face”. It is unclear if “face-to-face” is meant to include electronic “face-to-face” communication. DSAMH may wish to consider videoconferencing.

Agency Response: “Face-to-face” communication includes videoconferencing.

29. The “therapeutically necessary” exception to visitation and phone usage in §12.4.2.2.1 is at odds with bills of rights, including Title 16 Del. C §§1121(11) and 5192(10). It is also at “odds” that a non-clinical administrator makes the therapeutic decision.

Agency Response: The limitations ability for an Administrator to pose limitations on visitation and phone call procedures is meant as a safety measure for residents in the residential treatment program and as such, considered to be part of the therapeutic program and therefore “therapeutic” in nature. The administrator need not be a clinician in order to make decisions about safety for the participants in the program, however, it would be erroneous to assume that Administrators are not themselves clinicians. DSAMH appreciates the comment but will respectfully keep the standard as written.

30. In §14.3.4.2, the word “individuals” should not be capitalized.

Agency Response: §14.3.4.2 does not occur in the Summary of Proposed Changes (the standard referred to does not exist.) DSAMH is unable to comment on this suggestion.

31. The hyphen is missing in “take-home” in §§14.8.1.8 and 14.8.1.10.

Agency Response: §§14.8.1.8 and 14.8.1.10 do not occur in the Summary of Proposed Changes (the standard referred to does not exist.) DSAMH is unable to comment on this suggestion.

32. If no reference elsewhere, § 16.0 titled “ Co-Occurring Treatment” would be a logical place to incorporate the new Community Mental Health Treatment Act provision included in the recently enacted H.B. 41.

Agency Response: DSAMH agrees that the amendments made to 16 Del. C Ch. 51 with the passage of H.B.41 should be incorporated into the final order, however, DSAMH believes that §2.0 is a more appropriate section to amend as it will compel all facilities to follow the amended code, not just co-occurring programs. DSAMH appreciates the comment and will amend §2.0 to read: “... These regulations shall apply to any facility as defined in 16 Del. C Ch. 22 and Ch. 51...”

33. While §16.5.1.3 requires a Qualified Psychiatric Practitioner to meet with a consumer at least every 6 months, §16.5.4 contemplates the Qualified Psychiatric Practitioner conducting a record review only every 12 months. DSAMH may wish to change the latter standard to every 6 months to match the schedule for meeting with the consumer.

Agency Response: Standard 16.5.1.3 requires that the Qualified Psychiatric Practitioner to “meet” with the consumer at a minimum, every 6 months for psychiatric appointments. Standard 16.5.4 differs in that it requires a “review” of the treatment and the record for the prior year. DSAMH appreciates the comment but will respectfully keep the standard as written.

34. In §16.5.8 DSAMH lists a variety of supports for consumers, including step groups and faith-based organizations. DSAMH may wish to consider adding references to physical exercise which is also correlated with improved affect and recovery and less reliance on medications.

Agency Response: Standard 16.5.8.3 states: “Co-occurring treatment programs shall offer...support groups. Groups shall include but not be limited to: ...” This standard would allow for referral to physical exercise programs when appropriate, however DSAMH sees no harm in including physical fitness programs as part of the list of community services. DSAMH appreciates the comment.

35. In §17.4.1 “DSMAH” should be corrected to “DSAMH”.

Agency Response: DSAMH concurs with SCPD’s and GACEC’s comment. “DSMAH” in §17.4.1 has been amended to “DSAMH”.

36. The regulations (§§ 17.0-19.0) authorize exemption from many of the standards for facilities with certain accreditation. There is no State statutory authority to exempt covered facilities from the application of patient rights and prescriptive statutory licensing standards. For example, if a State statute directs abuse/neglect reporting conforming to a specific protocol, that would supersede any national certification standard. DSAMH may wish to review applicable State statutory patient rights compilations, including Title 16 Del. C. §§1121, 2220 and 5192 to ensure that the regulations do not inadvertently exempt facilities from compliance.

Agency Response: The three accreditation bodies that are covered by “Deemed Status” in §§17.0 to 19.0 require programs to follow all state and federal guidelines for treating substance use and mental health diagnosed in individuals. Imposing state licensing standards and the standards of national accreditation bodies would be redundant and cause undue strain on facilities that apply accreditation standards that often require more stringent protocols than those imposed by the state. DSAMH appreciates the comment but will respectfully keep the standard as written.

C. Glenn LeFevre of Gateway Foundation commented that §§12.1.1.4 and 12.1.1.7 require two individualized recovery plans within two days of each other. He suggested that DSAMH require an individual recovery plan either within 48 hours of admission OR 72 hours of admission rather than both.

Agency Response: DSAMH concurs with Mr. LeFevre’s comment. The final order has been amended to strike the individualized recovery plan within 48 hours.

D. Bruce Johnson of PACE, Inc. commented that the education requirements in §§5.1.7.4.2 and 5.1.7.4.3 be consistent with credentialing criteria for national licensure and certification boards which require 3 hours of education specific to ethics every 2 years. He suggests making the 3 hours of training specific to cultural competency consistent with the ethics training requirement.

Agency Response: DSAMH concurs with Mr. Johnson’s comment. The final order has been amended to require the 3 hours of ethics counseling and the 3 hours of cultural competence training in §§5.1.7.4.2 and 5.1.7.4.3 every two years.

E. Mr. Bruce Lorenz and Ms. Susan Harris of Thresholds, Inc. offer the following comments:

1. 6.1.2.1 This standard pulls out the word “clinical” when describing experience. We are concerned that it implies “clinical” is not important; yet it’s important in almost every other staff qualification.

Agency Response: DSAMH concurs with Thresholds. The final order will remove the strike through in §6.1.2.1.

2. 6.1.2.1.2 Deleting the bachelor’s degree and experience option as qualification for a Clinical Director is a problematic way to deal with a growing problem. The standards relating to this position don’t rationally connect to the realities of the workplace nor do they square with workforce development activities recommended by SAMHSA or those in place in other states that regulate the licensing of treatment services. If you want to change the standard relating to Clinical Supervision then adopt the standards that indicate competent practice that is offered through ICRC. They are recognized by most of the states and they are cited in Technical Assistance Publication 21 (et seq.), published by SAMHSA.

Agency Response: DSAMH concurs with Thresholds. The final order will remove the strike through in §6.1.1.2.

3. 6.1.5.1.1 We would recommend that regulations move towards developing degree requirements. If the state is interested in moving in the direction of education requirements, it should do so in a way that is deliberate and long-term. Attempting to fix the workforce problem solely by altering regulations doesn’t promise to have a lasting effect.

Agency Response: DSAMH’s intent in this standard is to allow individuals who are pursuing higher education (e.g. student interns) and those who are pursuing credentialing to gain the training needed to obtain credentialing while working in the field. DSAMH appreciates the comment but respectfully keep the standard as written.

4. 8.1.2.1.8 Referring to what used to be called a “treatment plan” as a “recovery” plan is using language that doesn’t make much sense to those who have not yet defined the problem, much less what to do about it.

Since most of the individuals who seek treatment are not yet describing themselves as “in recovery”, we suggest keeping the term “treatment” plan so that it better describes the services offered.

Agency Response: The term “recovery plan” is congruent with DSAMH’s movement to client centered treatment that offers services for all areas of concern for an individual and their family (e.g. substance abuse disorders, mental health disorders, medical treatment etc...) DSAMH appreciates the comment but will respectfully keep the standard as written.

5. 6.1 and 16.2 Having 2 sets of staffing qualification standards (alcohol/drug abuse and co-occurring disorders) does not reflect the integration of treatment that DSAMH has been developing through the Co-occurring State Incentive Grant. Additionally, under the Co-Occurring standards, there are no definitions that distinguish a mental health clinician from a substance abuse counselor.

Agency Response: §16.0 Co-Occurring Treatment Standards requires a “cadre of staff” with qualifications that are outlined in §6.1 with the addition of staff meeting the requirements of §16.0. Programs pursuing licensure as a co-occurring provider shall incorporate the credentials in §6.1 and 16.0 and in that manner, integrate staff and services. DSAMH appreciates the comment but will respectfully keep the standard as written.

F. Mr. David Parcher of Kent and Sussex County Counseling submitted the following comments:

1. Persons who have achieved the IC&RC Certified Clinical Supervisor (CCS) should be included in 6.1.2.1.1. This certification requires a minimum of Bachelors degree and rigorous commitment to IC&RC standards for clinical supervision.

Agency Response: DSAMH concurs with Mr. Parcher’s comment. The following order has been amended to read: “...full certification as a certified alcohol and drug Counselor (CADC) or certified co-occurring disorder professional (CCDP) in the state of Delaware or by a nationally recognized organization in addictions counseling and five (5) years of documented experience in substance use services.” Nationally recognized organization would include IC&RC.

2. It is essential that IC&RC credentialed persons already in this position(?) at the Bachelors level who have proven their capacity for the job should be grandfathered. Many people who have been doing this for many years are the best we have in the field. We need them to train the new ones.

From a workforce standpoint it is good that employers can hire someone who does not currently hold the IC&RC credential. However it should be required that these persons achieve the appropriate clinical credential within 1 year of hire.

Agency Response: The final order allows individuals to continue in their current position at the agency where they are working as of the publication of the final order. This is a grandfather clause that will allow agencies to continue employing existing staff. Agencies who would like to make credentialing mandatory within 1 year of hire are free to do so. DSAMH accepts all state and nationally recognized certification credentials and believes that the IC&RC credentials are captured as a “nationally recognized credential.” DSAMH appreciates the comment but will respectfully keep the standard as written.

3. 6.1.3.1.1: The CCDP should be included in these standards since the state is emphasizing integrated treatment. That credential requires a Bachelors degree.

Persons holding the IC&RC Certified Clinical Supervisor (CCS) should be included in 6.1.3.1.1.

Agency Response: The addition of the CCDP credential has been completed throughout the final rule. In regards to the IC&RC credential: DSAMH accepts all state and nationally recognized certification credentials and believes that the IC&RC credentials are captured as a “nationally recognized credential.”

G. Brandywine counseling submitted comments that summarized concerns around the agency’s ability to meet the proposed standards with no specific suggestions as to how to address their concerns.

Agency Response: DSAMH is happy to provide technical assistance to any agency that believes the new rule will be difficult to implement in their agency as well as offer suggestions on how to go about making the necessary changes for standard compliance.

FINDINGS OF FACT

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Substance Abuse and Mental Health's Standards for Substance Abuse Facilities is adopted and shall be final effective November, 2010.

Rita M. Landgraf, Secretary, DHSS
October 15, 2010

***Please Note: Due to the size of these proposed regulations, they are not being published here. A copy of both regulations is available at:**

6001 Substance Abuse Facility Licensing Standards

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311; 314; 29 Delaware Code, Section 10112
(18 Del.C. §§311; 314 & 29 Del.C. §10112)

ORDER

908 Procedures for Responding to Freedom of Information Requests

Proposed Regulation 908 relating to Procedures for Responding to Freedom of Information Requests was published in the *Delaware Register of Regulations* on September 1, 2010. The comment period remained open until October 4, 2010. There was no public hearing on proposed Regulation 908. Public notice of the proposed Regulation 908 in the Register of Regulations was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No comment was received on the proposed regulation.

FINDINGS OF FACT

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

The requirements of the proposed Regulation 908 best serve the interests of the public and of insurers and comply with Delaware law. Open government is best served by an orderly process for the release of information that is available by law to the public.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 Del.C. §§314, 1111 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt amended Regulation 908 as may more fully and at large appear in the version attached hereto to be effective on November 11, 2010.

TEXT AND CITATION

The text of the proposed Regulation 908 last appeared in the *Register of Regulations* Vol. 14, Issue 3, pages 144-146.

IT IS SO ORDERED this day of October 2010.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

908 Procedures for Responding to Freedom of Information Requests

1.0 Definitions

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

“Commissioner” means the Commissioner of the Delaware Insurance Department.

“Department” means the Delaware Department of Insurance.

“FOIA” means The Freedom of Information Act as established pursuant to Chapter 100 of Title 29 of the Delaware Code Annotated.

“FOIA Coordinator” is defined as an individual designated by a public body to accept and process requests for public records under the act. The Commissioner shall designate the individual who shall be the FOIA Coordinator. The FOI Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.

“Public record” is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected by the Department relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced and not protected from disclosure by law.

“Writing” is defined as “handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

“Written request” is defined as “a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.”

2.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Chapter 100.

3.0 Records Request, Response Procedures and Access

- 3.1 All FOIA Requests shall be made in writing to the Department, addressed to: FOIA Coordinator, Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall provide reasonable assistance to the public in identifying and locating records to which they are entitled access.
- 3.2 The Department shall respond, in writing, within ten working days of the receipt of a FOIA Request. Such response shall specify the name and telephone number of a contact person with respect to the FOIA Request and shall state whether:
 - 3.2.1 the Department will permit inspection of the public records;
 - 3.2.2 the Department requires additional time beyond the 10 business days for circumstances to include but not limited to, the request is for voluminous records, requires legal advice, for the public record is in storage or archived. In the event the Department is unable to make the requested public records available for inspection with the 10 business day period, the Department shall provide an expected time at which they will be made available; or
 - 3.2.3 if it does not permit such inspection, the reason or reasons for such refusal.

- 3.3 Prior to disclosure, records will be reviewed to ensure that those records or portions of records deemed non-public pursuant to 29 Del.C. §10002(g) are removed. In reviewing the records, all documents shall be considered public records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g).
- 3.4 After receiving the response of the Department to a FOIA Request, the requesting party shall contact the person specified in the written response thereto to schedule a mutually convenient date, time and place for the inspection of the public records.
- 3.5 All FOIA Requests shall be coordinated by the FOIA Coordinator.
- 3.6 The Department shall provide reasonable access for reviewing public records during regular business hours. The Department shall make the requested public records available unless the records or portions of the records are determined to be excluded from the definition of a "public record" pursuant to 29 Del.C. §10002(g).

4.0 Fees

4.1 Administrative Fees

4.1.1 Charges for administrative fees include:

4.1.1.1 Staff time associated with processing FOIA Requests will include:

4.1.1.1.1 Locating and reviewing files:

4.1.1.1.2 Monitoring file reviews:

4.1.1.1.3 Generating computer records (electronic or print-outs):

4.1.1.1.4 Review of request by legal counsel

4.1.1.1.5 Other work items as necessary per request.

4.1.2 Calculation of Administrative Charges:

4.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hours increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.

4.1.2.1 Appointment Rescheduling/Cancellation – Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Department in preparing the requested records. The Department shall prepare an itemized invoice of these charges and mail to the requestor for payment.

4.2 Photocopying Fees – The following charges for photocopies of public records made by Department personnel:

4.2.1 Standard Sized, Black and White Copies.

4.2.1.1 The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:

4.2.1.1.1 8.5" x 11"

4.2.1.1.2 8.5" x 14" and

4.2.1.1.3 11" x 17"

4.2.2 Oversized Copies/Printouts.

4.2.2.1 The charge for copying oversized public records shall be as follows:

4.2.2.1.1 18" x 22" \$2.00 each

4.2.2.1.2 24" x 36" \$3.00 each

4.2.3 Color Copies/Printouts

4.2.3.1 The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:

4.2.3.1.1 8.5" x 11"

4.2.3.1.2 8.5" x 14 and

4.2.3.1.3 11" x 17"

4.2.4 Microfilm and /or Microfiche Printouts.

4.2.4.1 Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.50 per printed page.

4.3 Electronically Generated Records.

4.3.1 Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

4.3.2 In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.

4.4 Payment

4.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.

4.4.2 The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records.

5.0 Effective Date of this Regulation.

This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

Surface Water Discharges Section

Statutory Authority: 7 Delaware Code, Section 6000 (7 Del.C. §6000)
7 DE Admin. Code 7201

Secretary's Order No.: 2010-W-0034

7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO)

Date of Issuance: October 15, 2010

Effective Date of Regulations: November 11, 2010

Under the authority vested in the Secretary of Natural Resources and Environmental Control (DNREC) and the Secretary of the Delaware Department of Agriculture (DDA) the following findings, reasons and conclusions are entered as an Order of the Secretaries in the above referenced rule making proceedings.

BACKGROUND and PROCEDURAL HISTORY

This Order considers the proposed regulations entitled "Regulations Governing the Control of Water Pollution, Section 9.5", which the Department of Natural Resources and Environmental Control (specifically the Division of Water), and the Department of Agriculture drafted and published in the July 1, 2010 Delaware Register of Regulations. The regulations establish requirements to control nitrogen and phosphorus from certain farms where

poultry, swine, beef cattle, dairy cattle and horses are raised also known as an Animal Feeding Operation (AFO).

The federal Clean Water Act of 1972 established the National Pollution Discharge Elimination System (NPDES) to regulate the discharge of pollutants from point sources to Waters of the United States. The federal NPDES permit program expressly includes and defines Concentrated Animal Feeding Operations (CAFO) as a point source. In 1983, EPA delegated to the DNREC the authority to administer and enforce the NPDES program. In 1999, Delaware enacted the Nutrient Management Law which created the Nutrient Management Commission, housed in the Delaware Department of Agriculture (DDA) and established the Nutrient Management Program. The Nutrient Management Law mandates that all farmers, golf courses, and other nutrient handlers develop and implement nutrient management plans, maintain handling records, and submit annual reports. The actions initiated by the two State Agencies in cooperation with the Delaware Nutrient Management Commission (DNMC) are a necessary step to achieve Delaware's water quality goals, protect the "waters of the state" and to continue the United States Environmental Protection Agency's (USEPA) delegated program. Part 122, Sub Sections 122 and 412 of the Clean Water Act (CWA) require States to develop regulations governing the discharge of nutrients from farms into nearby waterways. These state regulations are required in order to keep our "at least equal to" status with USEPA's requirements. Failure to do so may result in the increased likelihood of federal enforcement actions against Delaware agricultural producers and the withdraw of Delaware's delegated authority to administer this NPDES program.

In 2000, DNREC and DDA (the Departments) signed a Memorandum of Agreement (MOA) that sets up a framework for DDA to jointly manage the Concentrated Animal Feeding Operation (CAFO) permit program in partnership with DNREC and in conjunction with the Nutrient Management Program. This MOA set the framework for joint (DDA and DNREC) promulgation of the Draft CAFO regulations under statutory authorities in 3 **Del.C.** Ch. 22, and 7 **Del.C.** Ch. 60. This arrangement was reached in order to efficiently and effectively implement a CAFO program. It has become apparent through comments received during the regulation promulgation process and further examination of the current MOA by DDA and DNREC staff that the currently valid MOA should be redrafted to provide further clarity related to the roles of each agency. The Hearing Officer has recommended that a new MOA will be drafted and become effective by the implementation date of these regulations.

During regulatory development, public input was sought throughout the process. The initial draft of the regulations was presented to the public in a series of three public workshops on May 25, 26, and 27, 2010 at the Farmington Fire Hall, Laurel High School and Millsboro Fire Hall, respectively. A total of 143 people attended. The input received at those public workshops along with other input received at other meetings was valuable and further informed the process, as well as resulted in revisions to the draft regulations. Due to feedback received from the public workshops, and additional feedback from EPA, the workshop version of the Draft CAFO Regulations was revised. The revised Draft CAFO Regulations were then presented to the public for comment through the month of July 2010. The DNREC and DDA published the complete Draft 7201 Regulations Governing the Control of Water Pollution, Section 9.5 (CAFO Regulations) in the July 1, 2010 Delaware Register of Regulations. A Public Hearing was held at the Delaware Department of Agriculture building in Dover, on July 22, 2010.

The public hearing record contains a thirty-five page verbatim transcript of the public hearing and documents marked as Exhibits which were admitted to the record during the hearing, and other documents marked as exhibits admitted during the public comment period but subsequent to the hearing. (Please refer to the Hearing Officer's Report attached to this order as Appendix A for additional details.) Four individuals, representing three organizations, expressed views concerning the proposed Draft CAFO Regulations: Mr. Bruce Snow representing the Delaware Association of Conservation Districts (DACD); Mr. Jonathan Lobb and Ms. Mary Jacobson, both representing the Mid-Atlantic Environmental Law Center, and Henry Johnson, Sussex County Farmer. In addition, the Delaware Nature Society submitted written comments pre-hearing. Post-hearing, the Delaware Farm Bureau and the Environmental Integrity Project submitted written comments before the end of the public comment period. The submitted comments varied widely in perspective and desired outcome. Many of the comments questioned definitions contained in the regulations. The Environmental Integrity Project questioned the appropriateness of managing a CAFO program through the Department of Agriculture and also brought into question the Memorandum of Agreement between DDA and DNREC. Some commenters such as, the Mid-Atlantic Environmental Law Center, the Environmental Integrity Project, and the Delaware Nature Society, believed that the regulations did not go far enough to protect water quality while other commenters, such as the Farm Bureau, Mr. Henry Johnson, and the DACD, believed the regulation went too far and may place undue burden on the regulated community.

The delegated Hearing Officer, Mark Davis, prepared a Hearing Officer's report, dated October 12, 2010 (Report). The Report recommends certain findings and the adoption of these Regulations as attached to the full Report in Appendix C. In addition, a full "Response to Comments" narrative was developed by the technical staff of DDA and DNREC to address concerns, comments, and suggestions brought forward by the public during the public notice period. The "Response to Comments" are contained in Appendix A and B of the Report.

FINDINGS and DISCUSSION

The majority of the Draft CAFO Regulations mirror the federal regulations, however; there were points of divergence and consensus that arose in discussions by and among the Departments, DNMC, USEPA and other agencies and stakeholders. The best science available was used to inform discussions, as was input from the regulated community. There was a concerted effort to develop regulations which meet the federal intent, protect water quality, and provide practical implementation methods that will enhance compliance. It is important to review the entire "Response to Comments" portion of the Report found in Appendices A and B; some of the more important issues raised related to definitions, regulatory authority, monitoring and enforcement, setback requirements, and stockpiling and field staging of poultry litter. We find that within the context of Delaware's specific circumstances including: the MOA; research related to nutrient handling; the effective implementation of the Delaware Nutrient Management Law; and the demonstrated successful history of cooperation between the DNMC, DDA and DNREC that the Draft Regulations meet the intent of the federal requirements and in some cases exceed specific requirements, and final promulgation is in the best interests of the environment and the regulated community.

We find that the Draft Regulations, with non-substantive recommended revisions, are well supported by the record developed by the Departments and adopt the Report (with Appendices) to the extent it is consistent with this Order. We find that the Departments' experts fully developed the record to support adoption of these regulations. With adoption of this Order, Delaware will fully administer a CAFO program.

In conclusion, the following findings and conclusions are entered:

1. The Department of Natural Resources and Environmental Control, and Department of Agriculture (Departments) have jurisdiction under their statutory authorities and in accordance with the current Memorandum of Agreement between the two agencies to adopt these Regulations as final;
2. The Departments provided a adequate public notice of the Draft Regulations, and provided adequate opportunity to comment on the Draft Regulations including a public hearing on June 21, 2010;
3. The Departments held a public hearing in a manner required by the law and regulations;
4. The Departments considered all timely and relevant public comments in making its determination;
5. The Departments' Hearing Officer's Report, including its recommended record and the Regulations, as amended and set forth in Appendix C of the Report, are adopted to provide additional reasons and findings for this Order;
6. The Departments determine the Draft Regulations, as amended and contained in Appendix C of the Report, as Final Regulations.
7. The Departments shall submit this Order approving the Final Regulations to the *Delaware Registrar of Regulations* for publication in its next available issue and shall provide such other notice as the law and regulation require, and the Departments determine appropriate.

Collin P. O'Mara
Secretary
Department of Natural Resources
and Environmental Control

Ed Kee
Secretary
Department of Agriculture

7201 Regulations Governing the Control of Water Pollution

(Break in Continuity of Sections)

PREAMBLE

These regulations have been developed pursuant to 3 Del.C. §2201-2290 and 7 Del.C. §6000 et.al. and under DNREC's delegated authority. These statutory and regulatory authorities establish the requirement that a National Pollutant Discharge Elimination System (NPDES) permitting program for Concentrated Animal Feeding Operations (CAFOs) be implemented. These regulations will function as the baseline CAFO standards for compliance of NPDES CAFO permits applicable to certain farms. The Delaware Department of Agriculture (DDA) will [administer manage] these regulations in conjunction with DNREC. In general, NPDES CAFO permits, as provided in these regulations, are effective for five years. These regulations were developed by the Delaware Nutrient Management Commission, the Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control. They are adopted with the guidance, advice and consent of the Delaware Nutrient Management Commission.

(Break in Continuity within Sections)

9.5.10 Effective Date

9.5.10.1 These regulations shall become effective [~~October~~ November] 11, 2010.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2010 issue of the *Register* at page 144 (14 DE Reg. 144). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Concentrated Animal Feeding Operation (CAFO)

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code, Section 1815(b) (30 Del.C. §1815(b))

ORDER

100 Historic Preservation Tax Credit Program

Summary of the Evidence and Information Submitted

The Historic Preservation Tax Credit Act (30 Del.C. Ch. 18, Sub ch. II) was amended in the 145th General Assembly (77 Del. Laws, c. 413). The amendments to the legislation provide for a ten-year extension to the Historic Preservation Tax Credit Act, set aside a portion of the annual cap for projects which will receive a credit award under \$300,000 and require annual reporting on the program to the Governor and the Legislature. Additional regulatory clarifications have also been incorporated at this time to more efficiently administer the Program.

The proposed regulatory amendments were published in 14 DE Reg. 148-155. A notice of the proposed amendments to the regulations was published on Wednesday, September 1, 2010 in both the News Journal and Delaware State News. No written or verbal comments were received.

Finding of Fact

The proposed regulatory amendments implement the code changes of 2010 and clarify various sections of the regulations in order to more efficiently administer the program. These will remain in effect until such time as further changes to the law require revisions to the regulations.

FINAL REGULATIONS

Decision to Amend the Regulation

It is the recommendation of the Director of the Division of Historical and Cultural Affairs that the Secretary of State adopt as final the proposed Amendments as published pursuant to 30 Del.C. Ch.18, Subch. II, §1815(b).

DEPARTMENT OF STATE
Timothy A. Slavin
Director, Division of Historical and Cultural Affairs
Dated: October 13, 2010

Order and Effective Date

After review of the law and the recommendation of the Director of the Division of Historical and Cultural Affairs, I hereby adopt the recommended Findings of fact and the Amendments as proposed in 14 DE Reg. 148-155 (09/01/2010) to become effective November 11, 2010.

DEPARTMENT OF STATE
Jeffrey W. Bullock
Secretary of State
Date: October 14, 2010

***Please note that no changes were made to the regulation as originally proposed and published in the September 2010 issue of the *Register* at page 148 (14 DE Reg. 148). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

100 Historic Preservation Tax Credit Program

DIVISION OF PROFESSIONAL REGULATION GAMING CONTROL BOARD

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

ORDER

101 Regulations Governing Bingo

After due notice in the *Register of Regulations*, at a scheduled meeting of the Delaware Gaming Control Board on October 7, 2010, the Board met to review written comments, if any, regarding a proposed amendment to the Board's Rules.

The proposed amendment would require that the fee to play cookie jar bingo be collected separately and would prohibit including the fee in the regular fee to play bingo.

The proposed amendment was published in the *Register of Regulations*, Vol. 14, Issue 3, on September 1, 2010.

Summary of the Evidence and Information Submitted

No written comments were received. Members of the public appeared at the hearing and any comments were considered.

Findings of Fact and Conclusions of Law

1. The public was given notice and an opportunity to provide written comments on the proposed amendment.

-
2. The Board finds that the proposed amendment to the rules is necessary and in the public interest.
 3. Pursuant to 28 Del.C., Section 1122, the Board has statutory authority to promulgate regulations governing charitable gaming, including bingo.

Decision and Effective Date

The Board hereby adopts the proposed amendment to its rules in the manner to be published in the *Register of Regulations* in November, 2010, to be effective ten days after publication of the Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules shall be as published in the *Register of Regulations* in November, 2010 as attached hereto as Exhibit A.

SO ORDERED this 7th day of October, 2010.

DELAWARE GAMING CONTROL BOARD

Deborah Messina, Chair
Scott Angelucci, Member
Brad Barrie, Member

James Greene, Member
Sharon McDowell, Member

***Please note that no changes were made to the regulation as originally proposed and published in the September 2010 issue of the *Register* at page 156 (14 DE Reg. 156). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

101 Regulations Governing Bingo

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b); 29 Delaware Code, Section 10003(b)
(5 Del.C. §§121(b); 29 Del.C. §10003(b))
5 DE Admin. Code 103

Order Adopting New Regulation 103 (Freedom of Information Act Requests)

103 Freedom of Information Act Requests

IT IS HEREBY ORDERED, this 14th day of October 2010, that new Regulation 103 (Freedom of Information Act Requests) is adopted as a rule of practice and procedure that will be used by the Office of the State Bank Commissioner. A copy of Regulation 103 is attached hereto and incorporated herein by reference. The effective date of Regulation 103 is November 12, 2010. The Regulation is adopted by the State Bank Commissioner in accordance with Title 5 and Section 10003 of Title 29 of the Delaware Code, and pursuant to the requirements of Chapter 11 and Section 10113(b) of Title 29 of the Delaware Code. A copy of this order and Regulation 103 is to be filed with the Registrar of Regulations.

Robert A. Glen
State Bank Commissioner
October 14, 2010

Regulation 103 Freedom of Information Act Requests

Effective Date: November 12, 2010

1.0 Definitions

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

“FOIA” shall mean the Delaware Freedom of Information Act, 29 Del.C. Ch. 100, as amended.

“Office” shall mean the Office of the State Bank Commissioner for the State of Delaware.

“Public record” shall mean the same as that term is defined in 29 Del.C. §10002(g) and shall not include records deemed non-public pursuant to that section or records deemed confidential pursuant to the Delaware Banking Code, Title 5 of the Delaware Code.

“Standard size” shall mean 8.5” x 11”; 8.5” x 14”; and 11” x 17”.

2.0 General

- 2.1 This Regulation establishes the policy, procedures, charges and fees for responding to requests seeking to inspect public records of the Office under FOIA.
- 2.2 The Office shall provide reasonable access for reviewing public records during the Office’s regular business hours.
- 2.3 Notwithstanding the scope or nature of the request, only existing public records in the possession of the Office will be provided under FOIA.
- 2.4 The Office has no obligation under FOIA to answer written questions, analyze data, create records not already in its possession or compile information in any way.

3.0 Requests

- 3.1 Persons seeking to inspect public records pursuant to FOIA shall send an original and one copy of a written request addressed to:
Office of the State Bank Commissioner
555 East Loockerman Street
Dover, Delaware 19901
- 3.2 A FOIA request shall:
 - 3.2.1 clearly state the name, address and telephone number of the person making the request;
 - 3.2.2 indicate that the request is being made pursuant to FOIA; and
 - 3.2.3 describe the records sought in sufficient detail to enable the Office to determine their identity and location with reasonable effort.
- 3.3 FOIA requests by electronic mail will not be accepted.
- 3.4 FOIA requests that do not comply with this Regulation may be denied in whole or in part.
- 3.5 Records may not be produced to any person who has an outstanding balance to the Office relating to a pending or prior FOIA request.

4.0 Responses

- 4.1 Upon receipt of a FOIA request, the Office shall review the records in its possession to identify those that are public records.
- 4.2 Within ten (10) working days after a FOIA request is received, the Office shall send a written response to the person making the request using the address specified in the request.
- 4.3 The response may require inspection of requested records; may indicate when, where and under what conditions the requested records may be inspected; may include copies of requested records; may deny the request in whole or in part and the reasons therefor; or may indicate that additional time is required for a further response. If the response indicates that additional time is required, an expected date for the further response shall be specified.
- 4.4 Public records may be inspected only during the Office’s regular business hours.

5.0 Administrative Fees, Photocopying Charges, and Other Costs.

- 5.1 Administrative Fees. The Office may assess the person making a FOIA request administrative fees incurred pursuant to the request.
- 5.1.1 Administrative fees include personnel time associated with processing the request, including but not limited to, time spent locating and reviewing records; monitoring record reviews; photocopying paper records; generating paper copies of microfilm, microfiche and electronic records; review by legal counsel; and any other work necessitated by the request.
- 5.1.2 Administrative fees will be charged per quarter hour at the current, hourly pay rate plus benefits of the personnel performing the work, pro-rated in quarter hour increments.
- 5.1.3 Administrative fees will be in addition to all photocopy charges and other costs.
- 5.2 Photocopy Charges. The Office may assess the person making a FOIA request the following photocopy charges:
- 5.2.1 Standard Size or Smaller Paper Records. The charge for copying public records maintained on standard size or smaller paper will be \$0.50 per printed page for black and white copies and \$2.00 per printed page for color copies.
- 5.2.2 Large Size Paper Records. For black and white copies, the charge for copying public records maintained on paper that is larger than standard size will be \$2.00 per 24" x 26" printed page, \$3.00 per 24" x 36" printed page, \$5.00 per 30" x 42" printed page, and \$1.00 per square foot of printed page for all other oversized records. For color copies, an additional \$1.50 per printed page will be charged.
- 5.2.3 Microfilm and Microfiche Records. The charge for copying public records maintained on microfilm or microfiche will be \$1.00 per printed page. All such records will be copied to standard size paper in black and white.
- 5.2.4 Electronic Records. The charge for copying public records maintained electronically will be the same as standard size paper records if the requested records are copied to paper. Standard size paper will be used for all such copies. If the requested records are copied to an electronic storage device or media (such as magnetic tape, diskette, compact disc, thumb drive, etc.), the charge will be the cost of the device or media.
- 5.3 Other Costs. The Office may assess the person making a FOIA request any other costs incurred pursuant to the request, including charges assessed by an outside vendor to copy the requested records.
- 5.4 Payment for all fees, charges and costs is due at the time records are provided. The Office may also require payment prior to sending copies of records.

6.0 Effective Date

These regulations shall become effective 11 days after being published as a final regulation. Any and all FOIA requests currently in process at the time of adoption will be subject to these regulations.

GENERAL NOTICES

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

TECHNICAL INFORMATION MEMORANDUM 2010-01

DATE: July 1, 2010

SUBJECT: Legislation passed during the Second Session of the 145th Delaware General Assembly.

During the Second Session of Delaware's 145th General Assembly, ending June 30, 2010, eight (8) bills were enacted of interest to or having an impact on Delaware taxpayers and/or the state's Division of Revenue. The subjects of these bills range from the establishment of Delaware's \$0.04 Bottle Recycling Fee (HB 234) to the destruction of seized tobacco products (HB 408).

Legislation significant to Delaware's Division of Revenue has been summarized below and is divided into two categories for retrieval ease:

Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year; and

Legislation implementing broad policy changes or altering Division of Revenue processes with little to no effect on tax-filing requirements for the upcoming year.

Bills in their entirety may be viewed on the Delaware General Assembly website: www.legis.delaware.gov.

This memorandum is intended for general notification and explanation of recently enacted Delaware laws and should not be relied upon exclusively in any pending or future audit or judicial review of an individual taxpayer or transaction. Taxpayers are advised to consult the particular bill, the Delaware Code, or Delaware regulations in all matters conflicting with any part of this memorandum.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue Help Line at (302) 577-8200, or visit the Division's website at [www.revenue.delaware.gov] where information about tax topics and links to phone numbers for other information may be found.

(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year:

Senate Bill # 209 w/SA 1 + HA 1

Signed by Governor on 07/19/10

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE PROVIDING FOR AN EXTENSION OF THE HISTORIC PRESERVATION TAX CREDIT ACT.

This Act provides for a 10-year extension to the Historic Preservation Tax Credit Act which was scheduled to expire in June 2010. Seventy-five (75) historic buildings throughout the State have been rehabilitated and preserved for future generations as a result of this program. Since its inception in 2001, the State has awarded \$34 million in tax credits that have leveraged more than \$166 million in private-sector rehabilitation expenditures plus additional tens of millions in site acquisition investments. These investments have produced an estimated 2,400 jobs in Delaware – most of them in the construction trades and related industries.

Senate Bill # 234

Signed by Governor on 06/08/10

AN ACT TO AMEND TITLES 7 AND 30 OF THE DELAWARE CODE RELATING TO RECYCLING AND BEVERAGE CONTAINERS.

This legislation establishes Universal Recycling in Delaware. It requires DSWA to cease collecting curbside recyclables by a date certain and requires the implementation of comprehensive residential and commercial recycling programs by municipalities and waste haulers. It establishes the Delaware Recycling Fund and the Recycling Grants and Low-Interest Program to defray the costs of implementation, and funds, with funding derived by the conversion of the current 5¢ bottle deposit to a 4¢ Recycling Fee on beverage containers. It also establishes reporting requirements, establishes the Recycling Public Advisory Council in law, and ensures that DSWA provides a location in each county to accept source separated recyclables.

House Bill # 335

Signed by Governor on 04/14/10

AN ACT TO AMEND CHAPTER 11 OF TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX RETURNS.

This Act directs the Secretary of Finance to develop the means by which individuals can deposit their State income tax return directly into a Delaware College Investment Plan account.

House Bill 349

Signed by Governor on 06/11/10

AN ACT TO AMEND TITLES 9 AND 30 OF THE DELAWARE CODE RELATING TO WITHHOLDING OF TAX ON GAINS FROM REAL ESTATE.

Resident individuals and corporations are currently required to estimate, report, and pay the tax due on income, including gains recognized from the sale of real estate, in the quarter during which the sale occurs.

This Bill will require nonresident persons, corporations or pass-through entities that sell real estate owned in this State to declare and pay their estimate of the tax due on the gain recognized from the sale before the deed can be recorded.

The Bill does not apply to estates or to entities classified as a trust for federal income tax purposes, but does apply to the members, beneficiaries or grantors of entities disregarded for federal income tax purposes.

This Bill will facilitate the reporting and collection of the tax, and the administration of the tax code.

House Bill # 380

Signed by Governor on 06/16/10

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO ECONOMIC DEVELOPMENT INCENTIVES.

This proposed tax credit intends to create incentives for existing businesses to partner with the State in the effort to create new employment opportunities for Delaware citizens, and to stimulate the Delaware economy by expanding the tax base. A finder's fee, a tool used commonly by businesses, is an arrangement by which an intermediary finds, introduces, and brings together parties to a business opportunity. This bill creates a tax credit program that would award each Sponsor Firm and each New Business Firm with a \$500 annual tax credit per Delaware job created by the new business, with the tax credit available for three years. The program would require that the new business be brought to Delaware as a result of the efforts of the sponsor, and would specifically exclude those business, such as real estate agents, banks and commercial landlords, that already have an incentive to bring out-of-state business to Delaware.

House Bill 477

Signed by Governor on 07/19/10

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATED TO THE DELAWARE WHOLESALER LICENSE FEE.

This legislation clarifies that a pharmaceutical wholesaler located inside or outside of the state that ships pharmaceutical drugs to a pharmaceutical distribution wholesaler located in this state is exempt from the gross receipts tax.

(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no effect on tax-filing requirements for the upcoming year:

House Bill # 334 w/HA 1, HA 1 to HA 1

Signed by Governor on 07/12/10

AN ACT TO AMEND TITLE 30 AND TITLE 31 OF THE DELAWARE CODE RELATING TO THE DELAWARE CHILDREN'S TRUST FUND ACT.

This Bill removes the Delaware Children's Trust Fund as a contribution designation for income tax refunds, and removes the establishment and function of the Trust Fund from the Delaware Code. The Trust Fund has been defunct for several years.

House Bill 408

Signed by Governor on 07/02/10

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TOBACCO PRODUCT TAX.

The Act requires the destruction of any tobacco products forfeited for violations of §5342 of Title 30, which prohibits the possession of more than 10 packs or packages of untaxed tobacco. Current law requires the Department of Finance to sell any forfeited tobacco products by sealed bid to the highest bidder.

Patrick Carter
Director of Revenue

**DEPARTMENT OF AGRICULTURE
DELAWARE STANDARDBRED BREEDERS' FUND****PUBLIC NOTICE****502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed amended regulation constitutes a modification of one existing regulation. The proposed amendment of regulation 13.8 adds two words which clarify the qualification requirement for horses earning a place in finals at each racetrack.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulation. The deadline for the filing of such written comments will be thirty days (30) after this proposed amended regulation is promulgated in the *Delaware Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by December 1, 2010.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, November 18, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid-Related General Assistance (GA) Program and Temporary Assistance for Needy Families (TANF) Program Changes**

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 Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Medicaid-related General Assistance and TANF changes.

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Public Assistance Reporting Information System (PARIS)**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual regarding the *Public Assistance Reporting Information System (PARIS)*.

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE

Delaware Medicaid and CHIP Managed Care Quality Assessment & Improvement Strategy Draft

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 announcing a thirty (30)-day public comment period on its draft of the State's Draft Quality Strategy for healthcare services.

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE

DSSM: Citizenship and Alienage

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

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

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

DEPARTMENT OF JUSTICE**DIVISION OF SECURITIES****PUBLIC NOTICE****Rules and Regulations Pursuant to the Delaware Securities Act**

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division hereby proposes numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

Peter O. Jamison, III
Securities Commissioner
Department of Justice
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the Delaware Register of Regulations.

VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL**301 Victims' Compensation Assistance Program Rules and Regulations****PUBLIC NOTICE**

The Department of Justice Victims Compensation Assistance Program proposes to add an additional section, 28.0, to Regulation 301 relating to payment of claims. The VCAP currently pays medical claims for approved crime victims when they do not have other insurance which covers the medical expenses. The VCAP is the payer of last resort for these medical claims and other health insurance. Medicaid and/or Medicare must pay first before VCAP pays. In 1992 the Violent Crimes Compensation Board (now VCAP) developed letters of agreement with most local hospitals to pay 80% of the billed amount; and the hospitals agreed to accept this as payment in full.

This regulation would require that VCAP pay all medical providers at 80% of the usual and customary charge for services. This amount would be considered payment in full, and the medical provider would be unable to collect any additional monies from the victim, or from third parties. Enactment of this regulation would help preserve and extend the Victims Compensation Assistance Program funds and bring VCAP more in line with other companies who pay medical claims.

The VCAP Advisory Council considered applying this formula to mental health and dental claims, as well; but deferred action on that pending further study and comment.

The Department of Justice Victims Compensation Assistance Program will hold public hearings on these proposed amendments on Monday November 22 beginning at 5pm in the Carvel State Office Building Auditorium and on Tuesday November 23 beginning at 3pm at the Tatnall Building Room 113, Dover Delaware. Interested persons may submit comments in writing to Barbara Brown, VCAP, 900 King Street, Suite 4, Wilmington Delaware. Statements and testimony may be presented either orally or in writing at the public hearings.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT****1302 Delaware Regulations Governing Hazardous Waste****TITLE OF THE REGULATIONS:**

Delaware Regulations Governing Hazardous Waste (RGHW)

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to the *RGHW* that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations. Some of the changes DNREC is proposing to make are already in effect at the federal level. Additionally, DNREC is proposing to adopt required federal regulations and miscellaneous changes to correct errors and add consistency or clarification.

NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to RGHW will be held on Wednesday December 1, 2010 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

DIVISION OF FISH AND WILDLIFE**3214 Horseshoe Crab Annual Harvest Limit****TITLE OF THE REGULATIONS:**

3214 Horseshoe Crab Annual Harvest Limit

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

This action extends the effective date of Delaware's annual horseshoe crab quota allocation through April 30, 2013. This regulatory modification is required for Delaware to be compliant with Addendum VI to the Atlantic State's Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab. Addendum VI extends the provisions of Addendum V through April 30, 2013. The addendum prohibits the directed harvest and landing of all horseshoe crabs in Delaware from January 1 through June 7, and female horseshoe crabs from June 8 through December 31. Delaware's annual harvest is restricted to 100,000 male horseshoe crabs per year. If Delaware's annual horseshoe crab quota allocation is exceeded in any calendar year, the overage is deducted from the following year's quota allocation.

NOTICE OF PUBLIC COMMENT:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on November 23, 2010 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, November 30, 2010.

PREPARED BY:

Stewart Michels 735-2970 stewart.michels@state.de.us 28 September 2010

DIVISION OF PARKS AND RECREATION**9202 Regulations Governing Natural Areas and Nature Preserves****TITLE OF THE REGULATIONS:**

Regulations Governing Natural Areas and Nature Preserves

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To clarify processes associated with nominating and delisting Natural Areas and dedicating Nature Preserves. The current regulations are confusing and erroneous in some sections, and focus on Nature Preserve management plans. A total rewrite of the regulations provide a better focus on identifying Natural Areas and dedicating Nature Preserves. There is no cost associated with the proposed regulation.

NOTICE OF PUBLIC COMMENT:

Oral or written comments may be presented at a public hearing to be held on Wednesday, December 1, 2010 beginning at 5:00 PM in the DNREC Richard and Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Eileen M. Butler, DNREC Parks and Recreation, 89 Kings Highway, Dover, DE 19901.

PREPARED BY:

Eileen M. Butler (302) 739-9235 Eileen.Butler@state.de.us October 15, 2010

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**OFFICE OF THE SECRETARY****PUBLIC NOTICE****1101 Regulations Governing Travel Restrictions During A State Of Emergency****Type of Regulatory Action Required**

Promulgation of Rules and Regulations pursuant to 20 Del. C. Sections 3116(b) (12) and 3121

Synopsis of Subject Matter of the Regulation

The Secretary of Safety and Homeland Security intends to promulgate rules and regulations as they relate to travel restrictions during a State of Emergency.

The proposed regulation develops a system and structure for the activation of travel restrictions during a State of Emergency and creates an avenue for the Secretary of Safety and Homeland Security to grant waivers to persons and/or entities which have a valid significant health, safety or business necessity.

Any person may submit their views, comments, concerns and recommendations by close of business on or before November 30, 2010 to Elizabeth Olsen, Deputy Secretary, at the Department of Safety and Homeland Security, 303 Transportation Circle, P.O. Box 818, Dover, Delaware 19903. A copy of the proposed regulations is available from the above address.

OFFICE OF HIGHWAY SAFETY**1201 Driving Under the Influence Evaluation Program, Courses Of Instruction,
Programs of Rehabilitation and Related Fees****1204 Drinking Driver Programs Standard Operating Procedures****PUBLIC NOTICE**

The Secretary of Safety and Homeland Security intends to amend 2 **DE Admin. Code** 1201 and 1204 for the purpose of increasing the fees DUI Evaluation, Education, and Referral programs are permitted to charge offenders. These programs are fee-for-service and are governed by the Department of Safety and Homeland Security, Office of Highway Safety.

These providers were last permitted to increase their fees in 2001. Proposed fee increases are below the fair market value of these services in the private sector.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 30, 2010 to Lisa Shaw, Deputy Director, Office of Highway Safety, PO Box 1321, Dover, DE 19903. A copy of this regulation is available from the above address.

OFFICE OF HIGHWAY SAFETY
1206 Approved Motorcycle Helmets and Eye Protection
PUBLIC NOTICE

The Delaware Department of Safety and Homeland Security proposes to amend Regulation 1207 of the Office of Highway Safety's regulations to more clearly specify what motorcycle helmets and eye protection are approved for use in Delaware by the Secretary of the Department. Written comments concerning this proposed amendment should be submitted to Jana Simpler, Director, Office of Highway Safety, P.O. Box 1321, Dover, DE. 19903 on or before December 1, 2010, for consideration before a final regulation is adopted.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
4400 Delaware Manufactured Home Installation Board

Pursuant to 24 **Del.C.** §4416(b)(1), the Manufactured Home Installation Board has proposed revisions to its rules and regulations.

A public hearing will be held on November 22, 2010 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Manufactured Home Installation Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed revisions to Rule 9.0. The Board's licensing law, Chapter 44 of Title 24 of the Delaware Code, provides that all manufactured home installations must be performed in compliance with the requirements of the United States Department of Housing and Urban Development ("HUD"). See 24 **Del.C.** §4421(b). The revisions to Rule 9.0 expressly incorporate HUD's installation requirements. In particular, the rules reference specific sections of the Code of Federal Regulations. These amendments will make explicit what is already included in the Board's licensing law and will, therefore, provide greater clarity and greater protection for the public.

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

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
5100 Board of Cosmetology and Barbering

Pursuant to 24 **Del.C.** §5106(a)(1), the Board of Cosmetology and Barbering has proposed revisions to its rules and regulations.

A public hearing will be held on November 29, 2010 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit

written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 51 of Title 24 of the Delaware Code, which went into effect on June 26, 2010. In particular, certain rules have been revised to implement the enhanced education requirements for nail technicians and aestheticians.

Further, in Rule 2.0, the requirements for temporary work permits are amended to ensure that a permanent license is obtained in a timely manner. The apprenticeship requirements, in Rule 3.0, are also revised to enable the Board to more effectively monitor apprentices and their status pertaining to completion of the required hours. Rule 11.0, pertaining to the requirements for schools, makes clear that all instructors must be licensed. Finally, Rule 14.7 specifies that nail technicians are prohibited from performing any type of hair removal.

The Board proposes striking the existing rules and regulations in their entirety and replacing them with the rules and regulations set forth herein.

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