
Delaware Register of Regulations

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Regulations:

Proposed

Final

Calendar of Events &

Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 15, 2008.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

11 **DE Reg.** 759-786 (12/01/07)

Refers to Volume 11, pages 759-786 of the *Delaware Register* issued on December 1, 2007.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
November 1	October 16	4:30 p.m.
December 1	November 17	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 **Del.C.** §6403)

PUBLIC NOTICE**501 Regulations of the Delaware Solid Waste Authority****A. Statutory Authority:**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406, 6421 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") will conduct a hearing to consider amendments to the Regulations of the Delaware Solid Waste Authority (adopted June 7, 2001).

B. How To Present Views:

The hearing is to provide an opportunity for public comment on the proposed amendments. The public record will close at the close of the hearing, unless the hearing officer extends the comment period at the close of the hearing.

The hearing will be held Thursday, November 6, 2008 at 5:00 P.M. at Delaware Technical Community College, Terry Campus, Corporate Training Center, Room 400 Dover, Delaware 19903.

The Delaware Solid Waste Authority will receive oral and written comments, suggestions, compilations of data, briefs or other written material until the close of the hearing on November 6, 2008. Written comments, suggestions, compilations of data, briefs or other written material may be submitted at the hearing or sent to Michael D. Parkowski, Manager of Business Services and Governmental Affairs, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed rules and regulations may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19903, (302) 739-5361.

C. Possible Terms of Agency Action:

None.

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

None.

E. Brief Synopsis Of The Subject, Substance and Issues:

The proposed amendments encompass numerous changes to the comprehensive regulations of the Delaware Solid Waste Authority, which were last amended in the year 2001. The proposed regulations are intended to update the current regulations consistent with current practices and objectives. Significant highlights of proposed amendments include the following: (a) changes to licensing requirements, including a new requirement of a license to haul dry waste; (b) contractors with certain governmental entities to use DSWA facilities for the disposal of certain waste; (c) a requirement for the filing of an annual registration statement by owners and operators of recycling programs and facilities; and (d) numerous textual and definitional changes to the current regulations.

501 Regulations of the Delaware Solid Waste Authority

1.0 Purpose and Authorization

~~1.1~~ These Regulations are adopted pursuant to the Act to achieve the goals set forth therein.

~~* The Department also has promulgated regulations pertaining to solid waste disposal.~~

2.0 Definitions

"**Act**" means the Delaware Solid Waste Authority Act, 7 **Del.C.** Ch. 64.

"**Applicant**" means any person applying for a license under these regulations.

"**CEO**" means Chief Executive Officer and Manager of DSWA.

"**Chairman**" means the Director designated by the Governor as chairman of DSWA in accordance with 7 **Del.C.** §6403(a).

"**Collection Vehicle**" means any vehicle, truck, container, box, trailer, roll-off, or other device used for the collection, transportation or delivery of solid waste or recyclable materials.

"**Contamination**" means unacceptable material(s) mixed in a primary material, which in DSWA's sole judgment corrupts the intended use or the intended classification of the primary material. For example, a DSWA representative using visual senses may determine a load of material to be "contaminated" because municipal waste was found mixed in a load of recyclable materials.

"**Department DNREC**" means the Department of Natural Resources and Environmental Control of the State of Delaware.

"**Directors**" means the directors of DSWA holding office in accordance with 7 **Del.C.** §6403.

"**Dry Waste**" means any solid wastes including, but not limited to construction and demolition waste, ~~not mixed with waste that is other than dry waste,~~ plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"**DSWA**" means the Delaware Solid Waste Authority, an instrumentality of the State of Delaware, existing pursuant to the Act.

"**DSWA Solid Waste Facility**" means any DSWA solid waste disposal or recyclable materials site, system or process and the operation thereof, including but not limited to personnel, equipment and buildings. Such facility includes any landfill, recycling project, including waste to energy projects, collection station, transfer station, or other solid waste processing or disposal facility for projects operated by, on behalf of, or under contract with DSWA.

"**Hazardous Waste**" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, or chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible illness, or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation,

included within this definition are those hazardous wastes described in §§261.31, 261.32 and 261.33 of the Delaware Regulations Governing Hazardous Waste.

"Industrial Process Solid Waste" means solid waste produced by or resulting from industrial applications, processes or operations and includes, by way of example and not by way of limitation, sludges of chemical processes, waste treatment plants, water supply treatment plants, and air pollution control facilities and incinerator residues, but does not include the solid waste generated at an industrial facility which is comparable to municipal solid waste, such as cafeteria waste, cardboard, paper and pallets, crates or other containers constructed of and containing non-hazardous combustible material.

~~**"Junkyard"** means an establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.~~

"Licensee" means a person holding a license issued by DSWA pursuant to Article III of these Regulations.

"Municipality" means a county, city, town or other entity or public body of the State of Delaware including but not limited to any State agency, department, instrumentality, commission, board, school district, and publicly supported institution of higher learning.

"Permit" means the stickers which DSWA issues under the License identifying the Licensee's account number and a vehicle number, which shall be affixed to both sides of the vehicle.

"Person" means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or other ~~duly established legal~~ entity.

"Recycling" means the process by which solid waste and other discarded materials are transformed into usable material, product, energy, or managed separately in an authorized manner to reduce adverse environmental impacts.

"Recycle Delaware Center" means a DSWA facility, established pursuant to 7 **Del.C.** §6450 et seq., to receive recyclable materials and includes the recycling containers marked for the specific recyclable materials which are to be deposited therein and the area immediately surrounding them necessary for the purposes of such recycling centers.

"Recyclable Materials" means any material or group of materials that can be and commonly are collected or separated from the waste stream and sold or used for beneficial purposes and in an authorized manner to reduce environmental impacts.

"Recycler" means a person in the business of collecting, transporting, and delivering recyclable materials.

"Solid Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under 7 **Del.C.**, Ch. 60 as amended, or source, special nuclear, or by-product materials defined by the Atomic Energy Act of 1954, as amended, or materials separated on-site by the generator thereof for further use, service or value.

"Source Separation" or **"Source Separated"** means the process by which recyclable materials are segregated and kept apart from the waste stream by the generator thereof for the purpose of collection, disposition, or recycling or resource recovery.

"Special Solid Wastes" means those wastes that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial solid wastes, ~~infectious waste~~, municipal ash, septic tank pumpings, and sewage residues.

"Transfer Station" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling or disposal.

PROPOSED REGULATIONS

"Yard Waste" means plant material resulting from lawn maintenance or other horticultural gardening or landscaping activities and includes but is not limited to grass, leaves, prunings, brush, shrubs, garden materials, Christmas trees, and tree limbs up to 4 inches in diameter.

5 DE Reg. 100 (7/1/01)

3.0 Collection and Licensing

- 3.1 No person shall collect, transport, and/or deliver solid waste, or dry waste, except recycling materials, in the State of Delaware without first having obtained a license from DSWA, provided, however, that:
- 3.1.1 persons transporting and delivering solid waste, or dry waste, that they created on their premises resulting from their activities shall not be required to obtain a license therefore; and
- 3.1.2 persons collecting, transporting and/or delivering solid waste, or dry waste, in the course of their employment by a person holding a license from DSWA shall not be required to obtain a license therefore; and,
- 3.1.3 a license shall not be required for the collection, transportation, or delivery exclusively of dry waste, leaves, street and storm sewer cleaning materials, agricultural wastes or those materials identified in §§4.2.1 — 4.2.5 of these Regulations. persons who first became subject to this licensing requirement because of amendments to the regulations which require a license for the collection, transport, and/or delivery of dry waste, shall not be required to have such license for the 60 day period following the effective date of the regulations.
- 3.2 With respect to solid waste delivered to a DSWA Solid Waste Facility, tThe CEO, based upon a determination of threat to public health or welfare or other emergency, may designate a specific Solid Waste DSWA Facility or facilities for delivery or disposal of such solid waste, dry waste, or recyclable materials.
- 3.3 Each Licensee shall clearly display on both sides of the vehicle:
- 3.3.1 the license permit provided by DSWA which is the property of DSWA and subject to cancellation, suspension and/or revocation. The license permit shall be legible at all times and shall be placed in an area of high visibility to allow immediate identification by DSWA Weighmasters and Compliance Officers. The license permit shall be not be placed on fuel or hydraulic tanks or reservoirs, or areas where the operation of mechanical parts would impair the visibility of the permit;
- 3.3.2 the Licensee's business name with letters at least three (3) inches high and of a color that contrasts with the color of the vehicle. No name other than the Licensee's business name shall be displayed. A regularly used business logo may also be displayed.
- 3.4 Licensees shall maintain business offices and phone numbers as follows:
- 3.4.1 Licensees who collect on a yearly average 100 tons per month or more:
- 3.4.1.1 each Licensee shall maintain a manned business office location or locations and designate a representative in responsible charge thereof;
- 3.4.1.2 each Licensee shall provide his business office a street address for the business office to which correspondence may be mailed in addition to a Post Office Box;
- 3.4.1.3 telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by a responsible and authorized person at the main office during normal business hours. Licensees with main offices located outside of the State of Delaware may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. The exclusive use of An answering machine shall not satisfy this requirement; and
- 3.4.1.4 notification regarding any change of business location or telephone number shall be provided to DSWA in writing at least fifteen (15) within seven days prior to of such change.
- 3.5 Licensees who collect on a yearly average less than 100 tons per month:

- 3.5.1 each Licensee shall provide a street address ~~in addition to a Post Office Box~~ for the business office or dwelling ~~that is able to receive~~ to which correspondence may be mailed. A Post Office Box shall not satisfy this requirement;
- 3.5.2 telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by the Licensee during normal business hours. Licensees ~~with main offices located outside of the State of Delaware~~ may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. ~~The exclusive use of~~ An answering service may be utilized. An answering machine shall not satisfy this requirement; and
- 3.5.3 notification regarding any change of business location or telephone number shall be provided to DSWA in writing ~~at least fifteen (15) days prior to~~ within seven days ~~of~~ such change.
- 3.6 Each Licensee shall maintain insurance at the following minimum amounts:
- 3.6.1 Automobile liability: \$350,000 combined bodily injury and property damage per occurrence;
- 3.6.2 General liability: bodily injury \$300,000 per occurrence; property damage: \$100,000 per occurrence; and
- 3.6.3 Workman's Compensation as required by law.
- 3.6.4 Each Licensee shall provide to DSWA new certification of the coverages specified in Section 3.6 including a certification within ten (10) days of renewal. Each such certification of insurance shall provide that DSWA receive at least thirty (30) days advance notice of any canceled, discontinued, or diminished coverage.
- 3.7 ~~Each Licensee shall maintain collection vehicles to comply with the following minimum requirements~~ DSWA permitted vehicle shall, at all times:
- 3.7.1 ~~Each collection vehicle body shall bBe maintained to prevent fluids or other contents from discharging spilling onto the any surface; of the ground.~~
- 3.7.2 ~~Each collection vehicle body shall bBe capable of being readily emptied;:~~
- 3.7.3 ~~Each collection vehicle shall bBe kept in as much of a sanitary condition as possible to control the presence of vectors;:~~
- 3.5.4 ~~Containers, boxes, and other devices, excluding open top trailers, referred to as roll-offs, used by Licensees for collection of solid waste in excess of thirty (30) gallon capacity shall be enclosed or covered to reduce fluid leakage or collection of water.~~
- 3.7.54 ~~Each collection vehicle shall bBe equipped so that it can be readily towed, and maintained in good operational condition for safe and stable operation and/or navigation in or about a Solid Waste DSWA Facility; and:~~
- 3.7.65 ~~Each collection vehicle used or proposed for use by an applicant or Licensee and the contents of any collection vehicle shall bBe subject at all times to inspection by DSWA, including the contents thereof.~~
- 3.8 Each Licensee shall comply with the following requirements while collecting, transporting and/or delivering solid waste or dry waste.
- 3.8.1 Solid waste, or dry waste, shall not be processed, scavenged, modified, or altered unless in compliance with applicable laws and regulations.
- 3.8.2 Solid waste, or dry waste, in collection vehicles and/or containers shall be suitably enclosed or covered to prevent littering or spillage of solid waste or fluids.
- 3.8.3 Solid waste shall not be stored in a collection vehicle for more than twenty-four (24) hours unless the solid waste is being delivered to a ~~Solid Waste Facility~~ authorized to receive such waste and the facility is closed for the entire day when the twenty four hour period expires, in which case the collection vehicle may discharge the solid waste at the facility on the next day that the facility is open.
- 3.8.4 Any spillage ~~of solid waste~~ shall be immediately cleaned up and removed.
- 3.8.5 No undue disturbance shall be caused in residential areas as a result of collection operations.

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- 3.9 All collection vehicles shall be owned in the name of the Licensee or leased in the name of the Licensee. Upon submission of an application for a first time license, each applicant shall provide a copy of a valid motor vehicle registration card for each collection vehicle. If the collection vehicle is not owned by the applicant, a copy of a written motor vehicle lease agreement shall also be submitted with the application.
- 3.10 As a minimum each Licensee, except for municipalities with a written agreement with a licensed collector for such backup, shall own and/or lease, in the name of the licensee, at least two fully and continuously operational collection vehicles of like service, except for down time for routine maintenance
- ~~3.9 Only enclosed vehicles or vehicles capable of being enclosed or covered to prevent any spillage of, loss or littering of solid waste shall be used by Licensees for collection, transportation, or delivery of solid waste, except for vehicles utilized only to collect, transport or deliver the solid wastes referenced in §4.2.1-4.2.5 and §4.3, infra, or oversized bulky waste, such as couches and refrigerators. Such vehicles used for oversized bulky waste shall not satisfy part or all of the Section 3.8 requirement that each Licensee own and/or lease at least two fully and continuously operational vehicles. An exception to the requirements of the first sentence of this section may be authorized by the CEO or his designee in circumstances where it is physically impossible to provide solid waste collection services with such vehicles.~~
- 3.11 With the exception of any municipality, each applicant for a license and each Licensee shall provide to DSWA and maintain a bond under which the Licensee shall be jointly and severally bound with a corporate surety qualified to act in the Courts of Delaware to DSWA for amounts due to DSWA for fees or charges for services. A Bond or Surety is not required if the Licensee pays at the time of solid waste delivery. DSWA may suspend or revoke a license if the Licensee's account with DSWA is past due.
- 3.11.1 In lieu of corporate surety, the applicant or Licensee may provide security for its bond by depositing with DSWA, one of the following in an amount at least equal to the amount of the bond:
- 3.11.1.1 United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills; or
- 3.11.1.2 bonds or notes of the State of Delaware; or
- 3.11.1.3 bonds of any political subdivision of the State of Delaware; or
- 3.11.1.4 certificates of deposit or irrevocable letters of credit from any state or national bank located within the United States; or
- 3.11.1.5 United States currency, or check for certified funds from any state or national bank located within the United States.
- 3.11.2 The amount of the bond specified in § Section 3.11 shall be based upon the total solid waste tonnage ~~charged~~ delivered by the Licensee at a DSWA ~~Solid Waste Facility~~ during for the month of November immediately preceding the license year for which the license is issued in accordance with the following schedule:

"TONNAGE CHARGED FOR PRIOR NOVEMBER"	AMOUNT OF BOND
Less than or equal to 750 tons	(minimum) \$5,000
Greater than 750 tons but less than or equal to 1,500 tons	\$25,000
Greater than 1,500 tons	\$50,000
Each additional 1000 tons over 1,500 tons	\$5,000

If the Licensee has expanded or acquired its business since the preceding November, then the total tonnage for November and Bond amount will be adjusted to account for such increase. By reference to the accounts, business, or assets acquired, an estimate will be made of what the

charges in November would have been if the Licensee had been operating the newly acquired accounts, business, or assets at that time.

- 3.12 Any person desiring to collect, transport, and/or deliver solid waste or dry waste, except recyclable materials, in the State of Delaware shall submit a completed application for license to DSWA on forms provided by DSWA substantially in the form set forth in Attachment "A" of these Regulations. DSWA shall approve or deny license applications within thirty (30) days of receipt of a completed application.
- 3.13 DSWA may require information to supplement that requested in Attachment "A" in reviewing license applications.
- 3.14 The license period for municipalities shall be five years. The license period for all Licensees except municipalities shall be ~~July 1 to June 30 annually~~ two years, or such other time period as determined by DSWA's CEO or COO. ~~Applications for~~ The license renewal application shall be submitted to DSWA at least thirty (30) calendar days prior to the expiration date of the existing license.
- 3.15 Before any additional collection vehicle or substitute collection vehicle is utilized for the collection, transportation, and/or delivery of solid waste or dry waste, the Licensee shall submit to DSWA the following:
- 3.15.1 The name, address and telephone number of the owner of the vehicle.
 - 3.15.2 The state motor vehicle registration number.
 - 3.15.3 A description of chassis by year and manufacturer.
 - 3.15.4 A description of the body by year and manufacturer.
 - 3.15.5 The legal weight limit of the vehicle.
 - 3.15.6 The volume of the body of the vehicle in cubic yards.
 - 3.15.7 Evidence of the insurance coverage as required by ~~this Article~~ Section 3.6.
- 3.16 Each license shall contain the following:
- 3.16.1 Owners Name and/or trading name.
 - 3.16.2 Physical and/or mailing addresses.
 - 3.16.3 License period.
 - 3.16.4 Authorized signature.
 - 3.16.5 Special license conditions regarding collection, transportation, and/or delivery of solid waste or dry waste, as specified by DSWA.
- 3.17 Each license and/or collection vehicle may be transferred subject to prior approval of DSWA. The Licensee shall notify DSWA of any transfer of a license or title to a DSWA permitted vehicle within seven days of such transfer. Except for a municipality with a written agreement with a licensed collector for backup capacity, no person shall be entitled to collect, transport and/or deliver solid waste or dry waste under another person's license.
- 3.18 Notwithstanding anything to the contrary contained in these Regulations, a Licensee may operate a replacement vehicle on a temporary basis for a period of fifteen (15) days; provided further, that the licensee shall provide DSWA an original signed letter on company letterhead providing the information listed in §3.15 of these Regulations. An original letter must be submitted for each day of operation until DSWA license stickers are properly displayed on the vehicle or the vehicle is removed from temporary service. Letters must be taken to the weighstation of the DSWA Solid Waste Facility. Only persons licensed by DSWA shall utilize properly complete letters of authorization. No other letters of authorization shall be accepted at DSWA facilities.
- 3.19 No license shall be issued to any person who:
- 3.19.1 has an account with DSWA that is past due in accordance with DSWA policies or
 - 3.19.2 is obligated to file a report in accordance with ~~§8.2 of~~ these Regulations and has not done so for the immediately preceding calendar year.
 - 3.19.3 holds or has held a license from DSWA which as been revoked;
 - 3.19.4 holds or has held a license from DSWA which has been suspended, for such period as the license is suspended;

PROPOSED REGULATIONS

- 3.19.5 holds or has held an interest in any Licensee whose license from DSWA has been revoked;
- 3.19.6 holds or has held an interest in any Licensee whose license from DSWA has been suspended, for such period as the license is suspended; and
- 3.19.7 owns, in whole or in part, solid waste operating assets, including vehicles and routes, which were acquired from a Licensee whose license from DSWA was revoked or suspended and who acquired such assets from such Licensee for less than fair market value. Applicants for a license may be required to produce records and other information to demonstrate that they comply with this paragraph before a license will be issued.
- 3.20 Any person who first collects, transports, and/or delivers solid waste or dry waste, except recyclable materials, within the State of Delaware, without leaving first obtained a license under this Article, shall not be issued a license required under this Article, until the expiration of one hundred twenty (120) days after the last day on which such collection, transportation and delivery without a license occurred, as determined by the CEO, or his designee.
- 3.21 Any Licensee who does not maintain his principal place of business in Delaware shall designate an agent, by name and street address (box number not acceptable), for service of process within Delaware. The agent shall be either an individual resident in Delaware or a corporation authorized under Title 8 of the **Delaware Code** to transact business in Delaware.
- 3.22 Before a license application is approved or denied, DSWA shall determine whether the applicant is able and reasonably certain to comply with these Regulations. Such determination may take into account any relevant factors including, but not limited to, the prior conduct of the applicant or any person, as defined herein, who is employed by or is otherwise associated with the applicant and may significantly affect the applicant's performance as it is related to the licensed activities. If the application is denied, the determination shall be reduced to writing and include the rationale for denial. Any person denied a license shall be entitled to request a hearing on such determination before the Directors of DSWA in accordance with ~~§11.1.2 hereof~~ these Regulations.
- ~~3.22 No license shall be issued to any person who:~~
- ~~3.22.1 holds or has held a license from DSWA which has been revoked;~~
- ~~3.22.2 holds or has held a license from DSWA which has been suspended, for such period as the license is suspended.~~
- ~~3.22.3 holds or has held an interest in any Licensee whose license from DSWA has been revoked;~~
- ~~3.22.4 holds or has held an interest in any Licensee whose license from DSWA has been suspended, for such period as the license is suspended.~~
- ~~3.22.5 owns, in whole or in part, solid waste operating assets, including vehicles and routes, which were acquired from a Licensee whose license from DSWA was revoked or suspended and who acquired such assets from such Licensee for less than fair market value. Applicants for a license may be required to produce records and other information to demonstrate that they comply with this paragraph before a license will be issued.~~
- 3.23 A Licensee shall give written notice to DSWA ~~at least~~ within seven (7) days ~~in advance~~ of any of the following:
- 3.23.1 sale or conveyance of a significant portion of its assets;
- 3.23.2 sale or conveyance of a significant portion of the equity interest (e.g. stock) held in it;
- 3.23.3 purchase or other acquisition of a significant portion of the assets of another Licensee;
- 3.23.4 purchase or other acquisition of a significant portion of the equity interest in another Licensee. For purposes of this paragraph, a significant portion shall mean one-half. Fragmentation of a transfer into smaller portions shall not be used to avoid the requirements of this paragraph.
- 3.24 With respect to any vehicle which accesses a DSWA facility based on the extension of credit by DSWA, the vehicles shall use:
- 3.24.1 License permit stickers or charge account stickers;
- 3.24.2 RF transponders;
- 3.24.3 barcode identification Cards; or

3.24.4 Other identification as permitted by DSWA.

By using one or more of the above required items, the originally assigned person is accepting responsibility for all charges to the person's account. The required identification items are the property of DSWA and must be removed, returned, and/or destroyed in accordance with existing DSWA policy upon selling or transferring a vehicle. The originally assigned person remains responsible for all charges to his account until DSWA receives written documentation from the person to confirm a change in the status of the account or the account vehicle. (For example: selling or trading a vehicle.)

- 3.25 Each Licensee shall submit a report for the preceding calendar year ~~on~~ no later than February 1 of each year to DSWA stating, with respect to any waste collected in the State of Delaware and disposed of in the State of Delaware at a location other than a DSWA Solid Waste Facility, the quantities and types of waste disposed of, the names and address of the facility where it was disposed of, and any other information required on a form to be supplied by DSWA (See Attachment C).

5 DE Reg. 100 (7/1/01)

4.0 Use of DSWA ~~Solid Waste Facilities~~ by Municipalities and Their Contractors

- 4.1 ~~Except as provided in §4.1.1, §4.2, §4.3, or as provided by contract, all solid waste generated within the State of Delaware shall be delivered to and disposed of at a DSWA Solid Waste Facility or some other duly licensed or permitted facility. Whoever disposes of such waste at a facility which is not a DSWA Solid Waste Facility shall submit a report for the preceding calendar year on February 1 of each year to DSWA stating the generator(s) of the waste, type and quantity of material disposed and the name of the facility and its address at which the waste was disposed.~~

Any solid waste, including but not limited to dry waste, that is generated, collected, or transported by any municipality, or by a person pursuant to an agreement with any municipality, shall be disposed of at a DSWA facility, unless it is a solid waste listed in Section 4.2 or Section 4.3. Any municipality that enters into an agreement for the collection or transportation of such solid waste that is required to be delivered to a DSWA facility pursuant to this section shall include in such agreement a requirement that the solid waste shall be disposed at a DSWA facility.

- 4.1.1 ~~Except as provided in §4.2, all solid waste and dry waste that is generated by a municipality (defined to include any county, city, town or other public body of the State of Delaware, such as State agencies, instrumentalities, school boards, and publicly supported institutions of higher learning) shall be disposed of at a DSWA Solid Waste Facility. All solid waste and dry waste that is collected or transported by a municipality shall be disposed of at a DSWA Solid Waste Facility.~~
- 4.1.2 ~~Persons delivering solid waste to a DSWA Solid Waste Facility shall pay to DSWA the applicable fees, user fees, or contract fees. If different types of waste are commingled, the applicable fee shall be based on the type of waste in the commingled waste which has the highest fee.~~

- 4.2 The following solid wastes shall not be delivered to a ~~DSWA Solid Waste Facility~~:

- 4.2.1 Hazardous wastes
- 4.2.2 Explosives
- 4.2.3 Pathological and infectious wastes
- 4.2.4 Radioactive wastes
- 4.2.5 Solid wastes, as determined by the CEO or his designee, which will, because of their quantity, physical properties, or chemical composition, have an adverse effect on the DSWA ~~F~~facility, or the operation of the DSWA ~~F~~facility, or if an effective means of risk and cost allocation cannot be achieved.
- 4.2.6 Wastes which are prohibited by the DSWA ~~Solid Waste F~~facility(s) DNREC permit.
- 4.2.7 Solid wastes, except recyclable materials, generated outside the State of Delaware.

- 4.3 The following solid waste may but is not required to be delivered to a DSWA ~~Solid Waste F~~facility for disposal or recycling, upon payment of the appropriate fee or user charge, provided that delivery of such solid waste is not otherwise proscribed by §4.2:

- 4.3.1 ~~Agricultural waste generated on a farm.~~

PROPOSED REGULATIONS

- 4.3.2 ~~Dry Yard waste, such delivery is required by contract in which case it must be delivered to a DSWA Solid Waste Facility unless the CEO or his designee determines such waste would have an adverse effect on the DSWA facility, in which case Yard Waste shall not be delivered to the DSWA facility.~~
- 4.3.3 ~~Tires.~~
- 4.3.42 ~~Non-hazardous waste resulting from emergency clean-up actions of the Department DNREC.~~
- 4.3.53 ~~Industrial process solid waste exempted by §5.3.2~~ Any special solid waste allowed at a DSWA facility pursuant to Section 6 of these regulations.
- 4.3.64 ~~Asbestos.~~
- 4.3.7 ~~White goods.~~
- 4.3.85 ~~Source separated r~~Recyclables materials
- 4.4 ~~In the event that an invoice generated from the charging of fees or user charges at a DSWA Solid Waste Facility is not paid in accordance with DSWA credit policies the license may be revoked and/or the right to use DSWA Solid Waste Facilities may be denied to the user. Before the license revocation and/or denial of use, the user may have a hearing before the Directors of DSWA, and the user shall be given at least ten (10) days notice of the hearing. Otherwise, the procedure for the hearing shall be as set forth in §10.1.2.2-10.1.2.5 of these Regulations.~~

5 DE Reg. 100 (7/1/01)

5.0 Use of DSWA Facilities by Persons Other Than Municipalities and Their Contractors

- 5.1 Except as provided in Section 5.2, any person, other than a municipality and any person under an agreement with a municipality with respect to solid waste that must be delivered to a DSWA facility pursuant to Section 4.1, may dispose of the following at a DSWA facility (unless the CEO or his designee determines such waste would have an adverse effect in the DSWA facility) or other facility authorized to receive such waste: solid waste, including, but not limited to yard waste, dry waste, and recyclable materials.
- 5.2 Every person shall deliver solid waste to a DSWA facility to the extent so required by any agreement between such person, or its assignee, and DSWA.
- 5.3 No person shall deliver to a DSWA facility any waste listed in Section 4.2 of these regulations.

~~6.0 Reserved~~

~~56.0 Special Solid Waste~~

- ~~56.1 Any person causing or allowing special solid waste to be delivered to any DSWA Solid Waste Facility for disposal shall obtain the approval of DSWA prior to commencement of such disposal delivery; provided however, that where more than one person is involved in the generation and delivery of a particular special solid waste, approval of DSWA obtained by one person shall be sufficient. DSWA has adopted a policy on special solid wastes which provides detailed information regarding the approval process.~~
- ~~5.1.4~~ 6.2 ~~In the event that there are any risks or additional costs involved in accepting any special solid wastes, the CEO may impose a special solid waste disposal surcharge to compensate DSWA for such risks and additional costs, including administrative expenses and overhead. The following factors shall be considered in determining the amount of such special solid waste surcharge:~~
- ~~5.1.1.1~~ 6.2.1 ~~Quantity of waste to be disposed of;~~
- ~~5.1.1.2~~ 6.2.2 ~~Degree of risk associated with such disposal;~~
- ~~5.1.1.3~~ 6.2.3 ~~Additional handling, processing and disposal costs;~~
- ~~5.1.1.4~~ 6.2.4 ~~Additional administrative expenses and overhead;~~
- ~~5.1.1.5~~ 6.2.5 ~~Additional environmental protection controls including monitoring.~~
- ~~5.1.2~~ 6.3 ~~The special solid waste surcharge shall be set by the CEO, without notice and public hearing thereon, and may be done on a case by case basis.~~

~~5-26.4~~ Any person causing or allowing special solid waste to be delivered to a DSWA ~~Solid Waste Facility~~ operated by or on behalf of DSWA shall be deemed to have agreed to indemnify and hold harmless DSWA from any liability arising from disposal of such special solid waste and to have agreed to reimburse DSWA for any costs reasonably incurred to protect against or reduce any risk resulting therefrom; provided, however, such person, if such person has not caused or allowed the delivery of a hazardous substance within the meaning of the Comprehensive Environmental Response Compensation Liability Act (CERCLA), as amended, 42 USC Section 9601, et.seq., shall not be liable under this subsection to DSWA for harm or damage caused by the negligence of DSWA.

~~5-36.5~~ It shall be the responsibility of each generator of special solid waste, in addition to the person collecting, transporting and delivering it, to obtain the approval of DSWA for disposal of special solid waste at the DSWA ~~Solid Waste Facility~~ and to assure that such waste is delivered to the DSWA ~~Solid Waste Facility~~ for disposal. Such solid waste shall not be disposed in a DSWA ~~Solid Waste Facility~~ if:

- ~~5-3-16.5.1~~ DSWA refuses to approve the disposal of such waste at a DSWA ~~Solid Waste Facility~~; or
- ~~5-3-16.5.2~~ the generator of such waste determines or agrees to have such waste disposed of at another properly licensed or permitted facility;
- ~~5-3-36.5.3~~ the solid waste is described in § 4.2 of ~~Article IV~~.

~~56.4~~ Any person aggrieved by a determination of the CEO or his designee, under this Article or ~~§4.2.6 of Article IV Sections 4.2 and 4.3~~, may seek review thereof by the Directors of DSWA in accordance with ~~§6427 (f) of the Act, and § 10.1 of these Regulations~~.

5 DE Reg. 100 (7/1/01)

7.0 Operating in a DSWA ~~Solid Waste Facility~~

7.1 All vehicles entering a DSWA ~~Solid Waste Facility~~ to ~~dispose of~~ deliver solid waste, dry waste, or recyclable materials, shall proceed to the appropriate scale. Each vehicle shall come to a full stop before driving onto the scale, for weighing in or for weighing out. Quick stopping or starting on the scales will not be permitted. All personnel must remain in the vehicle unless directed by the Weighmaster to come to the scale bouse window. After weighing, the vehicle must not leave the scales until authorized to do so by the Weighmaster and must proceed to the area designated area at the DSWA facility. ~~for disposal of the quantity and type of waste that is carried in the vehicle. In the event that an invoice generated from the charging of fees or user charges at a DSWA facility is not paid in accordance with DSWA credit policies the license may be revoked and/or the right to use DSWA facilities may be denied to the user. Before the license revocation and/or denial of use, the user may have a hearing before the Directors of DSWA, and the user shall be given at least fifteen (15) days notice of the hearing. The procedure for obtaining and holding the hearing shall be as set forth in these Regulations.~~

7.2 After weighing and at the direction of the Weighmaster or other DSWA representative, each vehicle shall proceed to the area designated. Spotters at the landfill face or on the tipping floor shall direct the vehicles to a dumping special loading/unloading location. Vehicle drivers shall maintain safe distances from other vehicles at all times while at a DSWA facility. At small load facilities, waste shall be disposed only in the containers that have been provided. The contents of each vehicle shall be discharged as quickly as possible and the vehicle shall leave as directed by the operating contractor. Clean-up is allowed only at designated locations. No roll-off boxes will be dropped anywhere in a DSWA ~~Solid Waste Facility~~ without the express approval from a DSWA representative.

7.3 Each vehicle operator shall exercise caution, due care, and safe procedures in all operations at the all DSWA ~~Solid Waste Facility~~s. The speed limit on the facility roads is 25 miles per hour except where a lower speed limit is indicated. The posted speed limits at the facilities shall be observed. Vehicle drivers who disregard the posted speed limits on a DSWA ~~Solid Waste Facility~~ may be denied access to any DSWA ~~Solid Waste Facility~~. Vehicle operators shall follow directions from the DSWA or its representative.

7.4 No hand sorting, picking over, or ~~seavenging~~ salvaging of solid waste, dry waste or recyclable materials will be permitted at any time, without specific DSWA approval.

PROPOSED REGULATIONS

- 7.5 All vehicle operators and other personnel proceed onto the landfill delivery area or location at their own risk. DSWA shall not be liable for acts or omissions of its contractors, persons using a DSWA ~~Solid Waste Facility~~, or other third persons in or about a DSWA ~~Solid Waste Facility~~.
- 7.6 No loitering will be permitted in any DSWA ~~Solid Waste Facility~~.
- 7.7 DSWA reserves the right to redirect vehicles to alternate locations within the DSWA ~~Solid Waste Facility~~, if for any reason in the opinion of DSWA's representative, the original location cannot handle the load or type of material.
- 7.8 There shall be no smoking in at any DSWA ~~Solid Waste Facility~~ ~~except in areas where smoking is expressly permitted~~.
- 7.9 The DSWA from time to time may adopt and post other rules for DSWA ~~Solid Waste Disposal Facilities~~. It is the responsibility of Licensees and other persons using DSWA ~~Solid Waste Facilities~~ to familiarize themselves with and to obey such rules.
- 7.10 Any vehicle that is immobile and obstructing facility operations ~~shall~~ may be moved to a nonconflicting area by DSWA representatives after notifying the Licensee's driver. The Licensee's driver will be given reasonable time to contact his office either through radio or telephone. If the blocking vehicle poses a safety or fire hazard, it will be removed immediately after giving notice to the driver. Licensee shall also give written instructions to drivers on proper procedures for towing.
- 7.11 To prevent material from falling off vehicles and to minimize litter, all ~~open~~ vehicles, including but not limited to pick-up trucks, entering a DSWA ~~Solid Waste Facility~~ ~~to dispose solid waste~~, shall be sufficiently secured through the use of tarpaulins or ropes or netting or enclosures sufficient to prevent the material from falling off the vehicles. Vehicles shall remain secured until reaching the designated untarping area at the DSWA facility.
- 7.12 DSWA shall have the right to require unloading of the contents of the any vehicle ~~hauling solid waste to any area on at~~ a DSWA ~~Solid Waste Facility~~ for the purpose of inspection.
- ~~7.42-413~~ If any prohibited wastes, hazardous wastes, explosives, toxic substance, pathological and infectious wastes, radioactive wastes are found, then the person delivering such waste to a DSWA ~~Solid Waste Facility~~ shall be subject to the sanctions that may be imposed under Section 10.02 ~~for violation of Section 4.2 and sanctions for violation of and~~ other applicable laws and regulations and that person shall be notified and given an opportunity to remove properly all of the waste emptied from the solid waste collection vehicle at his expense. If that is not accomplished within four (4) hours of such notice, which shall be either in person or by telephone, or, if the person cannot be reached immediately, either in person or by telephone, DSWA may proceed to arrange for removal and proper disposal of the entire load and the person bringing who delivered such material to the DSWA ~~Solid Waste Facility~~ shall be liable to DSWA for all costs incurred by DSWA in arranging for proper disposal, including, without limitation, DSWA's out-of-pocket expenses, contractor's fees, disposal costs, overhead supervisory costs, legal fees, testing costs, and transportation costs.

5 DE Reg. 100 (7/1/01)

8.0 Recycling

- 8.1 The following definitions shall apply to this subarticle:
- "Recycling Center"** means a facility, established pursuant to ~~7 Del.C. §6450 et seq.~~, to receive recyclable materials. The Recycling Center includes the recycling containers marked for the specific recyclable materials which are to be deposited therein and the area immediately surrounding them necessary for the purposes of such recycling centers. Recycling Centers shall be known as 'RECYCLE DELAWARE' Centers.
- "Recyclable Materials"** mean those materials which have been source-separated by the generator thereof for recycling. Source separated materials must remain separate throughout the journey and are not to be re-combined for transport.
- "Recycling"** means the process by which solid waste is transformed or converted into usable material(s) or product(s).

~~"Recycler" means a person in the business of collecting, transporting, and delivering recyclable materials.~~

Any person who owns or operates a program or facility within the State of Delaware for the purpose of recycling or recovery of recyclable materials shall file with DSWA an annual registration statement in the form which appears as Attachment D to these regulations. Such statement shall be filed no later than February 1 of each year.

8.2 ~~All persons operating facilities within Delaware for the purpose of recycling solid waste or recyclable materials other than "RECYCLE DELAWARE" and "Recycling Centers" shall file with DSWA copies of any reports or other written information related to the recycling facilities or recycling activities that are filed with DNREC. Such reports or written information shall be filed with DSWA when they are filed or otherwise submitted to DNREC.~~

~~8.3 At a Recycling Delaware Center, no person shall:~~

~~8.32.1 dispose of solid waste or litter;~~

~~8.32.2 leave materials outside of recycling containers;~~

~~8.32.3 deposit into a recycling container any material other than the specific recyclable material for which the recycling container is marked to receive;~~

~~8.32.4 damage, deface, or abuse a recycling container;~~

~~8.32.5 block or obstruct vehicles using or serving the Recycling Center;~~

~~8.32.6 loiter;~~

~~8.32.7 scavenge any Recyclable Materials; or~~

~~8.32.8 deposit Recyclable Materials that has have been collected from or by a Recycler.~~

8.3 Recyclable materials and dry waste delivered to a DSWA facility shall be free of contamination as determined by DSWA.

5 DE Reg. 100 (7/1/01)

9.0 Transfer Station Requirements

9.1 Any person operating a transfer station for solid waste within the State of Delaware shall;

9.1.1 prepare daily and maintain (for minimum period of three years after preparation) records of the solid waste handled at the transfer station showing the source and final disposition of such waste after removal from transfer station, including address of such final disposition. The records to be maintained shall be adequate to provide all information required by the Transfer Station Monthly Solid Waste Report, shown in Attachment B;

9.1.2 submit to DSWA the report required by §9.1.1 of these Regulations and verify the accuracy thereof to DSWA on or before the twentieth (20th) day of the month following the month for which the report is compiled. The report shall be in the form of the Transfer Station Monthly Solid Waste Report, shown in Attachment B;

9.1.3 make the records required to be maintained and preserved by §9.1.1 of these Regulations available for inspection by representatives of DSWA during normal business hours.

9.2 DSWA through its designated representatives shall have the right to inspect the any transfer station in the State of Delaware and solid waste hauling vehicles entering and leaving the transfer station.

5 DE Reg. 100 (7/1/01)

10.0 Review, Enforcement and Sanctions

10.1 Any person seeking a license or to have solid waste, dry waste, or recyclable materials, delivered to disposed of at a DSWA Solid Waste Facility who has been aggrieved by a determination of the CEO or his designee under ~~§§3.19, 3.21, 4.2, 4.4, 5.1.2 or 5.4~~ of these Regulations with respect to the denial of such license or delivery of solid waste, dry waste or recyclable materials may seek review thereof by the Directors of DSWA by filing a request for review with the CEO within fifteen (15) days of receipt of notice of such determination. The hearing shall be held in accordance with ~~the paragraph of~~ Section 10.1.2 of these Regulations.

PROPOSED REGULATIONS

- 10.1.1 The person filing the request for review under paragraph 10.01 (a) of these Regulations shall be provided notice by registered mail at least fifteen (15) days before the time set for the hearing. The person filing the request for the hearing shall bear the burden of proof.
- 10.1.4-2 The person requesting the hearing may appear personally and/or by counsel and may produce competent evidence in his behalf. Upon the request of the person requesting the hearing or the CEO, the Chairman of DSWA shall issue subpoenas requiring the testimony of witnesses and the production of books, records, or other documents relevant to the material involved in such hearing.
- 10.1.4-3 All testimony at the hearing shall be given under oath and the Chairman shall administer oaths and all Directors shall be entitled to examine witnesses.
- 10.1.4-4 The hearing may be held as part of a regular meeting or a special meeting of the Directors of DSWA. Deliberation shall be held in executive session.
- 10.1.4-5 The decision of the Directors of DSWA shall be announced at a public meeting and shall be forwarded to the person requesting the hearing in written form by registered mail.
- 10.2 Any person who violates a provision of these Regulations shall be subject to the following sanctions:
- 10.2.1 If the violation has been committed, a civil penalty of not less than One Hundred (\$100) Dollars and not more than Five Thousand (\$5000) Dollars shall be assessed;
- 10.2.2 If a violation continues for a number of days, each day of such violation shall be considered a separate violation;
- 10.2.3 If the violation is continuous, or there is substantial likelihood that it will reoccur, DSWA may seek a temporary restraining order, a preliminary injunction or permanent injunction;
- 10.2.4 Any person holding a license issued by DSWA who violates these Regulations shall be subject to revocation of such license, or suspension of such license for such period as determined by DSWA.
- 10.2.5 DSWA personnel are empowered to issue written notices of violations of these Regulations, without the need to employ the sanctions set forth above.
- 10.3 Any person who violates a provision of these Regulations may be prevented from entering a DSWA ~~Solid Waste Facility~~, as determined by the CEO or his designee, until that person is in compliance with these Regulations.

5 DE Reg. 100 (7/1/01)

* Please note: The Attachments are being published due to space constraints. They can be viewed at, [501 Regulations of the Delaware Solid Waste Authority](#)

DEPARTMENT OF AGRICULTURE

DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION

Statutory Authority: 3 Delaware Code, Section 7202 (3 Del.C. §7202)

3 DE Admin. Code 304

PUBLIC NOTICE

The Delaware Department of Agriculture proposes these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state. It should be noted here that these regulations do not supersede **Delaware Code** Title 7 Chapter 6 regarding Endangered Species.

The Delaware Department of Agriculture solicits written comments from the public concerning these proposed regulations. Any such comments should be submitted to the Acting State Veterinarian, Caroline Hughes, VMD, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before November 1, 2008. Copies of the proposed regulations are available on request.

304 Exotic Animal Regulations

1.0 Authority

These regulations are promulgated pursuant to the authority of Section 7202 of Title 3 of the Delaware Code.

2.0 Purpose

These regulations govern the permitting process, possession, sale, and exhibition of exotic animals, i.e., live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in the State of Delaware. The State Veterinarian or her or his designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein.

3.0 Definitions

“Carnivore” means a flesh-eating mammal, which possesses teeth and claws adapted for attacking and devouring its prey.

“Custodian” means one who owns, possesses or cares for an exotic animal.

“Department” means the Delaware Department of Agriculture, the State Veterinarian or his or her designated agent or representative.

“Exotic” means a live wild mammal or hybrid of a wild mammal or a live reptile not native to or generally found in Delaware as determined by the Delaware Department of Natural Resources and Environmental Control and the Division of Fish and Wildlife.

“Herbivore” means a mammal that feeds exclusively on vegetable matter.

“Hybrid of a wild mammal” means a mammal whose parents are different varieties of the same species or belong to different but closely allied species, one parent being a wild mammal not native to or generally found in Delaware and the other parent being a domestic mammal native to or generally found in Delaware.

“Omnivore” means an animal which eats any sort of food, both animal and vegetable in origin.

“Owner” means one who owns, possesses or cares for an exotic animal.

“Permit Holder” means one who owns, possesses or cares for an exotic animal and holds an applicable Exotic Animal permit.

“Primate” means a mammal that belongs to the highest order of mammals including monkeys and lemurs.

“Reptile” means any cold-blooded vertebra of the class Reptilia including turtles, lizards, snakes, crocodilians and tuatara.

“Secretary” means the Secretary of Agriculture or his or her designee.

“State Veterinarian” means the State Veterinarian of the Delaware Department of Agriculture, or his or her designee.

“Welfare” means that the owner provides for the health and well-being and satisfies the physiological requirements of the exotic animal.

4.0 The State Veterinarian Powers; Duties

4.1 The State Veterinarian is responsible for administering and enforcing these regulations. The State Veterinarian has the power to grant, deny, or revoke permits to possess exotics in this state.

4.2 The State Veterinarian is also vested with the power to designate agencies to seize and when warranted to humanely destroy an exotic if necessary to protect the public health, safety, or welfare and to protect the health of other animals. The State Veterinarian can humanely destroy an exotic without first notifying the exotic animal's owner or custodian.

PROPOSED REGULATIONS

- 4.3 The State Veterinarian will maintain a list of animals that are exempt from permits. This list will be available to the public and is subject to change in keeping with current animal and human health and safety concerns.
- 4.4 The State Veterinarian is charged with preventing the introduction and spread of contagious and infectious diseases into and within the domestic animal population of the state. Therefore, any exotic animal health concerns must be immediately communicated to the State Veterinarian's office.

5.0 Enclosure and Welfare requirements for permits

- 5.1 There shall be two enclosures to house an exotic: a primary enclosure and a secondary enclosure. Locking devices shall be required on both primary and secondary enclosures. Both primary and secondary enclosures must be approved by a designated agent or representative of the Delaware Department of Agriculture. Future changes to any pen used to contain an exotic animal must be approved in advance by a designated agent or representative of the Delaware Department of Agriculture. Prior to granting a permit, a final inspection of the enclosures where the exotic is to be confined shall be completed by the Department to insure that the requirements of these regulations have been met by the applicant. Inspections may include onsite visits or other proof of enclosure and welfare compliance, such as pictures or videos, as deemed appropriate by the Department. The Department shall be allowed access to make random, unfettered re-inspections of a permitted location to insure continued compliance or to request other proof of existing enclosure and welfare compliance, as deemed appropriate by the Department, for the purpose of re-inspection.
- 5.2 The primary enclosure shall be a pen, cage or other structure where the exotic will be kept and which must be of sturdy and escape-proof construction. Enclosures/Pens must be consistent in size, structure, lighting, temperature control, and ventilation according to the welfare standards and needs described and found in scientific literature for the species under request for permitting into Delaware. The applicant is required to demonstrate knowledge of enclosure and welfare standards for the species under consideration with the application.
- 5.3 The secondary enclosure must be sufficient to prevent the exotic from escaping from the property of the custodian should it be set free from its primary enclosure. The secondary enclosure must insure there will be no physical contact between members of the public and the exotic if it is set free from the primary enclosure.
- 5.4 Shared enclosures: Permitted exotic animals must be kept so as not to be allowed to reproduce while in captivity. Any shared enclosures are only for sterile animals or animals unable to reproduce. The applicant may be required to provide proof of sterility or birth control treatment to the Delaware Department of Agriculture. Only animals permitted herein by an Accredited Zoo Permit under the inspection and accreditation of the Association of Zoos and Aquariums (AZA) shall be allowed to legally reproduce under these regulations.
- 5.5 Exotics must receive humane treatment and care. In order to insure humane treatment, the State Veterinarian may require an examination by a licensed veterinarian or the State Veterinarian's designee. Such examination will be at the owner's expense. The State Veterinarian may consult with a local Society for the Protection of Cruelty to Animals ("SPCA") to enforce this provision.
- 5.6 All Exotic Animal Permit holders must have an emergency evacuation plan and provide a written copy of this plan to the Department upon request.
- 5.7 The enclosure and welfare requirements listed above must be in compliance before application renewal for any class of Exotic Animal Permit can be approved by the Department of Agriculture.

6.0 Permit Classes

- 6.1 Individual Exotic Animal Permit
- 6.1.1 When exotics are kept as pets, the owner or appointed custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Exotic Animal Permits granted by the Department shall be null and void when the owner or appointed custodian transfers ownership or possession of the exotic to another individual. The owner or

appointed custodian must obtain a separate Individual Permit for each exotic animal intended to be kept as a pet. A background check of an applicant may be completed by the Department. An applicant is required to provide proof of research of her/his county, city, local laws, rules and regulations that may govern the possession of an exotic in his/her area. Individual Exotic Animal Permits must be renewed every three years.

6.2 Exotic Animal Sales Permit

6.2.1 In order to sell exotic animals, business entities must have a valid Delaware business license, and must obtain an Exotic Animal Sales Permit from the Department. When applicable, business entities must also hold a valid USDA Exotic Animal Dealer Permit. Exotic Animal Sales Permits granted by the Department shall be valid for one year and are not transferable.

6.2.2 When a permitted business entity (seller) sells an exotic animal, the following conditions of sale must be met:

6.2.2.1 The seller must provide the purchaser with written information regarding the exotic's enclosure and welfare requirements.

6.2.2.2 The seller must notify the purchaser of the requirement to obtain an Exotic Animal Permit from the Delaware Department of Agriculture.

6.2.2.3 The seller must notify the purchaser of the possibility that there may be county, city, local laws, rules and regulations that may govern the possession of exotics in their area.

6.2.2.4 The seller must notify the Department of the purchaser's identifying information (name, address, telephone, email) and the exotic's information within 2 business days after the sale of an exotic.

6.2.2.5 If the purchaser resides outside the State of Delaware, the seller must maintain a record of the interstate sale, including purchaser's address, and must notify the appropriate state veterinarian's office or applicable state agency.

6.2.2.6 A copy of the purchaser's sale record must be maintained by the seller for 3 years after the sale of the exotic animal.

6.2.3 Exotics Animal Sales permit holders must guarantee that all exotic animals for sale are in good health at the time of sale and for 10 days after the sale.

6.3 Accredited Zoo Permit

6.3.1 All zoos in Delaware accredited by the Association of Zoos and Aquariums (AZA) or the designated successor organization must obtain an Accredited Zoo Permit annually.

6.4 Exotic Animal Exhibitor Permit

6.4.1 All parties or entities (with the exception of accredited zoos located in Delaware) who wish to present exotic animals for public view must obtain an Exotic Animal Exhibitor Permit from the Department annually.

7.0 Initial Permits

7.1 **Individual Exotic Animal Permit.** Initial applications must be filed with the Delaware Department of Agriculture within 10 days of acquiring the exotic and/or within 10 days of relocating the exotic into the State of Delaware. The State Veterinarian, for good cause shown, and upon written request of the owner/custodian may grant an extension.

7.2 **Exotic Animal Sales Permit.** Initial applications must be filed with the Delaware Department of Agriculture prior to the sale of any exotic animal by a business. Exotic Animal Sales Permits must be obtained for each class of exotic animal: carnivore, herbivore, hybrid of wild mammals, omnivore, primate and reptile as defined in 3.0 of these regulations. If an exotic can be placed in more than one class, the applicant need only apply for one class per exotic. The yearly Exotic Animals Sales Permit request must include an inventory of each specific exotic animal per class of exotic animal identified on the Permit Application. The inventory must identify every exotic animal by accurate description (e.g. name, age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc..) stocked at the business at the time of application for the yearly Permit.

PROPOSED REGULATIONS

- 7.3 **Accredited Zoo Permit.** Initial applications must be filed with the Delaware Department of Agriculture upon accreditation by the Association of Zoos and Aquariums, or its successor association. The Accredited Zoo Permit covers every exotic animal housed or kept at the Zoo. The yearly Accredited Zoo Permit application must include a current copy of the Zoo's on-going accreditation document and identify an inventory of every exotic animal by accurate description (name, age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc.) kept at the Zoo at the time of application for the annual Accredited Zoo Permit.
- 7.4 **Exotic Animal Exhibitor Permit.** Initial applications must be filed with the Delaware Department of Agriculture prior to exhibiting exotic animals in the state of Delaware.
- 7.4.1 All Exotic Animal Exhibitors must:
- 7.4.1.1 Notify the Department within the 60 day period prior to exhibiting exotic animals in Delaware
 - 7.4.1.2 Provide the Department with an inventory of all animals to be exhibited
 - 7.4.1.3 Provide the Department with the dates of exhibition
 - 7.4.1.4 Provide the Department with a list of exhibition activities
 - 7.4.1.5 Provide the Department with a public health and safety plan and an animal health plan upon request
- 7.4.2 When applicable, Exotic Animal Exhibitors must:
- 7.4.2.1 Have a valid USDA Exotic Animal Exhibitor License
 - 7.4.2.2 Show proof of exotic animal permits or licenses from their states of origin
 - 7.4.2.3 Show valid health certificates
 - 7.4.2.4 Have a valid business license
 - 7.4.2.5 Provide proof of knowledge of exotics' health, safety and proper care

8.0 **Renewal of permits**

- 8.1 Individual Exotic Animal permits are required to be renewed every three years and renewal must occur by March 31st of the fourth year.
- 8.2 Exotic Animal Sales permits are required to be renewed on an annual basis and renewal must occur by December 31st of each year. An updated inventory must be submitted with each permit renewal application.
- 8.3 Accredited Zoo permits are required to be renewed on an annual basis and renewal must occur by December 31st of each year. An updated inventory must be submitted with each permit renewal application.
- 8.4 Exotic Animal Exhibitor permits are required to be renewed on an annual basis as needed. An updated inventory must be submitted with each permit renewal application.
- 8.5 Failure to renew permits of any class will be considered to be in possession of an exotic without a permit as defined in 9.0.

9.0 **Possessing, Keeping or Owning an Exotic Animal Without a Permit**

When the Department has reason to believe that an owner or custodian of an exotic animal has not obtained the proper permit, the Department shall inform the owner or custodian of his or her legal obligation to obtain a permit. The permit must be obtained within ten business (10) days from the date of the notification. No permit can be issued if the possession of an exotic animal is prohibited by other applicable statutes or limitations. The State Veterinarian may grant an additional extension and will notify the owner or custodian of the length of the extension.

10.0 **Transporting, Transfer of Ownership and Relocation of Exotic Animals**

- 10.1 If an exotic is to be moved from one location to another for any reason, the exotic shall be transported in a cage or other container that will be strong enough to prevent its escape while in transport, will

protect the public from physical contact and meets welfare requirements. If an owner is transporting an exotic because of zoonotic or animal disease concerns, the State Veterinarian is to be notified immediately. A violation of this provision is grounds for revoking a previously issued permit.

- 10.2 All permit holders are required to notify the Delaware Department of Agriculture if they change their name, permanent address or phone number within 30 days.
- 10.3 All permit owners are required to immediately notify the Delaware Department of Agriculture of any change of ownership or of an exotic animal's birth or death.

11.0 Prohibitions of Public Nuisances

- 11.1 The exotic must not become a public nuisance.
- 11.2 Any exotic animal that is an immediate threat and/or poses a risk of danger to the public may be subject to seizure and destruction in accordance with regulation 4.2 and without the administrative hearing contemplated by regulation 13.2.

12.0 Escape

The owner or custodian of an exotic who learns of its escape from its enclosures must immediately notify the Department and the appropriate animal control agency of the escape. The owner or custodian of an escaped exotic has a responsibility to offer assistance to recapture the exotic and incur any expenses associated with recapture including any damages that may occur.

13.0 Permit Denials and Revocations

- 13.1 The State Veterinarian or his/her designee may deny or revoke an initial application, renewal application or a permit for any justified reason, which will be furnished in writing upon the request of the owner or custodian. Reasons for denials may include, but are not limited to: a zoo losing its accreditation; an exotic animal biting, maiming, or injuring a human; an exotic animal escaping from its enclosure; failure to notify the Department of the transfer or sale of any exotic animal; exotic animals being bred or reproducing; failure to keep copies of sales records for three years; any zoonotic or animal disease concerns; prior animal cruelty violations or the applicant/permit holder fails to maintain welfare standards.
- 13.2 The applicant may appeal a revocation or denial of a permit previously issued to the Secretary of Agriculture and request an administrative hearing.
- 13.2.1 Administrative Hearing
- 13.2.1.1 Whenever the State Veterinarian determines that an exotic animal poses an immediate and unreasonable risk of harm to public health and safety or domestic animal health, the exotic animal is subject to immediate seizure and possible destruction. In such circumstances no administrative hearing is available to the applicant/permit holder to challenge the State Veterinarian's determination.
- 13.2.1.2 Whenever the State Veterinarian proposes to revoke a permit or deny an application for any reason other than an immediate and unreasonable risk or harm to the public health and safety the Department shall first give written notice to the permit holder or applicant of the State Veterinarian's determination. The written notice shall inform the permit holder or applicant that he or she has the right to challenge the determination and to request a hearing before the Secretary of the Department or his or her designee. A request for an administrative hearing must be in writing and must be received by the Department within ten (10) business days of the date of the written notice to such permit holder or applicant, or the State Veterinarian's determination becomes final. The hearing shall be informal and the technical rules of evidence shall not apply. The administrative hearing shall be scheduled by the Department as soon as practicable, but in no event more than thirty (30) business days after receiving the written request for an administrative hearing.

PROPOSED REGULATIONS

- 13.2.1.3 Administrative hearings shall be recorded. The Secretary or his or her designee shall render his or her decision in writing to all interested parties within thirty (30) business days of the date of the administrative hearing.
- 13.2.1.4 Appeals shall be handled by the Superior Court of the State of Delaware.

THOROUGHBRED RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposal amends Section 11 of the rules and regulations to address Entries, Subscriptions, Delegations by amending existing Rules 11.4.2 and 11.4.3.

A public hearing will be held on October 21, 2008 at 10:00 a.m. in the second floor conference room of the Horsemen's Office at Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be at the public hearing.

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

11.0 Entries, Subscriptions, Delegations

- 11.1 Entering and Eligibility Required:
- 11.1.1 No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the Licensee without notice or reason given therefor.
- 11.1.2 A horse must be eligible at the time of entry.
- 11.1.3 A horse must be eligible at the time of starting.
- 11.2 Procedure for Making Entries:
- 11.2.1 It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Veterinarian or Stewards on official forms from that State prior to entry.
- 11.2.2 All entries, subscriptions, declarations and scratches shall be lodged with the Racing Secretary and shall not be considered as having been made until received by the Racing Secretary who shall maintain a record of time of receipt of same.
- 11.2.3 Every entry must be in the name of such horse's registered Owner, as completely disclosed and registered with the Racing Secretary under these Rules and made by the Owner, Trainer or a person deputized by such Owner or Trainer.
- 11.2.4 Every entry must be in writing, or by telegraph promptly confirmed in writing, except that an entry may be made by telephone to the Racing Secretary but must be confirmed in writing should the Stewards, the Racing Secretary or an assistant to the Racing Secretary so request.

- 11.2.5 Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age color, sex, sire, dam and broodmare sire, as reflected by such horse's registration certificate.
- 11.2.6 No horse may race unless correctly identified to the satisfaction of the Stewards as being the horse duly entered;
- 11.2.7 In establishing the identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the Owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.
- 11.2.8 At the time of entering a horse, the Trainer of such horse or his representative, must declare to the Racing Secretary or his representative, whether the horse will race on any medication permitted by these Rules and shall not deviate from such declaration.
- 11.2.9 Within the discretion of the Stewards, a list of horses so declared to race on medication may, in whole or in part, be announced, released for publication or otherwise made public without liability for the accuracy thereof.
- 11.2.10 In order to claim an apprentice allowance at the time of entry, an Apprentice Jockey must be designated by name.
- 11.2.11 No alteration may be made in any entry after the closing of entries, except that an error may be corrected.
- 11.2.12 No horse may be entered in two races to be run on the same day.
- 11.3 Limitation as to Spouses:
Repealed 1/6/92.
- 11.4 Mutuel Entries:
- 11.4.1 All horses entered in the same race and owned wholly or in part by the same owner or spouse thereof shall be joined as a mutuel entry and a single betting interest. Horses shall be regarded as having a common owner when an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, has an ownership interest in another horse, either as an individual or as a licensed shareholder of a partnership or as a licensed shareholder of a corporation. No trainer of any horse shall have any ownership interest in any other horse in the same race unless such horses are coupled as a single wagering interest.
- 11.4.2 ~~No owner shall have more than one horse start in a trifecta or twin trifecta race. No mutuel entry shall start in a trifecta or twin trifecta race. However, the Stewards may, in their discretion, permit mutuel entries to start in stakes races and simulcast races when there is trifecta wagering.~~ Coupled Entries and Mutuel Fields: Horses with same owner ties may be coupled in wagering as a coupled entry or mutuel field and shall be considered part of a single betting interest for the purpose of purse calculations and distribution of pools. Should any horse in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining horse or horses in that couple entry or mutuel field shall remain valid betting interests and no refunds will be granted.
- 11.4.3 ~~Except with the permission of the Stewards, no more than two horses having such common ties through ownership as to require them to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one of the horses may be made.~~ Same Owner and Different Owner Entries: Owners and trainers shall not have more than two horses entered in a purse race with the exception of stake and handicap races.
- 11.4.4 In no case may two horses having common ties through ownership start in a purse race to the exclusion of a single interest.
- Revised: 6/19/92
- 11.5 Subscriptions:
- 11.5.1 Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.
- 11.5.1.1 Joint subscription and entries may be made by any one of the joint Owners of a horse and each such Owner shall be jointly and severally liable for all payments due thereon.

- 11.5.1.2 Death of a horse or a mistake in its entry, when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded.
- 11.5.1.3 Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry or right of entry thereunder; all rights, privileges and obligations shall attach to the successor Owner, including the legal representatives of the decedent.
- 11.5.1.4 When a horse is sold privately, sold at public auction or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new Owner, except that if such horse is transferred to a person whose registration is suspended or otherwise unqualified to race or enter such horse, then subscriptions shall be void as of the date of such transfer.

Rule 11.4 Rev. July 1977

Rule 11.4 Rev. July 1978

- 11.5.1.5 All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the conditions for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.

11.6 Closings:

- 11.6.1 Entries for purse races and subscriptions to stakes races shall close at the time designated by the Licensee in the previously published conditions for such races. If a race is not split, no entry, subscription or declaration shall be accepted after such closing time, except that in the event of an emergency or if a purse race fails to fill, then the Racing Secretary may, with the approval of a Steward, extend such closing time.
- 11.6.2 If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing, provided they are received in time for compliance with every other condition of such race.
- 11.6.3 Entries which have closed shall be compiled without delay by the Racing Secretary and, along with declarations, be posted.

11.7 Number of Starters in a Race:

- 11.7.1 The maximum number of starters in any race shall be limited to the number of starting positions afforded by the Licensee's starting gate and such extensions thereof as can be positioned across the width of the track at the starting point for such race. Such maximum number of starters shall be further limited by the number of horses which, in the opinion of the Stewards, considering the safety of the horses and riders and the distance from the start of the first turn, can be afforded a fair and equal start.
- 11.7.2 If any purse race in the printed condition book fails to fill, then the Licensee may cancel or declare off such race.

11.8 Split or Divided Races:

- 11.8.1 In the event a race is cancelled or declared off, the Licensee may split any race programmed for the same day and which may previously have been closed.
- 11.8.2 When a purse race is split, forming two or more separate races, the Racing Secretary shall give notice thereof not less than 15 minutes before such races are closed so as to grant time for the making of additional entries to such split races.
- 11.8.3 Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made and in the absence of specific prohibition by such conditions:
 - 11.8.3.1 Horses originally joined as a mutuel entry shall, to the greatest extent possible, be placed in different divisions of a split race;
 - 11.8.3.2 Division of other entries in any split race may be made according to age, sex or weight, except that such entries not so divided shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

11.9 Post Positions:

11.9.1 Post positions for all races shall be determined by lot drawn in the presence of those making the entries for such race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The Racing Secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two or more horses joined as a single betting interest.

11.10 Also Eligible List:

11.10.1 If the number of entries for a purse race exceeds the number of horses permitted to start in such race, then the names of as many as six (6) additional horses may be drawn as provided in Rule 11.9. The names drawn shall be posted, in the order they were drawn, as "also eligible" to start.

11.10.2 After any horses have been excused from a purse race at scratch time, the starting and post position of such horses as needed from the also-eligible list shall be determined by the order in which they appear on the entry sheet.

Revised: 10/26/95

11.10.3 Any Owner or Trainer of any horse on the also-eligible list who does not wish to start such horse in such race shall so notify the Racing Secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.

11.10.4 Where entries are closed two racing days prior to the running of a race, any horse on an also-eligible list, which has also been drawn into a race as a starter for the succeeding day, shall not be given an opportunity to be drawn into the earlier race for which he had been listed as also-eligible.

11.11 Preferred List; Stars:

11.11.1 The Racing Secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. Horses so eliminated shall be awarded a preference "star" for each such elimination. As to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.

11.11.2 No preference shall be given a horse otherwise entitled thereto for a race if such horse is also entered for a race on the succeeding day.

11.11.3 No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred".

11.12 Arrears:

11.12.1 No horse may be entered or raced if the Owner thereof is in arrears as to any stakes fees due by such Owner, or is indebted in any sum to Licensee, except with the approval of the Racing Secretary. (Also, see Rule 6.11).

11.13 Declarations:

11.13.1 Withdrawal of a horse from a race before closing thereof by the Owner or Trainer or person deputized by either, such being known as a "declaration", shall be made in the same manner as to form, time and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any Licensee.

11.14 Scratches:

11.14.1 Withdrawal of a horse from a race after closing thereof by the Owner or Trainer or person deputized by either, such being known as a "scratch", shall be permitted only under the following conditions:

11.14.1.1 A horse may be scratched from a stakes race for any reason at any time up until 45 minutes before post time for that race.

11.14.1.2 No horse may be scratched from a purse race without approval of the Stewards and unless such intention to scratch has been filed in writing with the Racing Secretary or his assistant at or before the time conspicuously posted as "scratch time". Scratch of one horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the Stewards to allow both horses to remain in the race until a later appointed scratch time therefor.

PROPOSED REGULATIONS

- 11.14.1.3 In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Horses that are not physically disabled or sick may be scratched only with the permission and in the manner prescribed by the Stewards.
- 11.14.1.4 Entry of any horse which has been scratched or excused from starting by the Stewards because of a physical disability or sickness shall not be accepted until the expiration of three calendar days after such horse was scratched or excused.
- 11.14.1.5 The Stewards will review all cases in which a horse is entered to run at a licensed track in Delaware, while appearing in the entries in another racing jurisdiction, during the five day entry period for Delaware. It shall be a violation of these Rules for a licensee to scratch a horse entered to race in Delaware in order for said horse to race in another jurisdiction within the five day entry period. Violations of this Rule, absent mitigating circumstances, will be subject to fines of not less than \$1,000 and no more than \$2,500. This rule shall not pertain to Handicap and Stake races.

4 DE Reg. 179 (07/01/00)

8 DE Reg. 1289 (03/01/05)

10 DE Reg. 1581 (04/01/07)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at:**

<http://regulations.delaware.gov/AdminCode/title3/1000/1001/index.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 245

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

245 Michael C. Ferguson Achievement Awards Scholarship

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to reauthorize 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship with no changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 3, 2008 to Susan K. 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 regulation serves as an incentive to students to do well on the DSTP that measures the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation defines the conditions of the scholarship awards and ensures that the awards are distributed in an equitable way.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation addresses the conditions of the scholarship award not health and safety issues.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation addresses the conditions of the scholarship award not student's legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The 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 regulation will 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 to be regulated will remain in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation will be consistent with and not an impediment to the implementation of other state education policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The Department of Education is required by statute to maintain regulations in this area.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the local school boards for compliance with the regulation.

245 Michael C. Ferguson Achievement Awards Scholarship

The Michael C. Ferguson Achievement Awards Scholarship Program, included in the Educational Accountability Act of 1998, recognizes students who demonstrate superior performance on the assessments administered pursuant to 14 **Del.C.** §153 (c).

1.0 Basis for Granting Scholarships

Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student's score on the results of the annual spring administration of the Delaware Student Testing Program. Scores from re-testing shall not be considered. Students who have completed the eighth grade prior to first participating in the eighth grade assessment(s) pursuant to 14 **Del.C.** §151 shall not be eligible to receive an eighth grade scholarship. The Scholarships may be awarded to a maximum of 300 eighth grade students in the content areas of reading, writing and mathematics and to a maximum of 300 tenth grade students in the content areas of reading, writing, and mathematics.

- 1.1 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics shall receive the scholarships.
 - 1.1.1 The eighth grade awards may be given to a maximum of 150 students in the areas of reading writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be awarded in the priority order of reading, mathematics and writing.
 - 1.1.2 The tenth grade awards may be given to a maximum of 150 students in the areas of reading, writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.
- 1.2 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in section 1.1. shall receive the scholarships.

- 1.2.1 The eighth grade awards may be given to a maximum of 150 students in the areas of reading, writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.
- 1.2.2 The tenth grade awards may be given to a maximum of 150 students in the areas of reading, writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.
- 1.3 A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C Ferguson Achievement Award Scholarship.

5 DE Reg. 1906 (4/1/02)

7 DE Reg. 998 (2/1/04)

2.0 Eligibility for More Than One Scholarship

Students may receive a scholarship in more than one content area and may also receive scholarships for their 8th and their 10th grade scores.

5 DE Reg. 1906 (4/1/02)

3.0 Use of Scholarship Funds

The Michael C. Ferguson Scholarship Award can only be used at a regionally or nationally accredited post secondary institution or at a Delaware or other state approved private business and trade school in the United States of America. The award cannot exceed direct educational costs.

5 DE Reg. 1906 (4/1/02)

4.0 Higher Education Commission Account and Notification Procedures

All scholarship awards shall be deposited in an account at the Delaware Higher Education Commission in an interest bearing account. Interest earned shall be utilized by the Department of Education and Delaware Higher Education Commission to offset administrative expenses associated with the program.

- 4.1 Funds deposited for scholarships through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a post secondary institution within five calendar years after graduating from high school.
- 4.2 It is the responsibility of the parent or guardian to notify the Higher Education Commission of any change of address during the scholarship eligibility period. Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary institution.
- 4.3 The Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships.
- 4.4 The Delaware Higher Education Commission shall send a "Request for Information" form to Michael C. Ferguson Scholarship recipients annually to update their account information.
 - 4.4.1 The Delaware Higher Education Commission shall send enrollment verification forms to institutions identified by recipients. When completed verification forms are received by the Delaware Higher Education Commission, disbursement of scholarship funds will be made to the institution.
 - 4.4.2 If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the parent or guardian's responsibility to provide timely notification to the Delaware Higher Education Commission prior to enrollment in order to receive payment of the scholarship.
 - 4.4.3 Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education Commission of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

4 DE Reg. 224 (7/1/00)

5 DE Reg. 1906 (4/1/02)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 505

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

505 High School Graduation Requirements and Diplomas

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 505 High School Graduation Requirements and Diplomas to include a requirement that the local school districts and charter schools review the Student Success Plan (SSP) of students at the end of the first and second year of high school to determine if the student is "on track" to graduate. The amended regulation establishes "on track" to mean the student has earned at least three (3) core course credits and two (2) other course credits for a total of five (5) course credits at the end of the first year, and the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits at the end of the second year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment outlines a process for determining whether a student in "on track" to graduate and therefore should improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendment outlines a process for determining whether a student in "on track" to graduate and therefore should help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment outlines a process for determining whether a student in "on track" to graduate and does not address health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendment outlines a process for determining whether a student in "on track" to graduate and therefore should help ensure all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendment outlines a process for determining whether a student in "on track" to graduate and effect the 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 amendment outlines a process for determining whether a student in "on track" to graduate and 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 graduating 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 amendment is consistent with and not an impediment to the implementation of 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 student graduation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or to the local school boards for compliance as the data to be reviewed is readily available to the local schools.

505 High School Graduation Requirements and Diplomas

1.0 Definitions:

"Career Pathway" means the three (3) credits of pre planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area. The Career Pathway shall be included in the Student Success Plan.

"Core Course Credit" means a credit in an English Language Arts, Mathematics, Science or Social Studies course.

"Credit" means the acquisition of skills and knowledge at a satisfactory level as determined by the district and charter school boards through 135 hours (a Carnegie Unit) of actual classroom instruction or through locally approved options contained in Section 8.0.

"Credit for Computer Literacy" means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.

"Department" means the Delaware Department of Education.

"English Language Arts" means those components of reading, writing and oral communication that are included in the State Content Standards for high school English Language Arts as required in 14 **DE Admin. Code** 501.

"Health Education" means those components that are included in the State Content Standards for high school health education as required in 14 **DE Admin. Code** 501.

"High School" means grades 9 through 12.

"Mathematics" means those components of number sense, algebra, geometry, statistics and probability combined with problem solving, reasoning, communicating, and making connections that are included in the State Content Standards for high school mathematics as required in 14 **DE Admin. Code** 501 either through integrated courses or in courses titles such as Algebra I, Algebra II, Geometry, Trigonometry, Pre-Calculus, Calculus, Discrete Mathematics, Statistics, and Probability.

"Physical Education" means those components that are included in the State Content Standards for high school physical education as required in 14 **DE Admin. Code** 501.

"Science" means those components of the nature of science which include inquiry, materials and their properties, energy and its effects, Earth in space, Earth's dynamic systems, life processes, diversity and continuity of living things, and ecology that are included in the State Content Standards for high school science as required in 14 **DE Admin. Code** 501 either through integrated courses or in course titles such as Earth Science, Biology, Chemistry and Physics.

"Social Studies" means those components of civics, economics, geography, and history that are included the State Content Standards for high school social studies as required in 14 **DE Admin. Code** 501 either through integrated courses or in course titles such as United States History, World History, Geography, Economics, and Civics.

"Student Success Plan (SSP)" means a plan encompassing a minimum of five years including one year beyond high school developed and updated at least annually by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver. The student's plan includes courses needed in preparation for immediate entry into the work force or opportunities in post secondary education. The plan also includes the support services necessary for the student to graduate from high school. An additional year of high school may be an option for inclusion in the Student Success Plan.

"Support Services" means those educational interventions such as tutoring; extra time before school, in school, or after school; summer school, an extra year(s) of high school or any other strategy to provide student educational assistance.

"World Languages" RESERVED

10 DE Reg. 1802 (06/01/07)

2.0 Current Graduation Requirements

- 2.1 A public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two credits in order to graduate including: 4 credits in English Language Arts, 3 credits in mathematics, 3 credits in science, 3 credits in social studies, 1 credit in physical education, 1/2 credit in health, 1 credit in computer literacy, 3 credits in a Career Pathway, and 3 1/2 credits in elective courses.

10 DE Reg. 1802 (06/01/07)

3.0 Graduation Requirements Beginning with the Class of 2011 (Freshman Class of 2007-2008)

- 3.1 Beginning with the graduating class of 2011, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two (22) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics; three (3) credits in Science, three (3) credits in Social Studies, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.

3.1.1 Students shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.

3.1.2 Scientific investigations related to the State Science Standards shall be included in all three science course requirements.

3.1.3 During the senior year students shall maintain a credit load each semester that earns them at least a majority of credits that could be taken that semester including one (1) of the four credits required in Mathematics.

3.1.3.1 Senior year credits shall include regular high school course offerings, the options available in 8.0 or a combination of both.

3.1.3.1.1 Options for the senior year in 3.1.3.1 that the districts and charter schools provide shall be submitted to the Department with a copy to the office of the State Board of Education for review.

4.0 Monitoring Student Progress (Personalizing the High School Experience)

- 4.1 Beginning with the 2007-2008 school year, every eighth and ninth grade student shall have a Student Success Plan (SSP) developed by the student, the student's advisor, at least one other school staff member and the student's parent(s), guardian(s) or relative caregiver. Each school year thereafter a grade shall be added so that by the 2011-2012 school year, every student in grades 8 through 12 shall have a Student Success Plan. [For a student with an Individualized Education Program (IEP) the Student Success Plan (SSP) shall also incorporate the other aspects of the transition plan required by 14 DE Admin. Code 925.]

- 4.2 Each local school district and charter school shall establish a process for developing Student Success Plans that includes:

- 4.2.1 Actively monitoring student progress, on an ongoing basis and, at a minimum, by the end of each marking period in those courses required for graduation,
- 4.2.2 Providing support services if a student is failing or in danger of failing courses required for graduation, and
- 4.2.3 Annual updating of the Student Success plans by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver] and others as appropriate.
- 4.2.4 Following the guidelines for Career and Technical Education (CTE) programs of study outlined in the CTE State Plan.
- 4.2.5 Reviewing each student's transcript at the end of the first and second year of high school to determine if the student is on track to graduate based on the following criteria:
 - 4.2.5.1 At the end of the first year of high school the student has earned at least three (3) core course credits and two (2) other course credits for a total of five (5) course credits; and
 - 4.2.5.2 At the end of the second year of high school the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits.
 - 4.2.5.3 For a student with an Individualized Education Program (IEP), on track to graduate shall be consistent with 4.2.5.1 and 4.2.5.2 unless otherwise determined by the student's IEP Team.

10 DE Reg. 1802 (06/01/07)

5.0 Credit Requirements Beginning with the Graduation Class of 2013 (Freshman Class of 2009-2010)

- 5.1 Beginning with the graduating class of 2013, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.
- 5.2 World Language (RESERVED)

10 DE Reg. 1802 (06/01/07)

6.0 Career Pathway

- 6.1 Local school districts and charter school boards shall establish policies concerning the purpose, content, development, and approval of Career Pathways.

10 DE Reg. 1802 (06/01/07)

7.0 Additional Credit Requirements

- 7.1 District and charter school boards may establish additional credit requirements for graduation above the minimum number of credits required by the Department.

10 DE Reg. 1802 (06/01/07)

8.0 Options for Awarding Credit Toward High School Graduation

- 8.1 District and charter school boards are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.
 - 8.1.1 Courses taken at or through an accredited community college, two or four year college.
 - 8.1.2 Voluntary community service as defined in 14 Del.C. §§8901A and 8902A.

- 8.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.
- 8.1.4 Independent study.
- 8.1.5 Correspondence Courses.
- 8.1.6 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.
- 8.1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district or to a charter school.
- 8.1.8 Course credit transferred from another high school.
- 8.1.9 Course credit earned through summer or evening school classes, as a member of the military service or as part of the James H. Groves Adult High School.
- 8.1.10 Tutoring programs taught by a teacher certified in the subject being taught.
- 8.1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.

9.0 High School Diplomas and the Certificate of Performance

- 9.1 A State sanctioned diploma shall be granted to students who meet the state and local district or charter school requirements for graduation pursuant to regulation 14 **Del.C.** §152.
- 9.2 A State sanctioned Certificate of Performance shall be granted to students who meet the requirements of 14 **Del.C.** §152.
- 9.3 Diplomas from one school year shall not be issued after December 31 of the next school year.
- 9.4 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).
- 9.5 State High School Diploma for World War II Veterans Pursuant to 14 **Del.C.** §159
 - 9.5.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.
 - 9.5.2 The Department shall provide a high school diploma to any World War II veteran who:
 - 9.5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.
 - 9.5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,
 - 9.5.2.3 Was discharged from the armed forces under honorable circumstances.
 - 9.5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 9.5.2.1 through 9.5.2.3.
 - 9.5.4 Applications for this high school diploma shall be made on forms designated by the Department and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

4 DE Reg. 995 (12/01/00)

5 DE Reg. 625 (09/01/01)

7 DE Reg. 1344 (04/01/04)

10 DE Reg. 547 (09/01/06)

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 612

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

612 Possession, Use or Distribution of Drugs and Alcohol

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 612 Possession, Use or Distribution of Drugs and Alcohol to clarify that charter schools are subject to this regulation and to require districts and charter schools to provide a copy of the policy electronically.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation continues to prohibit the possession, use and distribution of drugs and alcohol in the public schools the presence of which could interfere with students' academic achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation prohibits the possession, use and distribution of drugs and alcohol in the public schools for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation continues to prohibit the possession, use and distribution of drugs and alcohol in the public schools which helps to ensure that all students' health and safety are protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to prohibit the possession, use and distribution of drugs and alcohol in the public schools which helps to ensure that all students' legal rights are protected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation continues to preserve 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 any additional unnecessary reporting or administrative requirements or mandates upon decision makers at the local board or school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is necessary to make it clear what the schools' responsibilities are concerning drug and alcohol use by students.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost of compliance with this regulation is augmented by federal grants.

612 Possession, Use or Distribution of Drugs and Alcohol

1.0 The Following Policy on the Possession, Use, or Distribution of Drugs and Alcohol Shall Apply to All Public School Districts and Charter Schools

- 1.1 The possession, use and/or distribution of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia are wrong and harmful to students and are prohibited within the school environment.
- 1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.
- 1.3 Student motor vehicle use to and in the school environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of alcohol, a drug, a drug like substance, a look alike substance or drug paraphernalia in the school environment, may result in the student being asked to open an automobile in the school environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.
- 1.4 All alcohol, drugs, drug like substances, look alike substances and drug paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 **Del.C.** Ch. 47, turned over to police as potential evidence.

2.0 The Following Definitions Shall Apply to This Policy and Will be Used in All District and Charter School Policies

"**Alcohol**" shall mean alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"**Distribute**" "**Distributing**" or "**Distribution**" shall mean the transfer or attempted transfer of alcohol, a drug, a look alike substance, a drug like substance, or drug paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"**Drug**" shall mean any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"**Drug Like Substance**" shall mean any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of drug like substance does not include tobacco or tobacco products which are governed by ~~regulation~~ **14 DE Admin. Code 877** Tobacco Policy.

"**Drug Paraphernalia**" shall mean all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging drugs.

"**Expulsion**" shall mean exclusion from school for a period determined by the local district or charter school not to exceed the total number of student days. The process for readmission shall be determined by the local district or charter school.

"**Look Alike Substance**" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 **Del.C.** §4752A.

PROPOSED REGULATIONS

"Nonprescription Medication" shall mean any over the counter medication; some of these medications may be a "drug like substance."

"Possess" "Possessing" or "Possession" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, alcohol, a drug, a look alike substance, a drug like substance or drug paraphernalia.

"Prescription Drugs" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 **Del.C.** §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"School Environment" shall mean within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Use" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug like substance, or is reasonably found to be under the influence of such a substance.

3.0 Each School District and Charter School Shall Have a Policy on File and Update it Periodically. The Policy Shall Include, as a Minimum the Following

- 3.1 A system of notification of each student and of his/her parent, guardian or Relative Caregiver at the beginning of the school year, of the state and district policies and regulations. In addition a system for the notification of each student and his/her parent, guardian or Relative Caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.
- 3.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.
- 3.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, while maintaining confidentiality.
- 3.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
- 3.5 A written policy on search and seizure.
- 3.6 A program of assistance for students with counseling and referral to services as needed.
- 3.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state ~~and~~ district, and charter school drug policies.
 - 3.7.1 Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she shall be suspended for up to 10 days, or placed in an alternative setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative setting for the rest of the school year.
 - 3.7.2 Possession of alcohol, a drug, a drug like substance, and/or a look alike substance, in an amount typical for personal use, and drug paraphernalia: For a first offense, the student shall be suspended for 5 to 10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.
 - 3.7.3 Possession of a quantity of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia in an amount which exceeds an amount typical for personal use, or distribution of the above named substances or paraphernalia: the student shall be suspended for 10 days, or placed in an alternative setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.
- 3.8 A policy in cases involving a drug like substance or a look alike substance for establishing that the student intended to use, possess or distribute the substance as a drug.

- 3.9 A policy which establishes how prescription and nonprescription drugs shall be handled in the school environment and when they will be considered unauthorized and subject to these state and local policies.
- 3.10 A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.
- 3.11 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") or autoinjectable epinephrine with individual prescription label; provided, nevertheless, that the student uses the inhaler or autoinjectable epinephrine pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parent(s) or legal custodian(s) of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler or autoinjectable epinephrine at such student's discretion, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler or autoinjectable epinephrine and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler or autoinjectable epinephrine based upon the student's age, level of maturity, behavior, or other relevant considerations.
- (For students who use prescribed asthmatic quick relief inhalers or autoinjectable epinephrine, see 14 **DE Admin. Code** 817, Administration of Medications and Treatments)

4.0 Reporting Requirements and Timelines

- 4.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of drugs and alcohol policy on file with the Department of Education.
- 4.2 When a local school district or charter school revises its possession, use, and distribution of drugs and alcohol policy, it shall provide an electronic copy of the revised policy to the Department within ninety (90) days of the revision, even if the revision was made because of changes in Federal, state or local law, regulations, guidance or policies.

2 DE Reg. 2043 (5/1/99)

7 DE Reg. 767 (12/1/03)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1572

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

1572 Teacher of Students Who Are Gifted and Talented

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** 1572 Teacher of Students Who Are Gifted and Talented The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to conform to the

recent Standard Certificate regulation language clarity and consistency shift. This regulation sets forth the requirements for a Teacher of Students Who Are Gifted and Talented.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday October 31, 2008 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.

1572 Teacher of Students Who Are Gifted and Talented

4.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for a Teacher of Gifted and Talented Students in programs that are identified as specific to students who have been identified as gifted and talented through assessments and other criteria set forth by local school districts.~~

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

3.0 Standard Certificate

In accordance with ~~14 Del.C. §1220(a)~~, the Department shall issue a Standard Certificate as a Teacher of Gifted and Talented Students to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or 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 education or a content area from a regionally accredited college/university; and,
- 3.2 A minimum of three years of teaching experience at any pK to 12 level; and,
- 3.3 Completion of course work in each of the following areas:
 - 3.2.1 Foundations of giftedness, including cultural and socioeconomic equity;
 - 3.2.2 Curriculum design and instructional strategies for gifted students;
 - 3.2.3 Psychology of gifted students; and
 - 3.2.4 Creative and critical thinking skills.

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Teacher of Students Who Are Gifted and Talented. This certification is required in programs that are identified as specific to students who have been identified as gifted and talented through assessments and other criteria set forth by local school districts.
- 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

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

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students Who Are Gifted and Talented 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 Additional Requirements

- 4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:
- 4.2 If the educator is applying for their first Standard certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development

PROPOSED REGULATIONS

required in 14 DE Admin. Code 3.1.5.1 that must be satisfactorily completed for this standard certificate must at a minimum include the following areas:

- 4.2.1 Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);
 - 4.2.2 Curriculum Design and Instructional Strategies for Gifted Students (3 credits);
 - 4.2.3 Psychology of Gifted Students (3 credits); and
 - 4.2.4 Creative and Critical Thinking Skills (3 credits).
 - 4.3 If the educator is applying for their second standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of:
 - 4.3.1 Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);
 - 4.3.2 Curriculum Design and Instructional Strategies for Gifted Students (3 credits);
 - 4.3.3 Psychology of Gifted Students (3 credits); and
 - 4.3.4 Creative and Critical Thinking Skills (3 credits).
- 7 DE Reg. 779 (12/01/03)**

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3) (16 Del.C. §122(3))
16 DE Admin. Code 4406

PUBLIC NOTICE

4406 Home Health Agencies--Aide Only Licensure 4410 Skilled Home Health Agencies Licensure

The Department Health and Social Services is proposing regulations which establish standards for regulation of the operation of Home Health Agencies. The regulations for Home Health Agencies apply to any program that provides directly or through contract arrangements, to individuals primarily in their place of residence either (1) home health aide services only; or (2) two or more home care services one of which must be either licensed nursing services or home health aide services.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Delaware Regulations for Home Health Agencies. The regulations for Home Health Agencies apply to any program that provides directly or through contract arrangements, to individuals primarily in their place of residence either (1) home health aide services only; or (2) two or more home care services one of which must be either licensed nursing services or home health aide services.

The public hearing will be held on October 23, 2008 at 10:00 a.m. in the Felton-Farmington Room, located in the Delaware Department of Transportation Building, 800 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review in the October 1, 2008, edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 995-8521.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by October 20, 2008. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments, by October 30, 2008, to:

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

***Please Note: Due to the size of the regulations, 4406 Home Health Agencies -- Aide Only Licensure and 4410 Skilled Home Health Agencies Licensure, they are not being published here. A copies of the regulations are available at:**

4406 Home Health Agencies Aide Only Licensure
4410 Skilled Home Health Agencies Licensure

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 **Del.C.** §6010)
7 **DE Admin. Code** 1302

Secretary's Order No.: **2008-18**

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Hazardous Waste (DRGHW)

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 regularly amends the *DRGHW* by adopting amendments previously promulgated by EPA. In addition, the State is proposing to make miscellaneous changes to the *DRGHW* that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

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 *DRGHW* will be held on Thursday October 23, 2008 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 Regulations Governing Hazardous Waste**AMENDMENT 1:**

Headworks Exemption - Federal Checklist 211

Section 261.3 Definition of hazardous waste.

(a) A solid waste, as defined in §261.2, is a hazardous waste if:

(2) It meets any of the following criteria:

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D of this part and has not been excluded from paragraph (a)(2) of this section under §§ 260.20 and 260.22, paragraph (g) of this section, or paragraph (h) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in Subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2)(i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater), and:

(A) One or more of the following solvents listed in §261.31-benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents-Provided, that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million; or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Secretary. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received and approved in writing by the Secretary. The Secretary may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. Once approved, if the facility is not following the sampling and analysis plan, the facility shall cease the use of the direct monitoring option and immediately notify DNREC in writing, or if the Secretary finds that the facility is not following the sampling and analysis plan, the Secretary shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in §261.31--methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2- ethoxyethanol, or the scrubber waters derived from the combustion of these spent solvents-provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average

weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million; or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Secretary. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received and approved in writing by the Secretary. The Secretary may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. Once approved, if the facility is not following the sampling and analysis plan, the facility shall cease the use of the direct monitoring option and immediately notify DNREC in writing, or if the Secretary finds that the facility is not following the sampling and analysis plan, the Secretary shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in §261.33 §§261.31 through 261.33, arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph (a)(2)(iv)(D), "de minimis" losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in §§ 261.31 through 261.32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in subpart D of this part must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed (in 40 CFR 261 appendix VII) of this part; and the constituents in the table "Treatment Standards for Hazardous Wastes" in 40 CFR 268.40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files and made immediately available upon request; or

(F) One or more of the following wastes listed in §261.32--wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)--Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Secretary. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received and approved in writing by the Secretary. The Secretary may

reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. Once approved, if the facility is not following the sampling and analysis plan, the facility shall cease the use of the direct monitoring option and immediately notify DNREC in writing, or if the Secretary finds that the facility is not following the sampling and analysis plan, the Secretary shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in §261.32--organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156). Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Secretary. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received and approved in writing by the Secretary. The Secretary may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. Once approved, if the facility is not following the sampling and analysis plan, the facility shall cease the use of the direct monitoring option and immediately notify DNREC in writing, or if the Secretary finds that the facility is not following the sampling and analysis plan, the Secretary shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

AMENDMENT 2:

Cathode Ray Tubes - Federal Checklist 215

Subpart B-Definitions

Section 260.10 is amended by adding in alphabetical order the definitions of "Cathode ray tube," "CRT collector," "CRT generator," "CRT glass manufacturer," and "CRT processing," to read as follows:

§ 260.10 Definitions.

* * * * *

Cathode ray tube or **CRT** means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

* * * * *

CRT collector means a person who receives used, intact CRTs for recycling, repair, resale, or donation. [Note: CRT collectors must also comply with the requirements of Delaware's Regulations Governing Solid Waste.]

CRT generator means a person by site other than a household who offers CRT's for collection or recycling.

CRT glass manufacturer means an operation or part of an operation that uses a furnace to manufacture CRT glass. [Note: CRT glass manufacturers must also comply with the requirements of Delaware's *Regulations Governing Solid Waste*.]

CRT processing means conducting any of the following activities:

- (1) Receiving broken or intact CRTs; or
- (2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; or
- (3) Sorting or otherwise managing glass removed from CRT monitors.

[Note: CRT processing and processors must also comply with the requirements of Delaware's *Regulations Governing Solid Waste*.]

* * * * *

Section 261.4 is amended by adding a new paragraph (b) (16), to read as follows:

§ 261.4 Exclusions.

(b) * * *

(16) Used, intact or broken cathode ray tubes and CRT glass (CRTs)

(i) Used, intact or broken CRTs while at the site of the CRT Generator as defined in §260.10 of this chapter are not hazardous waste, provided the CRT's are not disposed and provided they are managed as follows:

A. Used, intact CRT's

(1) Storage: A CRT generator must store used, intact CRT's

(i) in a structurally sound building with a roof, impervious floor, and walls; or

(ii) in a container in good condition, constructed, filled and closed to minimize releases to the environment of CRT glass (including fine solid materials) with the container maintained in a structurally sound roofed structure on an underlying impervious base.

(2) Labeling: Containers in which used, intact CRT's are placed must be labeled or marked "Used cathode ray tube(s)-contains leaded glass."

(3) A CRT generator may accumulate used, intact CRT's for not longer than one year from the date the CRT is first taken out of service. The CRT generator must be able to demonstrate the length of time that each CRT is accumulated from the date it is first taken out of service.

B. Used, Broken CRT's, including CRT Glass

(1) Storage:

(i) A CRT generator must store used, broken CRT's in a container in good condition, constructed, filled and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(ii) Containers must be maintained in a structurally sound roofed structure on an underlying impervious base.

(2) Labeling: Containers in which used, broken CRT's are placed must be labeled or marked "Used cathode ray tube(s)-contains leaded glass " or "Leaded glass from televisions or computers." It must also be labeled "Do not mix with other glass materials."

(3) The CRT generator must be able to demonstrate the length of time that each used, broken CRT is accumulated from the date it is first taken out of service. [Note: The out of service date for a used, broken CRT resulting from breakage of an out of service used, intact CRT, is that of the original out of service date.]

(ii) Used, intact or broken CRTs as defined in §260.10 of this chapter managed by CRT collectors and processors are not hazardous waste, provided the CRT's are not disposed and provided they are managed in accordance with the applicable requirements of §261.39.

(iii) Used, intact CRTs as defined in §260.10 of this chapter are not hazardous waste when exported for recycling provided that they meet the requirements of § 261.40.

(iv) Used, intact CRTs as defined in §260.10 of this chapter are not hazardous waste when exported for reuse provided that they meet the requirements of §261.41.

(v) Glass removed from CRTs is not a solid waste provided that it meets the requirements of §261.39(c).

* * * * *

Part 261 is amended by adding Subpart E to read as follows:

Subpart E-Exclusions/Exemptions

§ 261.39 Conditional Exclusion from Hazardous Waste for Used, Intact or Broken Cathode Ray Tubes and CRT Glass (CRTs) Managed by CRT Collectors and CRT Processors and Processed CRT Glass Undergoing Recycling.

While solid waste, used, intact or broken CRTs are not hazardous waste if they meet the following conditions:

(a) Prior to processing: These materials are not hazardous waste if they are destined for recycling and if they meet the following requirements:

(1) Storage.

(i) Used, intact and broken CRTs must be stored in a structurally sound building with a roof, impervious floor, and walls; and

(ii) Used, broken CRTs must be stored in a container in good condition that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(2) Labeling. Each container in which CRT's are contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass " or "Leaded glass from televisions or computers." It must also be labeled "Do not mix with other glass materials."

(3) Transportation. The used, intact or broken CRTs must be transported in a container meeting the requirements of paragraphs (a) (1) (ii) and (2) of this section.

(4) Accumulation and use constituting disposal. The used, intact or broken CRTs must be recycled or sent for recycling during each calendar quarter (commencing January 1, April 1, July 1, and October 1) with the amount of CRT's recycled or sent for recycling equaling at least 75 percent of the amount accumulated at the beginning of each quarter. The CRT collector or processor must be able to demonstrate the actual amount recycled by providing records immediately upon request. Records must be maintained for a period of three years. If the CRT's are used in a manner constituting disposal, they must comply with the applicable requirements of Part 266, Subpart C instead of the requirements of this section.

(5) Exports. In addition to the applicable conditions specified in paragraphs (a) (1)-(4) of this section, exporters of used, intact or broken CRTs must comply with the following requirements:

(i) Notify EPA and the DNREC Secretary of an intended export before the CRTs are scheduled to leave the United States. A complete notification must be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(F) The name and address of the recycler and any alternate recycler.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered

notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. A copy of the notification must also be sent to the DNREC Secretary. In all cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA or DNREC, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country.

(b) Requirements for used CRT processing: While solid waste, used, intact or broken CRTs undergoing CRT processing as defined in §260.10 of this chapter are not hazardous waste if they meet the following requirements:

(1) Storage. Used, intact or broken CRTs undergoing processing are subject to the requirements of paragraph (a) of this section.

(2) Processing.

(i) All activities specified in paragraphs (2) and (3) of the definition of "CRT processing" in §260.10 of these regulations must be performed within a structurally sound building with a roof, impervious floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter is not a solid waste after processing unless it is speculatively accumulated as defined in §261.1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of Part 266, Subpart C instead of the requirements of this section.

§ 261.40 Conditional Exclusion from Hazardous Waste for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.

While solid waste, used, intact CRTs exported for recycling are not hazardous waste if they meet the requirements, including notice and consent conditions of §261.39(a).

§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) While solid waste, used, intact CRTs exported for reuse are not hazardous waste if they meet the conditions of 261.39(a)(1) and (2) and if during each calendar quarter (commencing January 1, April 1, July 1, and October 1) the amount of CRT's sent for reuse equals at least 75 percent of the amount accumulated at the beginning of each quarter. The exporter must be able to demonstrate the actual amount exported by providing records immediately upon request. Records must be maintained for a period of three years.

(b) Persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator and the DNREC Secretary. The notification must include a statement that the notifier plans to export used, intact CRTs for reuse, the notifier's name, address, and EPA ID number (if applicable) and the name and phone number of a contact person.

(c) Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

AMENDMENT 3:

Federal Correction, International Agreement Countries - Federal Checklist 214

Section 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, 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.

(1) For the purposes of this Subpart, the designated OECD 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, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

AMENDMENT 4:

Uniform Manifest Rule, Delaware Corrections

262.20 General requirements.

(a)

(2) The revised Manifest form and procedure in 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, ~~262.33~~, 262.34, 262.54, 262.60, and the appendix to part 262 of these regulations shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to part 262, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

Section 263.21 Compliance with the Manifest.

(a) The transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter, or

(4) The place outside the United States designated by the generator.

~~(b) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.~~

(b)(1) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with §263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in §264.72(e)(1) through (6) or (f)(1) through (6) or §265.72(e)(1) through (6) or (f)(1) through (6) of these regulations.

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with §263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the

shipment and comply with *DRGHW* §264.72(e)(1) through (6) or (f)(1) through (6) or §265.72(e)(1) through (6) or (f)(1) through (6).

Section 264.72 Manifest Discrepancies.

(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 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. Write the designated facility's name and mailing address in Item 5. If the designated facility's site address is different, then write the site address in the space in Item 5.~~

Section 265.72 Manifest Discrepancies.

(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 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. Write the designated facility's name and mailing address in Item 5. If the designated facility's site address is different, then write the site address in the space in Item 5.

AMENDMENT 5:

Use of the Manifest, Delaware Correction

Section 262.23 Use of the manifest.

(a) The generator must:

~~(4) Within 10 days of acceptance by the transporter send a copy of the manifest to the state in which the generator is located and to the state in which the facility is located.~~

(b) The generator must give the transporter the remaining copies of the manifest ~~or portions thereof in accordance with instructions on the standard manifest form.~~

AMENDMENT 6:

*Exception Report Recordkeeping for SQG's
Delaware Clarification*

Subpart D Recordkeeping and Reporting

Section 262.44 Special Requirements for Generators of Between 100 and 1000 Kilograms/Month.

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of this subpart, except for the recordkeeping requirements in paragraphs (a), the Exception Reporting requirements in (b), (c), and (d) in §262.40, §262.42(b) exception reporting requirements, and the requirements of §262.43.

AMENDMENT 7:*Manifest Printing**Delaware retraction of Federal portion***Section 262.21 Manifests tracking numbers, manifest printing, and obtaining manifests.**

- (f) ~~Reserved~~ Paper manifests and continuation sheets must be printed according to the following specifications:
- ~~(1) The manifest and continuation sheet must be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be preprinted on the manifest form.~~
 - ~~(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three letter suffix following nine digits.~~
 - ~~(3) The manifest and continuation sheet must be printed on 8 1/2 x 11-inch white paper, excluding common stubs (e.g., top or side-bound stubs). The paper must be durable enough to withstand normal use.~~
 - ~~(4) The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.~~
 - ~~(5) The manifest and continuation sheet must be printed as six copy forms. Copy to copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.~~
 - ~~(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:
 - ~~(i) Page 1 (top copy): "Designated facility to destination State".~~
 - ~~(ii) Page 2: "Designated facility to generator State".~~
 - ~~(iii) Page 3: "Designated facility to generator".~~
 - ~~(iv) Page 4: "Designated facility's copy".~~
 - ~~(v) Page 5: "Transporter's copy".~~
 - ~~(vi) Page 6 (bottom copy): "Generator's initial copy".~~~~
 - ~~(7) The instructions in the appendix to part 262 of these regulations must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.
 - ~~(i) Manifest Form 8700-22:
 - ~~(A) The "Instructions for Generators" on Copy 6;~~
 - ~~(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and~~
 - ~~(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.~~~~
 - ~~(ii) Manifest Form 8700-22A:
 - ~~(A) The "Instructions for Generators" on Copy 6;~~
 - ~~(B) The "Instructions for Transporters" on Copy 5; and~~
 - ~~(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.~~~~~~

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 103, 1902, 2701, 2703 and Chapter 15
(7 Del.C. §§103, 1902, 2701, 2703 and Ch. 15)
7 DE Admin. Code 3203 and 3214

REGISTER NOTICE SAN# 2008-22

1. **Title of the Regulations:**

Horseshoe Crab Regulations: 3203 Seasons and Area Closed to Taking Horseshoe Crabs.
3214 Horseshoe Crab Annual Harvest Limit.

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

The Department adopted regulations (Order Number 2007-F-0044) effective November 11, 2007 to implement the horseshoe crab mandatory harvest provisions in Addendum IV of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Horseshoe Crab. As a follow-up to this Order, the Department is proposing regulations designed to be in compliance with the provisions of the Atlantic States Marine Fisheries Commission Addendum V to the Interstate Fishery Management Plan for Horseshoe Crab. These regulations would extend for another year the prohibition on the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year as well. During the period June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. These harvest limits may be extended for a second year according to the provisions of Addendum V provided the Atlantic States Marine Fisheries Commission elects to do so. In addition it is proposed that where beach collecting is presently legal, that beach collecting of horseshoe crabs to be allowed to continue until July 31 of each year. Since no harvesting is allowed prior to June 8, and most of the migratory shorebirds that feed on horseshoe crab eggs will have departed from Delaware Bay by then, there should be no additional impacts to shorebirds from allowing harvesting to extend beyond the last day of June until the end of July. By harvesting only male horseshoe crabs, females would be further protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year. No other changes to reporting requirements or other horseshoe crab regulations are proposed.

3. **Possible Terms of the Agency Action:**

This regulation may be extended for an additional year beyond 2009 pending approval by the Atlantic States Marine Fisheries Commission.

4. **Statutory Basis or Legal Authority to Act:**

§103, §1902, §2701 and §2703 of 7 Delaware Code and Chapter 15 of 7 Delaware Code.

5. **Other Regulations That May Be Affected by the Proposal:**

N/A

6. **Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on October 30, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM November 3, 2008.

7. **Prepared By:**

Roy W. Miller

302-739-9914

September 15, 2008

3200 Horseshoe Crabs*(Break In Continuity of Sections)***3203 Seasons And Area Closed To Taking Horseshoe Crabs (Formerly S-51 & HC-3)**
(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person to dredge or attempt to collect by means of a dredge horseshoe crabs or parts thereof from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 am on January 1 and continuing through midnight, June 30, next ensuing. After June 30 in any given calendar year, it shall be unlawful to dredge or attempt to collect by means of a dredge female horseshoe crabs.

2.0 It shall be lawful for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect adult male horseshoe crabs on Monday through Friday from state owned lands to the east of state road No. 89 (Port Mahon Road) from 12:01 a.m. on June 8 and continuing through midnight on ~~June 30~~ July 31.

3.0 It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs or parts thereof from any land not owned by the state or federal government during the period beginning at 12:01 a.m. on January 1 and continuing through midnight, June 7, next ensuing. It shall be lawful, during a period beginning at 12:01 a.m. on June 8 and continuing through midnight on ~~June 30~~ July 31, for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect male horseshoe crab adults on Mondays through Fridays from such private lands.

4.0 It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his or her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

1 DE Reg 1412 (4/1/98)
7 DE Reg. 220 (8/1/03)
10 DE Reg. 1029 (12/01/06)
11 DE Reg. 685 (11/01/07)

*(Break In Continuity of Sections)***3214 Horseshoe Crab Annual Harvest Limit (Formerly S-62 & HC-14)**
(Penalty Section 7 Del.C. §1912)

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 ~~two one~~ years beginning January 1, 2007~~9~~ 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)

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Section 60, (7 Del.C. §60)
7 DE Admin. Code 7404

REGISTER NOTICE

7404 Total Maximum Daily Load (TMDL) for Zinc in the Red Clay Creek, Delaware

Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt an amended Total Maximum Daily Load (TMDL) Regulation for zinc in the Red Clay Creek. The original TMDL Regulation for zinc in the Red Clay Creek was published in the Delaware Register of Regulations on December 1, 1999 (3 DE Reg. 806 (12/1/99)). That TMDL Regulation was appealed by the National Vulcanized Fiber (NVF) Company to the State Environmental Appeals Board and the State Superior Court. The Department entered into a Settlement Agreement with the NVF Company in February of 2007, thereby resolving the appeal subject to the conditions of the Agreement. One condition of the Settlement Agreement was for the Department to consider an amended TMDL based upon a lognormal probability modeling approach. Such an approach provides an improved match between the strength, location, and timing of zinc mass loading to the Red Clay Creek with the inherent ability of the Red Clay Creek to assimilate the zinc loading without adverse impact. The lognormal probability modeling has been completed and the Department is now proposing to adopt an amended TMDL based upon the approach.

Possible Terms of the Agency Action

Following adoption of the amended Total Maximum Daily Load for zinc in the Red Clay Creek, the Department will submit the Final TMDL Regulation to the U.S. Environmental Protection Agency (EPA) for their review and approval. The Department will also monitor compliance with the terms of the Settlement Agreement between the Department and the NVF Company to ensure commitments are being met.

Statutory Basis or Legal Authority to Act

The authority to develop (and amend) a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the federal Clean water Act, 33 U.S.C. 1251 et. seq., as amended.

Other Legislation That May Be Impacted

None

Notice of Public Comment

A public hearing will be held on the proposed regulation to amend the Department of Natural Resources and Environmental Control's Total Maximum Daily Load regulation for zinc in the Red Clay Creek, Delaware. The public hearing will be held on Tuesday, October 28, 2008, beginning at 6:00 p.m., at the Delaware Department of Natural Resources and Environmental Control, 391 Lukens Drive, New Castle, Delaware.

If you are unable or do not wish to attend the hearing, you may submit written comments to the Department by 4:30 p.m., November 5, 2008. Comments should be directed to the attention of Maryann Pielmeier, DNREC, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE, 19904-2464, (maryann.pielmeier@state.de.us), fax: (302) 739-6140.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, Silver Lake Plaza, Suite 220, 820 Silver Lake Blvd., Dover, DE 19904-2464, (302) 739-9939. Supporting technical documents will also be available beginning October 1, 2008 at the following DNREC web site: <http://www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/tmdlinfo.htm>.

Prepared By:

Richard Greene, Watershed Assessment Section, (302) 739-9939.

7404 TMDLs for Zinc in the Red Clay Creek, Delaware

4.0 Introduction and Background

- 1.1 ~~Water quality monitoring performed by the Delaware Department of Natural Resources and Environmental Control (DNREC) and others has shown that the Red Clay Creek, adjacent to and downstream of Yorklyn, Delaware, does not meet applicable water quality standards for zinc. Although zinc is an essential element for both aquatic life and humans, excessive concentrations can adversely affect aquatic life and human health. Zinc concentrations in the Red Clay Creek are not high enough to adversely affect people who drink water that is withdrawn from the Red Clay Creek. Zinc concentrations do, however, frequently exceed water quality criteria designed to protect fish and other aquatic life from the toxic affects of the metal.~~
- 1.2 ~~A reduction in the amount of zinc reaching the Red Clay Creek is necessary to assure that applicable water quality standards are met and beneficial stream uses are protected. Zinc enters the Red Clay Creek from point sources and nonpoint sources. The National Vulcanized Fiber (NVF) Company located in Yorklyn, Delaware, is the only permitted point source discharge of zinc to the Red Clay Creek in Delaware. Nonpoint sources of zinc in the Red Clay Creek include background loading from the area of the Red Clay Creek watershed upstream of Yorklyn, seepage of contaminated groundwater from beneath the NVF facility to the Red Clay Creek, and diffusive flux from Creek sediments to the overlying water column.~~
- 1.3 ~~Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution controls are not sufficient to attain applicable water quality standards. Section 303(d) also requires each state to develop Total Maximum Daily Loads (TMDLs) for those waterbodies and pollutants placed on the state's 303(d) List. A TMDL sets a limit on the amount of a substance that can enter a water body while still assuring that applicable water quality standards are met and beneficial stream uses are protected. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, a Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.~~
- 1.4 ~~DNREC listed the Red Clay Creek on Delaware's 1996 and 1998 303(d) Lists because applicable water quality standards for zinc were, and continue to be, frequently exceeded. Therefore, DNREC is proposing the following Total Maximum Daily Load (TMDL) regulation for zinc in the Red Clay Creek.~~

2.0 Total Maximum Daily Load (TMDL) Regulation for Zinc in the Red Clay Creek, Delaware

- Article 1. ~~The TMDL for zinc in the Red Clay Creek shall be 1.81 pounds per day, measured as total zinc.~~
- Article 2. ~~The combined mass loading of zinc to the Red Clay Creek from NVF's permitted discharge 002 (i.e., WLA_{002}), plus the mass loading of zinc to the Red Clay Creek from contaminated groundwater beneath the NVF property (i.e., $LA_{g.w.}$) shall not exceed 1.2 pounds of zinc per day, measured as total zinc.~~
- Article 3. ~~The load allocation of zinc from the area upstream of Yorklyn (i.e., LA_{up}) shall be capped at 0.6 pounds per day, measured as total zinc.—~~
- Article 4. ~~The margin of safety (MOS) for the TMDL listed in Article 1 has been set at 0.01 pounds of zinc per day. This small margin of safety (less than 1% of the TMDL) reflects the robust data set and the conservative approach used to establish the TMDL, while still accounting for the uncertainty associated with possible diffusion of zinc from Red Clay Creek sediments.~~
- Article 5. ~~DNREC has determined with a reasonable degree of scientific certainty that water quality standards for zinc will be met in the Red Clay Creek once the mass loading requirements of Articles 1 through 3 are met.~~
- Article 6. ~~Implementation of this TMDL Regulation shall be achieved through the development of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with affected parties, the interested public, and the Department's ongoing Whole Basin Management Program. The manner in which the 1.2 pounds per day that is noted in Article 2 above is allocated between discharge 002 and the contaminated groundwater discharge shall be one particular area of focus as part of the Pollution~~

~~Control Strategy. The Pollution Control Strategy will also consider how monitoring will be conducted to verify compliance with the TMDL.~~

1.0 Introduction and Background

A TMDL specifies the maximum allowable mass loading of a pollutant (e.g., pounds per day) that can be delivered to a waterbody while still assuring that applicable water quality standards are met. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, a Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simple terms, a TMDL attempts to match the strength, location, and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

On December 1, 1999, a Final TMDL Regulation for zinc in the Red Clay Creek was published in the *Delaware Register of Regulations* (3 DE Reg. 806 (12/1/99)). That TMDL Regulation was appealed by the National Vulcanized Fiber (NVF) Company to the State Environmental Appeals Board and the State Superior Court. The NVF Company owns and operates a manufacturing facility in Yorklyn, DE along the banks of the Red Clay Creek. The Department entered into a Settlement Agreement with the NVF Company in February of 2007, thereby resolving the appeal subject to the conditions of the Agreement. One condition of the Settlement Agreement was for the Department to propose an amended TMDL based upon a lognormal probability modeling approach. Such an approach provides an improved match between the strength, location, and timing of zinc mass loading to the Red Clay Creek with the inherent ability of the Red Clay Creek to assimilate the zinc loading without adverse impact. The lognormal probability modeling has been completed and the Department is now proposing to adopt an amended TMDL based upon the approach.

2.0 Amended Total Maximum Daily Load (TMDL) Regulation for Zinc in the Red Clay Creek, Delaware

- Article 1. The TMDL for zinc in the Red Clay Creek shall be 55.93 pounds per day, measured as total zinc.
- Article 2. The combined mass loading of zinc to the Red Clay Creek from NVF Yorklyn's permitted discharge 002 (i.e., WLA_{002}), plus the mass loading of zinc to the Red Clay Creek from contaminated groundwater beneath the NVF Yorklyn property (i.e., $LA_{g,w}$) shall not exceed 25.17 pounds of zinc per day, measured as total zinc.
- Article 3. The load allocation of zinc originating from upstream of Yorklyn (i.e., LA_{up}) shall not exceed 25.17 pounds of zinc per day, measured as total zinc.
- Article 4. The margin of safety (MOS) for the TMDL listed in Article 1 has been set at 5.59 pounds of zinc per day, measured as total zinc. This MOS represents 10% of the TMDL and accounts for uncertainties in the overall TMDL analysis.
- Article 5. DNREC has determined with a reasonable degree of certainty that water quality standards for zinc will be met in the Red Clay Creek once the mass loading requirements of Articles 1 through 3 are met.

3 DE Reg. 806 (12/1/99)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 29 Delaware Code, Section 8203 (29 Del.C. §8203)

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Constables, in accordance with **Delaware Code** Title 10 Chapter 27 proposes to amend Rule 4.0 – Employment. This amendment will clarify the employment requirements

of a Constable. If you wish to view this adoption, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 31, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting in the Fall 2008, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

2400 Constables

1.0 Experience

- 1.1 A constable must meet the minimum training standards as established by the Council on Police Training.

Adopted 09/10/86

Amended 05/16/00

2.0 Appeal

- 2.1 Any applicant who is rejected for a commission as a constable may, within 30 days of such notice of rejection, submit a written notice of appeal.
- 2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.
- 2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 29).
- 2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

Adopted 09/10/86

3.0 Law Enforcement Exemption

- 3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.
- 3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory), under the conditions noted in Rule 4.0., and a comprehensive, multiple-choice examination, equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

Adopted 10/16/96

Amended 05/16/00

4.0 Employment

- 4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 4.2 All applicants must submit to an MMPI (Minnesota Multiphasic Personality Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.
- 4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 4.4 ~~No full time police officer may apply for a commission as a constable.~~ A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other state or federal jurisdiction.
- 4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.

- 4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.

Adopted 05/16/00

5.0 Firearm's Policy

- 5.1 No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.
- 5.2 Firearms - approved type of weapons
- 5.2.1 9mm
 - 5.2.2 .357
 - 5.2.3 .38
 - 5.2.4 .40
- 5.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.5 All individuals must qualify with the same type of weapon that he/she will carry.
- 5.6 All ammunition will be factory fresh (no re-loads).
- 5.7 The minimum passing score is 80%. All licenses are valid for a period of one (1) year.

Adopted 05/20/02

DEPARTMENT OF STATE

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code §2401

PUBLIC NOTICE

Summary

The State Bank Commissioner proposes to adopt new Regulation 2401 ("Mortgage Loan Originator Licensing"). This proposed regulation implements a new Chapter 24 of Title 5 of the **Delaware Code** dealing with the licensing of mortgage loan originators. It establishes criteria and procedures relating to license applications, exemptions, denials, suspensions, revocations, inactive status, surrender, expiration, record keeping and reporting. It also specifies applicable fees and the duties of originating entities that employ mortgage loan originators. The State Bank Commissioner would adopt the proposed new Regulation 2401 on or after November 6, 2008. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the **Delaware Code**.

Comments

A copy of the proposed new regulation is published in the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. Thursday, November 6, 2008.

Public Hearing

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Thursday, November 6, 2008, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

2401 Mortgage Loan Originator Licensing

1.0 Definitions

For the purposes of this regulation, the following definitions apply unless the context otherwise requires:

"Commissioner" means the State Bank Commissioner or the Commissioner's designee.

"Exempt organization" means any insurance company, banking organization, bank holding company, federal credit union, national bank, state bank, federal savings bank, or any bank, trust company, savings bank, savings and loan association or credit union or any affiliate or subsidiary of the preceding entities organized under the laws of any state, or any instrumentality created by the United States or any state with the power to make mortgage loans.

"Mortgage loan" has the same meaning as that term is defined by 5 **Del.C.** §2101(4).

"Mortgage loan originating" means providing services to a customer of an originating entity by soliciting, negotiating, explaining or finalizing the terms of a mortgage loan; provided, however, that the term "soliciting" shall mean the discussion of a mortgage loan product or products with a customer or potential customer, but shall not be deemed to mean the taking of customer information or the referral of a customer or the customer's information to a person who engages in mortgage loan originating; provided further that a mortgage loan originator shall not be deemed to include any person who provides clerical or secretarial services or provides legally related services that are not provided directly by an attorney relating to mortgage loan originating activities of an originating entity.

"Mortgage loan originator" and "MLO" mean any person employed by or affiliated with an originating entity, who engages in mortgage loan originating in this State irrespective of how such person is compensated by the originating entity, or any person who, as an originating entity or any substantial equity owner of an originating entity, engages in mortgage loan originating in this State with respect to residential property; provided that "affiliated with an originating entity" shall mean any person who is an independent contractor and is compensated by such originating entity in whole or in part, either directly or indirectly. An MLO shall not mean any person who is an originating entity, or any substantial equity owner of an originating entity, or any officer or manager of an originating entity that supervises the activities of MLOs and does not communicate directly with the customers of the originating entity.

"Originating entity" means a person or entity licensed pursuant to 5 **Del.C.** Chapters 21 or 22.

"Person" means an individual.

"Statute" means 24 **Del.C.** Chapter 24.

2.0 Exemptions

2.1 The statute and this regulation shall not apply to a person employed by an exempt organization or by a subsidiary or affiliate of an exempt organization, or to a person under an exclusive contract with an exempt organization or with a subsidiary or affiliate of an exempt organization to the extent that the person is acting within the scope of the person's employment or contract and the scope of the charter, license, authority, approval or certificate of the exempt organization or its affiliate or subsidiary; provided however, that any such affiliate or subsidiary licensed by the Commissioner pursuant to 5 **Del.C.** Chapters 21 or 22 shall provide an educational program or courses for its employees or

persons under exclusive contract who engage in mortgage loan originating that are the substantial equivalent, as determined by the Commissioner, of the educational requirements applicable to mortgage loan originators required by the statute.

- 2.2 Neither the statute nor this regulation shall require an attorney-at-law in good standing in this State who engages in mortgage loan originating to meet the licensing or education requirements prescribed by the statute.
- 2.3 No employee of, or person affiliated with, an exempt organization shall be subject to the licensing or education requirements of the statute due solely to that employee or person assisting in the performance of any business activities of a mortgage broker or lender licensed under 5 **Del.C.** Chapters 21 or 22 respectively that is controlled by, or is a subsidiary of, the exempt organization.
- 2.4 No employee of, or person affiliated with, an originating entity shall be subject to the licensing or education requirements of the statute due solely to that employee or person assisting in the performance of the business activities of the originating entity that are incidental to the performance of any mortgage loan originating activities performed by the originating entity.

3.0 License Required

- 3.1 No person shall engage in mortgage loan originating without first being licensed by the Commissioner as an MLO pursuant to the statute and this regulation, unless otherwise exempt; provided however that:
- 3.1.1 a person who was employed by or affiliated with an originating entity as an MLO prior to the effective date of the statute and who has submitted a license application and required fees by March 31, 2009 may continue to engage in mortgage loan originating on a temporary basis until that person is licensed as an MLO or is notified by the Commissioner that the application has been denied; and
- 3.1.2 a person who is initially employed by or affiliated with any originating entity as an MLO on or after the effective date of the statute and who has submitted a license application and required fees may engage in mortgage loan originating on a temporary basis until the person is licensed as an MLO or notified by the Commissioner that the application has been denied.
- 3.2 Licenses shall not be transferable or assignable.
- 3.3 An MLO shall not be simultaneously employed by, or affiliated with, more than one originating entity or exempt organization.
- 3.4 Every person licensed under the statute and this regulation shall be a financial institution for purposes of Part I of Title 5 of the **Delaware Code**.

4.0 Applications

- 4.1 Any person seeking an initial license to engage in mortgage loan originating shall submit an application to the Commissioner as soon as practicable after employment by an originating entity. The application shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate.
- 4.2 Any person seeking to renew an existing license as an MLO shall submit an application to the Commissioner at least 30 days before the expiration of the existing license. The application shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. A renewal application that is not received by that time shall be treated as an application for an initial license and shall be subject to the investigation fee.
- 4.3 All applications must be submitted with the multi-state automated system processing fee. The initial application must also be submitted with the investigation fee.
- 4.4 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 4.5 If an application is determined by the Commissioner to be incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully

PROPOSED REGULATIONS

addressing all such items within 30 days of the sending of such notice, the Commissioner may consider the application withdrawn.

- 4.6 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.
- 4.7 The Commissioner may require additional information in connection with any application.

5.0 Fees

- 5.1 An investigation fee of \$250.00 is to be submitted with the initial application and is non-refundable.
- 5.2 A multi-state automated licensing system processing fee of \$30.00 (or such other amount as the system may charge) is to be submitted with all applications and is non-refundable.
- 5.3 An annual license fee of \$250.00 is to be submitted upon the approval of an application and must be received before a license certificate is issued. The annual license fee shall not be reduced if the license is issued for less than one year; becomes inactive; or is surrendered, suspended, canceled or revoked prior to its expiration.

6.0 Issuance of License

- 6.1 The Commissioner shall issue a license to an applicant upon finding that the applicant's general character, fitness and educational qualifications are such as to warrant belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently within the purposes of the statute.
- 6.2 Upon approving a license application, the Commissioner shall:
- 6.2.1 issue a numbered certificate attesting to that licensing;
 - 6.2.2 transmit a copy of the license certificate to the applicant;
 - 6.2.3 transmit a notice of the application's approval and a copy of the license certificate to the originating entity that employs the MLO, or with which the MLO is affiliated; and
 - 6.2.4 maintain copies of the license certificate and notice of approval.

7.0 Denial of License

- 7.1 The Commissioner may deny a license to an applicant upon finding that the applicant:
- 7.1.1 does not possess sufficient general character, fitness and education qualifications to warrant belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently within the purposes of the statute;
 - 7.1.2 has been convicted of a felony;
 - 7.1.3 has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates persons engaging in mortgage loan originating;
 - 7.1.4 has been a director, partner, or substantial equity owner of an originating entity that has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates the originating entity;
 - 7.1.5 has been an employee, officer or agent of, or a consultant to, an originating entity that has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates the originating entity where the person has been found by the Commissioner, or by such similar regulatory person or entity, to bear responsibility in connection with that revocation.
 - 7.1.6 has failed to comply with any supervisory letter, directive or order of the Commissioner or of a regulatory person or entity of another state or the federal government; or
 - 7.1.7 has failed to pay the State or the Commissioner any money when due.
- 7.2 If the Commissioner makes a preliminary determination to deny an application, the Commissioner shall promptly send the applicant a written notice to that effect stating the grounds for that

determination. The applicant may request that the Commissioner hold a hearing to reconsider the determination in accordance with the 29 Del.C. Chapter 101.

- 7.3 When a determination to deny a license application has become final, the Commissioner shall promptly send the originating entity with which the applicant is employed or affiliated a written notice that the application was denied and that the applicant may not engage in mortgage loan originating in this State.

8.0 Suspension and Revocation of License

- 8.1 The Commissioner may suspend or revoke a license upon finding that:
- 8.1.1 the licensee has violated any provision of Title 5 of the Delaware Code., any rule or regulation of the Commissioner, or any law, rule or regulation of this State, another state, or the federal government pertaining to mortgage lending, brokering or loan originating;
 - 8.1.2 any fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the Commissioner to refuse to issue the initial license; or
 - 8.1.3 the licensee has committed a crime against the laws of this State or any other state or of the United States involving moral turpitude or fraudulent or dishonest dealing, or a final judgment has been entered against the licensee in a civil action upon grounds of fraud, misrepresentation or deceit.
- 8.2 Any suspension order issued after notice and a hearing may include as a condition of reinstatement that restitution be made to consumers of fees or other charges which have been improperly charged or collected as determined by the Commissioner.
- 8.3 The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in 29 Del.C. Chapter 101.
- 8.4 If the Commissioner makes a preliminary determination to suspend or revoke a license, the Commissioner shall promptly send the licensee a written notice to that effect stating the grounds for that determination. The licensee may request that the Commissioner hold a hearing to reconsider the determination in accordance with the 29 Del.C. Chapter 101.
- 8.5 Except as provided in section 8.3, no license shall be suspended or revoked except after notice and an opportunity for the licensee to request a hearing in accordance with 29 Del.C. Chapter 101.
- 8.6 The Commissioner shall have authority to reinstate a suspended license or to issue a new license to an MLO whose license has been revoked if no fact or condition then exists which would have warranted the Commissioner to refuse to issue an initial license.

9.0 Considerations Relating to Denial, Suspension, and Revocation

- 9.1 In making a determination to deny, suspend, or revoke a license, the Commissioner may consider, among other things, the applicant's or licensee's employment history; educational background; financial responsibility; history of complaints or consumer abuse relating to real estate or lending transactions; regulatory fines and enforcement actions; revocation, suspension or denial of licenses, certifications, authorizations or registrations by any state or federal governmental agency; and criminal convictions.
- 9.2 A person shall be deemed to have been convicted of a crime if that person has pled guilty or nolo contendere before a court or magistrate, or has been found guilty by the decision or judgment of a court or magistrate or by the verdict of a jury, irrespective of the pronouncement or suspension of sentence.
- 9.3 A conviction shall not require the Commissioner to deny, suspend or revoke a license:
- 9.3.1 if the conviction has been set aside, reversed or otherwise abrogated by lawful judicial process;
 - 9.3.2 if the person has received a pardon from the President of the United States or the governor or other pardoning authority of the jurisdiction where the conviction occurred, or has received a certificate of good conduct granted by a board of parole pursuant to provisions of an executive law to remove the disability the statute and this regulation because of that conviction; or

9.3.3 if the Commissioner determines that the conviction does not disqualify the person from holding a license.

10.0 Inactive Status

- 10.1 A license is not effective during any period when an MLO is not employed by, or affiliated with, an originating entity. The license of such MLO shall be immediately placed in inactive status until the Commissioner receives a written notice of the MLO's new employment or affiliation with an originating entity.
- 10.2 An MLO with an inactive license shall continue to take all required education courses, pay all required fees and assessments, maintain all required records, and file all required reports as if the license had remained in an active status.
- 10.3 An MLO with an inactive license may submit an application to the Commissioner for renewal of a license with that same status. The application shall request such information, and be submitted on such forms and in such manner as the Commissioner may designate.

11.0 Records and Reports

- 11.1 Every MLO shall promptly notify the Commissioner of the following:
- 11.1.1 any change of primary residence address;
 - 11.1.2 any pending felony charges or conviction;
 - 11.1.3 any pending charges or conviction for any crime involving financial services, a financial services related business, fraud, false statements or omissions, consumer deception, theft or wrongful taking of property, bribery, perjury; forgery or extortion;
 - 11.1.4 cessation of employment or affiliation with an originating entity;
 - 11.1.5 the initiation, settlement, or resolution of any complaint, action or proceeding against the MLO by a state or federal governmental unit or self-regulatory organization in connection with a financial services-related activity or business or involving fraud, misrepresentation, consumer deception, theft or perjury; and
 - 11.1.6 the initiation, settlement or resolution of any other civil action or proceeding against the MLO in connection with a financial services-related activity or business or involving fraud, misrepresentation, consumer deception, or theft.
- 11.2 Every MLO shall obtain certificates evidencing satisfactory completion of the education requirements for each education period under the statute and provide copies to the Commissioner and the MLO's originating entity. The MLO shall retain those certificates for six years.

12.0 Surrender of License

- 12.1 A license may be surrendered only by the person named on the license certificate. The originating entity that employs an MLO or with which an MLO is affiliated may not surrender the license of that MLO.
- 12.2 A license shall be surrendered by submitting to the Commissioner a written notice in such form and manner as the Commissioner may designate.
- 12.3 If the surrender occurs after the Commissioner issues a determination to suspend or revoke a license, the Commissioner may proceed against the MLO as if the surrender had not occurred.

13.0 Expiration of Licenses

- 13.1 All licenses expire on December 31 of each year; provided, however, that if a renewal application is received prior to that date, a license shall remain in effect until the Commissioner has made a determination on that application.
- 13.2 Whenever a license expires, the Commissioner shall send the licensee a written notice of that expiration stating that the licensee may no longer engage in mortgage loan originating in this State.

13.3 If a license expires after the Commissioner issues a determination to suspend or revoke that license, the Commissioner may proceed against the MLO as if the expiration had not occurred.

14.0 Duration of License

14.1 Every license shall remain in force and effect until it expires, becomes inactive, or is suspended, surrendered, or revoked.

14.2 Whenever a license ceases to be effective for any reason.

14.2.1 the Commissioner shall send a written notice to that effect to the originating entity for which the licensee had been providing services stating that the licensee may not engage in mortgage loan originating in this State; and

14.2.2 the obligations of any pre-existing lawful contract between the licensee and any person or entity and the licensee's civil or criminal liability for acts committed while the license was in effect shall not be affected in any way.

15.0 Duties of Originating Entities

15.1 No originating entity shall permit any person to engage in mortgage loan originating on its behalf who does not have a license in effect under the statute and this regulation, except for persons who are allowed to engage in mortgage loan originating on a temporary basis pursuant to the statute and this regulation. In order to allow a person to engage in mortgage loan originating on such a temporary basis, the originating entity must have a notice from the Commissioner stating that the person has submitted a license application as required by this regulation.

15.2 An originating entity shall retain for six years copies of the education course completion certificates of the MLOs who are employed or affiliated with it. If an originating entity also maintains the original education certificates of an MLO, the originating entity shall provide those originals to the MLO when the MLO terminates employment or affiliation.

15.3 When an MLO ceases to be employed by or affiliated with an originating entity, the originating entity shall promptly send the Commissioner written notice stating the name and residence address of the MLO, the termination date of that employment or affiliation, and the reasons for the termination.

15.4 Every originating entity shall display at the location where an MLO is providing mortgage loan originating services copies of the license certificates of the MLOs who are employed affiliated with the originating entity at that location.

15.5 Every originating entity shall require that the license number of the MLO performing mortgage loan originating services with respect to a mortgage loan application is recorded on that application.

16.0 Multi-State Automated Licensing System

The administrator of a multi-state automated licensing system in which the Commissioner participates is authorized to act on behalf of the Commissioner to process applications, to collect payments, to receive information and to maintain records related to the administration of the statute and this regulation.

Symbol Key

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

Final Regulations

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

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

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

The State Fire Prevention Commission ("the Commission") held a properly noticed, public hearing on August 19, 2008 to receive comment on proposed additions, revisions, deletions, and modifications to the Commission Regulations specifically Part IX, Fire Service Standards, Minimum Requirements of the Establishment Fire Companies and Substations, to update the regulation related to substations and to make the regulation applicable to the establishment of additional Emergency Medical Service (EMS) stations as well as fire substations.

Summary of the Evidence

No written comments were received. No members of the public attended the hearing.

Findings of Fact

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence:

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to Part IX, Fire Service Standards, Minimum

Requirements of the Establishment Fire Companies and Substations of the Commission's Regulations. The Commission received no written or verbal comments on the proposed amendments.

2. The Commission finds that the proposed amendments to the rules and regulations are necessary to update the regulations related to fire department substations and to make the regulations applicable to the establishment of additional Emergency Medical Service (EMS) stations.

The Law

The State Fire Prevention Commission's rulemaking authority is provided by 16 **Del.C.** §6603, §6619(a) and §6717(a).

Decision and Effective Date

There were no changes to the proposed amendments as a result of the public hearing. The Commission hereby adopts the proposed amendments to Part IX, Fire Service Standards, Minimum Requirements of the Establishment Fire Companies and Substations to be effective ten (10) days following publication of this order in the Register of Regulations.

Text and Citation

The text of the revised rules remains as published in the *Register of Regulations*, Vol. 12, Issue 1, July 1, 2008.

IT IS SO ORDERED this 16th of September, 2008.

STATE FIRE PREVENTION COMMISSION

Marvin C. Sharp, Jr., Chairman
Bob Ricker, Vice Chairman
Willard (Bill) Betts, Jr.
Kenneth H. McMahon
Douglas S. Murray, Sr.
David J. Roberts
Alan Robinson

***Please note that no changes were made to the regulation as originally proposed and published in the July 2008 issue of the *Register* at page 6 (12 DE Reg. 6). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Part XI, Fire Service Standards, Chapter 4

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 506

Regulatory Implementing Order

506 Policies for Dual Enrollment and Awarding Dual Credit

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to promulgate a new regulation 14 **DE Admin. Code** 506 Policies for Dual Enrollment and Awarding Dual Credit. The purpose of this regulation is to ensure all reorganized local school districts, including vocational technical school districts have policies regarding dual enrollment and the awarding of dual credit to promote consistency and equity across the state. The Secretary and State Board of Education are in agreement with the purpose statement articulated by Jobs for the Future when they state in their 2008 report "On Ramp to College" that "dual enrollment and the awarding of dual credit is to serve as a bridge to college for students not already college bound and as a head start on college for those already committed to a postsecondary credential."

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, August 5, 2008, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to promulgate a new regulation 14 **DE Admin. Code** 506 Policies for Dual Enrollment and Awarding Dual Credit in order to ensure all reorganized local school districts, including vocational technical school districts have policies regarding dual enrollment and the awarding of dual credit to promote consistency and equity across the state.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 506 Policies for Dual Enrollment and Awarding Dual Credit. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 506 Policies for Dual Enrollment and Awarding Dual Credit attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 506 Policies for Dual Enrollment and Awarding Dual Credit 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** 506 Policies for Dual Enrollment and Awarding Dual Credit amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 506 Policies for Dual Enrollment and Awarding Dual Credit 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 September 18, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of September 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 18th day of September 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President
G. Patrick Heffernan
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

*Please note that no changes were made to the regulation as originally proposed and published in the August 2008 issue of the *Register* at page 110 (12 DE Reg. 110). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[506 Policies for Dual Enrollment and Awarding Dual Credit](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 525

Regulatory Implementing Order

[525 Requirements for Career Technical Education Programs](#)

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs for alignment to the reauthorization of the Carl D. Perkins Career and Technical Education Act of 2006. The amended regulation reflects changes to be consistent with current laws, such as, career and technical rather than trade and industrial; inclusion of the Student Success Plan as a way to collect student occupational interests; and language to include provisions related to the Americans with Disabilities Act.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, August 5, 2008, 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 requesting clarification for eligibility of students with Individualized Education Programs and 504 Plans. The Department has made the suggested change.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs to reflect changes to be consistent with current laws, such as, career and technical rather than trade and industrial; inclusion of the Student Success Plan as a way to collect student occupational interests; and language to include provisions related to the Americans with Disabilities Act.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 525 Requirements for Career Technical Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin.**

Code 525 Requirements for Career Technical Education Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code 525** Requirements for Career Technical Education 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 525** Requirements for Career Technical Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code 525** Requirements for Career Technical Education 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 September 18, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of September 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 18th day of September 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

525 Requirements for Career Technical Education Programs

1.0 Career Technical Education Programs

All Career Technical Education Programs shall meet the provisions of Delaware's State Plan for Career and Technical Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

6 DE Reg. 955 (2/1/03)

2.0 All Local School Districts and Charter Schools that Offer State Approved Career Technical Education Programs Shall:

- 2.1 Meet the requirements within the state plan for the Carl D. Perkins Career and Technical Education Act of 2006.
- 2.42 Have the approval of the Department of Education before implementing new programs CTE courses and or pathways.
- 2.23 Have adequate funding to Adequately fund, support and sustain the instructional program.

-
- 2.34 ~~Employ~~ Ensure all teachers are certified in the Career Technical Education Program areas in which they teach.
- 2.45 Make provisions for meeting the unique needs of all students.
- 2.56 Establish and maintain an active CTE advisory committee which includes labor and management personnel to assist in the development and operation of the program.
- 2.67 ~~Use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, Department of Labor market projections~~ to determine the need for new and continuing Career Technical Education Programs.
- 2.78 ~~Survey local business and industry to determine their~~ Assess occupational needs and the availability of placement and employment opportunities for program completers with input from the local CTE advisory committee.
- 2.89 ~~Survey the student population to determine their occupational interests and needs. Use the information derived from the Student Success Plan (SSP) portfolio to determine student occupational interests, needs and educational program.~~
- 2.910 Organize and financially support Career Technical Student Organizations as integral components of Career Technical Education Programs in public schools that complement and enrich instruction. The following career technical student organizations are affiliated in Delaware:
- 2.910.1 Business Professionals of America (BPA)
 - 2.910.2 Technology Student Association (TSA)
 - 2.910.3 ~~Distributive Education Clubs of America (DECA)~~, an association of marketing students
 - 2.910.4 Family, Career and Community Leaders of America (FCCLA)
 - 2.910.5 The National FFA Organization
 - 2.910.6 Skills USA/~~VICA~~
 - 2.910.7 The Delaware Career Association (DCA)
- 2.4011 Integrate related academic content into individual career technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals as documented in the student's SSP.
- 2.4412 Schedule ~~trade and industrial~~ skilled and technical sciences (trade and industrial) education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years.
- 2.4213 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career Technical Education Program in a career technical school district.
- 2.4314 Use equipment and facilities comparable to that used by local business and industry for which the Career Technical Education Program is preparing students.
- 2.4415 Schedule Department of Education and Delaware Advisory Council on Career and Technical Education Program review and monitoring visits upon request.
- 2.16 Report CTE program data as required by the Delaware Department of Education.
- 1 DE Reg. 1196 (2/1/98)**
6 DE Reg. 955 (2/1/03)
8 DE Reg. 1603 (5/1/05)
9 DE Reg. 1070 (01/01/06)

3.0 Cooperative Education Programs

Cooperative Education Programs provide senior Career Technical Education Program students with coordinated on the job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on the job training in occupations directly related to the Career Technical Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a

summer Cooperative Education Work Experience Program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

- 3.1 In order to qualify for Career Technical Education funding units the Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make at least quarterly visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 3.2 In order to qualify for career technical education funding units the students shall; possess minimum occupational competencies specified by the Career Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed career technical education pathway, meet the requirements of 3.0 and be supervised through on site visits by an assigned Career Technical Education Program Teacher Coordinator or Career Guidance Counselor.
- 3.3 In order to qualify for career technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 3.4 ~~For an Individuals with Disabilities Education Act (IDEA) eligible student, the student's Individualized Education Plan (IEP) team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of senior year status if necessary to provide the student a free, appropriate public education. **[Students whose education plans are guided by an Individualized Education Program (IEP) or a 504 plan through the Americans with Disabilities Act (ADA) may participate in Cooperative Education programs without senior year status if participation is necessary to provide the student a free appropriate public education and if approved by the IEP team and Career and Technical Education Teacher Coordinator.**~~ Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Cooperative Education programs without senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.]

2 DE Reg. 111 (07/01/98)

6 DE Reg. 955 (02/01/03)

9 DE Reg. 1070 (01/01/06)

4.0 Diversified Occupations Programs

Diversified Occupations Programs provide students with coordinated on the job training not ordinarily available in the classroom. During the student's junior or senior year or under unique circumstances as approved by the Department of Education, employers provide this on the job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

- 4.1 In order to qualify for career technical education funding units a Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make at least quarterly on site visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 4.2 In order to qualify for career technical education funding units the students shall; possess minimum readiness competencies as specified by the Career Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation,

meet the requirements of 4.0 and be actively enrolled in a Diversified Occupations Work Experience Program and meets for at least one class period per week.

- 4.3 In order to qualify for career technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 4.4 For an Individuals with Disabilities Education Act (IDEA) eligible student, the student's Individualized Education Plan (IEP) team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of junior or senior year status if necessary to provide the student a free, appropriate public education. ~~[Students whose education plans are guided by an Individualized Education Program (IEP) or a 504 plan through the Americans with Disabilities Act (ADA) may participate in Cooperative Education programs without junior or senior year status if participation is necessary to provide the student a free appropriate public education and if approved by the IEP team and Career and Technical Education Teacher Coordinator.]~~ Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Diversified Occupations programs without junior or senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.]

2 DE Reg. 111 (07/01/98)
 6 DE Reg. 955 (02/01/03)
 9 DE Reg. 1070 (01/01/06)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
 (14 Del.C. §122(b) and §154(e))
 14 DE Admin. Code 716

Regulatory Implementing Order

716 Maintenance of Local School District and Charter School Personnel Records

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 716 Maintenance of Local School District Personnel Records in order to align it with the new rules of the Delaware Public Archives concerning the retention of the personnel records of inactive employees. The retention period has been increased from 30 years to 50 years by the Delaware Public Archives. In addition, there is clarification related to the number of summative appraisals that are to be kept in personnel files.

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

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records in order to align it with the new rules of the Delaware Public Archives and to clarify the number of summative appraisals that are to be kept in personnel files.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records 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** 716 Maintenance of Local School District and Charter School Personnel Records amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records 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 September 15, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of September 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

*Please note that no changes were made to the regulation as originally proposed and published in the August 2008 issue of the *Register* at page 116 (12 DE Reg. 116). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

716 Maintenance of Local School District and Charter School Personnel Records

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 901

Regulatory Implementing Order**901 Education of Homeless Children and Youth****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth. The amendments include: 1) the addition of the definition for "awaiting foster care placement" to be consistent with 14 **Del. C.** §202(c), which allows all children in foster care to be considered "homeless" and subject to the provisions of the regulation; 2) changing "calendar" to "business" days under the resolution dispute procedures; and 3) clarifying the state level dispute resolution process.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, August 5, 2008, 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 with concerns related to the change from "calendar" days to "working" days and the availability of an appeal to the State Board of Education in the dispute resolution process. The Department has responded to the Councils indicating the change to "working" days is appropriate because of the nature of a school calendar. In addition, certain decisions made by a local school board can be appealed to the State Board and this regulation as written does not prohibit this action.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth in order to define "awaiting foster care placement" to be consistent with 14 **Del.C.** §202(c), changing "calendar" to "business" days and clarifying the state level dispute resolution process.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 901 Education of Homeless Children and Youth. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 901 Education of Homeless Children and Youth attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 901 Education of Homeless Children and Youth 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** 901 Education of Homeless Children and Youth amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 901 Education of Homeless Children and Youth 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 September 15, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of September 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

*Please note that no changes were made to the regulation as originally proposed and published in the August 2008 issue of the *Register* at page 119 (12 DE Reg. 119). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

901 Education of Homeless Children and Youth

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

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

ORDER

Medicaid for Workers with Disabilities

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the Medicaid for Workers with Disabilities Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to implement a Medicaid Buy-In (MBI) program and to comply with federal law to ensure federal financial participation as it relates to the MBI Program for working individuals with disabilities. The Medicaid for Workers with Disabilities (MWD) Program is available to current and new Medicaid beneficiaries with disabilities who meet the MWD eligibility requirements.

Statutory Authority

- 1902(a)(10)(A)(ii)(XIII) of the Social Security Act, *Working disabled individuals who buy into Medicaid*;
- 1902(a)(10)(A)(ii)(XV) of the Social Security Act, *Working disabled individuals who buy into Medicaid under TWWIIA (Ticket to Work and Work Incentives Improvement Act of 1999) Basic Coverage Group*;
- 1916(g) of the Social Security Act, *Premiums - Working Disabled Individuals*; and,
- Balanced Budget Act (BBA) of 1997, Section 4733, *State Option To Permit Workers With Disabilities To Buy Into Medicaid*.

Background

BBA Eligibility Group

Section 4733 of the Balanced Budget Act of 1997 (BBA) allows States to provide Medicaid coverage to working individuals with disabilities who, because of their earnings, cannot qualify for Medicaid under other Statutory provisions. Section 4733 allows States to provide Medicaid coverage to these individuals by creating a new optional categorically needy eligibility group.

Summary of Proposed Amendment

Congress enacted the Medicaid Buy-In option for states in the Balanced Budget Act of 1997 (§4733) and enhanced the option in the Ticket to Work and Work Incentive Improvement Act of 1999 (P.L. 106-170, 42 USC 1396 et seq.). The purpose of this amendment is to adopt rules for Delaware's MBI program, as in effect on June 1, 2008. The Division of Medicaid and Medical Assistance (DMMA) proposes to amend *Attachment 2.2-A, Page 23e and Attachment 2.6-A, Pages 12c through 12o* of the State Medicaid Plan; amend section DSSM 14900; and, propose new Section 17900 of the DSSM to add a new Medicaid categorically needy eligibility group: Medicaid Buy-In Basic Coverage Group. All references in the rules to **Medicaid for Workers with Disabilities (MWD)** mean the Medicaid Buy-In Program.

Section-by-Section Summary:

Section 17900 provides a general description of the Medicaid for Workers with Disabilities (MWD) program and the eligibility effective date. The requirements for applying and providing information are provided in §17901, *General Eligibility Requirements*. The eligibility requirement related to citizenship is contained in §17902, *Alien Status*. An individual must meet the age requirement under 17903, *Age Requirement*. The disability requirement for clients is described in §17904, *Disability Requirement* and the employment requirement the individual must meet is found in §17905, *Employment Requirement*. Sections 17905 through 17909, *Income*, explains what income is considered as well as what is excluded. The deeming policy for income is explained in §17910, *Deeming of Income*. §17911, *Financial Eligibility Determination*, describe the income tests used to determine financial eligibility. *Retroactive Eligibility* provisions are contained in Section 17912 and, finally, §17913 implements the monthly cost-sharing requirements for all months of eligibility.

The provisions of the proposed amendments to establish Medicaid for Workers with Disabilities (MWD) eligibility requirements, including the monthly cost-sharing requirements, are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

First, the "Summary of the Proposed Amendment" is somewhat underinclusive. It recites as follows: "This program will allow disabled individuals receiving Medicaid to return to the workplace without losing their Medicaid coverage, by paying a monthly premium, if applicable." The could be construed as a representation that the MBI is only available to current Medicaid beneficiaries who would lose eligibility based on returning to work. In fact, individuals who have never been on Medicaid can also qualify. See, e.g. the National Assistive Technology Advocacy Project Newsletter article at p. 365 and attached Delaware Medicaid Buy-in presentation materials from January 27, 2005 LIFE Conference identifying the following target groups:

- SSDI/Medicare beneficiaries who have to spend down to qualify for Medicaid
- SSDI beneficiaries who have to spend down to qualify for Medicaid
- SSI recipients with income at or above SSA limits
- SSI recipients with resources at or above the SSA limits
- Workers who are not receiving Medicaid or SSI/DI who meet the SSA disability definition in always except financial tests.

Agency Response: The "Summary of the Proposed Amendment" is revised to clarify that the Medicaid for Workers with Disabilities (MWD) Program is available to current and new Medicaid beneficiaries with disabilities who meet the MWD eligibility requirements.

Second, DMMA could have imposed a resource test. See pp. 1318-1320. The Councils endorse the absence of a resource cap.

Agency Response: Thank you for the endorsement.

Third, the Plan amendment on the bottom of p.1323, bottom of p.1324, and top of p.1325 contemplate that everyone pays a premium. However, §17912 clarifies that persons earning up to 100% FPL pay no premium. At a minimum, it would be preferable to amend the table on the top of p. 1325 to include an initial row for "0% - 100%" and "\$0" or "none" for amount of premium. The table in §17912 could include the same clarifying edits.

Agency Response: Section 17912 clearly indicates a premium is only required for an individual with countable income greater than 100% of the Federal Poverty Level. No change to the regulation will be made.

Fourth, it would be preferable to include a "Resource" section in the DSSM, perhaps as §17906 (renumbering other sections), which would recite, consistent with p. 1319, that there are no resource or asset eligibility criteria for this program.

Agency Response: The regulation will be amended to recite that resources are not counted in the

eligibility determination.

Fifth, in §17904, we recommend that DMMA add the following: "The Division may also accept pre-existing documentation (e.g. school district or DVR assessment) which confirms that the individual meets SSI disability standard (e.g. I.Q. of 59 or less)." Otherwise, the Division has no choice but to pay for an evaluation despite clear documentation that the person meets the SSI standards.

Agency Response: The regulation will be amended to allow greater flexibility in methods for performing disability determination.

Sixth, §17912 recites that an individual or couple whose AGI exceeds \$90,008 must pay the highest premium. In contrast, the CMS "note" on p. 1324 recites that "the agency MUST require that individuals whose annual adjusted gross income, as defined in IRS statute, exceeds \$75,000 pay 100% of premiums." The above AT article (p. 365) recites as follows: "States must require a 100 percent premium payment for individuals with adjusted gross incomes greater than \$75,000 unless states choose to subsidize the premium using their own funds." It is unclear if: 1) the CMS standard has been increased to \$90,008 in 2008; or 2) DMMA is subsidizing premiums for persons with AGI between \$75,001 and \$90,007. DMMA may wish to reassess the accuracy of the \$90,008 figure.

Agency Response: The Ticket to Work and Work Incentives Improvement Act of 1999 requires States to charge 100% of the premium for individuals whose adjusted gross annual income (as determined under the IRS statute) exceeds \$75,000. This amount increases each year by the percentage of the annual Social Security cost-of-living increase. The amount used for this standard in 2008 is \$90,008.

Seventh, §17909 contemplates application of standard SSI deeming rules. For 16 and 17 year old applicants, this would generally mean deeming of parental income. However, §17910.2 only refers to spousal deeming. DMMA may wish to consider incorporating a reference to parental deeming for 16-17 year old program participants.

Agency Response: As indicated in Section 17910, the deeming methodologies of the SSI program will be used and are incorporated by reference. Section 17911 describes the financial eligibility determination that is completed after the deeming provisions of the SSI program are applied.

Eighth, unearned income is excluded up to \$800/month/individual (Section 17907). This could exclude many individuals who could benefit from the MBI program that receive benefits from the Social Security Administration (e.g. SSDI). Indeed, this a target population specifically referenced by Medicaid at many of its presentations. See, for example, the attached MBI presentation from the January 27, 2005 LIFE Conference and the listed target groups. We recommend that income derived from the Social Security Administration (SSA) be disregarded. DMMA could still implement the unearned income exclusion up to \$800, but disregard any income from the SSA.

Agency Response: MWD is an employment initiative that provides comprehensive health insurance coverage to encourage people with disabilities to work or increase their level of work, increase their disposable income, and reduce or eliminate dependency on cash assistance programs. The appropriation approved by the General Assembly assumed the imposition of an unearned income limit. Income derived from the Social Security Administration is treated as unearned income for the eligibility determination. DMMA is unable to disregard all income derived from the Social Security Administration; however, we have applied an inflationary factor recognizing that the unearned income limit was originally set several years ago. This will increase the monthly unearned income exclusion from \$800.00 to \$904.00. This monthly unearned income exclusion will increase each year by the Cost of Living Adjustment (COLA) announced by the Social Security Administration.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) as it relates to the Medicaid for Workers with Disabilities

Program is adopted and shall be final effective October 10, 2008.

Vincent P. Meconi, Secretary, DHSS, 9/11/2008

*Please note the following sections were the only changes made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1316 (12 DE Reg. 1316). Therefore, the rest of the regulation is not being republished. A copy of the final regulation is available at:

Medicaid State Plan: Attachment 2.2-A, Page 23C and Attachment 2.6-A, Pages 12c through 12o

(Break In Continuity of Sections)

DMMA FINAL REGULATION #08-43a

REVISIONS:

(Break In Continuity of Sections)

[Revision:	HCFA-PM-91-4	(BPD)	Supplement 8a to ATTACHMENT 2.6-A
	AUGUST 1991		Page 1
			OMB No.: 0938-

STATE PLAN UNDER TITLE OF THE SOCIAL SECURITY ACT

State: DELAWARE

MORE LIBERAL METHODS OF TREATING INCOME UNDER SECTION 1902 (r) (2) OF THE ACT

/ / Section 1902(f) State/ X / Non-Section 1902 (f) State

For children covered under Section 1902 (a) (10) (A) (I) (III) and 1905 (n) of the Social Security Act, the State of Delaware will disregard an equal amount to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

Interest and dividend income are excluded for QMB, SLMB, QDWI and QI-1 cases.

A standard deduction will be applied to the gross income from self employment for poverty level pregnant women, infants and children; QMB, SLMB, and QI-1 cases. The standard deduction for self employment income is considered the cost to produce income. The standard deduction for self employment is a percentage determined annually and announced each October.

When the application of the standard deduction results in a finding of ineligibility, the applicant will be given an opportunity to show that actual self employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self employment.

For the TWWIIA Basic Coverage Group, unearned income is excluded up to \$904.00 per month for the

individual. There is no \$904.00 per month unearned income exclusion for a spouse who is not applying for the TWWIA Basic Coverage Group Medicaid.

This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

*More liberal methods may not result in exceeding gross income limitations under Section 1903(t)]

**DMMA PROPOSED REGULATIONS #08-43b
REVISIONS:**

14900 Enrollment In Managed Care

On May 17, 1995, Delaware received approval from the Health Care Financing Administration (HCFA) (~~in 2000 on June 14, 2001, HCFA was~~ renamed Centers for Medicare and Medicaid Services [CMS]) for a Section 1115 Demonstration Waiver that is known as the *Diamond State Health Plan*. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The *Diamond State Health Plan* is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

Effective July 1, 2002, a Medicaid only managed care organization, *Diamond State Partners*, is implemented. Individuals may enroll in either the *Diamond State Health Plan* or *Diamond State Partners*

The majority of the Medicaid population receiving non institutional services will be enrolled into the *Diamond State Health Plan* or *Diamond State Partners*. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in *Diamond State Health Plan* or *Diamond State Partners*:

- a. Individuals entitled to or eligible to enroll in Medicare
- b. Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- c. individuals covered under the home and community based waivers
- d. non lawful and non qualified non citizens (aliens)
- ~~e.~~ e. individuals who have Military Health Insurance For Active Duty, Retired Military, and their dependents
- e- f. individuals eligible under the Breast and Cervical Cancer Group.
- f. g. presumptively eligible pregnant women
- h. individuals eligible under Medicaid for Workers with Disabilities

(Break in Continuity of Sections)

17900 Medicaid for Workers with Disabilities

The Ticket to Work and Work Incentives Improvement Act of 1999 established an optional categorically needy eligibility group under Section 1902(a)(10)(A)(ii)(XV) of the Social Security Act. This eligibility group provides Medicaid coverage to certain employed individuals with disabilities. The rules in this section set forth the eligibility requirements under this group entitled Medicaid for Workers with Disabilities (MWD). The **[implementation effective]** date for MWD is **[June October] 1, 2008.**

17901 General Eligibility Requirements

The Medicaid rules at Section 14000 of the Division of Social Services Manual (DSSM) also apply to MWD except as provided in this section.

17902 Alien Status

MWD does not provide state-funded benefits to qualified aliens subject to the 5-year bar under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) or to legally residing nonqualified aliens.

17903 Age Requirement

The individual must be at least 16 but less than 65 years old.

17904 Disability Requirement

The individual must be disabled as defined under the Supplemental Security Income (SSI) program except that being engaged in substantial gainful activity will not preclude a determination of disability. ~~[The disability requirement is met if there is currently in effect a decision by the Social Security Administration (SSA) that the individual is disabled. If there is no SSA decision currently in effect, a contractor who is competent to perform a disability determination will be used.]~~

17905 Employment Requirement

The individual must be engaged in paid employment and document Federal Insurance Contributions Act (FICA) withholding from income.

[17906 Resources

All resources are excluded.]

[179067] Income

The definition of income is the same definition used by the SSI program. Refer to DSSM 20200-20200.9 and 20210-20210.15 for a detailed description of income.

[179078] Unearned Income Exclusion

Unearned income is excluded up to ~~[\$800.00] \$904.00~~ per month for the individual. There is no ~~[\$800.00] \$904.00~~ per month unearned income exclusion for a spouse who is not applying for MWD. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

[179089] Earned Income Exclusions

Monthly earned income exclusions are applied in the following order:

1. Earned income of disabled student children (under age 18) up to the student earned income exclusion monthly limit, but not more than the student earned income exclusion yearly limit. These limits are updated annually by the Social Security Administration.
2. \$20.00 general income exclusion
3. \$65.00 of earned income
4. Earned income of disabled individuals used to pay impairment-related work expenses. Expenses must be directly related to the individual's impairment. These are the costs paid by the individual for certain items and services that he or she needs in order to work even though such items and services are also needed for

normal daily activities. Examples include but are not limited to the cost of certain attendant care services, dog guide, modified audio/visual equipment, specialized keyboards, and vehicle modification. The expense cannot be one that a similar worker without a disability would have, such as uniforms. The expenses are subject to reasonable limits. The amount paid will be considered reasonable if it does not exceed the standard or normal cost for the same item or service in the individual's community.

5. One-half of remaining earned income

[1790910] Deeming of Income

The term deeming identifies the process of considering another person's income for the eligibility determination. Deeming provisions recognize some measure of family responsibility as they apply from spouse-to-spouse or parent-to-child. The deeming provisions of the SSI program at 20 CFR Part 416, Subpart K, Deeming of Income, are used for the eligibility determination. The Federal Benefit Rate is used in the SSI program for the deeming calculation. The income standard of 275% of the Federal Poverty Level (FPL) will be substituted for the Federal Benefit Rate in the MWD deeming calculation.

[17904011] Financial Eligibility Determination

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds ~~[\$800.00]~~ \$904.00, the individual is ineligible. This unearned income limit will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

[17904112] Retroactive Eligibility

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive prior to ~~June~~ **October** 1, 2008.

[17904213] Premium Requirements

Individuals with countable income over 100% FPL are required to pay a monthly premium to receive coverage. Countable income is the same amount that is used to determine eligibility. When a husband and wife are both MWD eligible, a monthly premium is assessed on each spouse.

The monthly premium will be based on a sliding scale as follows:

<u>Percentage of FPL</u>	<u>Monthly Premium</u>
<u>101-125%</u>	<u>\$25</u>
<u>126-150%</u>	<u>\$35</u>
<u>151-175%</u>	<u>\$45</u>
<u>176-200%</u>	<u>\$60</u>
<u>201-225%</u>	<u>\$75</u>
<u>226-250%</u>	<u>\$90</u>
<u>251-275%</u>	<u>\$105</u>

Exception to sliding scale: An individual or couple whose adjusted gross annual income (as determined under the

IRS statute) exceeds \$90,008 must pay the highest premium amount listed on the sliding scale. This adjusted gross annual income amount will increase each year by the COLA.

A premium is assessed the month an individual is added for coverage including any months of retroactive eligibility. Eligibility for a month is contingent upon the payment of the premium. Payments that are less than one month's premium will not be accepted.

A monthly premium notice for ongoing coverage will be sent to the individual. The premium is due by the [20 15]th of the month for the next month's coverage. When the premium is not received by the date due, action will be taken to terminate eligibility under MWD. If the premium is received by the last day of the month, eligibility under MWD will be reinstated.

Coverage continues pending a fair hearing decision if the fair hearing request is filed within the timely notice period, even if the individual is not paying premiums that are due.

DIVISION OF SOCIAL SERVICES

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

ORDER

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the *Responsibility for the Administration of Delaware's Assistance Programs*. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

As a reminder, the proposed changes described below amend policies in the Division of Social Services Manual (DSSM) regarding *Responsibility for the Administration of Delaware's Assistance Programs and Confidentiality*.

Statutory Authority

- Title 31 – Welfare, including
 - Chapter 5, *State Public Assistance Code*
 - Chapter 6, *Food Stamp Program*
 - Chapter 9, *Work Assignments for Recipients of Assistance*
- Title IV-A of the Social Security Act, *Grants to States for Temporary Assistance for Needy Families*
- Title IV of the Immigration and Nationality Act
- Title XX of the Social Security Act, *Block Grants to States for Social Services*
- 7 U.S.C., Chapter 51, *Food Stamp Program*
- Child Care Development Block Grant, as amended by the Personal Responsibility and Work Reconciliation Act of 1996

- 7 CFR §273.7, *Work Provisions*
- 7 CFR §272.1(c), *General Terms and Conditions – Disclosure*
- 45 CFR §205.50, *Safeguarding Information for the Financial Assistance Programs*

Summary of Proposed Changes

DSSM 1000, *Responsibility for the Administration of Delaware's Assistance Programs*: This section is being revised to include omitted programs and services; and, to reorganize for clarity. DSSM 1000 is updated to include the following programs and services: the Emergency Assistance Program, the Refugee Resettlement Program, the Child Care Subsidy Program, and Food Stamp Employment and Training services.

DSSM 1000, *Confidentiality*: This section revises the text wording and clarification of reference to the Code of Federal Regulations citations by including the correct citations for the confidentiality regulation.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received for this regulation.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the *Responsibility for the Administration of Delaware's Assistance Programs* is adopted and shall be final effective October 10, 2008.

Vincent P. Meconi, Secretary, DHSS, September 11, 2008

DSS FINAL ORDER REGULATION #08-42 REVISIONS:

1000 Responsibility for the Administration of Delaware's Assistance Programs

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs as allowed under Title IV – A of the Social Security Act (the TANF Program), Title 31 of the Delaware Code (the General Assistance Program), and Public Law 95 – 113, (the Food Stamp Program). Within the Department, the Division of Social Services (DSS) administers these programs. The specific programs are those allowed under:

1. Title IV-A of the Social Security Act (the TANF Program and the Emergency Assistance Program);
2. Title 31 of the **Delaware Code**, Chapter 5 (the General Assistance Program);
3. Title IV of the Immigration and Nationality Act (the Refugee Resettlement Program);
4. Title 31 of the **Delaware Code**, Title XX of the Social Security Act, 7 CFR §273.7, and the CCDBG as amended by the Personal Responsibility and Work Reconciliation Act of 1996 (the Child Care Subsidy Program);
5. Title 31 of the **Delaware Code**, Chapter 9 (Food Stamp Employment and Training services); and

6. 7 U.S.C. Chapter 51 and Title 31 of the **Delaware Code**, Chapter 6 (the Food Stamp Program).

Included in this manual are technical and financial eligibility rules for the following programs:

1. Temporary Assistance ~~to~~ for Needy Families (TANF)
2. The General Assistance Program
3. The Food Stamp Program
4. The Refugee Resettlement Program
5. ~~Purchase of Day-Care Services~~ The Child Care Subsidy Program
6. The Emergency Assistance Program
7. Employment and Training Services

(Break in Continuity of Sections)

1003 Confidentiality

[~~272.1(e)(4)~~ 7 CFR §272.1(c); 45 CFR §205.50]

Federal and State laws provide that public assistance information and records may be used only for purposes directly connected with the administration of public assistance programs. Thus, all information gathered regarding individuals for public assistance purposes is considered confidential and will be safeguarded by DSS.

By safeguarding public assistance information, DSS protects its clients from being identified as a special group based on financial needs and protects their right to privacy.

See Administrative Notice:

A-14-98 Subpoenas for Public Assistance Records

DIVISION OF SOCIAL SERVICES

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

ORDER

FOOD STAMP PROGRAM 9007.1 Citizenship and Alien Status

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Citizenship and Alien Status*. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the

public concerning the proposed regulations to be produced by August 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends the Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Citizenship and Alien Status*.

Statutory Authority

7 CFR §273.4, *Citizenship and Alien Status*

Summary of Proposed Changes

DSSM 9077.1, *Citizens and Qualified Aliens*: The proposed revisions at 9007.1 are being made to rename this section and replace with Citizenship and Alien Status and to reorganize and reformat the content to align text with federal regulations at 7 CFR §273.4.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received for this regulation.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program regarding *Citizenship and Alien Status* is adopted and shall be final effective October 10, 2008.

Vincent P. Meconi, Secretary, DHSS, September 11, 2008

DSS FINAL ORDER REGULATION #08-41

REVISIONS:

~~9007.1 Citizens and Qualified Aliens~~ Citizenship and Alien Status

[7 CFR 273.4]

~~Citizens and qualified aliens~~

~~The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:~~

~~1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if they meet one of the following conditions:~~

- ~~•² both parents are citizens of the United States and one parent has had a residence in the United States, or one of its outlying possessions, prior to the birth of the child; or~~

- ~~•² one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the United States; or~~
- ~~•² one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.~~

2. ~~Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;~~

3. ~~Individuals who are:~~

A. ~~An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;~~

B. ~~A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;~~

C. ~~Lawfully residing in the U.S. and was a member of the Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;~~

~~(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or~~

~~(ii) An unmarried dependent child of such Hmong or highland Laotian who is under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.~~

4. ~~Individuals who are eligible indefinitely due to being:~~

A. ~~A lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited for the work of a parent the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouses quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);~~

B. ~~lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry:~~

~~Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under section 501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.~~

~~C. lawfully in US and is now under 18 years of age;~~

~~D. lawfully in US and is receiving disability or blind (payments listed under DSSM 9013.1)~~

~~E. lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).~~

~~F. An alien with one of the following military connections:~~

~~(i) A veteran who was honorably discharged for reasons other than alien status who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;~~

~~(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 389 U.S.C. 107;~~

~~(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or~~

~~(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.~~

~~5. The following aliens with a seven-year (7) time limit:~~

~~(A) refugees admitted under section 207 of the Act;~~

~~(B) asylees admitted and granted asylum under section 208 of the Act;~~

~~(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA.~~

~~(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and~~

~~(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.~~

~~The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).~~

~~(F) Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by US Immigration and Citizenship Services.~~

~~The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.~~

~~If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.~~

~~If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.~~

~~Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded Derivative T Visas, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.~~

~~When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:~~

~~1. Accept the original certification letter for child in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)~~

~~2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Offices of Refugee Resettlement (ORR) of the benefits for which the individual has applied.~~

~~3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefit purposes is the certification date, which appears in the body of the certification letter or letter for children.~~

~~4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.~~

~~5. Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.~~

~~6. The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).~~

~~7. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered.~~

~~When an eligible relative of a direct victim of severe trafficking applies for benefits:~~

~~1. Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.~~

~~2. Call the toll-free trafficking verification lines at 1 (866) 401-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)~~

~~3. Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.~~

~~4. For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual's Derivative T Visas.~~

~~5. For an individual who enters the United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual's passport or I-94 Arrival Record.~~

The following residents of the United States (U.S.) are eligible to participate in the Food Stamp Program based on their citizenship or alien status:

A. U.S. Citizens

1. Persons born in the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands.

2. Children born outside the U.S. are citizens if they meet one of the following conditions:

a. Both parents are citizens of the U.S. and one parent has had a residence in the U. S., or one of its outlying possessions, prior to the birth of the child; or

b. One parent is a citizen of the U.S. who has been physically present in the U. S., or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the U. S; or

c. One parent is a citizen of the U.S. who has been physically present in the U. S., or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.

3. Naturalized citizens or a U.S. non-citizen national (person born in an outlying possession of the U. S., American Samoa or Swains Island, or whose parents are U.S. non-citizen nationals);

4. Individuals who are:

a. An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply; or

b. A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians:

c. Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975:

d. The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

e. An unmarried dependent child of such Hmong or Highland Laotian who is:

- under the age of 22;
- an unmarried child under the age of 18, or if a full-time student under the age of 22, of a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or
- an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

B. An individual who is BOTH a qualified alien and an eligible alien as follows:

1. A qualified alien is:

a. An alien lawfully admitted for permanent residence (Immigration and Nationality Act [INA]);

b. An alien who is granted asylum to the U.S. (section 208 of INA);

c. A refugee who is admitted to the U.S. (section 207 of the INA);

d. An alien who is paroled into the U.S. for a period of at least one year (section 212[d][5] of the INA);

e. An alien whose deportation/removal is being withheld (sections 207[a][7] and 241[b][3] of the INA);

f. An alien who is granted conditional entry (section 203[a][7]);

g. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse; [or]

h. An alien who is a Cuban or Haitian entrant (section 501[e] of the Refugee Education Assistance Act of 1980);

2. An eligible alien is:

a. An alien lawfully admitted for permanent residence who has 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of:

- quarters the alien worked;
- quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
- quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased.

(i) A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made.

If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien eligibility continues until the next recertification.

At that time, eligibility is determined without crediting the alien with the former spouse quarters of coverage.

(ii) Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent or spouse quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter counts toward the 40 qualifying quarters total.

b. [H]awfully living in the U.S. for five (5) years as a qualified alien beginning on the date of entry.

c. A refugee who is admitted to the U.S. (section 207 of the INA);

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- d. An alien who is granted asylum to the U.S. (section 208 of INA);
 - e. An alien whose deportation/removal is being withheld (sections 207[a][7] and 241[b][3] of the INA);
 - f. An alien who is a Cuban or Haitian entrant (section 501[e] of the Refugee Education Assistance Act of 1980);
 - g. An Amerasian who is admitted to the U.S. (section 584 of P.L. 100-202, amended by P.L. 100-461);
 - h. An alien with one of the following military connections:
 - (i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service.

A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

- (ii) An individual on active duty in the Armed Forces of the U.S. other than for training; or
- (iii) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

- i. [H]lawfully in U.S. and is receiving disability or blind payments ([as] listed under DSSM 9013.1);
- j. [H]lawfully in U.S. and 65 or older on 8/22/96 (born on or before 8/22/31)
- k. [H]lawfully in U.S. and is now under 18 years of age (when child turns 18, the child must meet another eligibility criteria like 40 quarters or the five-year residency rule to continue to get food stamps);
- l. [H]lawfully in U.S. in a qualified status for five years;
- m. Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by U.S. Immigration and Citizenship Services.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated [at as] T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T Visa application was filed, the Derivative T Visa[s] are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U.S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded a Derivative T Visa, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)

Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

Note the "entry date" for refugee benefit purposes. The individual "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.

Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.

Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.

Call the toll-free trafficking verification line at 1 (866) 402-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)

Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.

For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual Derivative T Visa.

For an individual who enters the ~~United~~ United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual passport or I-94 Arrival Record.

8 DE Reg. 1712 (6/1/05)

10 DE Reg. 1702 (05/01/07)

DIVISION OF SOCIAL SERVICES

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

ORDER

FOOD STAMP PROGRAM

Income Deductions, Certification Period Lengths, Reporting Changes

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Income Deductions, Certification Period Lengths and Reporting Changes*. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the

public concerning the proposed regulations to be produced by August 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed changes described below amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Income Deductions, Certification Period Lengths and Reporting Changes*.

Statutory Authority

- Food, Conservation, and Energy Act of 2008, Title IV, Section 4103, *Supporting Working Families with Child Care Expenses* and Section 4105, *Facilitating Simplified Reporting*;
- 7 CFR §273.10(f), *Certification Periods*; and,
- 7 CFR §273.12, *Requirements for Change Reporting Households*.

Summary of Proposed Changes

The proposed changes amend the Food Stamp Program rules to implement the mandatory provisions of Section 4103 and Section 4105 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill) that removes the cap on the deduction for dependent care expenses that allow working families with children to deduct the entire amount of child care expenses when calculating eligibility and benefit levels (**DSSM 9060**). The Division of Social Services (DSS) further proposes to simplify the reporting requirements for the elderly and disabled households with no earned income with a 12-month certification period (**DSSM 9068.1 and DSSM 9085**).

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Division of Social Services (DSS) has carefully considered and responds to the SCPD public comment summarized below.

SCPD endorses the proposed regulations and has the following observations.

First, federal law currently imposes a cap on the amount of the deduction for child and dependent care expenses in determining Food Stamp eligibility. On June 18, federal law was amended to remove the cap effective October 1, 2008. This is explained in a USDA policy letter. DSS is implementing this provision by deleting the cap.

Second, the federal law authorizes simplified reporting for households with seniors and persons with disabilities. Consistent with the attached July 1 summary from the Center on Budget and Policy Priorities, Section 4105 of the new federal law has the following result:

Reduces paperwork burdens on households with seniors and people with disabilities by allowing states to extend the "simplified reporting" option to them. Under the option, households in which all members are elderly or have a disability (and where no one has earnings) will be allowed to participate for 12-month periods; the only change in circumstances they will be required to report over the year will be if their household income rises above 130 percent of the poverty level. (Almost every state has adopted this policy for six-month periods for other households, as allowed under the 2002 farm bill.) *CBO 9-yr. cost: \$285 million*

Delaware already had a 12-month reporting period for households in which all members were elderly or persons with disabilities with no earned income. This will not change. See strike-out language and second bullet at the bottom of p 138. Otherwise, the amendments "track" the new federal law by requiring such households to report an increase in income only if it exceeds 130% of the poverty income guideline for the household.

Agency Response: DSS thanks the Council for their endorsement.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program regarding *Income Deductions, Certification Period Lengths and Reporting Changes* is adopted and shall be final effective October 10, 2008.

Vincent P. Meconi, Secretary, DHSS, September 11, 2008

***Please note that no changes were made to the regulation as originally proposed and published in the August 2008 issue of the Register at page 135 (12 DE Reg. 135). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

9060 Income Deductions

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Sections 2207 and 2208 (16 **Del.C.** §§2207 and 2208)

ORDER

6001 Substance Abuse Facility Licensing Standards

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt amendments to the State of Delaware Regulations governing Licensing of Substance Abuse Facilities. The DHSS proceedings to amend the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122 (3) p.

On October 1, 2007 (Volume 11, Issue 4), 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 October 31, 2007, 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."

FINDINGS OF FACT:

Based on comments received, substantive and non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as amended and set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations governing Licensing of Substance Abuse Facilities are adopted and shall become effective January 1, 2009, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, DHSS, September 11, 2008

SUMMARY OF EVIDENCE**State of Delaware Regulations Governing Licensing Standards For Substance Abuse Facilities**

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations governing Licensing Standards for Substance Abuse Facilities were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (October 1, 2007 through October 31, 2007).

Public comments and the DHSS (Agency) responses are as follows:

The following responses to the comments received on the proposed Substance Abuse Treatment Program Standards identify the organization or individual offering comment and/or recommendation. Where multiple organizations or individuals offered similar comments, reference is made to the additional organization or individual before the agency response is given.

The Governor's Advisory Council for Exceptional Citizens, the Delaware Developmental Disabilities Council and the State Council for Persons with Disabilities offered virtually identical comments and recommendations summarized below. DSAMH has considered each comment, found the comments to be helpful and instructive and have adopted some of the suggestions made.

First, it is unclear whether the regulations apply to children's facilities. The licensing statutes [Title 16 **Del.C.** §§2206(1), 2207, and 2208] authorize DHSS to adopt standards, in consultation with the DSCY&F, for adult and children's facilities. DHSS is also authorized to delegate to the DSCY&F the authority to issued regulations for children's facilities. There is no recital in the regulations that DSCY&F has been consulted. Moreover, all the references in the lengthy regulation are to DSAMH to the exclusion of DSCY&F. We identified only three references [§5.1.4.4.1.14; §5.1.7.1.1.2; §7.1.2.1.7] which suggest coverage of children's facilities since they require reporting of child abuse or neglect. DSAMH should clarify whether the standards apply to both adult and child facilities. If the standards do apply to children's facilities, DSAMH should consider revisions to address children. For example, residential facilities and some day programs should ensure that minors receive schooling. Cf. Title 16 **Del.C.** §5161(a)(12)[residential mental health facilities must ensure education of minors].

Agency Response: DSAMH would like to clarify that the standards do apply to children's facilities. The Division of Services for Children, Youth and their Families (DSCY&F) participated in the initial drafting of the standards. DSCY&F was also invited to review the final draft before the proposed regulations were published. Subsequent to the receipt of comments on the proposed regulations, DSAMH consulted with DSCY&F around education requirements. It was jointly determined that there was not a need to include regulations for education in these standards.

Second, the definition of "counseling" in §3.0 only permits "face-to-face interaction" between counselor and clients, family members, and significant others. The regulations include some minimum amounts of such "counseling". See, e.g., §§10.1.8, 11.1, and 12.1. Literally, the regulation may categorically preclude use of videoconferencing and teleconferencing. Such modalities may be necessary to promote participation by family members and significant others. The Division should consider authorization of such modalities at least under some circumstances (e.g. family is distant or lacks transportation). Moreover, the Division may wish to clarify whether videoconferencing amounts to "face-to-face interaction".

Agency Response: "Face-to-face interaction(s)" would include videoconferencing as the interaction would be considered "face-to-face." While best practices would suggest that therapeutic contact is most beneficial when a professional counselor meets with a client and/or their family, programs that develop policies that include ongoing teleconferencing would be eligible to apply for a waiver as per §4.15 of the proposed standards. DSAMH declines the recommendation to change the standard.

Third, we are pleased to note that the definition of “medical history” in §3.0 affirmatively references “head injuries”. Given the “underidentification” of TBI, this merits endorsement.

Agency Response: As the addictions field becomes more sophisticated in treating individuals with co occurring disorders, providers have become more aware of the special needs of individuals with head injuries. DSAMH appreciates this recognition by the Council(s).

Fourth, §4.5.2.1 requires compliance with the ADA in license applications. Likewise, §7.1.1.3 requires compliance with ADA standards. These provisions merit endorsement.

Agency Response: DSAMH appreciates this response and the support of the Councils in this area.

Fifth, §4.13.4 there are some extraneous brackets “[]”.

Agency Response: DSAMH has removed the extraneous brackets.

Sixth, §4.15.4 invariably requires any waiver granted by the Division to extend for the full term of the existing license, i.e., up to 2 years. This unnecessarily limits the Division’s discretion. For example, there may be circumstances under which a short-term waiver would be more appropriate. DSAMH should consider adopting the approach reflected in DLTCRP regulations covering DDDS neighborhood homes, 16 **DE Admin. Code** 3310, §17.4. Section 17.4 provides as follows: “A waiver may be granted for a period up to the term of the license.”

Agency Response: DSAMH agrees that provision for a short-term waiver should be clear. §4.15.4 has been modified to read: “A waiver granted under these regulations shall be in effect for the term of the applicant’s license unless the approval of the waiver specifies a shorter term; all waivers not otherwise approved for a shorter term shall expire at the end of the term of license and new waiver(s) must be requested as part of the licensure renewal process in accordance with 4.15”.

Seventh, at least in the context of residential facilities, it is preferable to require notice of the waiver request be shared with residents to permit input from persons who may be most affected. Compare 16 **DE Administrative Code** 3310, §17.1.4. No harm is done by promoting the opportunity for consumer input into waiver requests.

Agency Response: DSAMH agrees that consumer input can be valuable when a program requests a waiver. §4.15.1 has been modified to read:

“An application for a waiver from a requirement of these regulations shall be made in writing to the Division’s Licensing Unit; it shall specify the regulation from which waiver is sought, demonstrate that each requested waiver is justified by substantial hardship, and describe the alternative practice(s) proposed. 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. The Division’s Licensing Unit shall make a recommendation of action on the application to the Division Director or designee after reviewing the waiver request and any consumer input. Only the Division Director shall grant waivers.”

Eighth, §5.1.1.4 requires the facilities Governing Body to meet only once annually. If DSAMH wishes to promote an active, knowledgeable board, this standard may fall short of achieving that objective.

Agency Response: While DSAMH understands the rationale behind more frequent meetings of the Governing Body, the standard will apply to a wide variety of organizations both large and small. The proposed minimum standard allows programs flexibility in establishing Governing Body protocols that best meet their needs. DSAMH does not think the standard is in need of revision.

Ninth, Facilities are required to make mandated reports of child abuse [§§5.1.4.4.1.16; 5.1.7.1.1.2; and 7.1.2.1.7]. There is no comparable provision requiring reporting of abuse, mistreatment, neglect or financial exploitation as required by Title 16 **Del.C.** §2224. This oversight should be corrected.

Agency Response: DSAMH agrees and amended the standard in the final order to read: “5.1.4.4.1.16...Policies and procedures for making mandated reports of suspected child abuse or neglect in compliance with 16 **Del.C.** §§ 902 through 904 and 16 **Del.C.** § 2224...”; “5.1.7.1.1.2... reporting of cases of suspected child abuse or neglect in compliance with 16 **Del.C.** §§ 902 through 904 and 16 **Del.C.** § 2224...”

Tenth, There is an anomaly in §6.1. Section 6.1.2.1.1 requires the Clinical Director to have a “master’s degree in counseling or a related discipline.” Section 6.1.3.1.1 requires a Clinical Supervisor to have a bachelor’s degree with “a major in chemical dependency, psychology, social work, counseling, or nursing.” The “related discipline” standard applicable to the Clinical Director is ostensibly narrower than the educational background standards for the Clinical Supervisor (degree in chemical dependency, psychology, social work, counseling, or nursing). For example, could a Clinical Director qualify with a master’s degree in nursing? DSAMH may wish to clarify “related discipline” by at least providing some specific examples of acceptable contexts of degrees.

(Russel Buskirk and Chris Devaney of Connections, Janice Sneed of Brandywine Counseling, Inc., David Parcher of Kent and Sussex County Counseling, Bruce Lorenz of Thresholds, Inc, Bruce Johnson on behalf of the Delaware Association for Addiction Counselors (DAADAC), David Parcher on behalf of the Delaware Certification Board (DCB), Steven Martin of the Center for Drug and Alcohol Studies: University of Delaware and Ms. Samantha Hurd offered similar recommendations)

Agency Response: DSAMH agrees and changed the standard in the final order to read:

6.1.2 Qualifications for the Position of Clinical Director

6.1.2.1 Each individual, hired or promoted, to the position of Clinical Director on or after the date these regulations become effective shall have, at a minimum:

6.1.2.1.1 A master’s degree with a major in chemical dependency, psychology, social work, counseling, nursing or a related field of study and five (5) years of documented clinical experience in human services, at least three (3) years of which shall be in substance abuse services.

6.1.3 Qualifications for the Position of Clinical Supervisor

6.1.3.1 Each individual authorized, hired, or promoted, to provide clinical supervision on or after the date these regulations become effective shall have, at a minimum:

6.1.3.1.1 A Bachelor’s Degree from an accredited college or university with a major in chemical dependency, psychology, social work, counseling, nursing or a related field of study and full certification as a certified alcohol and drug counselor (CADC) in the state of Delaware or by a nationally recognized organization in addictions counseling; or

6.1.3.1.2 A Bachelor’s Degree from a accredited college or university with a major in chemical dependency, psychology, social work, counseling, nursing or a related field of study and five (5) years of documented clinical experience in the substance abuse treatment field.

Eleventh, §7.1.1.1is problematic. It recites as follows: “No program shall deny any person equal access to its facilities or services on the basis of race, color, religion, ancestry, sexual orientation, gender expression, national origin or disability, unless such disability makes treatment offered by the program non-beneficial or hazardous. [emphasis supplied]”

The underlined exclusion is an inane standard which is not consistent with the ADA, §504, or the Equal Accommodations statute (Title 6 **Del.C.** Ch. 45). It is also inconsistent with §7.1.3.1. For example, it would authorize a program to deny services to a Deaf applicant since the Deaf applicant could not benefit from the existing program. Legally, the program must provide accommodations to ensure that its program is beneficial to the applicant with disabilities. In this example, the program should not be barring the Deaf client from admission. It should be providing a sign-language interpreter. Similarly, there is no “hazardous” exception in the ADA [28 C.F.R. §35.149-35.150 (public entities); 28 C.F.R. §36.302(private entities)]. For example, it may be “hazardous” for a person with ambulatory limitations to climb a stairway to an upper floor location. However, rather than denying that person services, the provider should be providing accommodations (e.g. moving counseling session to ground floor). If a specialty program does not offer the type of treatment that a person with a disability seeks, the program is expected to make a referral to another program. See 28 C.F.R. §36.302(b). If an applicant poses a “direct threat”

or “safety” risk to a private provider, that assessment must be made in the context of accommodations. [28 C.F.R. §§36.208 and 36.301].

David Parcher of Kent and Sussex County Counseling also commented:

It is not financially feasible to have the staff and expertise readily available to serve all populations. Most small or mid size programs are not able to afford the high cost of additional staff to provide specialized services. Additional funding needs to be in place.

Agency Response: DSAMH agrees. The final order is being changed to read as follows: “No program shall deny any person equal access to its facilities or services on the basis of race, color, religion, ancestry, sexual orientation, gender, gender expression, national origin, or disability.”

Twelfth, §7.1.2.1.9 should be expanded to include a reference to advocates and advocacy agencies (See Title 16 **Del.C.** 2220(7).)

Agency Response: 7.1.2.1.9 is in keeping with federal confidentiality law CFR 42 (Part II) which does not allow for the sharing of information with advocates or advocate agencies without proper consent from the consumer. DSAMH declines this recommendation.

Thirteenth, §7.1 would benefit from the addition of a “catch all” provision requiring compliance with Title 16 **Del.C.** §2220. This would be consistent with §8.1.2.1.2.11.1, which requires programs to provide notice of such rights.

Agency Response: DSAMH agrees and changed §7.1.1.3 in the final order to read: “All agencies shall ensure that they comply with the federal Americans with Disabilities Act 28 U.S.C. §§12101 et seq.; 28 code of Federal Regulations, Part 36 (July 1991) and Title 16 **Del.C.** §2220.

Fourteenth, §§8.1.2 and 8.1.3 could be strengthened in the context of discharge planning. Compare in the mental health context, §5161(b)(4), which contemplates that the discharge plan be developed in consultation with anticipated post discharge providers. See also DLTRCP mental health group home regulations, 16 **DE Admin Code** 3305, §6.8.

Agency Response: DSAMH declines this recommendation at this time.

Fifteenth, requiring facilities to only maintain records for 12 months [§8.1.4] is too short. Contrast the DLTRCP mental health group home regulations [16 **DE Administrative Code** 3305, §8.1] which require records to be maintained for 7 years.

Agency Response: DSAMH agrees that the standard as written does not clearly convey its intent. §8.1.4 has been amended in the final order to read: “Programs shall provide a minimum of twelve (12) months of records up until and including the expiration date of the current license for the purposes of licensure audit. Programs shall develop a policy that clearly outlines timelines for record retention and storage for all records beyond the required audit period.

Sixteenth, there is an extraneous reference to §8.1.2.2 in the margin next to §10.1.6.

Agency Response: The reference to §8.1.2.2 is not extraneous, but refers the reader back to the standards outlining treatment plan development

Seventeenth, §12.4.2.2.1 authorizes restrictions on phone use. Such restrictions may be precluded by Title 16 **Del.C.** §2220(11).

Agency Response: Best practice policies and procedures take into consideration the benefits of each policy to the consumer. Programs may chose to restrict phone usage if the use would be considered dangerous or counter-therapeutic to a consumer (e.g. a consumer making or receiving phone calls from their drug dealer could cause harm to the consumer and other consumers who participate in treatment at the same program.) DSAMH does not think that permitting such limited restrictions would be precluded.

Eighteenth, §14.1.1.1.6 categorically precludes admission to opioid treatment services unless the applicant has been addicted at least 1 year. This categorical exclusion may unnecessarily limit provider clinical judgment and discretion. This provision should be deleted from the regulations.

Agency Response: §14.1.1.1.6 is in compliance with federal regulations for opioid treatment CFR 42 (Part VIII) §8.12(e)(1) which states: "...that the person is currently addicted to an opioid drug, and that the person became addicted at least 1 year before admission for treatment..." and applies specifically to Opioid Treatment Programs. DSAMH declines this recommendation.

Nineteenth, the rationale for precluding admission to opioid treatment services by someone released from a penal institution within 6 months [§14.2.1] may also unduly restrict provider discretion. For example, the applicant could have been in a penal institution (e.g. pre-trial pending release on bail) for only a few days.

Agency Response: DSAMH believes that a misreading of §14.2.1 may have resulted in this comment. Federal regulations require that a person become addicted at least one year before admission to an Opioid Treatment Program. §14.2.1 provides an exception to this requirement when clinically appropriate and is in compliance with federal regulations for opioid treatment CFR 42 (Part VIII) §8.12(e)(3) which states: "If clinically appropriate, the program physician may waive the requirement for a 1- year history of addiction under paragraph (e)(1) of this section, for patients released from a penal institution (within 6 months after release)..."

Twentieth, in §14.7 it would be preferable to include a provision requiring that the applicant be provided with the specific reasons for denial of admission. Indeed, public entities would be required to provide such information as a matter of due process.

Agency Response: DSAMH agrees. §14.7 has been amended to add:

§14.7.2 The reasons for non admission must be made available in writing to the client upon request.

§14.7.2.1 Documentation of the written response to the non admitted client must be entered into the client file.

Twenty-first, §14.18.3 categorically bars admission of a client for more than 2 detoxification treatment episodes in 1 year. It is unclear why such a restriction would be included in a licensing standard. If an applicant wishes to "private pay" for detoxification, or an insurer will cover such costs, why should the State categorically preclude access to detoxification? If DSAMH wishes to impose such a standard for detoxification paid for by the State, it could do so by contract. Otherwise, providers should be allowed to exercise professional discretion.

Agency Response: §14.18.3 is specific to detoxification in an Opioid Treatment Program (OTP) for opioid consumers and is in compliance with federal regulations for Opioid treatment CFR 42 (Part VIII) §8.12(e)(4) which states: "Patients with two or more unsuccessful detoxification episodes within a 12-month period must be assessed by the OTP physician for other forms of treatment. A program shall not admit a patient for more than two detoxification treatment episodes in one year." This restriction would not apply to licensed Detoxification programs. DSAMH declines this recommendation.

Finally, it is noted that there is an absence of standards in the context of criminal background checks and there is no references to the Adult Abuse Registry or the Child Abuse Registry in relation to hiring and maintaining staff. We highly recommend the inclusion of language that addresses these issues.

Agency Response: DSAMH agrees and added §5.1.6.3.6 in the final order to read: "Criminal background checks and previous, substantiated reports to the Adult Abuse and Child Abuse registries,"

Mr. Russel Buskirk and Mr. Chris Devaney of Connections, CSP, offered the following observations and recommendations summarized below. DSAMH has considered each comment, found the comments to be helpful and instructive.

A. Under §3.0 "Definitions", where is the definition for "Program Director?" (Ms. Samantha Hurd also asked this question.)

Agency Response: DSAMH has reviewed the use of the term “Program Director” in the standards and the final order will be amended as follows: all reference to “Program Director” will be struck and replaced with Administrator.

B. Under §4.15.3: The standard states: “No waiver shall be granted for any requirement in §§ 6.1.2; 6.1.3 or 6.1.4 of these regulations. This will create undue hardship in a situation where an individual does not meet the norm. (David Parcher of Kent and Sussex County Counseling, Bruce Lorenz of Threshold, Inc., Jim Elder of CiviGenics and Ms. Samantha Hurd offered similar responses.)

Agency Response: DSAMH agrees. This restriction has been removed.

C. Under §§5.1.7.3.1 and 5.1.7.3.2 fifteen (15) hours specific to training and education in the treatment of alcohol and other drugs of abuse and six (6) hours specific to training and education in providing culturally competent services: Is this in addition to Certification/Licensure requirements?

Agency Response: DSAMH has taken this comment and subsequent discussion with commenters into consideration and has modified §§5.1.7.3.1 and 5.1.7.3.2 as follows. A §5.1.7.3.3 has been added. This is not in addition to the Certification/Licensure requirements applicable to private practitioners.

Ten (10) hours specific to training and education in the treatment of alcohol and other drugs of abuse; and
Three (3) hours specific to training and education in providing culturally competence services; and
Three (3) hours of training specific to ethics training and education.

D. Under 5.1.7.5 in regards to training in hepatitis; HIV/AIDS; Tuberculosis; and other sexually transmitted diseases: Will DSAMH Training office be able to accommodate clinical staff in having these subject/training areas available in the annual training catalogue? (David Parcher of Kent and Sussex County Counseling offered a similar response in regards to this training.)

Agency Response: The DSAMH Training office provides comprehensive training throughout the year on a variety of subjects which may include hepatitis, HIV/AIDS, Tuberculosis and other sexually transmitted diseases. DSAMH conducts a needs assessment and training is provided according to the identified needs of the field.

E. Under §6.0 is there any consideration for a person with a Bachelor’s, CADC or certain amount of experience for the position of Clinical Director? (Michael Kriner of Gateway Foundation, Jim Elder of CiviGenics, Bruce Johnson of PACE, Inc and Ms. Samantha Hurd offered similar comments and recommendations.)

Agency Response: DSAMH acknowledges that there may be individuals with a Bachelor’s Degree, CADC and five (5) years of experience who would be competent in meeting the responsibilities of the Clinical Director. In these cases, programs may request a waiver of this standard under §4.15.1.

F. Under §§6.0; 6.1.3.1; 6.1.4.1: Do the imposed time limits to meet the standard support the current needs of the work force and/or assist in securing long term employment stability for facilities? (David Parcher of Kent and Sussex County Counseling and on behalf of DCB, Bruce Lorenz of Thresholds, Steve Martin of the University of Delaware’s Addiction Studies Department, Jim Elder of CiviGenics, Ms. Katherine Harding and Ms. Samantha Hurd offered similar comments.)

Agency Response: DSAMH agrees that the time limits do not meet the needs of the current or future work force and has amended the final order to remove the time limits. A “grandfathering” provision has been added as §6.1.6.

G. Under 6.1.4.1.1: Can there be further definition of “nationally recognized body in addictions counseling?” Would this include forensic counselors and counselors certified by the National Association for Alcohol and Drug Abuse Counselors (NAADAC) and National Counselor’s Certification (NCC)? (David Parcher of Kent and Sussex County Counseling and on behalf of DCB, Bruce Lorenz of Thresholds, Inc. and Michael Kriner of Gateway Foundation offered similar comments.)

Agency Response: Nationally recognized body in addictions counseling would include forensic counselors, NAADC and NCC as well as any credential offered by a National organization that offers a certification specific to addictions counseling.

H. Under 6.1.5; Assistant Counselor: Can there be further clarification of “Assistant Counselor?”

Agency Response: “Assistant Counselor” is a term of art used to encompass a wide range of professionals who are beginners in the substance abuse treatment field. DSAMH realizes that the term can be confusing. The final order has been amended to strike “Assistant Counselor” from the standards and replace it with the term “Counselor II” to relate the position back to counseling functions within a program.

I. Under §6.1.5.2, reference is made to individuals with less than 5 years of experience as meeting the criteria for Assistant Counselor. Would that account for anyone else who generally wants to be an addictions/AODA counselor?

Agency Response: Assistant Counselor (now Counselor II) is the term used in these standards to accommodate the wide range of professionals who are beginners in the substance abuse treatment field.

J. Under §8.1.1.1.5: Records are to be updated within twenty-four (24) hours of delivery of services. Is there consideration for 48 or 72 hours in hardship situations or completion for Friday services for outpatient programs?

Agency Response: Documentation of services provided to or on behalf of the consumer should be completed as soon after provision of services as possible. DSAMH does not think this standard should be revised.

K. Under §8.1.2.1.2.19.1: “Signed by the counselor completing the assessment;” Can the Assistant Counselor perform this task?

Agency Response: §8.1.2.1.2.19.1 refers to the signatures of staff completing the assessment and would include the Assistant Counselor (Counselor II in the final order.)

L. Under §8.1.2.3.1 “treatment plans shall be reviewed and revised by the client and his/her primary counselor no less often than the intervals specified...;” Can the Assistant Counselor complete this task.

Agency Response: The Assistant Counselor (Counselor II under the final order) completes this task under the supervision of the Clinical Supervisor.

M. Under §8.1.2.5.1 “primary counselor” is used as a descriptor. Does this apply to the Counselor position, Assistant Counselor position or both?

Agency Response: DSAMH agrees that this is in need of clarification. The final order has been amended to remove the word “primary”.

N. Under §8.1.2.7.1 which states: “...the program shall complete a discharge summary within seventy-two (72) hours of discharge...;” Is there a reason this has been decreased from 5 days (current standard) to 3 days? (Michael Kriner of Gateway Foundation made a similar comment.)

Agency Response: Documentation of services provided to or on behalf of the consumer should be completed as soon after provision of services as possible. This includes discharge planning and documentation which should be completed with the participation of the consumer. DSAMH does not think this standard should be revised.

O. Under §§8.1.2.7.2.6 & 8.1.2.7.2.7 there is reference to the summary of the client’s progress toward meeting the treatment plan goals and a summary of the client’s participation in treatment. Can the narrative include both?

Agency Response: §§8.1.2.7.2.6 & 8.1.2.7.2.7 specify the information to be captured in treatment planning documentation. A format that includes this information in a single narrative is acceptable.

P. Under §8.1.2.7.3.2 the discharge is to be completed by the “primary counselor.” Does this apply to the Counselor position, Assistant Counselor position or both?

Agency Response: DSAMH agrees that this is in need of clarification. The final order has been amended to remove the word “primary”.

Q. Under §8.1.3 programs are to provide a list of referral sources for the clients’ various needs when the agency is unable to meet the needs internally. How is this to be documented?

Agency Response: §8.1.3 specifies the information to be captured in referral documentation. The specific format that includes this information is at the discretion of the program.

R. Under §8.1.4 programs are required to keep a minimum of twelve (12) months of records up and until the expiration date of the current license. This could be a significant volume of records particularly for outpatient programs.

Agency Response: Licensure audits are based on the review of documents completed up to one year prior to the current expiration date of the license and should be made available upon request by DSAMH. In order to clearly delineate between required records for annual audit and overall record retention, §8.1.3 4 has been amended as follows: “Programs shall provide a minimum of twelve (12) months of records up until and including the expiration date of the current license for the purposes of licensure audit. Programs shall develop a policy that clearly outlines timelines for record retention and storage for all records beyond the required audit period.”

S. Under §9.1.2.3 facilities must provide “...restrooms for clients, visitors and staff...” Do these have to be separate bathrooms?

Agency Response: §9.1.2.3 requires the availability of restrooms for those individuals using the facility. Programs are free to choose how to provide these at their individual facility. There is no requirement for separate bathrooms for clients, for visitors, for staff.

T. Under §12.1.1.6 treatment planning required by 8.1.2.2 within seventy-two hours (72) of admission. How is this different from the initial treatment plan due within forty-eight (48) hours?

Agency Response: DSAMH agrees that the requirements for treatment plans are confusing. The final order has been amended as follows: §8.1.2.2 “An individual, Master Comprehensive Treatment Plan, developed in partnership with the client shall be completed...” Definitions for “Initial Treatment Plan, Master Comprehensive Treatment Plan and Periodic Treatment Plan Review/Revision have been added in §3.0.

U. Under §12.1.1.8 and in accordance with §8.1.2.3 treatment plan update and revision is due on the thirtieth (30) day and every thirty (30) days thereafter. In a thirty (30) day period consumer/clients will have had up to four treatment plans/reviews.

Agency Response: DSAMH agrees that the description of treatment planning is confusing. The final order has been amended to include the following definitions:

“Initial Treatment Plan means a preliminary plan that addresses short term goals the program plans to achieve in the earliest days of treatment. The initial treatment plan shall be in effect until the master comprehensive treatment plan has been developed.

Master Comprehensive Treatment Plan means a treatment plan that is formulated from the comprehensive assessment as outlined in §8.1.2.1.2.14. and in the format outlined in §8.1.2.2.1.

Periodic Treatment Plan Review/Revision is a process whereby the clinical supervisor and counselor review prior treatment plans and establish new goals based on the client’s progress and/or changing needs through out treatment.”

§8.1.2.2 has also been amended as follows: “An individual, Master Comprehensive Treatment Plan, developed in partnership with the client shall be completed...”

V. Under §12.2.4 a minimum of 1 hour of face-to-face supervision per week between the counselor and clinical supervisor is required. Can this occur individually or as a treatment team?

Agency Response: §12.2.4 outlines the minimum requirement for supervision of the clinical staff by the clinical supervisor. It is acceptable to meet this minimum standard in individual or group supervision or both.

W. Under §15.1.1.4 the frequency of treatment plan revision has increased from every 90 days to every 60 days. Is there clinical justification for this? (David Parcher of Kent and Sussex County Counseling, Janice Sneed of Brandywine Counseling, Inc., Bruce Lorenz of Thresholds, Inc., and Ms. Katherine Harding offered similar Observations.)

Agency Response: DSAMH agrees that the 90 day intervals for treatment plan revision remain acceptable. The final order has been amended to state: "Treatment plan revision...every ninety (90) days after the effective date of the initial treatment plan."

X. Under §15.1.1.5 a schedule for individual, group and family counseling is to be reviewed at the time of the treatment plan review. Do I document this as part of the treatment plan revision?

Agency Response: Yes. All services provided to the consumer are to be documented on the treatment plan and treatment plan review.

Y. Under §15.2 there is a requirement that all services offered at locations other than the program's main building meet the requirements of §9.0 (Client Rights) in full. Where does this apply?

Agency Response: The requirement under §15.2 applies to programs providing services away from the program's main building (e.g. in the case of a satellite site) and assure client rights are met in full when documentation is transported from one site to another.

Z. Under §§16.5.1.1.2 & 17.0 programs are required to be in compliance with §6.0. If an agency has CARF or JACHO accreditation, the agency must meet this standard. Will waivers be granted to providers that have Deemed Status?

Agency Response: DSAMH has amended §4.15 to allow agency's to request waiver for the requirements of §6.0. All programs, including those with Deemed Status, are eligible for waiver under §4.15.

AA. Under §15.1.1.1.1 how is a "good faith effort" to receive physicals to be documented.

Agency Response: Any attempt to request a physical from a primary care physician (PCP), including any written correspondence to the PCP, and/or any attempts to have the consumer acquire a physical exam should be documented in the clinical file.

Imad Jarwan of the Department of Corrections offered the following comments summarized below:

The Department of Corrections (DOC) operates substance abuse programs based on Therapeutic Community (TC) standards. The TC model of treatment advocates the use of recovering addicts as counselors to promote the use of addicts and ex-addicts and/or offenders in key leadership and counseling positions. The proposed education and training background for clinical staff provides a hardship to correction substance abuse programs as "... (program) graduates who have a Bachelor's Degree or a Master's Degree is very dim at best...based on the historical educational level of our TC graduates, it is near impossible to have a Key graduate who holds a Master's Degree. The following options are offered for consideration:

A. Apply the current Therapeutic Community Accreditation (TCA) standards to the DOC's substance abuse treatment programs in place of the proposed standards. (Steven Martin of the Center for Drug and Alcohol Studies: University of Delaware offered similar comment.)

Agency Response: DSAMH and DOC have discussed alternatives to the application of the proposed standards with respect to DOC programs. It has been determined that the best course at this time is to apply the

proposed standards. DSAMH and DOC have agreed that, where necessary to accommodate the requirements of the corrections environment, DOC programs will request waivers as required and that DSAMH will consider reasonable alternative practices designed to maintain quality of care.

B. Exclude the DOC's substance abuse programs from the proposed educational requirements for providers.

Agency Response: DSAMH and DOC have discussed alternatives to the application of the proposed standards with respect to DOC programs. It has been determined that the best course at this time is to apply the proposed standards. DSAMH and DOC have agreed that, where necessary to accommodate the requirements of the corrections environment, DOC programs will request waivers as required and that DSAMH will consider reasonable alternative practices designed to maintain quality of care.

C. Provide a statement that states that when DSAMH standard is in conflict with DOC's policies and procedures, the DOC's policies and procedures will supersede DSAMH standard.

Agency Response: DSAMH and DOC have discussed alternatives to the application of the proposed standards with respect to DOC programs. It has been determined that the best course at this time is to apply the proposed standards. DSAMH and DOC have agreed that, where necessary to accommodate the requirements of the corrections environment, DOC programs will request waivers as required and that DSAMH will consider reasonable alternative practices designed to maintain quality of care.

D. §§7.1.2.1.3 (right to participate in grievance procedure); 7.1.2.1.4 (informing a client that treatment is voluntary); 12.4.1.3 (Privacy for personal hygiene) and 12.4.1.7 (Space for solitude) present as a hardship for DOC substance abuse programs. (Jim Elder of Civigenics and Steve Martin of the University of Delaware Drug and Alcohol Studies Department offered a similar comment.)

Agency Response: DSAMH and DOC have discussed alternatives to the application of the proposed standards with respect to DOC programs. It has been determined that the best course at this time is to apply the proposed standards. DSAMH and DOC have agreed that, where necessary to accommodate the requirements of the corrections environment, DOC programs will request waivers as required and that DSAMH will consider reasonable alternative practices designed to maintain quality of care.

E. Keep the old standard (§12.0) which states: "Alcoholism or drug abuse treatment programs operating within a correctional institution shall comply with standards applicable to program type, and in accordance with established regulations of the Department of Corrections as appropriate."

Agency Response: DSAMH and DOC have discussed alternatives to the application of the proposed standards with respect to DOC programs. It has been determined that the best course at this time is to apply the proposed standards. DSAMH and DOC have agreed that, where necessary to accommodate the requirements of the corrections environment, DOC programs will request waivers as required and that DSAMH will consider reasonable alternative practices designed to maintain quality of care.

Jim Elder of Civigenics offered the following observations and recommendations summarized below. DSAMH has considered each comment, found the comments to be helpful and instructive and have, adopted some of the suggestions made.

A. There are some ambiguities about what is meant by Clinical Director and Clinical Supervisor. The distinction is not clear. (Steve Martin and Daniel O'Connell of the University of Delaware Drug and Alcohol Studies Department and Ms. Samantha Hurd offered similar comment.)

Agency Response: DSAMH agrees that the distinction between Clinical Director and Clinical Supervisor is not clear. The definition of Clinical Director in §3.0 has been amended as follows: "Clinical Director' means an individual who, by virtue of education, training, and experience meets the requirements of 6.1.2.1 of these regulations; and is authorized by the Administrator to provide clinical and administrative oversight of the treatment program. The Clinical Director may also serve as Clinical Supervisor when directed to do so by the agency's governing body."

The definition of Clinical Supervisor in §3.0 has been amended as follows: “Clinical Supervisor’ means an individual who, by virtue of education, training and experience, satisfies the requirements of 6.1.3.1 of these regulations; and is authorized by the Administrator and/or the governing body to provide clinical supervision to all clinical staff.”

B. §6.1.2.1.1 as written requires a Master’ Degree. I would like DSAMH to add the following requirements for Clinical Director: 1.) Bachelor’s Degree in Counseling, Behavioral Science, Human Services, Sociology, Education, or Criminal Justice, 2.) a current CADC certification and 3.) Five years of experience in the field. (Bruce Johnson of PACE and Ms. Samantha Hurd offered similar comment.)

Agency Response: DSAMH accepts the recommendation to expand credentialing for the position of Clinical Director. The final order has been amended as follows: “6.1.2.1.2: A Bachelor’s Degree from an accredited college or university with a major in chemical dependency, psychology, social work, counseling, nursing or a related field, full certification as an alcohol and drug counselor and five (five) years of clinical experience in the substance abuse treatment field, including two years of management experience.

David Parcher, Executive Director of Kent and Sussex Counseling offered the following comments and recommendations summarized below. DSAMH has considered each comment, found the comments to be helpful and instructive and have, adopted some of the suggestions made.

A. §5.1.7.2 requires 30 hours of training annually instead of 20 hours which is the requirement for certification or professional clinical license. Providers are having difficulty meeting the current 20 hours of training per year. In addition, Six hours of cultural competence training is required under §5.1.7.3. This seems excessive. Who will review this to make sure it is alcohol and drug specific? (Howard Isenberg of Open Door, Inc., Michael Kriner of Gateway Foundation, Bruce Lorenz of Thresholds, Bruce Johnson of PACE, Inc. and David Parcher on behalf of the DCB offered similar comments.)

Agency Response: DSAMH agrees that the increase to 30 hours of training annually from 20 hours of training annually is excessive. The final order has been amended to read “Clinical supervisors and all staff providing counseling services to clients shall complete at least twenty (20) hours of training annually including: Ten (10) hours specific to training and education in the treatment of alcohol and other drugs of abuse; Three (3) hours specific to training and education in providing culturally competence services; and Three (3) hours of training specific to ethics training and education. (Note: Only §5.1.7.3, not §5.1.7.2, addresses hours of annual training; §5.1.7.3 has been amended accordingly.)

DSAMH’s Licensing and Medicaid Certification Unit will be responsible for reviewing documentation to determine if training is alcohol and drug specific.

B. Requirements for §6.1.3.1.2 for Clinical Supervisor should be more stringent if a CADC is not required. (David Parcher on behalf of DCB and Ms. Samantha Hurd offered similar comments.)

Agency Response: DSAMH agrees that the requirements for Clinical Supervisor are unclear. §6.1.3.1.2 has been amended as follows: “A Bachelor’s Degree from an accredited college or university with a major in chemical dependency, psychology, social work, counseling, nursing or a related field of study and five (5) years of documented clinical experience in the substance abuse treatment field.”

C. §6.1.4.1.3 appears to negate the importance of certification and the specific training and one on one supervision required to assure competence as a chemical dependency counselor.

(David Parcher on behalf of the Delaware Certification Board, Bruce Lorenz of Thresholds, Bruce Johnson of PACE, Inc and on behalf of the Delaware Association for Addictions Counselors and Ms. Samantha Hurd offered similar comments.)

Agency Response: DSAMH agrees that the requirements for Counselor I are unclear. §6.1.4.1.3 has been amended as follows: “Five (5) years of documented clinical experience working in the field of substance abuse

treatment.” DSAMH believes that this minimum requirement coupled with the required clinical supervision adequately assure competence as a chemical dependency counselor.

D. §8.1.2 will require additional data collected by the ASI and modification of the current face sheet. DSAMH reviewed paperwork burden with its contractual providers a couple of years ago. The proposed changes do not appear consistent with that effort.

Agency Response: DSAMH believes this to be a matter that is better addressed within the context of particular contract issues with its contracted providers.

E. §8.1.2 requires consent/disclosure regarding each medication (and its side effects) prescribed by the program physician. Would this apply to daily doses of methadone or suboxone or would consent/disclosure be completed just once?

Agency Response: In the case of medication consent/disclosure, the physician reviews the medication and its side effects before the first dose of the medication. Consent/disclosure is not needed for each dose of the medication.

F. §9.3.3 requires staff on site at all times who are trained in basic first aid and CPR. This will cause a financial burden. Would everyone on staff have to be trained?

Agency Response: Staff on site at all times who are trained in basic first aid and CPR provides assurances of appropriate intervention during medical emergencies. Programs are required to have at least one person available during hours of operation that have the mentioned training. DSAMH allows individual programs to determine whether or not they will train their entire staff.

G. §15.1.1.3 requires the treatment planning in accordance with §8.1.2.2 within thirty (30) days of admission or by the fourth (4) counseling session, whichever occurs first. Does this include group sessions? If so, it would present challenges in regard to getting the client actively involved in treatment and still complete the treatment plan by the fourth session.

Agency Response: The admission date referred to in §15.1.1.3 is established by the individual program. Treatment planning in accordance with §8.1.2.2 is required within 30 days of the established admission date, or by the fourth counseling session (whichever occurs first) and includes any treatment session that the consumer participates in as a part of their substance abuse treatment program. This may include group or individual treatment.

H. §14.0 (Opioid Treatment Services) requires testing for CBC, Hepatitis B, Hepatitis C and Tetanus immunization review. This will increase the cost of treatment per client significantly. (Janice Sneed of Brandywine Counseling, Inc. and Ms. Katherine Harding offered similar comments.)

Agency Response: In order to allow opioid program providers to establish standards of care for admission to opioid treatment DSAMH agrees that an amendment to §14.1.1.1.10 of the final order is needed. The amendment states: “Laboratory tests including serology and other tests deemed necessary by the program physician within 14 days of admission...”. Some tests specified in the sub-sections to §14.1.1.1.10 in the proposed standards have been removed and subsections have been renumbered as necessary.

I. §14.1.1.2 requires assessment of each client every (90) days by the program physician. This will result in more paperwork and more tracking.

Agency Response: §8.12(4)(f)(4) of CFR 42 (Part II) (Federal Standards for opioid treatment) state: “Each patient accepted for treatment at an OTP shall be assessed initially and periodically by qualified personnel to determine the most appropriate combination of services and treatment.” DSAMH will require assessment every 90 days in conjunction with clinical supervision and treatment plan review as per §15.1.1.4 of the amended final order.

J. §14.14.1.2 states that no client may receive more than two weeks of take homes. This is more restrictive than the federal guidelines (CFR 42 (Part II).) (Ms. Katherine Harding offered similar comments.)

Agency Response: DSAMH agrees that the proposed state standards should be consistent with federal regulations for opioid treatment. The final order has been amended to delete this restriction.

K. DSAMH had TRI review paperwork burden in an effort to reduce the burden on staff. This appears to conflict with that effort.

Agency Response: DSAMH believes this to be a matter that is better addressed within the context of particular contract issues with its contracted providers.

Michael Kriner, Community Director at Gateway Foundation offered the following comments and recommendations summarized below. DSAMH has considered each comment, found the comments to be helpful and instructive and have, adopted some of the suggestions made.

A. Should a counselor be doing the supervision of an intern? Wouldn't it be advisable for the clinical supervisor to supervise an intern?

Agency Response: At a minimum, a clinician should be responsible for the oversight of an intern. DSAMH acknowledges that many programs will assign supervision tasks to just the Clinical Supervisor. DSAMH also acknowledges that ultimately, the Clinical Supervisor is responsible for the overall clinical program.

B. "Licensed Practice Nurse" means a person licensed by the state of Delaware as a Practical Nurse. DSAMH should consider accepting nursing personnel who are licensed in states that are in the interstate compact.

Agency Response: DSAMH agrees that Practical Nurses licensed in states that participate in the National Licensure Compact (NLC) should be eligible for employment in Delaware substance abuse treatment programs. The final order will be amended to state: "'Licensed Practical Nurse' means a person licensed by the State of Delaware as a Practical Nurse or a person licensed by a state that participates in the National Licensure Compact (NLC)."

C. §5.1.4.2 requires that the Governing Body review and update the policy and procedure manual annually. We suggest that DSAMH allow a designee appointed by the Governing Body to review and update the policy and procedure manual annually.

Agency Response: DSAMH agrees that a Governing Body should have the authority to appoint a designee to review and update the policy and procedure manual annually. The final order has been amended to state: "The program's policies and procedures manual shall be reviewed at least annually by the governing body or its designee."

D. §6.1.1.2.1.2 requires two (2) years of management experience for individuals hired as program Administrators. Is management experience specific to management in substance abuse programs? We would suggest that management experience be specific to substance abuse programs.

Agency Response: The Governing Body will be responsible for making decisions about the type of management experience the program will accept for the position of Administrator. DSAMH declines this recommendation.

E. §6.1.3.1.1 requires a Clinical Supervisor to obtain a Bachelor's Degree from an accredited college or university...and full certification as an addictions counselor in the state of Delaware or nationally recognized body in addictions counseling. We believe that a person with a Master's Degree and a CADC would qualify as a Clinical Supervisor.

Agency Response: The requirements for Clinical Supervisor as outlined in §6.1.3.1.1 are minimum requirements for the position of Clinical Supervisor. Individuals with credentials that exceed the minimum requirement, as in the example provided, would meet the standard for Clinical Supervisor.

F. §6.1.5 outlines the qualifications and background for an Assistant Counselor (someone who has worked in the addictions field for less than five years) and suggests that this individual is able to provide the same functions as a Counselor. We suggest that this position have limited duties and more training.

Agency Response: The Assistant Counselor (now Counselor II) outlines minimum standards for individuals who are new to the substance abuse treatment field. DSAMH acknowledges that the standard as written causes confusion and implies that the Counselor II position is equivalent to the Counselor position. To clearly outline the increased level of supervision required for the Counselor II position, §5.1.6.4.2 of the final order has been amended and states: "Documentation of Supervision as required in 6.1.5.2 and 6.1.5.3." §6.1.5 has been amended to include: "§6.1.5.2. The individual must receive clinical supervision by the Clinical Supervisor a minimum of one (1) hour per every twenty (20) hours of clinical services provided to clients." and "§6.1.5.3 The Clinical Supervisor must review all documentation developed by the Counselor II for accuracy and clinical appropriateness."

G. §11.3.5 requires a counselor to be on site and available to clients at least eight (8) hours a day, seven (7) days per week and available on call twenty-four (24) hours a day. Would a supervisor suffice?

Agency Response: In considering this comment, DSAMH determined that §11.0 should be revised to Non-Residential Detoxification. §11.0 has been amended and the final order will state: "11.0 Standards Applicable to Non Residential Detoxification. §11.1 Services required as determined by the Division of Substance Abuse and Mental Health." §§ 11.2 through 11.4 have been struck from the final order.

Bruce Lorenz, Executive Director of Thresholds, Inc., offered the following comments and recommendations summarized below. DSAMH has considered each comment, found the comments to be helpful and instructive and have, adopted some of the suggestions made.

A. §5.1.6.3.5.8 requires documentation of the staff member's abilities to provide culturally competent services. While cultural competence is important this standard lends little clarity to determining competence. Beyond a statement asserting that the counselor is competent, how is this to be documented?

Agency Response: §§5.1.6.3.5.8; 5.1.7.1.1.6; 5.1.7.3.2; 5.1.8.3.1.1 and the definition section of the standards address cultural competence including documentation of staff's competence (§5.1.6.3.5.8); agency policies and procedures providing training for staff (§5.1.7.1.1.6); required hours of annual training for each staff person in cultural competence (§5.1.7.3.2); and the agency's responsibility to provide culturally competent clinical services including an agency self assessment to determine the cultural needs of the population that the agency serves (§§5.1.8.3.1.1 & 5.1.8.3.1.1.1) Documentation of how each standard is being met by the agency as well as documentation of staff training and consideration for culturally competent provision of services on the annual employee evaluation would all be acceptable means to document cultural competence.

B. §6.1.5.1.1 outlines the educational and experiential requirements for Assistance Counselor and refers the reader to §6.1.4. The referenced standard does not have an educational requirement.

Agency Response: DSAMH agrees that §6.1.4 does not identify educational requirements for the position of Assistant Counselor (Counselor II in the final order.) The final order has been amended to state: "§6.1.5.1.1 A person who does not meet the educational and experiential qualifications for the position of Counselor I as set forth in 6.1.4 may be employed as an Counselor II if the individual holds a minimum of a high school diploma or its equivalent and meets at least one of the following:"

C. §6.1.5.2 is accurate. "If someone waits around for five years they will qualify to meet the licensure standard.

Agency Response: DSAMH agrees that the requirements for Counselor I ("Counselor in the proposed order) and Counselor II (Assistant Counselor in the proposed order) are unclear. §6.1.4.1.3 has been amended as follows: "Five (5) years of documented clinical experience in the substance abuse treatment field." §6.1.5.1.1.1 "The individual has less than five (5) years of documented clinical experience in the substance abuse treatment field." DSAMH believes that this minimum requirement coupled with the required clinical supervision adequately

assure competence as a chemical dependency counselor. The language in §6.1.5.2 as proposed has been deleted.

D. §17.5.1.1.7 references the reader to §5.1.9 of the standards. There is no §5.1.9 in the standards.

Agency Response: DSAMH agrees that the reference is erroneous. The final order has been amended and the reference to §5.1.9 has been deleted.

E. In §5.1.7, staff training and development should include training a familiarity with MRSA as part of the training on infectious diseases.

Agency Response: The proposed standards are minimum standards of care. Agencies are encouraged to remain up to date on infectious diseases, including MRSA that may require further training for staff. Specific infectious diseases have not been named, but are left to the discretion of the program to be determined as appropriate to the needs of the program. DSAMH declines this recommendation.

(Daniel O'Connell offered this additional comment.)

The new standards set a lofty goal for higher levels of education without means to attain it. Other states (e.g. Maryland) offered reimbursement of tuition or partial tuition for other professions when the minimum educational goal was raised. It would be prudent to provide a mechanism so that interested parties can more suitably attain the goal.

Agency Response: DSAMH agrees that the minimum educational requirements may present as challenging to substance abuse treatment professionals. DSAMH is not in a position at this time to offer reimbursement for individuals pursuing college degrees.

Ms. Samantha Hurd offered the following observations and recommendations summarized below. DSAMH has considered each comment, found the comments to be helpful and instructive and have, adopted some of the suggestions made.

A. §6.1.3.1.1 references a degree in Chemical Dependency as an acceptable degree program. However, I am not aware of this type of degree at the Bachelor's level. I would like DSAMH to consider replacing the Chemical Dependency degree with one that is accessible in Delaware at the Bachelor's level.

Agency Response: §6.1.3.1.1. is a list of degrees that may be obtained by professionals within and outside of the state of Delaware (e.g. Delaware Technical Community College offers degrees and certificates in chemical dependency counseling). It is not meant to be exhaustive, but rather offer guidance in the human service skills needed by individuals seeking to provide substance abuse treatment. We also note that this section has been amended to include "or a related field of study." DSAMH declines this recommendation.

B. The proposed standards could possibly omit the current CADC qualifications for Clinical Supervisor. I would like to suggest that DSAMH consider making the CADC mandatory for Clinical Supervisors.

Agency Response: DSAMH acknowledges the CADC credential as a respected credential and supports individuals who continue to work toward credentialing as a CADC. DSAMH also acknowledges the work force crisis in regards to the shrinking number of CADC's in the state of Delaware. DSAMH declines this recommendation.

C. §6.1.2 implies that Clinical Directors would report to Administrators as outlined in §6.1.1. Administrators have less of an educational requirement. I believe this to be incongruent to typical management hierarchy.

Agency Response: The educational requirements in §§6.1.1 and 6.1.2 reference positions that may require different skill sets and therefore, different educational requirements. For example, The Clinical Director's position requires education and background that prepares an individual to deliver and supervise clinical services to substance abusing consumers. Administrators may not be called upon to deliver clinical services. Ultimately, hiring for the position of Administrator and minimum qualifications within the program would be established by the program's Governing Body.

***Please Note: Due to the size of the Substance Abuse Facility Licensing Standards regulation, it is not being published here. A copy of the regulation is available at:**

6001 Substance Abuse Facility Licensing Standards

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314, 322(a), 324 and 526
(18 Del.C. §§314, 322(a), 324 and 526)
18 DE Admin. Code 301

ORDER

301 Audited Financial Reports [Formerly Regulation 50]

Docket No. 2008-810

Proposed changes to Regulation 301 relating to Audited Financial Reports were published in the *Delaware Register of Regulations* on August 1, 2008. The comment period remained open until September 2, 2008. There was no public hearing on the proposed changes to Regulation 301. Public notice of the proposed changes to Regulation 301 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Comment was received in a joint letter from the American Council of Life Insurers, America's Health Insurance Plans, and the National Association of Mutual Insurance Companies. The comment questioned the need to make effective some provisions of the proposed changes as of January 1, 2008, while other provisions are effective in 2010. Additionally, the comment references certain paragraph numbering errors. The effective dates set forth in the amendment to Regulation 301 were selected to provide uniform implementation in the 50 states. The paragraph numbering errors have been corrected. The purpose of the proposed amendment is to update reporting and auditing requirements in order to better monitor the financial condition of insurance companies. These requirements are in compliance with the requirement of the Sarbanes-Oxley Act and create uniform auditing and reporting requirements in the 50 states.

Findings of Fact

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

The requirements of the amended Regulation 302, including effective dates, comply with the financial audit and reporting requirements of the Sarbanes-Oxley Act and best serve the interests of the public and of insurers by making such requirements uniform.

Decision and Effective Date

Based on the provisions of 18 Del.C. §§ 314, 322(a), 324, 526 and 29 Del.C. §§ 10113-10118 and the record in this docket, I hereby adopt Regulation 301 as amended and as may more fully and at large appear in the version attached hereto to be effective on October 11, 2008.

Text and Citation

The text of the proposed amendments to Regulation 301 last appeared in the *Register of Regulations* Vol. 12, Issue 2, pages 140-158.

IT IS SO ORDERED this 15th day of September 2008.

Matthew Denn, Insurance Commissioner

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

301 Audited Financial Reports

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

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

Secretary's Order No.: **2008-A-0039**

1138 Emission Standards For Hazardous Air Pollutants For Source Categories

RE: Proposed Adoption of Section 11.0: "Area Source Lead Acid Battery Manufacturing Standard" into existing Air Regulation 1138: *Emission Standards for Hazardous Air Pollutants for Source Categories*

Date of Issuance: September 10, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Tuesday, July 29, 2008, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on the proposed adoption of Section 11.0, "Area Source Lead Acid Battery Manufacturing Standard" into existing Delaware Regulation 1138, Emission Standards for Hazardous Air Pollutants for Source Categories. To serve as a brief background for this promulgation, it should be noted that Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants (HAPs) in the 1990 Amendments to the Clean Air Act. Under Section 112(k) – Area Source Program, Congress mandated that the EPA identify 30 or more HAPs that posed the greatest threat to public health in urban areas, and to identify the small (i.e., "area") sources that emit any of those pollutants.

In 1999, the EPA identified 33 HAPs that posed the greatest threat to public health. Since that time, the EPA has identified over 60 area source categories for which standards are to be promulgated. The EPA promulgated its first of these area source standards in 2006, and they are under Court-ordered deadlines to complete all promulgations by June 2009. 40 CFR Part 63, Subpart PPPP constitutes the Department's starting point for the development of this State of Delaware proposed regulation.

In July 2007, the EPA promulgated its first area source standard affecting a Delaware source: the lead acid battery manufacturing standard. The Johnson Controls facility, located in Middletown, Delaware, is the only known Delaware source that will be subject to this standard. Representatives from that facility were in communication with the Department during the pre-hearing phase of this matter to learn more about this proposed regulatory action.

No members of the public attended this hearing on July 29, 2008, and no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 5, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to this proposed regulatory action, as reflected in the Hearing Officer's Memorandum of September 5, 2008, which again is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and has determined that Johnson Controls does not qualify for the additional considerations that would be afforded to small business in such matters;
6. Promulgation of these proposed amendments would update Delaware's requirements to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The minor non-substantive changes made to this regulation will correct clerical errors which were contained in the initial regulatory language, and provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation (with changes), as published in the July 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "C" of the Hearing Office's Memorandum attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;
10. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulation* for publication in its next available issue, and shall provide written notice to those affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated September 5, 2008, and expressly incorporated herein, it is hereby ordered that the proposed adoption of Section 11.0, "Area Source Lead Acid Battery Manufacturing Standard" into existing Delaware Regulation 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories*, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of Section 11.0 into State of Delaware Regulation 1138 will bring Delaware into compliance with Federal standards by updating Delaware's requirements, where appropriate, to be consistent with the same. Additionally, the minor non-substantive changes being made to this regulation will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

1138 Emission Standards For Hazardous Air Pollutants For Source Categories

10/11/08

11.0 ~~Reserved~~ **Emission Standards for Hazardous Air Pollutants for Area Source Lead Acid Battery Manufacturing Plants**

11.1 Applicability.

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

11.2 Definitions.

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

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

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

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

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

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

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

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

11.3 Compliance Dates.

11.3.1 The owner or operator of an existing affected source shall be in compliance with the applicable provisions of 11.0 of this regulation by no later than October 11, 2008.

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

11.3.3 The owner or operator of a new or reconstructed affected source that has an initial startup after July 16, 2007 shall be in compliance with the provisions of 11.0 of this regulation immediately upon startup or October 11, 2008, whichever is later.

11.4 Standards.

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

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

11.4.3 Emission and opacity limitations for affected sources.

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

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

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

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

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

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

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

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

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

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

where:

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

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

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

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

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

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

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

11.4.5.2 The monitoring frequency for each control device.

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

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

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

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

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

11.5 Performance testing requirements.

11.5.1 Initial compliance demonstration.

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

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

11.5.2 Ongoing performance test requirements.

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

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

11.6 Monitoring requirements.

- 11.6.1 The owner or operator of each affected source subject to the provisions of 11.0 of this regulation shall be in compliance with the monitoring requirements in 11.6.2 and 11.6.3 of this regulation.
- 11.6.2 For any exhaust gas stream controlled by a scrubbing system, the owner or operator shall install, calibrate, maintain, and operate a monitoring device that measures and records the differential pressure drop across each scrubbing system at least once every 15 minutes. The monitoring device shall have an accuracy of $\pm 5\%$ over its operating range.
- 11.6.3 For any exhaust gas stream controlled by a fabric filter, the owner or operator shall be in compliance with the requirements in 11.6.3.1 through 11.6.3.3 of this regulation. Fabric filters equipped with a high efficiency particulate air (HEPA) filter or other secondary filter are allowed to monitor less frequently, as specified in 11.6.3.4 of this regulation.
- 11.6.3.1 The owner or operator shall perform quarterly inspections and maintenance to ensure proper performance of each fabric filter. This quarterly inspection includes inspection for structural and filter integrity. The owner or operator shall record the results of these inspections and any maintenance performed.
- 11.6.3.2 The owner or operator shall install, maintain, and operate a pressure drop monitoring device to measure the differential pressure drop across the fabric filter during all times that the process is operating. Except as provided in ~~[11.6.4 11.6.3.4]~~ of this regulation, the differential pressure drop shall be recorded at least once per day. If a pressure drop is observed outside of the normal operating ranges, the owner or operator shall take immediate corrective action. The owner or operator shall also record the incident and the corrective actions taken. The owner or operator shall submit a monitoring system performance report in accordance with 3.10.5.3 of this regulation.
- 11.6.3.3 The owner or operator shall conduct a visible emissions observation at least once per week to verify that no visible emissions are occurring at the discharge point to the atmosphere from any exhaust gas stream subject to the requirements in 11.4 of this regulation. If visible emissions are detected, the owner or operator shall record the incident and conduct an opacity measurement in accordance with 11.7.4 of this regulation. The owner or operator shall record the results of each opacity measurement. If the measurement exceeds the applicable opacity standard in 11.4.3.7 or 11.4.3.8 of this regulation, the owner or operator shall submit this information in an excess emissions report required under 3.10.5.3 of this regulation.
- 11.6.3.4 If the fabric filters are equipped with a HEPA filter or other secondary filter, the owner or operator shall record the differential pressure drop at least once per week. If a pressure drop is observed outside of the normal operating ranges, the owner or operator shall take immediate corrective action. The owner or operator shall also record the incident and the corrective actions taken. The owner or operator shall submit a monitoring system performance report in accordance with 3.10.5.3 of this regulation.

11.7 Test methods and procedures.

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

$$E_{tp} = \left[\sum_{a=1}^n (C_a * Q_a) \right] / \sum_{a=1}^n Q_a \quad (11-2)$$

where:

- E_{tp} = lead emission rate from the three-process operation facility, mg/dscm (gr/dscf).
- n = total number of control devices to which different operations in the three-process operation facility are ducted.
- C_a = concentration of lead emissions in the exhaust gas stream from each control device, a, mg/dscm (gr/dscf).
- Q_a = volumetric flow rate of exhaust gas stream from each control device, a, dscm/hr (dscf/hr).

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

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

$$E_{lo} = \left[\sum_{i=1}^m (C_i * Q_i) \right] / (P * K) \quad (11-3)$$

where:

- E_{lo} = lead emission rate from the lead oxide manufacturing facility, mg/kg (lb/ton) of lead charged.
- m = total number of exhaust gas streams in the lead oxide manufacturing facility.
- C_i = concentration of lead from each exhaust gas stream, i, mg/dscm (gr/dscf).
- Q_i = volumetric flow rate of each exhaust gas stream, i, dscm/hr (dscf/hr).
- P = average lead feed rate to the lead oxide manufacturing facility, kg/hr (ton/hr).
- K = conversion factor, 1.0 mg/mg (7000 gr/lb).

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

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

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

where:

- P = average lead feed rate to the lead oxide manufacturing facility, kg/hr (ton/hr).
- N = number of lead pigs (ingots) charged.
- W = average mass of a pig (ingot), kg (ton).
- T = duration of run, hr.

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

11.8 Recordkeeping requirements.

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

FINAL REGULATIONS

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

- 11.8.2.1 Inspection records for the control devices and monitoring equipment, to document that the inspection and maintenance required by the startup, shutdown, and malfunction plan in 11.4.5 of this regulation and by 11.6.3.1 of this regulation have taken place. The record can take the form of a checklist and should identify the control device and monitoring equipment inspected, the date of inspection, a brief description of the working condition of the control device during the inspection, and any actions taken to correct deficiencies found during the inspection.
- 11.8.2.2 Records of all maintenance performed on the affected source, the control devices, and monitoring equipment.
- 11.8.2.3 Records of the occurrence, duration, and cause (if known) of each malfunction of process, control devices, or monitoring equipment.
- 11.8.2.4 Records of actions taken during periods of malfunction when such actions are inconsistent with the startup, shutdown, and malfunction plan.
- 11.8.2.5 Other records, which may take the form of checklists, necessary to demonstrate conformance with the provisions of the startup, shutdown, and malfunction plan in 11.4.5 of this regulation.
- 11.8.2.6 Test reports documenting results of all performance tests.
- 11.8.2.7 All measurements as may be necessary to determine the conditions of performance tests, including measurements necessary to determine compliance with the equivalent emission limitation in 11.4.4 of this regulation.
- 11.8.2.8 Records of monitoring data required in 11.6 of this regulation that are used to demonstrate ongoing compliance including the date and time the data are collected.
- 11.8.2.9 The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions, as indicated by monitoring data, that occurs during malfunction of the process, control devices, or monitoring equipment.
- 11.8.2.10 The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions, as indicated by monitoring data, that occurs during periods other than malfunction of the process, control devices, or monitoring equipment.
- 11.8.2.11 All other startup, shutdown, and malfunction plan information required in 11.4.5.6 of this regulation.
- 11.8.2.12 All documentation supporting the notifications and reports required in 11.9 of this regulation and in 3.9 and 3.10 of this regulation.

11.8.3 All records shall be maintained for a period of at least five years in accordance with 3.10.2.1 of this regulation.

11.9 Notification and reporting requirements.

11.9.1 The owner or operator of each affected source subject to 11.0 of this regulation shall fulfill all notification and reporting requirements outlined in 3.0 and 11.9 of this regulation, according to the applicability of 3.0 of this regulation, as identified in Table 11-1 of this regulation. These reports shall be submitted to the Administrator and to the Department, in accordance with 3.10.1.4.2 of this regulation.

11.9.2 At a minimum, the owner or operator of an affected source subject to 11.0 of this regulation shall submit to the Department in writing the following notifications and reports.

11.9.2.1 For [existing] affected sources ~~[that have an initial startup before July 16, 2007]~~, the initial notification required by 3.9.2 of this regulation shall be submitted no later than October 11, 2008.

11.9.2.2 For [new or reconstructed] affected sources ~~[that have an initial startup before July 16, 2007]~~, the initial notification shall be submitted in accordance with ~~[3.9.2.2]~~ 3.9.2.4 or 3.9.2.5 of this regulation, whichever is applicable.

- 11.9.2.3 For affected sources required to conduct a performance test by 11.5 of this regulation, the notification of compliance status required by 3.9.8 of this regulation shall be submitted no later than **[99 60]** calendar days following completion of the compliance demonstration required in 11.5.
- 11.9.2.4 For affected sources not required to conduct an initial performance test by 11.5 of this regulation, the notification of compliance status required by 3.9.8 of this regulation shall be submitted no later than March 13, 2009.
- 11.9.2.5 For affected sources required to conduct an initial performance test by 11.5 of this regulation, the notification of compliance status **[s]**hall be submitted in accordance with 3.9.8 of this regulation.
- 11.9.2.6 The notification of a performance test shall be submitted in accordance with 3.9.5 of this regulation.
- 11.9.2.7 The notification of opacity and visible emission observations shall be submitted in accordance with 3.9.6 of this regulation.
- 11.9.2.8 The results of performance tests shall be reported in accordance with 3.10.4.2 of this regulation.
- 11.9.2.9 The results of opacity or visible emission observations performance tests shall be reported along with the results of the performance tests in accordance with 3.10.4.3 of this regulation.
- 11.9.2.10 The startup, shutdown, and malfunction reports shall be submitted in accordance with 3.10.4.5 of this regulation.
- 11.9.2.11 The excess emissions and continuous monitoring system performance report and summary report shall be submitted in accordance with 3.10.5 of this regulation.

11.10 Applicability of general provisions.

The owner or operator of an affected sources subject to the provisions of 11.0 of this regulation shall also be in compliance with the provisions in 3.0 of this regulation, that are applicable to 11.0 as specified in Table 11-1 of this regulation.

11.11 ~~**[Equivalent methods of control]**~~ **Additional compliance requirements**].

~~**[Upon written application, the Department may approve the use of control technologies, other than scrubbers and fabric filters, after the owner or operator has satisfactorily demonstrated the alternative control technology is equivalent in terms of reducing emissions of lead to the atmosphere in accordance with 11.4.1 through 11.4.4 of this regulation. The application shall contain a complete description of the equipment and the proposed testing procedures to initially demonstrate equivalency. The application shall also include the operating, maintenance, monitoring, recordkeeping and reporting procedures required to demonstrate ongoing equivalency.**~~

- 11.11.1 If the owner or operator of an affected source subject to 11.0 of this regulation elects to use a control technology other than scrubbers or fabric filters to comply with the requirements of 11.4 of this regulation, the owner or operator shall:
 - 11.11.1.1 Submit to the Department a startup, shutdown and malfunction plan consistent with the requirements of 11.4.5 of this regulation.
 - 11.11.1.2 Submit to the Department, consistent with the requirements of 11.5.1, the following, whichever is applicable.
 - 11.11.1.2.1 The proposed performance testing procedures and protocols necessary to demonstrate compliance with the requirements of 11.4.1 through 11.4.4 of this regulation or
 - 11.11.1.2.2 The results of the latest performance test demonstrating compliance with the requirements of 11.4.1 through 11.4.4 of this regulation.
 - 11.11.1.3 Submit to the Department an application under 7 DE Admin. Code 1102 of State of Delaware "Regulations Governing the Control of Air Pollution" that proposes

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monitoring, recordkeeping and reporting requirements needed to demonstrate ongoing compliance with the provisions of 11.0 of this regulation.

11.11.2 The operation of the control technology shall be made federally enforceable in a permit issued pursuant to 7 DE Admin. Code 1102 of State of Delaware "Regulations Governing the Control of Air Pollution".]

11.12 [Reserved]

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

General		
Provisions	Applies to	
Reference	11.0	Comments
<u>3.1.1.1</u>	Yes	<u>Additional terms defined in 11.2 of this regulation; when overlap between 3.0 and 11.0 of this regulation occurs, 11.0 takes precedence.</u>
<u>3.1.1.2-3.1.1.3</u>	Yes	
<u>3.1.1.4</u>	Yes	<u>11.0 of this regulation clarifies the applicability of each paragraph in 3.0 of this regulation to sources subject to 11.0.</u>
<u>3.1.1.5</u>	No	
<u>3.1.1.6</u>	Yes	
<u>3.1.1.7-3.1.1.9</u>	No	
<u>3.1.1.10-3.1.1.12</u>	Yes	
<u>3.1.1.13-3.1.1.14</u>	No	
<u>3.1.2.1</u>	Yes	
<u>3.1.2.2</u>	Yes	
<u>3.1.2.3</u>	Yes	
<u>3.1.3.1</u>	Yes	<u>11.0 of this regulation clarifies the applicability of each paragraph in 3.0 of this regulation to sources subject to 11.0.</u>
<u>3.1.3.2</u>	Yes	<u>11.1.4 of this regulation exempts area sources from the obligation to obtain Title V operating permits.</u>
<u>3.1.3.3</u>	No	
<u>3.1.3.4</u>	No	
<u>3.1.3.5</u>	Yes	
<u>3.1.4</u>	No	
<u>3.1.5</u>	Yes	
<u>3.2</u>	Yes	<u>Additional terms defined in 11.2 of this regulation; when overlap between 3.0 and 11.0 of this regulation occurs, 11.0 takes precedence.</u>
<u>3.3</u>	Yes	
<u>3.4.1.1-3.4.1.2</u>	Yes	
<u>3.4.1.3-3.4.1.5</u>	No	
<u>3.4.2-3.4.2.2</u>	Yes	
<u>3.4.2.3</u>	No	
<u>3.4.3</u>	Yes	
<u>3.5.1</u>	Yes	
<u>3.5.2.1</u>	Yes	
<u>3.5.2.2</u>	No	
<u>3.5.2.3-3.5.2.4</u>	Yes	
<u>3.5.2.5</u>	No	

<u>3.5.2.6</u>	<u>Yes</u>	
<u>3.5.3</u>	<u>No</u>	
<u>3.5.4.1.1-3.5.4.1.2.8</u>	<u>Yes</u>	
<u>3.5.4.1.2.9</u>	<u>No</u>	
<u>3.5.4.1.2.10</u>	<u>Yes</u>	
<u>3.5.4.1.3</u>	<u>Yes</u>	
<u>3.5.4.2-3.5.4.4</u>	<u>Yes</u>	
<u>3.5.5</u>	<u>Yes</u>	
<u>3.5.6-3.5.6.1.1</u>	<u>Yes</u>	
<u>3.5.6.1.2-3.5.6.1.4</u>	<u>No</u>	
<u>3.5.6.2</u>	<u>Yes</u>	
<u>3.6.1</u>	<u>Yes</u>	
<u>3.6.2-3.6.2.5</u>	<u>Yes</u>	
<u>3.6.2.6</u>	<u>No</u>	
<u>3.6.2.7</u>	<u>Yes</u>	
<u>3.6.3.1-3.6.3.2</u>	<u>Yes</u>	
<u>3.6.3.3-3.6.3.4</u>	<u>No</u>	
<u>3.6.3.5</u>	<u>Yes</u>	
<u>3.6.4</u>	<u>No</u>	
<u>3.6.5-3.6.5.1</u>	<u>Yes</u>	
<u>3.6.5.2</u>	<u>No</u>	
<u>3.6.5.3</u>	<u>Yes</u>	<u>Except that 11.4.5 specifies the minimum that the startup, shutdown, and malfunction plan shall contain.</u>
<u>3.6.6</u>	<u>Yes</u>	
<u>3.6.7</u>	<u>Yes</u>	
<u>3.6.8-3.6.8.2.1</u>	<u>Yes</u>	
<u>3.6.8.2.2</u>	<u>No</u>	
<u>3.6.8.2.3-3.6.8.2.3.4</u>	<u>Yes</u>	
<u>3.6.8.3</u>	<u>No</u>	
<u>3.6.8.4-3.6.8.5.3</u>	<u>Yes</u>	
<u>3.6.8.5.4</u>	<u>No</u>	
<u>3.6.8.5.5-3.6.8.9.4</u>	<u>Yes</u>	
<u>3.6.9-3.6.9.5</u>	<u>Yes</u>	
<u>3.6.9.6.1.1-3.6.9.6.1.2.1</u>	<u>Yes</u>	
<u>3.6.9.6.1.2.2</u>	<u>No</u>	
<u>3.6.9.6.1.2.3-3.6.9.6.1.2.4</u>	<u>Yes</u>	
<u>3.6.9.6.1.3-3.6.9.6.1.4</u>	<u>No</u>	
<u>3.6.9.6.2-3.6.9.7</u>	<u>Yes</u>	
<u>3.6.9.8</u>	<u>Yes</u>	
<u>3.6.9.9</u>	<u>Yes</u>	
<u>3.6.9.10.1-3.6.9.10.4</u>	<u>Yes</u>	
<u>3.6.9.10.5.1</u>	<u>Yes</u>	
<u>3.6.9.10.5.2-3.6.9.14</u>	<u>Yes</u>	

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<u>3.6.9.15</u>	<u>No</u>	
<u>3.6.9.16</u>	<u>Yes</u>	
<u>3.6.10</u>	<u>Yes</u>	
<u>3.7.1.1</u>	<u>Yes</u>	
<u>3.7.1.2-3.7.1.2.8</u>	<u>No</u>	
<u>3.7.1.3</u>	<u>Yes</u>	
<u>3.7.2.1-3.7.2.2</u>	<u>Yes</u>	
<u>3.7.3</u>	[No Yes]	
<u>3.7.4</u>	<u>Yes</u>	
<u>3.7.5-3.7.7.1</u>	<u>Yes</u>	
<u>3.7.7.2</u>	<u>No</u>	
<u>3.7.7.3-3.7.8.5</u>	<u>Yes</u>	
<u>3.8.1.1-3.8.1.2</u>	<u>Yes</u>	
<u>3.8.1.3</u>	<u>No</u>	
<u>3.8.1.4-3.8.7</u>	<u>Yes</u>	
<u>3.9.1-3.9.1.3</u>	<u>Yes</u>	
<u>3.9.1.4.1</u>	<u>No</u>	
<u>3.9.1.4.2-3.9.2.2.4</u>	<u>Yes</u>	
<u>3.9.2.2.5</u>	<u>No</u>	
<u>3.9.2.3</u>	<u>No</u>	
<u>3.9.2.4-3.9.2.4.1</u>	<u>Yes</u>	
<u>3.9.2.4.2-3.9.2.4.4</u>	<u>No</u>	
<u>3.9.2.4.5-3.9.8.3</u>	<u>Yes</u>	
<u>3.9.8.4</u>	<u>No</u>	
<u>3.9.8.5-3.9.10</u>	<u>Yes</u>	
<u>3.10.1-3.10.1.3</u>	<u>Yes</u>	
<u>3.10.1.4.1</u>	<u>No</u>	
<u>3.10.1.4.2-3.10.3.1</u>	<u>Yes</u>	
<u>3.10.3.2-3.10.3.4</u>	<u>No</u>	
<u>3.10.3.5-3.10.3.8</u>	<u>Yes</u>	
<u>3.10.3.9</u>	<u>No</u>	
<u>3.10.3.10-3.10.4.4</u>	<u>Yes</u>	
<u>3.10.4.5</u>	<u>Yes</u>	
<u>3.10.5-3.10.5.3.1.2</u>	<u>Yes</u>	
<u>3.10.5.3.1.3</u>	<u>No</u>	
<u>3.10.5.3.2-3.10.6.6</u>	<u>Yes</u>	
<u>3.11</u>	<u>No</u>	<u>11.0 of this regulation does not require flares.</u>
<u>3.12-3.15</u>	<u>Yes</u>	

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 102(c), 504, 508, 510 and 513
(7 Del.C. §§102(c), 504, 508, 510 and 513)
7 DE Admin. Code 3311 and 3567

Secretary's Order No.: 2008-F-0048

Date of Issuance: September 15, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Wednesday, August 27, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed new Delaware Tidal Finfish Regulations 3567 and 3311 concerning the establishment of a registry system here in Delaware for both saltwater and freshwater fisherman, respectively. 7 Del.C., Chapter 5, proscribes licenses required for recreational fishing by residents and non-residents in Delaware fresh and tidal waters. In order to improve upon present means of determining recreational catch and effort in marine waters, by act of Congress in January of 2007, the federal National Marine Fisheries Service will establish a registry of recreational fishermen who fish in the federal coastal waters of the United States or who fish for anadromous species in state or federal coastal waters in 2009 and begin charging anglers for this registration in 2011. The fees so generated will be deposited in the federal treasury and not returned to the states according to existing federal plans.

The National Marine Fisheries Service has determined that any state such as Delaware that already has a complete name and address file of marine recreational fishermen via state-issued recreational fishing licenses will be exempt from the federal registry and the fees to be imposed. Delaware's recreational boat license, however, may cause Delaware to become a non-exempt state because the holder of a recreational boat license may take any number of non-licensed anglers with them on the licensed vessel. Thus, such unlicensed anglers would not be included in the database of all anglers. In addition, resident senior citizens age 65 and older also are exempt from Delaware recreational fishing license requirements. Therefore, to avoid a federal determination that Delaware is a non-exempt state, this regulation will establish a state-level registration process for all anglers fishing in Delaware at no additional cost to the angler. This new Delaware registration will be known as the FIN number (Fisherman Information Network).

Under this proposed registration system, ***all*** prospective Delaware anglers over the age of 16, whether they are licensed or not, will be required by this regulation to obtain a FIN number on an annual basis before fishing in Delaware waters. All hunters must presently comply with a similar federal registration process if they intend to hunt migratory birds (the HIP program). Those who also purchase a fishing license may write this FIN number on the space to be provided on their license. Those who do not need a fishing license (i.e., those who fall in the category of being legally unlicensed), but who intend to fish in Delaware's waters anyway, must carry their FIN number on their person.

The FIN number may be obtained in two ways: (1) by accessing a computer web site and following the directions; or (2) by phoning a toll-free number and following the verbal directions. The caller or computer user will be instructed to indicate whether they intend to fish in Delaware's freshwaters, marine (tidal) waters, or both, and then give their name, address, and phone number. Once all prospective Delaware fishermen have obtained a FIN number, Delaware will also be able to supply a complete computerized name, address, and telephone number file to the National Marine Fisheries Service, so that Delaware may be exempt from the federal recreational fishing registry and associated charges.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 Del.C. §§ 504, 508, 510, 513, 102(c), 903(a) and (b), and 903(f). Numerous members of the public attended this hearing on August 27, 2008 to ask questions and offer comment with regard to the Department's proposed new regulations concerning the FIN registry, and the same were taken into consideration during the Division's review of this proposed regulation.

Afterwards, the Hearing Officer prepared her report in the form of a Hearing Officer's Memorandum dated September 12, 2008. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided sound reasoning with regard to the proposed new regulations, as reflected in the Hearing Officer's Memorandum of September 12, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Congress authorized the National Marine Fisheries Service (NMFS) to compile a nationwide registry of all anglers fishing in saltwater beginning in 2009, and to begin charging for participation in this registry as of 2011;
7. Delaware's ability to provide a complete registry of its marine recreational fishermen from its state-issued fishing license program would result in Delaware anglers being exempt from participation in the aforementioned federal registry and federal license fees;
8. To avoid a federal determination that Delaware is a non-exempt state, the state-level registration process, to be known as the FIN program (Fisherman Information Network), would be established for all anglers fishing in Delaware;
9. This promulgation would require all prospective Delaware anglers age 16 or older, licensed or not, to obtain a FIN number on an annual basis before fishing in Delaware waters. The FIN number would be available at no cost to anglers by either calling a toll-free number or by providing requested information online. Each person who requests a FIN number should write this number on his or her fishing license, or for those who are legally unlicensed, be able to produce this number when asked by an authorized enforcement agent to do so;
10. Once all Delaware fishermen have obtained a FIN number and the NMFS has a copy of Delaware's saltwater angler registry, Delaware would be exempt from the federal marine recreational fishing registry and its charges;
11. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
12. The Department's proposed regulation, as published in the August 1, 2008 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
13. The Department's proposed new regulations, to wit: Delaware Non-Tidal Finfish Regulation 3311: Freshwater Fisherman Registry, and Delaware Tidal Finfish Regulation 3567: Tidal (Salt) Water Fisherman Registry, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulations, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
14. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 12, 2008 and expressly incorporated herein, it is hereby ordered that the proposed new regulations, to wit: Delaware Non-Tidal Finfish Regulation 3311: Freshwater Fisherman Registry, and Delaware Tidal Finfish Regulation 3567: Tidal (Salt) Water Fisherman Registry, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of these new regulations will enable the State of Delaware to formally establish the FIN (Fisherman Information Network) program, thus enabling Delaware to provide a complete registry of its marine recreational fishermen from its state-issued fishing license program. The institution of this FIN program will result in Delaware anglers being exempt from participation in the aforementioned federal registry and federal license fees, which are scheduled to begin in 2011. The program will not result in any additional cost to Delaware anglers, and it will enable the Department to use the data it generates for its own surveying needs in the future as well, for both marine fishing and for freshwater fishing.

In developing the FIN program, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** §§ 504, 508, 510, 513, 102(c), 903(a) and (b), and 903(f).

John A. Hughes, Secretary

3311 Freshwater Fisherman Registry

1.0 All persons ages 16 and older who wish to fish in Delaware's fresh or tidal waters or both in any given year must first obtain a Fisherman Identification Network (F.I.N.) number for the year in question before fishing. This number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for that purpose. Each person who requests a F.I.N. number is to write this number on his or her Delaware fishing license, or those who are legally unlicensed must be able to produce this number when checked by an enforcement agent when fishing in Delaware waters. Failure to provide a valid F.I.N. number for the year in question is a violation of 7 **Del.C.** §501 in the case of residents, or 7 **Del.C.** §506 in the case of non-residents, and will be treated the same as a failure to have a fishing license before going fishing. Information provided during the process of obtaining a F.I.N. number shall be treated as confidential and may only be shared with the National Marine Fisheries Service for the purpose of compliance with federal requirements for a national registry of marine fishermen.

3567 Tidal Water Fisherman Registry

1.0 All persons ages 16 and older who wish to fish in Delaware's fresh or tidal waters or both in any given year must first obtain a Fisherman Identification Network (F.I.N.) number for the year in question before fishing. This number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for that purpose. Each person who requests a F.I.N. number is to write this number on his or her Delaware fishing license, or those who are legally unlicensed must be able to produce this number when checked by an enforcement agent when fishing in Delaware waters. Failure to provide a valid F.I.N. number for the year in question is a violation of 7 **Del.C.** §501 in the case of residents, or 7 **Del.C.** §506 in the case of non-residents, and will be treated the same as a failure to have a fishing license before going fishing. Information provided during the process of obtaining a F.I.N. number shall be treated as confidential and may only be shared with the National Marine Fisheries Service for the purpose of compliance with federal requirements for a national registry of marine fishermen.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 102 and 103 (7 **Del.C.** §§102 & 103)
7 **DE Admin. Code** 3901

3900 Wildlife**Secretary's Order No.: 2008-F-0042 Regulation 3903****I. Background:**

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3903. The Department wishes to add three additional sub-sections to Regulation No. 3903 concerning Mute Swans. These revisions serve to clarify the existing regulations in this Section, as well as to expand hunting opportunity to minors, and to protect aquatic ecosystems in Delaware from severe damage by Mute Swans.

Additionally, it should be noted that this proposed action also included the intent to change the title of Regulation No. 3903 to simply read "Waterfowl". The Department had wished to change the title of this regulation because there are several items as contained within this section which do not specifically pertain to the Division's adoption of Federal laws and regulations. However, on the advice of the Department's enforcement personnel, they decided to keep the title as is.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received from them at that time. One e-mail offering public input was received by the Department prior to the hearing, and that suggestion was incorporated into these proposed amendments. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the same, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would expand hunting opportunity for minors and protect aquatic ecosystems in Delaware from severe damage by Mute Swans;
7. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt or practice aviculture;
8. The Department's proposed amendments to Regulation 3903 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware Register of Regulations; and that
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3903 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3903, will aide the Department in its ability to provide better clarity to Delaware hunters with regard to the regulations concerning Mute Swans as contained in this section. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to expand hunting opportunity for minors and to protect aquatic systems here in Delaware from severe damage by Mute Swans.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

Secretary's Order No.: 2008-F-0042 Regulation 3905**I. Background:**

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3905: Wild Turkey (2008). These proposed revisions would allow the Division's new Hunter Safety Coordinator to recognize and accept as "Division-approved" additional courses of instruction in turkey hunting that have been officially sponsored and sanctioned by other state or provincial hunter education programs. Additionally, the Division has proposed a special "youth day" for turkey hunting in Delaware (as there are already special "youth days" for waterfowl and deer hunting), with the condition that it will only be allowed on private lands.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would allow the State of Delaware's Hunter Safety Coordinator to recognize and accept other state and/or provincial hunter education programs which are officially sponsored and sanctioned outside the State of Delaware as being Division-approved courses of instruction in turkey hunting;

7. Promulgation of these proposed amendments would also create a special "youth day" for turkey hunting here in Delaware. This activity will be restricted to only private land. Private land owners and/or hunting clubs may decide for themselves whether they wish to participate, and how they wish to do so;

8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt wild turkeys;

9. The Department's proposed amendments to Regulation 3905 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware Register of Regulations; and that

10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3905 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3905: Wild Turkeys will aide the Department in its ability to expand hunting opportunities for young hunters, and make it easier for non-residents to participate in Delaware wild turkey hunting.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

Secretary's Order No.: 2008-F-0043 Regulation 3907

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3907: Deer (2008). These proposed revisions would expand hunting opportunities for young hunters, and would clarify regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would expand hunting opportunities in Delaware for young hunters by dropping the minimum age requirement from 12 years old to 10 years old, thus corresponding with the age at which minors can obtain the Department's hunter certification to hunt deer;
7. Promulgation of these proposed amendments would also clarify the existing regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer here in Delaware;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt deer;
9. The Department's proposed amendments to Regulation 3907 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware Register of Regulations; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3907: Deer be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3907: Deer will aide the Department in its ability to expand hunting opportunities for young hunters, and clarify existing regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

Secretary's Order No.: 2008-F-0045 Regulation 3908**I. Background:**

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3908: General Rules and Regulations Governing Land and Waters Administered by the Division (2008). These revisions will improve hunting safety and quality on State of Delaware wildlife hunting areas where geocaching and letterboxing activities are permitting. In addition, the revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of 3908, and will be enforced as such by the Department with fines assessed accordingly.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the same, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would improve hunting safety and quality on state wildlife areas where hunting, geocaching and letterbox activities are permitted;
7. The revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of Regulation 3908, and will be enforced as such by the Department with fines assessed accordingly;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that participate in geocaching or letterbox activities;
9. The Department's proposed amendments to Regulation 3908 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware Register of Regulations; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3908 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3908, will aide the Department in its ability to improve hunting safety and quality on state wildlife hunting areas where hunting, geocaching and letterbox activities are permitted, while simultaneously protecting the natural resource itself.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

Secretary's Order No.: 2008-F-0047 Regulation 3920**I. Background:**

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive public comment on the proposed new Delaware Wildlife Regulation No. 3920: Game Bird Releases (2008). This new regulation would require that people who raise and release domestically-raised game birds (in particular, quail, pheasant, chukar partridge and Hungarian partridge) into the wild, primarily either for dog training purposes and/or for hunting purposes, obtain a permit from the Division to do so. This new regulation also requires those birds to be leg-banded prior to release. Permitted banders must report the band numbers of the birds released, the type of bird released, and the release date and location.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to this proposed new regulation, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of this new regulation will allow the Department to monitor release activities and better determine what proportion of the reported game bird harvest is made up of native wild birds versus released game farm birds;
7. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that participate in raising and releasing game birds;
8. The Department's proposed new Regulation 3920 is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware Register of Regulations; and that
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed new State of Delaware Regulation No. 3920: Game Bird Release be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3920, will enable the Department to monitor release activities and better determine what proportion of the reported game bird harvest is made up of native birds versus released game farm birds.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

Secretary's Order No.: 2008-F-0046 Regulation 3921

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive public comment on the proposed new Delaware Wildlife Regulation No. 3921: Guide

License Requirements (2008). Last year, the General Assembly made several license changes here in Delaware. One such change concerned new guidelines for those persons who are in the business of guiding hunters and charging for that service. At that time, there was not enough time for the Department to prepare regulations related to that new license statute. Instead, a policy was developed for the Department concerning this matter, which defined the requirements related to the Delaware Guide License as found in 7 **Del.C.**, Chapter 5. This new regulation would simply take this policy and convert it into a formal State of Delaware regulation.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the same, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of this new regulation will allow the Department to take the policy as developed last year and convert it into a formal State of Delaware Regulation. No additional or increased costs would apply with this conversion. The new regulation will define the requirements related to the Delaware Guide License as found in 7 **Del.C.**, Chapter 5;
7. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that provide a guiding service to hunters;
8. The Department's proposed new Regulation 3921 is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware Register of Regulations; and that
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed new State of Delaware Regulation No. 3921: Guide License Requirements be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3921, will enable the Department to take the policy as developed last year and convert it into a formal State of Delaware Regulation. No additional or increased costs would apply with this conversion. The new regulation will define the requirements related to the Delaware Guide License as found in 7 **Del.C.**, Chapter 5.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

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

3901 Wildlife, Sections 3.0, 5.0, 7.0, 8.0, 20.0, and 21.0

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

2600 Examining Board of Physical Therapists and Athletic Trainers

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

ORDER

The Examining Board of Physical Therapists and Athletic Trainers ("the Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §2604(a)(1) to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §2604(a)(1), the Board has proposed revisions to Rule 1.2.3 of its Rules and Regulations. Rule 1.2.3 addresses supervision of a Physical Therapist Assistant who has one year or more experience. Currently, the Physical Therapist Assistant must receive on-site, face to face supervision, by the supervising Physical Therapist, at least once every fifth treatment day or once every three weeks, whichever occurs first.

The amended Rule 1.2.3 states that the supervising Physical Therapist must see the patient at least one every sixth treatment day, and the Physical Therapist Assistant must receive on-site, face to face supervision at least once every twelfth treatment day.

The Board originally published proposed revisions to Rule 1.2.3 in the *Delaware Register of Regulations* on May 1, 2008, Volume 11, Issue 11. A public hearing was held on May 27, 2008. As the result of the public comments, the Board decided to make substantive revisions to the proposed amendments.

Pursuant to 29 **Del.C.** §10115, notice of the second public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, July 1, 2008, Volume 12, Issue 1.

Summary of the Evidence and Information Submitted

The original revisions to Rule 1.2.3, published on May 1, 2008, required on-site face to face supervision of the Physical Therapist Assistant at least once every twelfth visit or once every four weeks, whichever occurs first. These proposed revisions further stated that, in addition to providing the required supervision of the Physical Therapist Assistant, the supervising Physical Therapist must also see the patient at least once every sixth treatment day.

Shortly before the May 27, 2008 hearing, Mr. Joseph Lucca of the Delaware Physical Therapy Association presented written comments on the proposed revisions. He suggested that the supervising Physical Therapist see

the patient every fifth visit or once every two weeks, whichever occurs first. However, Mr. Lucca appeared at the hearing and stated that he was withdrawing his written comments and supported the Board's proposed revisions.

Ms. Pam Reuther, Director of Easter Seals of Delaware, stated her view that the Board's role is to ensure public access to services and the safety of patients. She felt that the proposed revisions to Rule 1.2.3 could improve patient access to services, although, due to resources, having the Physical Therapist see the patient every sixth visit could be challenging.

Ms. Reuther did express concern regarding the provision stating that the Physical Therapist assistant must have on-site, face to face supervision every twelfth visit or once every four weeks, whichever occurs first. Ms. Reuther stated that the "once every four weeks" language could have unreasonable results. She gave as an example a patient who is seen twice a week. The Physical Therapist would be required to see the patient on the sixth visit, during the third week, and then return for a co-visit during the fourth week.

Mr. Lucca spoke again briefly to reiterate his support for the Board's proposed revisions.

Cyd Barry, a Physical Therapist with VNA, stated that she felt that having the Physical Therapist see the patient every sixth visit, and then having a co-visit every twelfth visit, would be appropriate and would meet the needs of the patient. She noted that the current provision requiring a co-visit every fifth treatment day has been difficult to accomplish given resources in the profession. She agreed with Ms. Reuther that the "once every four weeks" language should be eliminated.

After the public comment, the Board deliberated and agreed with the comments of Ms. Reuther and Ms. Barry regarding the "once every four weeks" language. The Board determined that Rule 1.2.3 should be revised once again and re-published.

As noted herein, on July 1, 2008, second proposed revisions to Rule 1.2.3 were published in the *Register of Regulations*. Pursuant to the new revisions, the Physical Therapist must see the patient at least one every sixth treatment day, and the Physical Therapist Assistant must receive on-site, face to face supervision at least once every twelfth treatment day.

A public hearing on the most recent revisions to Rule 1.2.3 was held on July 22, 2008.

Written comment was received from Candace Bartlett, Government Relations Issues Consultant with Aegis Therapies. Ms. Bartlett opposed the revision requiring the Physical Therapist to see the patient on every sixth treatment day. She argued that the requirement was too restrictive and would reduce the provision of services to the public.

Findings of Fact

At the May 27, 2008 hearing, the Board considered the public comments and concluded that Ms. Reuther and Ms. Barry were correct in their statements that including the "once every four weeks" language would, in some instances, lead to unreasonable results, which the Board never intended. Consequently, the Board decided to publish further revisions to Rule 1.2.3. Pursuant to those revisions, the Physical Therapist must see the patient at least one every sixth treatment day, and the Physical Therapist Assistant must receive on-site, face to face supervision at least once every twelfth treatment day.

At the July 22, 2008 hearing, the Board considered the written submission by Ms. Bartlett and disagreed with her conclusions. Pursuant to the revisions to Rule 1.2.3, the Physical Therapist and Physical Therapist Assistant are given more discretion and flexibility in providing services to the public. The revisions will bring Delaware into line with standards in other states and will result in a more efficient use of resources in the profession. The proposed amendments will thus serve to protect the public.

The Board therefore adopted the revisions to Rule 1.2.3 as published on July 1, 2008 in the *Register of Regulations*.

Decision and Effective Date

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

Text and Citation

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

IT IS SO ORDERED this 26h day of August 2008, by the Examining Board of Physical Therapists and Athletic Trainers.

Gary Nowell, Chairperson Denise Smith, Vice Chairperson

Katherine Daniello William Holland

Kristen Burris Sharon Harris

Steven Kotrch

****Please note that no changes were made to the regulation as originally proposed and published in the July 2008 issue of the *Register* at page 53 (12 DE Reg. 53). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2600 Examining Board of Physical Therapists and Athletic Trainers

HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code, Section 4506 (6 Del.C. 4506)
1 DE Admin. Code 1501 and 1502

ORDER

1501 Equal Accommodations Regulations

A public hearing was held on September 11, 2008 to receive comments related to proposed amendments to the Equal Accommodations Regulations of the State Human Relations Commission ("Commission").

The Commission, in accordance with 29 **Del.C.** Chapter 101 and 6 **Del.C.** §4506, proposed amendments to the Equal Accommodations Regulations to clarify hearing procedures and to comply with changes to "The Delaware Equal Accommodations Law" 6 **Del.C.** Chapter 45, and 31 **Del.C.** Chapter 30, and other items. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Fair Housing Act" 6 **Del.C.** Chapter 46, and 31 **Del.C.** Chapter 30, and other items. These amendments if approved will become part of the Commission's Regulations.

Pursuant to the Administrative Procedures Act, 29 **Del.C.** § 10115, notice of the proposed amendments to the Regulations was published on August 1, 2008 in the Delaware *Register of Regulations*, Volume 12, Issue 2 as well as in the *News Journal* and *Delaware State News* on August 7, 2008.

Commission Chair Calvin Christopher conducted the public hearing on Thursday, September 11, 2008 at 7:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904.

Summary of the Evidence and Information Submitted

1.2: Addition of definition of "Minor"

"Minor" means a person under the age of eighteen years who has not been court emancipated.

3.1: Removal of "or notice of intention to pursue no-fault settlement" to read:

3.1 The Respondent shall file a written response to the complaint, on a form provided by the Division within twenty (20) days of receipt of service of the complaint.

4.1: Change to: "The Complaint may be amended at any time."

5.1.1: Removal of "or notice of intention to pursue no-fault settlement" so that it will read:

5.1.1 A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all Parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph without prejudice may refile a complaint within ninety (90) days after the occurrence of the alleged Discriminatory Public Accommodation Practice.

5.1.2: Removal of "or notice of intention to pursue no-fault settlement" so that it will read:

5.1.2 After the Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission or upon order by a single Commissioner authorized by the Commission prior to the appointment of a Panel and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

7.1: Change "conciliation" in the fourth line to "fact-finding" such that 7.1 will read:

7.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement offer. The Complainant(s) shall be notified of the opportunity to conciliate when a complaint is filed, and the Respondent(s) shall be so notified when a complaint is served. Staff shall schedule an informal fact-finding conference to be held with the Complainant(s), the Respondent(s) and, if they so choose, attorneys representing them, within thirty (30) days after the receipt of the response to the complaint, unless it is impractical to do so.

8.5: Change "ten days" to "20 business days" such that 8.5 will read:

8.5 As provided in 6 **Del.C.** §4510, a subpoena shall be issued upon written request by any Party, Staff or Panel member. Such requests shall be submitted no later than twenty (20) business days in advance of the hearing. Witnesses and documents requested in the subpoena must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be subject to the discretion of the Panel.

8.8: Change "ten days" to "20 business days" such that 8.8 will read:

8.8 A written list of witnesses a Party intends to call during a panel hearing must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least twenty (20) business days prior to a hearing.

8.14: A new provision was added such that 8.14 will read:

8.14 Testimony shall be under oath or affirmation administered by the court reporter. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.

Comments Concerning Equal Accommodations Regulations**Written Comment:**

Public comments were received from three sources. All of the comments were made in writing, were timely received by the Commission, and were exactly the same. Comments were received from: Jamie Wolfe, Chair of the Delaware Developmental Disabilities Council dated April 16, 2008; Robert D. Overmiller, Chairperson of the Governor's Advisory Council for Exceptional Citizens dated April 22, 2008; and, Daniese McMullin-Powell, Chairperson of the State Council for Persons with Disabilities dated May 1, 2008. Jamie Wolfe, Chair of the Delaware Developmental Disabilities Council provided additional written comments in a letter dated August 18, 2008. The comments were as follows:

1. In the "Introduction" section, first sentence, delete "under".
2. In the "Introduction" section, last sentence, the HRC recites that the revised regulations will apply to causes of action arising under the Equal Accommodation Act after May 8, 2008. Section 11.3 explicitly applies the APA to any amendment to the existing regulations. Under the APA, non-emergency regulations cannot become final until "10 days from the date the order adopting, amending or repealing a regulation has been published in its final form, in full or as a summary, in the *Register of Regulations...*" See Title 29 **Del.C.** §10118(g). With a public hearing scheduled for May 8, the earliest final regulations could be published in the Register is June 1, 2008. If the HRC is confident of publication of the final regulation in the June Register, it could consider adoption of an effective date of approximately June 11.
3. A period should be inserted at the end of §1.2 definition of "minor".
4. The HRC should consider deletion of the definition of "Persons Entitled to Protection" in §1.2. I could not locate any reference to the term in the regulations and the definition is therefore superfluous. Moreover, the definition is oddly worded. It essentially states that all persons in Delaware are protected. Finally, the term "handicap" should be deleted to comport with the deletion of "handicap" in §1.1 based on Title 6 **Del.C.** §4502(6).
5. §2.6.3 is "underinclusive". It refers to "owner, lessee, proprietor, manager or superintendent". The statute [Title 6 **Del.C.** §4504(a)(b)] now includes the following: director, supervisor, agent or employee.
6. §2.8 recites that service of the complaint shall be made in accordance with "12.2 of these Regulations". There is no §12.2 in the Regulations.
7. §4.3, substitute "attorneys" for "attorney".
8. In §5.1.8, first sentence, substitute "to" for "on" after "due".
9. §5.1.10 is "underinclusive". It only refers to a right of appeal of an order dismissing a complaint by "the Panel" while §5.0 includes circumstances under which dismissal can be authorized by "a single Commissioner" (§5.1.2) or Panel Chair or designee (§5.1.6). The HRC could consider amending §5.1.10 as follows: "Any final order dismissing a complaint under this section is subject to Superior Court review pursuant to 6 **Del.C.** §4511."
10. In §7.1, third sentence, retain the word "conciliation" rather than substituting "fact-finding" because:
 - A. The title of Regulation 7.0 is "Conciliation".
 - B. Conciliation is different from fact-finding. Compare the HRC's Fair Housing regulations. A "fact-finding" conference is part of investigation (§4.3) which is distinct from "conciliation" (§5.0).
 - C. The Equal Accommodations statute refers to "conciliation" (§4507) and includes a helpful definition of "conciliation" [§4507(4)]. There is no definition of "fact-finding".
 - D. The conference under §7.0 may involve no "fact-finding" whatsoever (e.g. facts may be undisputed) and settlement terms could be the sole topic of discussion.
11. §8.5 changes the time period to request a subpoena from 10 calendar days to 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days. Since §11.0 converts periods of less than 11 days to "business days", the current 10 calendar day standard is essentially 10 business days. A 15 business day standard would amount to an extension of 5 business days in the regulation.
12. §8.6 authorizes, "another person who is not a Party" to serve a subpoena. This conflicts with Title 6 **Del.C.** §4510(a), first sentence.

13. We recommend adopting the same time frame for disclosure of witnesses and exhibits under §§8.8 and 8.10. As a practical matter, this will generally result in a single combined submission rather than two submissions. Moreover, the interests served by the advance disclosure are the same. We recommend amending §8.8 by establishing a 10 business day standard to conform to the 10 business day standard in §8.10. This would be the same timetable adopted in the HRC's Fair Housing regulations, §§10.1 and 10.2.

14. §8.9 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business days prior to hearing. In all other contexts, the Commission reserves discretion in addressing late submissions. See §§8.2 and 8.5 and 8.10.1. The no-exceptions approach also creates conflict with §11.1.2.

15. The HRC Fair Housing regulation (§10.1.1) authorizes a panel to inspect or view the location involved in the case. This could be particularly helpful in an accessibility dispute. The HRC may wish to amend §8.10 to incorporate such an authorization in the Equal Accommodation standards.

16. In §9.3, first sentence, some words are missing. Insert "any Party" after "order".

Verbal Comment:

None.

**Recommended Findings Of Fact
Based On The Evidence And Information Submitted**

The following are findings based on the specific comments received.

1. In the "Introduction" section, first sentence, delete "under".

This stylistic change was not necessary. Therefore the Commission rejected the change.

2. In the "Introduction" section, last sentence, the HRC recites that the revised regulations will apply to causes of action arising under the Equal Accommodation Act after May 8, 2008. Section 11.3 explicitly applies the APA to any amendment to the existing regulations. Under the APA, non-emergency regulations cannot become final until "10 days from the date the order adopting, amending or repealing a regulation has been published in its final form, in full or as a summary, in the Register of Regulations..." See Title 29 **Del.C.** §10118(g). With a public hearing scheduled for May 8, the earliest final regulations could be published in the Register is June 1, 2008. If the HRC is confident of publication of the final regulation in the June Register, it could consider adoption of an effective date of approximately June 11.

This change was required and the date changed to October 10, 2008, ten days after the Order amending the Regulations will be published in the *Register of Regulations*.

3. A period should be inserted at the end of §1.2 definition of "minor".

This change was made.

4. The HRC should consider deletion of the definition of "Persons Entitled to Protection" in §1.2. I could not locate any reference to the term in the regulations and the definition is therefore superfluous. Moreover, the definition is oddly worded. It essentially states that all persons in Delaware are protected. Finally, the term "handicap" should be deleted to comport with the deletion of "handicap" in §1.1 based on Title 6 **Del.C.** §4502(6).

The definition at issue is "Persons Entitled to Protection" means all persons within the jurisdiction of this State regardless of the race, age, marital status, creed, color, sex, handicap or national origin of such persons. The Commission agreed that this definition was not needed as it is contained in § 4503 of the statute.

5. §2.6.3 is "underinclusive". It refers to "owner, lessee, proprietor, manager or superintendent". The statute [Title 6 Del.C. §4504(a)(b)] now includes the following: director, supervisor, agent or employee.

This comment was accepted and §2.6.3 was changed to add "director, supervisor, agent or employee" so that the amendment reflects the current law.

6. §2.8 recites that service of the complaint shall be made in accordance with "12.2 of these Regulations". There is no §12.2 in the Regulations.

This change was made to §11.2 to correct a typographical mistake.

7. §4.3, substitute "attorneys" for "attorney".

This change was not made as Section 4.3 states, "Amended complaints and the answers shall be signed by the Party(s) or their the Party's attorneys. Since Party is singular, attorney should be singular, too.

8. In §5.1.8, first sentence, substitute "to" for "on" after "due".

The change was made in the second sentence to correct a typographical error.

9. §5.1.10 is "underinclusive". It only refers to a right of appeal of an order dismissing a complaint by "the Panel" while §5.0 includes circumstances under which dismissal can be authorized by "a single Commissioner" (§5.1.2) or Panel Chair or designee (§5.1.6). The HRC could consider amending §5.1.10 as follows: "Any final order dismissing a complaint under this section is subject to Superior Court review pursuant to 6 **Del.C.** §4511."

This change was made to 5.1.10 by removing "issued by the Panel" so that it now reads, "All orders resulting from an application for dismissal are subject to Superior Court review pursuant to 6 **Del.C.** §4511." This change was needed because the added words are the same words contained in the statute such that the amendment reflects the current law.

10. In §7.1, third sentence, retain the word "conciliation" rather than substituting "fact-finding" because:

A. The title of Regulation 7.0 is "Conciliation".

B. Conciliation is different from fact-finding. Compare the HRC's Fair Housing regulations. A "fact-finding" conference is part of investigation (§4.3) which is distinct from "conciliation" (§5.0).

C. The Equal Accommodations statute refers to "conciliation" (§4507) and includes a helpful definition of "conciliation [§4502(4)]. There is no definition of "fact-finding".

D. The conference under §7.0 may involve no "fact-finding" whatsoever (e.g. facts may be undisputed) and settlement terms could be the sole topic of discussion.

The Commission agreed with these changes for the reasons stated above by the commentators.

11. §8.5 changes the time period to request a subpoena from 10 calendar days to 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days. Since §11.0 converts periods of less than 11 days to "business days", the current 10 calendar day standard is essentially 10 business days. A 15 business day standard would amount to an extension of 5 business days in the regulation.

The Commission agreed that 20 business days is a long time. For that reason, the Commission changed the time to 20 days which will include Saturdays, Sundays and Holidays such that the time will be closer to the 15 business days suggested by the public commentators. The parties will have more time rather than less time to request subpoenas.

12. §8.6 authorizes, "another person who is not a Party" to serve a subpoena. This conflicts with Title 6 **Del.C.** §4510(a), first sentence.

The Commission made this change so that §8.6 does not conflict with 6 **Del.C.** §4510(a). The first sentence of §8.6 now reads, "Subpoenas may be served by any sheriff, deputy sheriff, constable or any member of the Commission or employee of the Division of Human Relations." The added words are the same words contained in the statute such that the amendment reflects the current law.

13. We recommend adopting the same time frame for disclosure of witnesses and exhibits under §§8.8 and 8.10. As a practical matter, this will generally result in a single combined submission rather than two submissions. Moreover, the interests served by the advance disclosure are the same. We recommend amending §8.8 by establishing a 10 business day standard to conform to the 10 business day standard in §8.10. This would be the same timetable adopted in the HRC's Fair Housing regulations, §§10.1 and 10.2.

The Commission agreed with the commentators but changed the time to 10 days so that the parties will have more time rather than less time to submit witnesses and exhibits.

The Commission found that it was not necessary to include the phrase "business days" since Regulation 11.1.1 states that "when the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation." For this reason, the definition of Business Days and all references to business days have been removed from the Regulations.

14. §8.9 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business

days prior to hearing. In all other contexts, the Commission reserves discretion in addressing late submissions. See §§8.2 and 8.5 and 8.10.1. The no-exceptions approach also creates conflict with §11.1.2.

The Commission accepted a middle ground such that Motions must be delivered at least 10 days before the hearing. In addition, the Commission agreed that whether or not motions untimely filed will be heard should be left to the discretion of the Hearing Panel. The second sentence was changed to, "Motions filed beyond this time limit may be considered at the discretion of the Panel."

15. The HRC Fair Housing regulation (§10.1.1) authorizes a panel to inspect or view the location involved in the case. This could be particularly helpful in an accessibility dispute. The HRC may wish to amend §8.10 to incorporate such an authorization in the Equal Accommodation standards.

The Commission made this change because such examination may be helpful to the Panel. The following new sentence was added to the end of section 8.10.1, "After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the location involved in a case."

16. In §9.3, first sentence, some words are missing. Insert "any Party" after "order".

The Commission made this change.

WHEREAS the State Human Relations Commission have voted to approve the proposed amendments to the Equal Accommodations Regulations;

IT IS THEREFORE ORDERED this 11th day of September, 2008, that the Amendments to the Equal Accommodations Regulations as attached as Exhibit A are approved and will become effective on October 10, 2008.

Calvin Christopher	Eastern Ramsey
Gail Launay	Randall Perry
Shirley Horowitz	James Gray
Wallace Dixon	William Johnston
Chok-fun Chui	Robert Watson, Jr.
Ralph Figueroa	Whittona Burrell
Richard Senato	Stephen Elkins
Earnest Gulab	Prameela Kaza
Nancy Maihoff	Bernice Edwards
Doug James	Marian Harris
Katharine Cropper	Olga Ramirez
Peter Schott	

~~[4504~~ 601] Equal Accommodations Regulations

Introduction

These Rules and Regulations have been prepared pursuant to the powers granted the Human Relations Commission and are intended to meet the applicable requirements of the Administrative Procedures Act.

These Regulations shall govern individual cases over which the Human Relations Commission and the Division of Human Relations have jurisdiction pursuant to 6 **Del.C.** Ch. 45, as it may be amended from time to time.

These Regulations refer to "hearings" for case decisions only and are, therefore, to be distinguished from any other public hearings which may be held by the Commission to address general issues of public concern and which are not controlled by these Regulations.

These Rules and Regulations are specific to the processing of complaints of discrimination under the Delaware Equal Accommodations Law. The Commission believes these Rules and Regulations are necessary to ensure the appropriate administration of the Equal Accommodations Law.

These Regulations shall apply to Equal Accommodation causes of action arising under the Delaware Equal Accommodations Law ~~on or after July 1, 1996~~. Delaware Fair Housing Act actions under 6 Del.C. Ch. 45 are not affected by these Regulations.

1.0 Definitions (~~Formerly Part I~~)

- 1.1 The following terms used in these Regulations shall have the same definitions as those terms contained in the Equal Accommodations Law, 6 Del.C. Ch. 45, §4502:

~~A place of public accommodation~~

Chairperson

Commission

Complainant

Conciliation

Conciliation Agreement

Disability

~~Discriminatory p~~Public a~~Accommodation p~~Practice

Division

~~Handicap~~

Marital Status

Panel

Panel Chair

Place of Public Accommodation

Respondent

Special Administration Fund

- 1.2 As used in these Regulations, the following terms are defined:

“**Commissioner**” means a person duly serving as a member of the Commission.

“**Division Director**” means the administrator and head of the Division of Human Relations, or other person duly authorized to act as such.

“**Minor**” means a person under the age of eighteen years who has not been court emancipated.

“**Office**” means any one of the places of business of the Division of Human Relations.

“**Party or Parties**” means the Complainant(s) or Respondent(s).

“**Staff**” means a person ~~who is~~ or persons employed by the Division of Human Relations of the State of Delaware.

2.0 Commencement of Proceedings (~~Formerly Rules 1, 2, 3, 4, 5, 6 & 7~~)

- 2.1 Any person claiming to be aggrieved by discriminatory public accommodations practices within the jurisdiction of the Commission may file a written complaint with the ~~Commission~~ Division. Minors shall be represented by a parent, guardian or other responsible adult for the purpose of bringing an action.
- 2.2 The Commission ~~and the Division~~ may each initiate an investigation into compliance with the Equal Accommodations Law, whether or not a complaint is filed. If an investigation is initiated by the Commission, ~~Such investigations~~ may be initiated by written statement showing justification signed by the Chairperson or by such person as may be authorized by the Commission. In accordance with applicable provisions of the law, and to the extent practicable, the procedures in these Regulations shall apply to Commission-initiated ~~and Division-initiated~~ investigations.
- 2.3 A complaint shall be filed at any one of the places of business of the Division of Human Relations.
- 2.4 Complaints made with the Commission through the Division of Human Relations shall be in writing and deemed to be "filed" when received at the Division in substantially completed form.
- 2.5 All complaints must be filed on a complaint form provided by the ~~Office~~ Division.
- 2.6 All complaint forms shall include the following information:

- 2.6.1 ~~¶~~The complainant's name and address;
 - 2.6.2 ~~¶~~The name and location of the place of public accommodation at which the discriminatory public accommodation practice(s) occurred, and the date, time and ~~other details~~ an explanation thereof; ~~and~~
 - 2.6.3 ~~if~~ known, the name and address of each Respondent and, if different, the name of the owner, lessee, proprietor, manager or superintendent of the place of public accommodations.
 - 2.6.4 The date of the first occurrence of the alleged discriminatory practice and whether the practice is of a continuing nature; ~~and~~
 - 2.6.5 The signature of the complainant or his/her attorney.
- 2.7 Complainants and Respondents must keep the Division of Human Relations informed of their current addresses and telephone numbers during the pendency of any proceedings.
- 2.8 Service of the complaint shall be made by the Division of Human Relations in accordance with 11.2 (~~Formerly Rule 30~~) of these ~~¶~~Regulations.

3.0 Response to Complaint (~~Formerly Rule 8~~)

- 3.1 Respondent shall file a written response to the complaint, on a form provided by the Division of Human Relations, or a notice of intention to pursue no-fault settlement, within twenty (20) days of receipt of service of the complaint.
- 3.2 Either of such documents shall be signed by the Respondent or Respondent's attorney and shall be filed at the Office of the Division where the complaint was filed, ~~showing~~ and shall provide proof that a copy has been served on the Complainant.

4.0 Amending a Complaint (~~Formerly Rule 9~~)

- 4.1 The ~~Complainant(s)~~ Complaint may be amended ~~a complaint~~ at any time ~~prior to service of the response on the Complainant(s); thereafter, amendment is subject to approval by the Panel Chair or the Chairperson of the Commission.~~
- 4.2 The Respondent shall serve an answer to any amended complaint within ten (10) days of receipt of service of the amended complaint, whichever is greater, or within the time remaining to respond to the initial complaint, whichever is greater.
- 4.3 Amended complaints and the answers shall be signed by the Party(~~s~~) or their Party's attorney.

5.0 Case Closing Prior to Hearing (~~Formerly Rule 10~~)

- 5.1 Voluntary Termination and Dismissal
 - 5.1.1 A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all ~~p~~Parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph without prejudice may refile a complaint within ninety (90) days after the occurrence of the alleged discriminatory public accommodation practice.
 - 5.1.2 After a the Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission or upon order by a single Commissioner authorized by the Commission prior to the appointment of a panel and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.
 - 5.1.3 A case may be dismissed, upon notice of the Commission or of the Division, for lack of activity. Application shall be made in writing by the Division staff to a Panel ~~of~~ or if no Panel has been appointed, then to the Division Director ~~of~~ or Commission Chairperson, stating the reason for the proposed dismissal.

- 5.1.4 A case may be dismissed, upon notice of the Commission or of the Division, for failure of Complainant to cooperate upon application of the Division staff to the Panel or if no Panel has been appointed, then to the Division Director or Commission Chairperson. Failure to cooperate includes, but is not limited to, failure to keep the Division informed of Complainant's current address.
- 5.1.5 A case may be dismissed upon written application to the ~~Panel~~ Commission by the Respondent or the Division Director when
 - 5.1.5.1 the Commission does not have jurisdiction to determine the case; or
 - 5.1.5.2 the facts alleged do not state a violation of the law.
- 5.1.6 If the Division determines that the Commission does not have jurisdiction over the case or that the complaint does not allege facts that state a violation of the law, the Division Director shall apply in writing to the Panel Chair or designee (or, if a Panel has not been appointed, to the Chairperson or other designee), for dismissal of the complaint under Rule 5.1.5.
- 5.1.67 An application for dismissal by the Respondent shall show proof of service of the application upon the Complainant and the Division. Complainant shall have 10 days after being served to respond to the Respondent and Commission. An application for dismissal by the Division shall show proof of service on all parties and all parties shall have 10 days after being served to respond to the Commission with proof of service to the Division.
- 5.1.78 The Panel Chair or designee (or, if no panel has been appointed, the Commission Chairperson or other designee) shall ~~A Panel will convene to~~ consider the application for dismissal. ~~Unless directed by the Panel based on~~ In the absence of compelling or unusual circumstances, such consideration shall be without an evidentiary hearing or oral argument. The Panel Chair or designee (or, the Commission Chairperson or designee) will consider only the facts alleged in the pleadings or any related submissions and any reasonable inferences from those facts. The facts alleged by the claimant, unless conclusory, will be considered as true for the purpose of the dismissal proceeding.
- 5.1.89 All notices of case dismissals shall be served on all parties and shall include a statement of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Division Director or Chairperson.
- 5.1.10 All orders resulting from an application for dismissal are subject to Superior Court review pursuant to 6 Del.C. §4511.

7 DE Reg. 793 (12/1/03)

6.0 Investigation (~~Formerly Rule 14~~)

- 6.1 Investigation of the complaint shall be conducted by Staff and shall commence promptly after the filing of the complaint. Investigation may include, without limitation: interviews, questionnaires, fact finding conferences, searching of records, testing, identification of any witnesses, development of statistics, other studies of practices and patterns, or other work to gather relevant evidence.
- 6.2 Evidence sought by a subpoena issued in connection with an investigation must be relevant to the investigation, be adequately specified, and only cover a reasonable period of time.

7.0 Conciliation (~~Formerly Rules 12, 13 and 14~~)

- 7.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement offer. The Complainant(s) shall be notified of the opportunity to conciliate when a complaint is filed, and the Respondent(s) shall be so notified when a complaint is served. Staff shall schedule an informal conciliation conference to be held with the Complainant(s), the Respondent(s) and, if they so choose, attorneys representing them, within thirty (30) days after the receipt of the response to the complaint, unless it is impractical to do so.
- 7.2 ~~(Formerly Rule 13)~~ Conciliation shall be initiated upon request of any Party, or upon the request or recommendation of Staff or a member of the Commission.

- 7.3 ~~(Formerly Rule 14)~~ Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the Parties. Forms of relief may include, without limitation:
- 7.3.1 binding arbitration to resolve the dispute;
 - 7.3.2 payment of damages; other monetary relief;
 - 7.3.3 payment to the Special Administration Fund;
 - 7.3.4 monitoring of the future activities of Respondent(s);
 - 7.3.5 measures taken to ensure future compliance with the Equal Accommodations Law; and/or
 - 7.3.6 such other relief as is agreed upon by the Parties.
- 7.4 Executed copies of such agreements shall be given to all Parties.

8.0 Hearings ~~(Formerly Rules 15, 16, 17, 18, 19, 20, 21, 22 and 23)~~

- 8.1 The purpose of a hearing is:
- 8.1.1 to hear argument;
 - 8.1.2 where appropriate, to receive evidence and determine facts; and
 - 8.1.3 in all events to render an adjudication in accordance with applicable law.
- 8.2 If a complaint cannot be resolved through conciliation, as provided in Section 4508(c) of the Delaware Equal Accommodations Law, the Commission shall appoint a Panel to hold a public hearing within 60 days after the expiration of the 120-day period for investigation and conciliation. The deadlines provided in Section 4508(c) and Section 4508(e) may be extended by the Chairperson or if a Panel has been appointed by the Panel Chair at the request of any Party or Staff upon a showing of good cause.
- 8.3 The date, time, place and a brief description of the subject matter of the hearing shall be included in the Notice of Hearing sent to all Parties, the Panel and the Attorney General's representative, as well as other information required by the Administrative Procedures Act.
- 8.4 The Hearing shall be held within the county in which the discriminatory practice is alleged to have occurred.
- 8.5 As provided in 6 Del.C. §4510, A subpoena shall be issued upon written request by any Party, Staff, or a Panel Member. Such requests shall be submitted no later than ~~ten (10)~~ twenty (20) days in advance of the Hearing. Witnesses and documents must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be in the discretion of the Panel.
- 8.5.1 Any individual or entity served with a subpoena may apply to the Panel to quash or modify the subpoena on any legal basis including but not limited to the following: that the subpoena does not adequately describe the evidence requested; is not relevant to the complaint; covers an unreasonable period of time; requires disclosure of a trade secret, confidential research, development or commercial information, or privileged or other protected matter and no exception or waiver applies; subjects a person to undue burden or hardship; or requires disclosure of the opinion of an expert not retained for a hearing or information not describing specific events or occurrences in dispute.
- 8.5.2 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order may be punishable by the Court as contempt.
- 8.6 Subpoenas may be served by ~~Staff, a Commissioner, or by another person who is not a Party and is not less than 18 years of age~~ any sheriff, deputy sheriff, constable or any member of the Commission or employee of the Division of Human Relations. The return of service of each subpoena shall be promptly filed at the appropriate Division office.
- 8.7 No fewer than ~~the majority of the three (3) Commissioners appointed to a Panel~~ three (3) Commissioners shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel ~~Member, for~~

- ~~any reason whatsoever~~, the Chairperson or his or her designee shall be empowered to make a substitution, without notice to the Parties, provided the Hearing has not yet begun.
- 8.8 A written list of witnesses a Party intends to call during a panel hearing must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to a hearing.
- 8.8.1 The Panel, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.
- 8.9 All motions shall be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to the hearing. Motions filed beyond this time limit may not be considered at the discretion of the Panel. Opposing Parties may file a response to the motion or may present opposition at the hearing. Replies to responses to motions are not permitted.
- 8.10 ~~Hearings shall be recorded by electronic instrument or court reporter.~~
- 8.910 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other parties at least ten (10) ~~business~~ days prior to the Hearing. The Panel shall consider such exhibits without formal proof unless the parties and the Commission have been notified at least five (5) ~~business~~ days prior to the Hearing that an adverse Party intends to raise an issue concerning the authenticity of the exhibit.
- 8.910.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to the Commission and to an adverse Party as provided herein. After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the location involved in a case.
- 8.910.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under §4511 of the Delaware Equal Accommodations Law or until all relevant proceedings have been concluded, whichever is later. The exhibits shall then be returned to the Party which submitted such or, at the request of that Party, destroyed.
- 8.11 The hearing shall be conducted by the Panel Chair. Individuals [and business organizations] may be represented by counsel. ~~[A corporate entity must be represented by an attorney admitted to practice law in Delaware~~ Individuals and business organizations may be represented by counsel. A business organization may also be represented by a non-attorney employee] . Every hearing shall be recorded by electronic instrument or court reporter.
- 8.142 Certain Hearings may address purely legal issues, in which event all Parties or their counsel may, at the discretion of the Panel, have an opportunity to present oral argument.
- 8.123 In evidentiary hearings, all Parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The Panel Chair shall explain to the Parties that they may make a general statement of what they intend to prove through testimony and exhibits but that they are not permitted at this time to testify or to present argument to the Panel. The Panel Chair shall interrupt a Party who attempts to testify or present argument during an opening statement and inform the Party that such testimony or argument can be provided at the appropriate time during the hearing. The Panel Chair will then offer the opposing Party the opportunity to present an opening statement if the opposing Party has not already done so or shall move to the next stage of the proceedings.
- 8.134 Testimony shall be under oath or affirmation administered by the Panel Chair ~~court reporter~~. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.
- 8.145 Staff shall be required to attend the Hearing in order to assist in the proceedings, or, where appropriate, to be a witness.
- 8.156 The Panel Chair shall have full authority to control the hearing proceedings, including, but not limited to the authority to call and examine witnesses; to admit or exclude evidence; and to rule upon all motions and objections subject to the following:
- 8.156.1 Formal rules of evidence ~~need~~ will not be strictly followed.

- 8.156.2 Direct and cross examination shall be preserved and may be conducted by the Parties or their attorney(s), or Panel Members or the Deputy Attorney General representing the panel may question any witness.
- 8.156.3 Testimony from any person may be allowed at the discretion of the Panel.
- 8.156.4 Witnesses may be sequestered at the discretion of the Panel Chair upon the request of any Party(ies).
- 8.156.5 Evidence on the behalf of the Complainant(s) should ordinarily be introduced first, to be followed by the Respondent(s)' evidence, then allowing rebuttal, if any.
- 8.156.6 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all Parties.
- 8.156.7 Following the presentation of the evidence, an opportunity shall be given to each Party to make a closing statement.
- 8.156.8 The Panel may recall the Parties for further testimony if necessary to reach a decision.
- 8.16.9 Deliberations of the Panel typically commence immediately following the hearing, and are not open to the public.

- 8.167 A written transcript shall be prepared, if and as required, on the written request of any Party, provided that such Party pays for the cost of preparing the transcript. Staff shall coordinate this process under State contract. A deposit may be required. Such recordings and transcripts shall be preserved with the official file record of a case.

9.0 Decision and Orders (~~Formerly Rules 25, 26, and 27~~)

- 9.1 The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date. Case decisions shall be by a majority vote of the Panel.
- 9.2 A copy of the Panel's Final Order shall be mailed by certified mail, return receipt requested, delivered by hand or delivered by regular first class mail to the last address which each Party has provided to the Division of Human Relations for the Party or, if the Party is represented, the Party's attorney.
- 9.3 ~~Any party w~~Within five (5) ~~business~~ days after receipt of the ~~Final~~ Panel's decision or order may apply to the Panel for reconsideration by briefly and distinctly stating the grounds. The application shall show that it was served on the opposing party. Within five (5) ~~business~~ days after service of such application, the opposing party may serve and file a brief answer to each ground asserted. The Panel shall promptly convene to consider such application for reconsideration. The filing of such application shall extend the time for judicial review under 6 Del.C. §4511.

7 DE Reg. 793 (12/1/03)

10.0 Recovery of Attorney's Fees and Expenses (Formerly Rule 28)

- 10.1 Any Party seeking to recover attorneys' fees and expenses pursuant to Section 4508 (g) or (h) shall, at least five (5) ~~business~~ days prior to the hearing, file at the ~~office of the Division of Human Relations at the Division Office~~ where the complaint was filed, and serve upon the other Parties, a motion and affidavit detailing the time spent and fees incurred and a reasonable estimate of the fees likely to be incurred after such date through the end of the H~~earing~~. Any objections to the motion shall be presented at the Hearing. Determination that a Party is entitled to an award of attorneys' fees or costs shall be made solely at the Panel's discretion. Failure to timely file such motion and affidavit as set forth in these Regulations shall constitute a waiver of a Party's right to an award of attorneys' fees or costs.

11.0 Miscellaneous Provisions (~~Formerly Rules 29, 30, 31, 32, 33, and 34~~)

- 11.1 Time
- 11.1.1 In computing any period of time prescribed or allowed, by these Regulations or by order of court or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, legal holiday, in which event the period shall run until the end of the next

business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the Supreme Court of the State of Delaware.

- 11.1.2 When, by these Regulations or by a notice given thereunder or by order of court, an act is required, or allowed to be done, at or within a specified time, the Panel Chair or the Chairperson of the Commission, for good cause shown, may, at any time, in its discretion:
 - 11.1.2.1 with or without motion or notice, order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or
 - 11.1.2.2 upon a motion made after the expiration of a specified period, permit the act to be done where the failure to act was the result of excusable neglect.
 - 11.1.3 Whenever a Party has the right to do, or is required to do, some act or take some proceeding within a prescribed period after being served, and service is by mail, three (3) days shall be added to the prescribed period.
 - 11.2 Service. Unless otherwise specifically required by the Equal Accommodations Law or these Regulations, service of complaints, answers, other pleadings, motions, requests or notices shall be made according to this Rule.
 - 11.2.1 For the initial complaint and any pleading which brings in a new Party, service shall be made by certified mail, return receipt requested with the return receipt card signed by: the person to be served; a person living with or working in the office of the person to be served; or an agent authorized by appointment or by law to receive service of process. Alternatively, where appropriate, service may be made in accordance with Superior Court Civil Rule 4(f), or Superior Court Civil Rule 4(h) for service under Title 10, Section 3104.
 - 11.2.2 For documents other than the initial complaint and any document which brings in a new Party, once jurisdiction over a party has been established, service shall be by certified mail, return receipt requested; by hand delivery or first class mail, as evidenced by a certificate of service; by an express mail service, with a receipt showing that the notice was delivered to the express mail service; or by telecopier or facsimile machine with confirmation of the transmission from the sender's machine.
 - 11.2.2.1 Where a Party is represented by an attorney, service shall be made on the attorney only.
 - 11.3 The Administrative Procedures Act (29 **Del.C.** Ch. 101), as it may be amended from time to time, shall provide the method by which these Regulations may be amended.
 - 11.4 These Regulations shall be reviewed periodically by the Commission, or a designee and the Director of the Division of Human Relations. Any recommendations for revision shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.
 - 11.5 These Regulations shall be liberally construed in such a manner as to accomplish the purpose of the Equal Accommodations Law.
 - 11.6 Copies of these Regulations shall be available during regular office hours at each of the offices of the Division of Human Relations or, upon request, by mail. A fee established by the Division of Human Relations may be charged for the provision of copies.
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PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

ORDER

IN THE MATTER OF THE ADOPTION OF RULES		
AND REGULATIONS TO IMPLEMENT THE PROVISIONS		
OF 26 DEL.C. CH 10 RELATING TO THE CREATION OF		
A COMPETITIVE MARKET FOR RETAIL ELECTRIC		PSC REGULATION DOCKET NO. 49
SUPPLY SERVICE (OPENED APRIL 27, 1999;		
RE-OPENED JANUARY 7, 2003; RE-OPENED AUGUST		
21, 2007		

ORDER NO. 7435

AND NOW, this 2nd day of September, 2008;

WHEREAS, in 2005, the General Assembly and the Governor enacted the “Renewable Energy Portfolio Standards Act,” 26 Del.C. §§ 351-363 (2006 Supp.) (“the Act”). As its name suggests, the Act requires each electric supplier to annually accumulate a portfolio of “renewable energy credits” equivalent to a specified percentage of its retail electric supply sales within this State. The obligation began in 2007 and the particular percentages increase each year. In 2006, exercising the authority granted under 26 Del.C. § 362 (2006 Supp.), the Commission promulgated “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (“RPS Rules”). See PSC Order No. 6931 (June 6, 2006); and

WHEREAS, on July 24, 2007, the General Assembly and the Governor enacted significant changes to various provisions in the Act and, in so doing, directed the Delaware Public Service Commission (the “Commission”) to adopt revised rules. See 76 Del. Laws ch. 165 §§ 1-9 (July 24, 2007) (“chapter 165”); and

WHEREAS, for the reasons set forth above, on August 21, 2007, by PSC Order No. 7252, the Commission re-opened Regulation Docket No. 49 to revise its RPS Rules and directed Staff to draft proposed rules to effect the changes made by the legislature and the Governor; and

WHEREAS, by PSC Order No. 7326 (Dec. 4, 2007), the Commission issued Proposed Revisions to the “Net Energy Metering” within the “Rules for Certification and Regulation of Electric Suppliers;” and

WHEREAS, by PSC Order No. 7326 (Dec. 4, 2007), the Commission directed publication in the *Delaware Register* (among other places) of Staff’s revised proposed RPS Rules and directed a Hearing Examiner to conduct proceedings regarding the proposed RPS rules; and

WHEREAS, after holding a duly-noticed public evidentiary hearing, the Hearing Examiner has now submitted her Findings and Recommendations (Aug. 22, 2008), in which she recommends Commission approval of Staff’s final proposed RPS Rules, which include certain non-substantive changes made after the initial publication in the *Delaware Register*; and

WHEREAS, the Commission finds that the proposed revisions to the “Net Metering Provisions” within the “Rules for Certification and Regulation of Electric Suppliers” are just and reasonable and that adoption of the Hearing Examiner’s Report is in the public interest. Such revised rules are set forth as Exhibit “A” to this Order.

Now, therefore, **IT IS ORDERED**:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the Findings and Recommendations of the Hearing Examiner (Aug. 22, 2008) appended to the original hereof as “Attachment A”.

2. That the Commission hereby adopts and approves the proposed “Net Metering provisions” within the “Rules for Certification and Regulation of Electric Suppliers” attached to the Hearing Examiner’s Findings and Recommendations as “Appendix 1”. The Secretary of the Commission shall transmit to the Registrar of

Regulations for publication in the *Delaware Register* the exact text of the Regulations attached hereto as Exhibit "A" for publication on October 1, 2008.

3. The effective date of this Order shall be the later of October 10, 2008, or ten days after the date of publication in the *Delaware Register of Regulations* attached hereto as Exhibit "A."

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Norma J. Sherwood, Acting Secretary

****Please note that no changes were made to the regulation as originally proposed and published in the January 2008 issue of the *Register* at page 901 (11 DE Reg. 901). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Docket No. 49: The Creation of a Competitive Market for Retail Electric Supply Service

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302, 2708, 2709, 4362, 4363 and 4364
(21 Del.C. §§302, 2708, 2709, 4362, 4363 & 4364)
2 DE Admin. Code 2222

ORDER

Proposed Regulation 2222 establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on Delaware commercial driver licenses. The proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2008. The comment period remained open until August 31, 2008. There was no public hearing on proposed Regulation 2222.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation. The Division made some non-substantial grammar changes to the proposed regulation.

Findings of Fact

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

1. The proposed regulation meets the requirements of the Administrative Procedures Act and is not in conflict with Delaware law.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302 and the record in this docket, I hereby adopt Regulation 2222 and as may more fully and at large appear in the version attached hereto to be effective on October 10, 2008.

Text and Citation

IT IS SO ORDERED THIS 11th day of September 2008.

Carolann Wicks, Secretary of Transportation

2222 School Bus Driver Qualifications and Endorsements
(Formerly Regulation No. 35)

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §2708, 21 **Del.C.** §2709, 21 **Del.C.** §4362, 21 **Del.C.** §4363, and 21 **Del.C.** §4364.

2.0 Purpose

- 2.1 This regulation establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on **[a]** Delaware commercial driver licenses.
- 2.2 The Division of Motor Vehicles (DMV) uses this regulation to initiate program requirements.

3.0 Applicability

This regulation interprets §2708 and §2709 of Title 21 of the **Delaware Code**.

4.0 Definitions.

The following words and terms, when used in the regulation, should have the following meaning unless the context clearly states otherwise:

“Air Brake Restriction” means a restriction that prohibits the CDL holder from operating a school bus (or any commercial motor vehicle) which is equipped with air brakes. The CDL will be marked with an **“L”**.

“Commercial Driver License (CDL)” means a driver license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate a certain class or classes of a commercial motor vehicle. The classes of a CDL are as follows:

CDL CLASS A - Required for the operation of vehicles with a registered, actual or gross vehicle weight rating (GVWR) of 26,001 or more pounds and the vehicle is towing a vehicle with a registered, actual or GVWR of 10,000 or more pounds. The holder of a Class A CDL may, with proper endorsement, operate any Class B or Class C vehicle.

CDL CLASS B - Required for the operation of vehicles with a registered, actual or GVWR of 26,001 or more pounds and not towing a vehicle with a GVWR of 10,000 or more pounds. The holder of a Class B CDL may, with proper endorsement, operate any Class C vehicle.

CDL CLASS C - Required for vehicles with a GVWR less than 26,001 pounds when the vehicle is designed to transport 16 or more passengers, including the driver, or for vehicles required to be placarded for carrying hazardous materials.

“Commercial Motor Vehicle (CMV)” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or

- Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is required to be placarded for the transportation of hazardous materials.

“Green Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of an annual Department of Education (DOE) physical certification. The Green Card is to be in the immediate possession of the school bus driver at all times, while operating or in control of a school bus except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a Certified Delaware School Bus Driver Trainer.

“P” Endorsement means an endorsement that authorizes a driver to transport passengers in all classes of commercial motor vehicles.

“Q” Endorsement means an endorsement that authorizes a driver to transport passengers in only Class B and Class C commercial motor vehicles.

“R” Endorsement means an endorsement that authorizes a driver to transport passengers in only Class C commercial motor vehicles.

“S” Endorsement means an endorsement that indicates the CDL holder meets the requirements of 21 **Del.C.** §2708 and this regulation and is authorized to operate a school bus. The CDL must also display a passenger (P, Q or R) endorsement to specify the class of commercial vehicle the driver may operate when transporting passengers.

School Bus means every motor vehicle which has the words “School Bus” displayed on the front and rear of the vehicle as specified in 21 **Del.C.** §4362(a) and which is painted the uniform color “national school bus chrome yellow” as specified in 21 **Del.C.** §4363(a), which is equipped with flashing lamps as specified in 21 **Del.C.** §4364(a), which meets the minimum size requirements as specified in 21 **Del.C.** §4363(b), and which meets other regulations as required by the Department of Transportation (DOT) and the Department of Education.

Yellow Card means a card issued by the district/school transportation supervisor that certifies satisfactory completion of DOE requirements for an S endorsement as specified in 21 **Del.C.** §2708 (b)(3). The applicant will surrender the Yellow Card to DMV when the applicant’s **[CDL and/or]** school bus endorsement is issued. The DMV will forward the Yellow Cards to DOE.

5.0 Substance of Policy

5.1 Procedures.

5.1.1 Basic Requirements:

5.1.1.1 Basic. School bus drivers are required to have been issued and have in their possession, while driving a school bus, a CDL with an S endorsement, a passenger endorsement (P, Q or R), and a valid physical examination certification (Green Card).

5.1.1.2 Exceptions. These exceptions are only for drivers undergoing school bus training and evaluation.

5.1.1.2.1 Basic Training. For training and evaluation a driver may drive a school bus with a CDL permit or a valid CDL with the proper passenger endorsements (P, Q or R), but only when accompanied by a DOE Certified Delaware School Bus Driver Trainer (CDSBDT) or a DMV Examiner. In addition, for vehicle maneuvering skills training, a driver may drive a school bus with a CDL permit or a valid CDL with the proper passenger endorsements (P, Q or R) when accompanied by a driver with a valid CDL with an S endorsement and other proper endorsements.

5.1.1.2.2 45-Day Temporary S Endorsement for Classroom Training Unavailability. If a driver has completed all DMV CDL requirements, including the DMV road test, and the DOE 6 hours of on-bus training, DMV may, upon specific written DOE request, issue a CDL license along with a one-time only temporary S endorsement for a period not to exceed 45 days. This temporary S endorsement allows the driver to carry students without a CDSBDT, if all other S endorsement requirements have been met. This temporary S endorsement is intended for the driver who, due to exceptional

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- circumstances, has been unable to complete the DOE classroom training. This temporary S endorsement will only be issued one time and cannot be extended.
- 5.1.1.2.3 Temporary S Endorsement Conversion. DMV will convert the temporary S-endorsed CDL to an S-endorsed CDL upon receipt of certification (Yellow Card) issued to the applicant by the district/school transportation supervisor (5.1.2.10 of this regulation) indicating that the required training has been completed. DMV will forward the Yellow Cards to DOE.
- 5.1.2 Initial Issuance Requirements: All of the following requirements shall be met by all new and out-of-state transfer applicants for a school bus (S) endorsement. Drivers must:
- 5.1.2.1 Be 18 years of age or older with at least one (1) year of valid driving experience.
- 5.1.2.2 Have a valid Delaware CDL with a passenger (P, Q or R) endorsement.
- 5.1.2.3 Complete a driver training course with specific course content as determined by 49 C.F.R. 383.123(a)(2) and DOE requirements as specified in 21 Del.C. §2708(b)(3).
- 5.1.2.4 Pass the school bus knowledge test administered by DMV containing specific content as required by 49 C.F.R. 383.123(a)(2).
- 5.1.2.5 Pass a road test in a school bus administered by DMV as required by 49 C.F.R.383.123 (a)(3).
- 5.1.2.6 Not have more than five (5) points (full point value) on the applicant's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to S endorsement holders in meeting this requirement.
- 5.1.2.7 Not have had the applicant's license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five (5) years. This five (5) year period will begin from the date the suspension, revocation or disqualification has been cleared. Certified driving records from other jurisdictions may be requested from these applicants for DMV to verify compliance with this section.
- 5.1.2.8 Never been convicted of any crime under the laws of this State or any other jurisdiction as specified in 21 Del.C. §2708(b)(7).
- 5.1.2.8.1 Prior to being issued a S endorsement applicants must complete a Federal Bureau of Investigation and a State Bureau of Investigation criminal history background check to verify that ~~he/she is~~ they are] clear of any disqualifying crime as specified in 21 Del.C. §2708(b)(7) and to ensure applicants are qualified in accordance with 5.1.2.8 above.
- 5.1.2.8.2 Questionable criminal history background check reports will be reviewed by the Department of Transportation's (DOT) Deputy Attorney General. The DOT Deputy Attorney General will forward the questionable criminal history background check reports, with issuance recommendation, to DMV.
- 5.1.2.9 Have a valid physical examination certification (Green Card).
- 5.1.2.10 The applicant will be issued a School Bus Driver's Certificate (Yellow Card) by a district/school transportation supervisor as certification of DOE requirements being completed as specified in 21 Del.C. §2708(b)(3). The applicant will surrender the Yellow Card to DMV when the applicant's ~~CDL and/or~~ school bus (S) endorsement is issued. DMV will forward the Yellow Cards to DOE.
- 5.1.2.11 Drivers transferring into Delaware with other jurisdiction school bus endorsed licenses will be required to meet all Delaware Initial Issuance Requirements (5.1.2 this regulation).
- 5.1.2.11.1 Transferring S endorsement holders shall provide a five year motor vehicle driving record from ~~his/her~~ their] previous jurisdiction or jurisdictions to DMV. DMV will electronically check transferring S endorsement holders' motor vehicle records. If the electronic check is unable to be performed, transferring S endorsement holders will need to provide an official certified copy of their motor vehicle driving records to DMV. DMV will ensure these driving records meet the requirements in 5.1.2.6 and 5.1.2.7.

- 5.1.2.11.2 In accordance with 5.1.2.10, applicants will be issued a School Bus Driver's Certificate (Yellow Card) by district/school transportation supervisors.
- 5.1.2.11.3 All transferring S endorsement holders will be required to pass a DMV-administered road test in a school bus per 5.1.2.5, regardless of past experience, training or qualifications.
- 5.1.2.11.4 All transferring S endorsement holders will be required to pass a school bus knowledge test administered by DMV per 5.1.2.4, regardless of past experience, training or qualifications.
- 5.1.3 Removal of School Bus Endorsements:
- 5.1.3.1 All school bus (S) endorsement removals, except those under 5.1.3.8 below, will be approved by the Chief of Driver Services, the CDL Program Manager or the CDL Management Analyst.
- 5.1.3.2 The school bus (S) endorsement will be removed when driving privileges are withdrawn.
- 5.1.3.3 The school bus (S) endorsement will be removed when a driver's record exceeds eight (8) points (full point value) for moving violations on the driver's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to S endorsement holders in meeting this requirement.
- 5.1.3.4 The school bus (S) endorsement will be removed when the DMV is made aware of a conviction of a disqualifying crime as specified in 21 **Del.C.** §2708(b)(7).
- 5.1.3.5 The school bus (S) endorsement will be removed when the DMV receives in writing, a report from a physician that a driver is not medically qualified to operate a motor vehicle **[and/]** or **[a]** commercial motor vehicle as specified in 21 **Del.C.** §2733(a)(3).
- 5.1.3.6 The school bus (S) endorsement will be removed if a driver downgrades from a CDL to a Class D license.
- 5.1.3.7 Any driver that has a school bus (S) endorsement and is required to register as a sex offender with DMV pursuant to 11 **Del.C.** §4120 and § 4121, shall have the school bus (S) endorsement removed.
- 5.1.3.8 DMV will notify the S endorsement holder and DOE, in writing, when an S endorsement is removed from a license including the reason for removal. This notification will entitle the S endorsement holder to request a DMV hearing and will also require the S endorsement holder to notify his **[her]** employer.
- 5.1.4 School Bus Endorsement Reinstatement: A school bus (S) endorsement, once removed, may be reinstated if all other licensing requirements are met. If the school bus (S) endorsement is withdrawn for one year or more, then the driver will need to retake all DMV school bus (S) endorsement testing requirements, pay appropriate fees, and provide DMV with a new School Bus Driver's Certificate (Yellow Card).
- 5.1.4.1 If the school bus (S) endorsement was removed for points, the driver shall be eligible for reinstatement once the full point total on his **[her]** three (3) year driving record falls to eight (8) points or below. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to school bus drivers in meeting this eligibility.
- 5.1.4.2 If the school bus (S) endorsement was removed due to a suspension, revocation or disqualification for moving violations, the driver shall be eligible to reapply for the school bus (S) endorsement five (5) years from the date the suspension, revocation or disqualification has been cleared, as long as there are no further violations incurred affecting eligibility during this time period.
- 5.1.4.3 If the school bus (S) endorsement was removed due to a medical reason, the driver may be eligible for reinstatement once approved by the DMV.
- 5.1.4.4 If the driver voluntarily downgrades from an S endorsed CDL to a Class D license and then the driver wishes to reinstate the S endorsed CDL, the driver will be required to meet the initial issue requirements in accordance with 5.1.2 of this regulation, if the downgrade has

been over one (1) year, including providing a new School Bus Driver's Certificate (Yellow Card).

5.1.4.5 Any driver that has been convicted of a disqualifying crime as outlined in 21 Del.C. §2708(b)(7)(a-f) will never be eligible for a school bus (S) endorsement or reinstatement regardless of the amount of time since the conviction.

5.1.4.6 After five (5) years has passed since the completion of all sentencing requirements resulting from the conviction of any other felony crime, other than those listed in 21 Del.C. §2708(b)(7)(a) through (f), and which have not been pardoned, then 21 Del.C. §2708(b)(7)(g) applies, and the driver must reapply as a new applicant for a school bus (S) endorsement. DMV may seek DOT Deputy Attorney General guidance/clarification in these situations.

5.2 Driver's Status, Records and Record's Review: The following shall apply concerning the driving records and the status of all Delaware-licensed school bus drivers.

5.2.1 Upon a request from DOE, a school district or a school bus contractor, DMV shall provide a copy of a school bus driver's Delaware driving record free of charge. These agencies shall certify on DMV forms that they understand and will comply with the Delaware Privacy Act provisions as found in 21 Del.C. §305.

5.2.2 DMV shall at any time review the driving records of all Delaware-licensed school bus drivers to ensure they continually meet school bus qualification requirements. This review is accomplished through a computerized search of records for violations, which may result in the removal of a school bus (S) endorsement and notification to the driver and the DOE. Although not a prerequisite to a suspension, revocation or removal of an endorsement or a license, DMV will attempt to send warning letters to S endorsement holder's with copies of such letters being sent to DOE, when a S endorsement holders driving record indicates a situation where additional violations could readily result in the withdrawal of driving authority or school bus (S) endorsement.

5.2.3 Drivers moving to Delaware and requesting a school bus (S) endorsement shall provide to the DMV a copy of their driving records for the previous five (5) years from the driver's former state(s) of record. DMV will electronically check the drivers' motor vehicle records. If the electronic check is unable to be performed, the driver will need to provide an official certified copy of his[**her**] motor vehicle driving record to DMV.

6.0 Severability

If any part of this regulation 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 shall remain in full force and effect under Delaware law.

7.0 Effective Date

This regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. §10118(e) or October 1, 2008, whichever is later.

DELAWARE SOLID WASTE AUTHORITY**PUBLIC NOTICE****501 Regulations of the Delaware Solid Waste Authority**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406, 6421 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") will conduct a hearing to consider amendments to the Regulations of the Delaware Solid Waste Authority (adopted June 7, 2001).

The hearing is to provide an opportunity for public comment on the proposed amendments. The public record will close at the close of the hearing, unless the hearing officer extends the comment period at the close of the hearing.

The hearing will be held Thursday, November 6, 2008 at 5:00 P.M. at Delaware Technical Community College, Terry Campus, Corporate Training Center, Room 400 Dover, Delaware 19903.

The Delaware Solid Waste Authority will receive oral and written comments, suggestions, compilations of data, briefs or other written material until the close of the hearing on November 6, 2008. Written comments, suggestions, compilations of data, briefs or other written material may be submitted at the hearing or sent to Michael D. Parkowski, Manager of Business Services and Governmental Affairs, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed rules and regulations may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19903, (302) 739-5361.

The proposed amendments encompass numerous changes to the comprehensive regulations of the Delaware Solid Waste Authority, which were last amended in the year 2001. The proposed regulations are intended to update the current regulations consistent with current practices and objectives. Significant highlights of proposed amendments include the following: (a) changes to licensing requirements, including a new requirement of a license to haul dry waste; (b) contractors with certain governmental entities to use DSWA facilities for the disposal of certain waste; (c) a requirement for the filing of an annual registration statement by owners and operators of recycling programs and facilities; and (d) numerous textual and definitional changes to the current regulations.

DEPARTMENT OF AGRICULTURE
DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION**PUBLIC NOTICE****304 Exotic Animal Regulations**

The Delaware Department of Agriculture proposes these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state. It should be noted here that these regulations do not supersede **Delaware Code** Title 7 Chapter 6 regarding Endangered Species.

The Delaware Department of Agriculture solicits written comments from the public concerning these proposed regulations. Any such comments should be submitted to the Acting State Veterinarian, Caroline Hughes, VMD, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before November 1, 2008. Copies of the proposed regulations are available on request.

THOROUGHBRED RACING COMMISSION**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposal amends Section 11 of the rules and regulations to address Entries, Subscriptions, Delegations by amending existing Rules 11.4.2 and 11.4.3.

A public hearing will be held on October 21, 2008 at 10:00 a.m. in the second floor conference room of the Horsemen's Office at Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, October 16, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH****NOTICE OF PUBLIC HEARING AND COMMENT PERIOD****4406 Home Health Agencies--Aide Only (Licensure)**

The Department Health and Social Services is proposing regulations which establish standards for regulation of the operation of Home Health Agencies. The regulations for Home Health Agencies apply to any program that provides directly or through contract arrangements, to individuals primarily in their place of residence either (1) home health aide services only; or (2) two or more home care services one of which must be either licensed nursing services or home health aide services.

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Delaware Regulations for Home Health Agencies. The regulations for Home Health Agencies apply to any program that provides directly or through contract arrangements, to individuals primarily in their place of residence either (1) home health aide services only; or (2) two or more home care services one of which must be either licensed nursing services or home health aide services.

The public hearing will be held on October 23, 2008 at 10:00 a.m. in the Felton-Farmington Room, located in the Delaware Department of Transportation Building, 800 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review in the October 1, 2008, edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 995-8521.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by October 20, 2008. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments, by October 30, 2008, to:

Deborah Harvey, Hearing Officer

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

DIVISION OF PUBLIC HEALTH
NOTICE OF PUBLIC HEARING AND COMMENT PERIOD
4410 Skilled Home Health Agencies (Licensure)

The Department Health and Social Services is proposing regulations which establish standards for regulation of the operation of Home Health Agencies. The regulations for Home Health Agencies apply to any program that provides directly or through contract arrangements, to individuals primarily in their place of residence either (1) home health aide services only; or (2) two or more home care services one of which must be either licensed nursing services or home health aide services.

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF AIR AND WASTE MANAGEMENT
NOTICE OF PUBLIC HEARING AND COMMENT PERIOD
1302 Regulations Governing Hazardous Waste

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 regularly amends the *DRGHW* by adopting amendments previously promulgated by EPA. In addition, the State is proposing to make

miscellaneous changes to the *DRGHW* that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

The public hearing on the proposed amendments to *DRGHW* will be held on Thursday October 23, 2008 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**NOTICE OF PUBLIC HEARING AND COMMENT PERIOD****3203 Seasons and Area Closed to Taking Horseshoe Crabs, and
3214 Horseshoe Crab Annual Harvest Limit**

The Department adopted regulations (Order Number 2007-F-0044) effective November 11, 2007 to implement the horseshoe crab mandatory harvest provisions in Addendum IV of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Horseshoe Crab. As a follow-up to this Order, the Department is proposing regulations designed to be in compliance with the provisions of the Atlantic States Marine Fisheries Commission Addendum V to the Interstate Fishery Management Plan for Horseshoe Crab. These regulations would extend for another year the prohibition on the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year as well. During the period June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. These harvest limits may be extended for a second year according to the provisions of Addendum V provided the Atlantic States Marine Fisheries Commission elects to do so. In addition it is proposed that where beach collecting is presently legal, that beach collecting of horseshoe crabs to be allowed to continue until July 31 of each year. Since no harvesting is allowed prior to June 8, and most of the migratory shorebirds that feed on horseshoe crab eggs will have departed from Delaware Bay by then, there should be no additional impacts to shorebirds from allowing harvesting to extend beyond the last day of June until the end of July. By harvesting only male horseshoe crabs, females would be further protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year. No other changes to reporting requirements or other horseshoe crab regulations are proposed.

This regulation may be extended for an additional year beyond 2009 pending approval by the Atlantic States Marine Fisheries Commission.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on October 30, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM November 3, 2008.

Prepared By:

Roy W. Miller

302-739-9914

September 15, 2008

DIVISION OF WATER RESOURCES**NOTICE OF PUBLIC HEARING AND COMMENT PERIOD****7404 Total Maximum Daily Load (TMDL) for Zinc in the Red Clay Creek, Delaware**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt an amended Total Maximum Daily Load (TMDL) Regulation for zinc in the Red Clay Creek. The original TMDL Regulation for zinc in the Red Clay Creek was published in the Delaware Register of Regulations on December 1, 1999 (3 DE Reg. 806 (12/1/99)). That TMDL Regulation was appealed by the National Vulcanized Fiber (NVF) Company to the State Environmental Appeals Board and the State Superior Court. The Department entered into a Settlement Agreement with the NVF Company in February of 2007, thereby resolving the appeal subject to the conditions of the Agreement. One condition of the Settlement Agreement was for the Department to consider an amended TMDL based upon a lognormal probability modeling approach. Such an approach provides an improved match between the strength, location, and timing of zinc mass loading to the Red Clay Creek with the inherent ability of the Red Clay Creek to assimilate the zinc loading without adverse impact. The lognormal probability modeling has been completed and the Department is now proposing to adopt an amended TMDL based upon the approach.

Following adoption of the amended Total Maximum Daily Load for zinc in the Red Clay Creek, the Department will submit the Final TMDL Regulation to the U.S. Environmental Protection Agency (EPA) for their review and approval. The Department will also monitor compliance with the terms of the Settlement Agreement between the Department and the NVF Company to ensure commitments are being met.

The authority to develop (and amend) a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the federal Clean water Act, 33 U.S.C. 1251 et. seq., as amended.

A public hearing will be held on the proposed regulation to amend the Department of Natural Resources and Environmental Control's Total Maximum Daily Load regulation for zinc in the Red Clay Creek, Delaware. The public hearing will be held on Tuesday, October 28, 2008, beginning at 6:00 p.m., at the Delaware Department of Natural Resources and Environmental Control, 391 Lukens Drive, New Castle, Delaware.

If you are unable or do not wish to attend the hearing, you may submit written comments to the Department by 4:30 p.m., November 5, 2008. Comments should be directed to the attention of Maryann Pielmeier, DNREC, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE, 19904-2464, (maryann.pielmeier@state.de.us), fax: (302) 739-6140.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, Silver Lake Plaza, Suite 220, 820 Silver Lake Blvd., Dover, DE 19904-2464, (302) 739-9939. Supporting technical documents will also be available beginning October 1, 2008 at the following DNREC web site: <http://www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/tmdlinfo.htm>.

Prepared By:

Richard Greene, Watershed Assessment Section, (302) 739-9939.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****BOARD OF EXAMINERS OF CONSTABLES****PUBLIC NOTICE****2400 Constables**

Notice is hereby given that the Board of Examiners of Constables, in accordance with **Delaware Code** Title 10 Chapter 27 proposes to amend Rule 4.0 – Employment. This amendment will clarify the employment requirements of a Constable. If you wish to view this adoption, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 31, 2008, to Delaware State Police, Detective

Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting in the Fall 2008, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER
PUBLIC NOTICE
2401 Mortgage Loan Originator Licensing

The State Bank Commissioner proposes to adopt new Regulation 2401 ("Mortgage Loan Originator Licensing"). This proposed regulation implements a new Chapter 24 of Title 5 of the **Delaware Code** dealing with the licensing of mortgage loan originators. It establishes criteria and procedures relating to license applications, exemptions, denials, suspensions, revocations, inactive status, surrender, expiration, record keeping and reporting. It also specifies applicable fees and the duties of originating entities that employ mortgage loan originators. The State Bank Commissioner would adopt the proposed new Regulation 2401 on or after November 6, 2008. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the **Delaware Code**.

A copy of the proposed new regulation is published in the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. Thursday, November 6, 2008.

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Thursday, November 6, 2008, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.
