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# Delaware Register of Regulations

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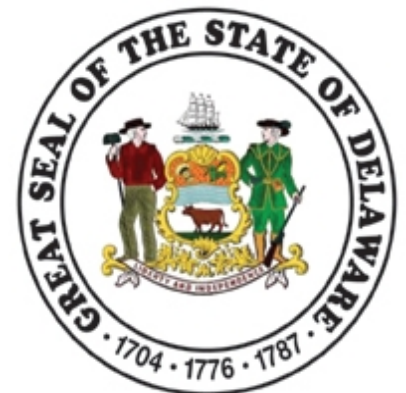


## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 17, 2012.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

15 **DE Reg.** 1728 - 1759 (06/01/12)

Refers to Volume 15, pages 1728 - 1759 of the *Delaware Register* issued on June 1, 2012.

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## 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.

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## 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 17	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	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.

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**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

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

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****624 School District/Charter School Policy Prohibiting Cyberbullying****A. Type of Regulatory Action Required**

New Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks to establish a new regulation 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying. This regulation is a result of Senate Bill 193 of the 146<sup>th</sup> General Assembly, which requires that the Delaware Department of Education shall collaborate with the Delaware Department of Justice to develop a model cyberbullying policy. This legislation and this subsequent regulation expands upon the policy found in 14 **Del.C.** §4112D(B)(2) and also explicit prohibits cyberbullying by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against cyberbullying.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 5, 2012 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 new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to improve the school climate thus resulting in helping to improve student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure all students receive and equitable education.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation is intended to ensure all students' health and safety are adequately protected, specifically in the area of cyberbullying.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation is intended to help ensure all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation is intended to preserve the necessary authority and flexibility of decision making at the local board and school level, but does provide for more specificity of actions required in instances of bullying.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The legislation and this subsequent regulation does require additional reporting.
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 bullying and cyberbullying does not change because of this regulation.
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 is consistent with other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is aligned with the legislation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no anticipated additional costs to the State or to the local school boards for compliance with this regulation.

### **624 School District/Charter School Policy Prohibiting Cyberbullying**

#### **1.0 Cyberbullying Forbidden**

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 Del.C. §4112D(b)(2), each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

#### **2.0 Definition of Cyberbullying**

- 2.1 Cyberbullying means creating an unpleasant or hostile situation through uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community. Cyberbullying can be punished by a school district or charter school if it (1) interferes with a student's physical well-being; (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school.
- 2.2 Whether speech constitutes cyberbullying will be determined from the standpoint of a reasonable student of the same grade and other circumstances as the victim.
- 2.3 The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.

- 2.4 Upon implementation of this policy, and again at the beginning of each academic year, each school district and charter school shall inform students in writing of mediums where posting of speech will be considered to be automatically available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings. From implementation of this policy through the end of the 2012-2013 school year, postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's list of mediums where posting of speech will be considered to be automatically available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.
- 2.5 Nothing in this policy shall limit in any way a school district's or charter school's ability to regulate student conduct, including bullying, in any manner provided for by existing law, regulation, or policy.
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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1501

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

#### 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators

#### A. TYPE OF REGULATORY ACTION REQUESTED

Reauthorization of 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 reauthorize regulation 14 **DE Admin. Code** 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators. It is necessary to review this regulation in order to comply with the 5 year regulation review process. No changes have been deemed necessary. This regulation sets forth the requirements for Knowledge, Skills, and Responsibility Based Salary Supplements for Educators.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday October 31, 2012 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 reauthorized regulation help improve student achievement as measured against state achievement standards? The reauthorized 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 reauthorized regulation help ensure that all students receive an equitable education? The reauthorized 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 reauthorized regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation addresses educator certification, not students' health and safety.

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

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

6. Will the reauthorized regulation place unnecessary reporting or administrative requirements or mandates

upon decision makers at the local board and school levels? The reauthorized 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 reauthorized 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 reauthorized 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 reauthorized 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.

**\*Please Note: Due to this being a reauthorization of the regulation, and there are no amendments, it is not being published here. A copy of the regulation is available at:**

**1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1508

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

### 1508 Special Institute for Teacher Licensure and Certification

#### A. TYPE OF REGULATORY ACTION REQUESTED

Reauthorization of 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 reauthorize regulation 14 **DE Admin. Code** 1508 Special Institute for Teacher Licensure and Certification. It is necessary to review this regulation in order to comply with the 5 year regulation review process. No changes have been deemed necessary. This regulation sets forth the requirements for the Special Institute for Teacher Licensure and Certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, October 31, 2012 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 reauthorized regulation help improve student achievement as measured against state achievement standards? The reauthorized 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 reauthorized regulation help ensure that all students receive an equitable education? The reauthorized 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 reauthorized regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation addresses educator certification, not students' health and safety.

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

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

6. Will the reauthorized regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized 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 reauthorized 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 reauthorized 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 reauthorized 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.

**\*Please Note: Due to this being a reauthorization of the regulation, and there are no amendments, it is not being published here. A copy of the regulation is available at:**

**1508 Special Institute for Teacher Licensure and Certification**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1509

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

**1509 Meritorious New Teacher Candidate Designation**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Reauthorization of 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 reauthorize regulation 14 **DE Admin. Code** 1509 Meritorious New Teacher Candidate Designation. It is necessary to review this regulation in order to comply with the 5 year regulation review process. No changes have been deemed necessary. This regulation sets forth the requirements for a Meritorious New Teacher Candidate Designation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, October 31, 2012 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 reauthorized regulation help improve student achievement as measured against state achievement standards? The reauthorized 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 reauthorized regulation help ensure that all students receive an equitable education? The reauthorized 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 reauthorized regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation addresses educator certification, not students' health and safety.

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

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

6. Will the reauthorized regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized 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 reauthorized 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 reauthorized 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 reauthorized 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.

**\*Please Note: Due to this being a reauthorization of the regulation, and there are no amendments, it is not being published here. A copy of the regulation is available at:**

**1509 Meritorious New Teacher Candidate Designation**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1543

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

**1543 Secondary Science Teacher**

## A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1543 Secondary Science Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide clarification regarding secondary science curricular areas and the necessity for secondary science teachers to hold the appropriate Standard Certificate in each secondary science curricular area they are teaching. This regulation sets forth the requirements for a Secondary Science Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, October 31, 2012 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.

**1543 Secondary Science Teacher****1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary Science Teacher. ~~This certification is required for grades 9 to 12 and is valid in a Middle~~

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~~Level school, grades 6 to 8, and may be used in lieu of the Middle Level Science Teacher certification in grades 6 to 8. Certificates issued include in the individual secondary science curricular areas of Biology, Chemistry, Earth Science, Integrated Science, Physical Science, and Physics.~~

- 1.2 An educator shall hold a Standard Certificate in each secondary science curricular area the educator is teaching, in grades nine (9) to twelve (12).
- 1.2.1 Notwithstanding the requirements in 1.2, a secondary science teacher who holds a Standard Certificate in each of the secondary science curricular areas within a discrete integrated science course, may teach the course without holding a Standard Certificate Secondary Science Teacher Integrated Science.
- 1.3 Any Secondary Science Teacher Standard Certificate may be used in lieu of 14 DE Admin. Code 1533 Middle Level Science Teacher for teachers teaching middle level science in grades six (6) to eight (8).
- 1.24 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.

11 DE Reg. 1646 (06/01/08)

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

~~“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area. A major or its equivalent for eligibility for a Standard Certificate for Physical Science includes physics, chemistry, astronomy, space science, engineering, or a related field. A major or its equivalent in any science discipline or related field is acceptable for eligibility for a Standard Certificate for Integrated Science.~~

11 DE Reg. 1646 (06/01/08)

## 3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Secondary Science Teacher in the individual secondary science curricular areas of Biology, Chemistry, Earth Science, Integrated Science, Physical Science, and Physics 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.

## 4.0 Testing Requirements

Pursuant to 14 Del.C. §1220, where an examination of content knowledge such as a Praxis™ II examination is applicable and available in the individual secondary science curricular area, the applicant shall achieve a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board for each Standard Certificate issued.



## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1553

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

#### 1553 Driver Education and Traffic Safety Education Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to update the current required coursework/professional development and Driver's license requirements. This regulation sets forth the requirements for a Driver Education and Traffic Safety Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, October 31, 2012 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.

## 1553 Driver Education and Traffic Safety Education Teacher

### 4.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Driver Education and Traffic Safety Education Teacher.~~

### 2.0 Definitions

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

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

~~“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 Driver Education and Traffic Safety Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

#### 3.1 Professional Education

3.1.1 A bachelor's degree in any field from a regionally accredited college or university; and

3.1.1.1 A minimum of twelve (12) semester hours of pedagogy courses, taken either as part of a degree program or in addition to it, from a regionally accredited college or university to include:

3.1.1.1.1 Human Development;

3.1.1.1.2 Identifying and Treating Exceptionalities;

3.1.1.1.3 Effective Teaching Strategies; and

3.1.1.1.4 Multicultural Education; and

3.1.1.2 A minimum of nine (9) semester hours, or equivalent in service courses approved by the Department, as indicated below:

3.1.1.2.1 Driver Education, Methods and Materials, 3 semester hours;

3.1.1.2.2 Driver Education, In Car Training, 3 semester hours; and

3.1.1.2.3 Three (3) semester hours selected from the following:

3.1.1.2.3.1 Alcohol and Drug Education;

3.1.1.2.3.2 Current Issues in Driver Education;

3.1.1.2.3.3 Organization, Administration and Supervision of Safety, Driver, and Traffic Safety Education;

3.1.1.2.3.4 Problems in Driver and Safety Education;

3.1.1.2.3.5 Research and Evaluation in Driver and Safety Education;

3.1.1.2.3.6 First Aid;

3.1.1.2.3.7 Teaching Mentally and Physically Challenged Individuals; or

3.1.1.2.3.8 Education for Safe Living.

## ~~3.2 Other Requirements.~~

~~3.2.1 A valid driver's license.~~

~~3.2.2 The applicant's driving record shall not have more than five (5) points at the time of application.~~

~~3.2.3 The applicant's driver's license shall not have been suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five years and shall remain valid for the duration of the applicant's employment under this standard certificate.~~

## **1.0 Content**

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Driver Education and Traffic Safety Education Teacher.

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

## **2.0 Definitions**

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

## **3.0 Standard Certificate**

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Driver Education and Traffic Safety Education Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,

3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Additional Requirements**

An educator shall also have met the following:

4.1 Education requirements:

4.1.1 A minimum of twenty-one (21) credits, taken either as part of a degree program or in addition to it from a regionally accredited college or university, or their equivalent in professional development approved by the Department in the following areas:

4.1.1.1 Human Development (3 credits);

4.1.1.2 Identifying and Treating Exceptionalities (3 credits);

4.1.1.3 Effective Teaching Strategies (3 credits);

4.1.1.4 Cultural Diversity (3 credits);

4.1.1.5 Driver Education, Methods and Materials (3 credits);

4.1.1.6 Driver Education, In Car Training (3 credits); and

4.1.1.7 Three (3) credits selected from one (1) of the following areas:

4.1.1.7.1 Alcohol and Drug Education (3 credits);

4.1.1.7.2 Current Issues in Driver Education (3 credits);

4.1.1.7.3 Problems in Driver and Safety Education (3 credits);

4.1.1.7.4 First Aid (3 credits);

4.1.1.7.5 Teaching Students with Disabilities (3 credits); or

4.1.1.7.6 Education for Safe Living (3 credits).

4.2 Driver's License Requirements.

4.2.1 The applicant shall hold a valid driver's license.

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- 4.2.2 The applicant's driving record shall have no more than five (5) points total from Delaware or any other jurisdiction at the time of application.
- 4.2.3 The applicant's driver's license shall not have been suspended, revoked or disqualified in Delaware or any other jurisdiction in the last five (5) years and the applicant's driver's license shall remain valid for the duration of the applicant's employment under this Standard Certificate.
- 4.3 The educator shall notify the Department immediately if they fail to meet the Driver's License Requirements.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1591

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

### 1591 School Principal and Assistant Principal

#### 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** 1591 School Principal and Assistant Principal. 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 provide research-based pathways to certification for school building leaders. This regulation sets forth the requirements for a School Principal or an Assistant Principal.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, October 31, 2012 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.

### **1591 School Principal and Assistant Principal**

#### **4.0 Content**

4.1 This regulation shall apply to the issuance of a Standard Certificate for School Principal and Assistant Principal, pursuant to ~~14 Del.C. §1220.~~

~~7 DE Reg. 190 (8/1/03)~~

~~7 DE Reg. 1744 (6/1/04)~~

#### **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:

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

~~"Standard Certificate"~~ means a credential issued to verify 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.

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

~~"Teaching Experience"~~ means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK to 12 setting.

~~7 DE Reg. 190 (8/1/03)~~

~~7 DE Reg. 1744 (6/1/04)~~

#### **3.0 Standard Certificate**

The following shall be required for the Standard Certificate for the Principal or Assistant Principal of an elementary or intermediate school, a middle school, a high school, or a school for exceptional students:

3.1 Educational requirements

3.1.1 A master's degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or

3.1.2 A master's degree in education offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards

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~~from a regionally accredited college or university and a current and valid Principal or Assistant Principal certificate from another state, or~~

- ~~3.1.3 A master's degree in any field from a regionally accredited college or university and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the Standard Certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements:~~

~~3.1.3.1 A three semester hour graduate level course in each of the following areas:~~

- ~~3.1.3.1.1 School Administration (at the level to be initially assigned),  
3.1.3.1.2 Supervision and Evaluation of Staff,  
3.1.3.1.3 Curriculum Development,  
3.1.3.1.4 School Business Management,  
3.1.3.1.5 School Law or Legal Issues in Education,  
3.1.3.1.6 Human Relations, and,  
3.1.3.1.7 Child, Adolescent or Human Development, if not taken at the undergraduate level.~~

~~3.2 Experience requirements~~

- ~~3.2.1 A minimum of three (3) years of teaching experience at the level to be initially assigned as a school Principal or Assistant Principal, except at the middle level, where the teaching experience may be at any pK to 12 level, or as a Principal or Assistant Principal of a school for exceptional students, where the teaching experience must have been with one or more of the categories of exceptional children served by the school.~~

## **1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a) for School Principal and Assistant Principal. This certification is required for all School Principals and Assistant School Principals working in Delaware's public school system.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## **2.0 Definitions**

- 2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Certification Program for Leaders in Education" means a program comprised of education components as defined and approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

"School Principal Course of Study" means a course of study approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

## **3.0 Standard Certificate**

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

3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Additional Requirements**

An educator must also have met the following additional requirements.

### 4.1 Education requirements.

4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:

4.1.1.1 A master's or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or

4.1.1.2 A master's or doctoral degree from a regionally accredited college or university in any field and the successful completion of one of the following:

4.1.1.2.1 A School Principal Course of Study, as defined in 14 DE Admin. Code 1595 Certification Programs for Leaders in Education; or

4.1.1.2.2 A School Principal Certification Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

### 4.2 Experience requirements.

4.2.1 An educator must have a minimum of five (5) years of teaching experience.

## **5.0 Procedures for School Principal Preparation Programs**

### 5.1 Program Application Procedures

5.1.1 Program application procedures are specified in 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

### 5.2 Program Evaluation Procedure

5.2.1 Program Evaluation Procedures are specified in 14 DE Admin Code 1595 Certification Programs for Leaders in Education.

## **6.0 Validity**

6.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware Register of Regulations.

6.1.1 Educators currently enrolled in a school leader course of study prior to the effective date of this regulation will have eighteen (18) months subsequent to the effective date to apply for the previous School Principal or Assistant Principal Standard Certificate. Educators are responsible for providing the Department evidence of enrollment via submission of appropriate transcripts.

6.2 An Emergency Certificate for a School Principal or Assistant Principal is not available.

6.3 The Department shall also recognize a Standard Certificate for School Principal or Assistant Principal issued by the Department prior to the effective date of this regulation.

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1595

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

**1595 Certification Programs For Leaders In Education**

**A. TYPE OF REGULATORY ACTION REQUESTED**

New 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 adopt regulation 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to adopt this regulation in order to define and set out the parameters for additional programs for Delaware leaders in education. This regulation sets forth the requirements for Certification Programs for Leaders in Education.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, October 31, 2012 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 adopted regulation help improve student achievement as measured against state achievement standards? The adopted 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 adopted regulation help ensure that all students receive an equitable education? The adopted 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 adopted regulation help to ensure that all students' health and safety are adequately protected? The adopted regulation addresses educator certification, not students' health and safety.

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

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

6. Will the adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The adopted 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 adopted 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 adopted 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.



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## 1595 Certification Programs for Leaders in Education

### **1.0 Content**

This regulation shall apply to Certification Programs for Leaders in Education, pursuant to 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal, 14 **DE Admin. Code** 1592 Certified Central Office Personnel, 14 **DE Admin. Code** 1593 Superintendent, and 14 **DE Admin. Code** 1594 Special Education Director.

### **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.

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

**“Certified Central Office Personnel”** means Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas.

**“Cohort”** means a group of educators that begins and finishes a course of study or certification program as an entity.

**“School Principal”** means a School Principal or an Assistant School Principal.

**“Secretary”** means the Delaware Secretary of Education

**“Superintendent”** means a Superintendent or an Assistant Superintendent.

### **3.0 Minimum Requirements for Leaders in Education Programs**

#### **3.1 School Principal Certification Program**

3.1.1 A School Principal Certification Program must include the following minimum components:

3.1.1.1 A minimum of two hundred (200) hours of graduate level coursework or the equivalent in professional development with a focus on the responsibilities of a school principal and aligned with 14 **DE Admin. Code** 1590 Delaware Administrator Standards, 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards, 14 **DE Admin. Code** 1598 Delaware Professional Development Standards and DPAS for Administrators. The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;

3.1.1.2 A minimum of six hundred (600) hours of residency, internship, or clinical experience under the mentorship of a currently employed effective or highly effective building level administrator in a public school who is licensed in Delaware and holds a standard certificate under 14 **DE Admin. Code** 1591;

3.1.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for a school principal;

3.1.1.4 Training and successful certification and calibration in DPAS; and

3.1.1.5 An evaluation process that includes evaluation of the participant for competency, and feedback regarding the clinical placements, mentors and the program’s coursework or professional development.

#### **3.2 School Principal Course of Study**

3.2.1 A School Principal Course of Study must include the following minimum components:

3.2.1.1 The course of study must have a focus on the responsibilities of a school principal and be aligned with 14 **DE Admin. Code** 1590 Delaware Administrator Standards, 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards, 14 **DE Admin. Code** 1598 Delaware Professional Development Standards and DPAS for Administrators.

3.2.1.2 A minimum of eighteen (18) graduate level credit hours or their equivalent in professional development provided by a regionally accredited college or university;

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## PROPOSED REGULATIONS

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- 3.2.1.3 A minimum of two-hundred and forty (240) additional clinical hours equitably distributed within the course of study. The clinical hours must be completed under the mentorship of currently employed effective or highly effective building level administrators;
- 3.2.1.4 Training and successful certification and calibration in DPAS; and
- 3.2.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the course of study's effectiveness including the clinical placements, mentors, and the coursework or professional development.

### 3.3 Certified Central Office Personnel Certification Program

#### 3.3.1 A Certified Central Office Personnel Program must include the following minimum components:

- 3.3.1.1 A minimum of two hundred (200) hours of graduate level coursework or the equivalent in professional development aligned with 14 **DE Admin. Code** 1590 Delaware Administrator Standards, 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards, 14 **DE Admin. Code** 1598 Delaware Professional Development Standards and DPAS for Administrators, with a focus on the responsibilities of a Director, Supervisor, Administrative Assistant, Coordinator or Manager in an instructional area. The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;
- 3.3.1.2 A minimum of six hundred (600) hours of a residency, internship or clinical experience under the mentorship of a currently employed effective or highly effective administrator in a public school system who is licensed in Delaware and holds a standard certificate under 14 **DE Admin. Code** 1592;
- 3.3.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for an instructional area Director, Supervisor, Administrative Assistant, Coordinator or Manager;
- 3.3.1.4 Training and successful certification and calibration in DPAS; and
- 3.3.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the program effectiveness including the clinical placements, mentors, and the program's coursework or professional development.

### 3.4 Superintendent Certification Program

#### 3.4.1 A Superintendent Program must include the following minimum components:

- 3.4.1.1 A minimum of two hundred and fifty (250) hours of graduate level coursework or the equivalent in professional development aligned with 14 **DE Admin. Code** 1590 Delaware Administrator Standards, 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards, 14 **DE Admin. Code** 1598 Delaware Professional Development Standards and DPAS for Administrators, with a focus on the responsibilities of a superintendent. The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;
- 3.4.1.2 A minimum of six hundred (600) hours of a residency, internship or clinical experience under the mentorship of a currently employed effective or highly effective superintendent in a public school system who is licensed in Delaware and holds a standard certificate under 14 **DE Admin. Code** 1593;
- 3.4.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for a Superintendent.;
- 3.4.1.4 Training and successful certification and calibration in DPAS; and
- 3.4.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the program effectiveness including the clinical placements, mentors, and the program's coursework or professional development.

### 3.5 Special Education Director Certification Program

#### 3.5.1 A Special Education Director Program must include the following minimum components:

- 3.5.1.1 A minimum of two hundred and fifty (250) hours of graduate level coursework or the equivalent in professional development aligned with 14 **DE Admin. Code** 1590 Delaware

Administrator Standards, 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards, 14 **DE Admin. Code** 1598 Delaware Professional Development Standards and DPAS for Administrators, with a focus on exceptional children/special education. The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;

- 3.5.1.2 A minimum of six hundred (600) hours of a residency, internship or clinical experience under the mentorship of a currently employed effective or highly effective Special Education Director in a public school system who is licensed in Delaware and holds a standard certificate under 14 **DE Admin Code**. 1594;
- 3.5.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for a Special Education Director;
- 3.5.1.4 Training and successful certification and calibration in DPAS; and
- 3.5.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the program effectiveness including the clinical placements, mentors, and the program's coursework or professional development.

#### **4.0 Application Approval Procedure**

- 4.1 An application for a certification program pursuant to 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education will be reviewed in the following sequence:
  - 4.1.1 Applications must be submitted well in advance of the prospective initiation of the program or course of study's cohort to allow for the review and approval process to be completed.
  - 4.1.2 A designee of the Standards Board will screen each application for completeness. Incomplete applications will not be processed and the applicant will be notified.
  - 4.1.3 The complete application will be forwarded to the Standards Board's Licensure and Certification Criteria Committee for initial review and recommendation. The complete application will also be forwarded to the Secretary or his designee.
  - 4.1.4 The recommendation and comments from the Standards Board's Licensure and Certification Criteria Committee shall be submitted to the Standards Board for consideration. The Standards Board shall decide upon a recommendation as to the approval of the program, the duration, and any special considerations or conditions.
  - 4.1.5 The recommendation of the Standards Board shall be submitted to the State Board for their recommendation to approve or deny the application.
  - 4.1.6 The Standards Board and State Board recommendations shall be submitted to the Secretary for the final approval or denial of the certification program.
- 4.2 Programs are initially approved for two (2) cohorts. However if the recommendations of the Standards Board's Licensure and Certification Criteria Committee, the Standards Board and the State Board are unanimous in their recommendation to approve for three (3) cohorts, the Secretary may approve the program for three (3) cohorts.
- 4.3 Program Renewal
  - 4.3.1 Renewal is necessary for continued program approval.
    - 4.3.1.1 The renewal request must be made at least nine (9) months prior to approval expiration and must contain an updated application including program success and evaluation information.
    - 4.3.1.2 The applicant must submit all requested information for continued approval.
    - 4.3.1.3 The applicant is responsible for establishing the effectiveness of the program.
  - 4.3.2 The Standards Board recommendations, program data and evaluations will be considered to determine the continued approval of the program.
  - 4.3.3 Additional evidence submitted to the Standards Board may also be considered.

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4.3.4 A designee of the Standards Board will screen each renewal application for completeness. Incomplete applications will not be processed and the applicant will be notified.

4.3.4.1 The complete renewal application will be forwarded to the Standards Board's Licensure and Certification Criteria Committee for initial review and recommendation. The complete renewal application will also be forwarded to the Secretary or his designee.

4.3.4.2 The recommendation and comments of the Standards Board's Licensure and Certification Criteria Committee shall be submitted to the Standards Board for consideration. The Standards Board shall make a recommendation as to the renewal of the program, the duration, and any special considerations or conditions.

4.3.4.3 The recommendation of the Standards Board shall be submitted to the State Board for their recommendation to approve or deny the renewal application.

4.3.4.4 The Standards Board and State Board recommendations shall be submitted to the Secretary for the final approval or denial of the renewal application.

4.3.5 Renewal of a certification program may be for up to an additional three (3) cohorts, contingent upon meeting all requirements.

## **5.0 Accountability and Evaluation**

5.1 All programs will be evaluated for fidelity to the approved application.

5.2 At least biannually on the first day of December and June, upon request at any other time, and at the conclusion of each cohort, the provider must submit a report to the Standards Board and the Secretary. The provider of an approved Certification Program for Leaders in Education must submit evidence in the report of the following:

5.2.1 The applicant selection process is consistent with that described in the approved program application.

5.2.2 The delivered professional development is consistent with that described in the approved program application.

5.2.3 The residency, internship or clinical experience for participants has been monitored for appropriateness and meeting the participants' needs.

5.2.4 The program has met or exceeded the hours mandated.

5.2.5 All program participants have been evaluated on an ongoing basis for:

5.2.5.1 Program participation and attendance.

5.2.5.2 Successful completion of assignments.

5.2.5.3 Successful application of skills and knowledge attained by program participation.

5.2.5.4 Successful job placement or employment of current or past cohort participants.

5.3 Failure by the provider to meet the requirements of this regulation or to file biannual reports may result in the removal of the program's approval and the subsequent non-issuance of the appropriate Standard Certificate to a program participant.

5.3.1 The Secretary shall have the authority to remove the approval of the program for failure to meet the requirements of this regulation.

## **6.0 Recommendation for Certification**

6.1 The approved program provider shall recommend individual program participants to the Department for the appropriate Standard Certificate based on criteria set forth in the approved program application and applicable regulation.

6.1.1 The recommendation shall be on approved program provider's letterhead and must attest to the participant's successful completion of all program components.

6.2 The Department shall issue the appropriate Standard Certificate to qualified educators who successfully complete the program and meet the minimum requirements as verified by the approved program provider.

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## 7.0 Oversight

- 7.1 The Department shall work in consultation and cooperation with the Standards Board or their designee to monitor the program's components as listed in Section 5.0 and make reports to the Standards Board and the State Board.
- 7.1.1 The Standards Board or their designee shall work with the Department to develop procedures for program application and monitoring.

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

Statutory Authority: 16 Delaware Code, Section 1101 (16 Del.C. §1101)  
16 DE Admin. Code 3220

### 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

#### PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3220 - Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Thursday, November 1, 2012.

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

#### SUMMARY OF PROPOSED CHANGES

This regulatory proposal amends the existing regulations by establishing reporting requirements for Certified Nurse Aide training program providers and makes some minor revisions in training curricula.

#### Statutory Authority

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

### 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

#### 1.0 Definitions

**“Advanced Practice Nurse”** shall mean an individual whose education and licensure meet the criteria outlined in 24 Del.C. Ch. 19 and who is certified in at least one of the following specialty areas: (1) Adult nurse practitioner; (2) Gerontological clinical nurse specialist; (3) Gerontological nurse practitioner; (4) Psychiatric/mental health clinical nurse specialist; (5) Family nurse practitioner.

**“Assisted Living Facility”** ~~Assisted living facility~~ is a residential arrangement for fee licensed pursuant to 16 Del.C. Ch. 11.

**“CE Track”** is the Division's website [www.CNADECE.org](http://www.CNADECE.org) used for recording and tracking CNA continuing education hours counted toward CNA recertification requirements.

**“CE Hour”** Continuing education offered by an education provider consisting of 60 minutes of instruction. For formal college nursing courses completed, one (1) semester hour is equivalent to five (5) CE hours.

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**“Certified Nursing Assistant (CNA)”** a duly certified individual under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the person(s) to whom they are providing care.

**“Department”** the Department of Health and Social Services.

**“Direct Supervision”** means actually observing students performing tasks.

**“Division”** the Division of Long Term Care Residents Protection.

**“Education Provider”** is a facility, agency or other entity that offers continuing education courses approved by the Division. Education Provider approval is contingent upon the education provider recording attendance, confirming participant identity and otherwise ensuring that CE hours are accurately recorded in CE Track.

**“General Supervision”** is providing necessary guidance for the program and maintaining ultimate responsibility.

**“Intermediate Care Facility”** Facility licensed pursuant to 16 Del.C. Ch. 11 with a license designated for intermediate care beds.

**“Licensed Nurse”** shall mean a licensed practical nurse, registered nurse and/or advanced practice nurse whose education and licensure meet the criteria in 24 Del.C. Ch. 19.

**“Licensed Nursing Facility”** is a residential institution, as defined in 16 Del.C., §11042(4), which provides services to residents which include resident beds, continuous nursing services, and health and treatment services for individuals who do not currently require continuous hospital care. Care is given in accordance with physician's orders and requires the competences of a registered nurse (RN).

**“Licensed Practical Nurse (LPN)”** a nurse who is licensed as a practical nurse in Delaware or whose license is recognized to practice in the State of Delaware, and who may supervise LPN's, CNA's, NA's and other unlicensed personnel.

**“Nursing Assistant (NA)”** an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

**“Nursing Related Services”** those health related services that include supervision of, and direct assistance to, individuals in their activities of daily living and/or those physical and psychosocial basic skills encompassed in the certified nursing assistant curriculum.

**“Nursing Services Direct Caregivers”** those individuals, as defined in 16 Del.C., §1161(e), assigned to the direct care of nursing facility residents.

**“Physician”** a physician licensed to practice in the State of Delaware.

**“Registered Nurse (RN)”** a nurse who is a graduate of an approved school of professional nursing and who is licensed in Delaware or whose license is recognized to practice in the State of Delaware.

**“Rehabilitation”** the restoration or maintenance of an ill or injured person to self-sufficiency at his or her highest attainable level.

**“Resident”** a person admitted to a nursing facility or similar facility licensed pursuant to 16 Del.C. Ch 11.

**“Restraint” “Chemical Restraints”** are defined as a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

**“Physical Restraints”** are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

**“Senior Certified Nursing Assistant”** a Certified Nursing Assistant who has met the requirements and training specified in Section 4 of these regulations.

**“Skilled Care Facility”** Facility licensed pursuant to 16 Del.C. Ch. 11 with a license designated for skilled care beds.

**“Student”** a person enrolled in a course offering certification as a CNA.

**2.0 General Training Requirements And Competency Test**

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

- 2.1 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.
- 2.3 Nursing Assistants shall take the competency test within 30 days of completion of an approved program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test. The certificate of completion of an approved program, a prerequisite to testing, must be dated within 24 months of the available testing date. Nursing assistants who are trained in a facility and are counted for staffing purposes pursuant to 16 Del.C. §1162(f) must pass the test within 90 days of completion of the facility program to continue to be counted in staffing calculations.
- 2.4 In order to qualify for recertification, a CNA must, during each 24 month certification period: (1) complete 24 hours of approved continuing education including 6 hours of dementia training and 2 hours of patient abuse prevention training and (2) perform at least 64 hours of nursing related services for pay under the supervision of a licensed nurse or physician. A CNA who does not perform at least 64 hours of nursing related services in a certification period, ~~or fails to complete the required continuing education, or fails to renew their certification before the expiration date,~~ must pass the competency test again. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.
  - 2.4.1 ~~All The CNAs shall receive~~ dementia specific training ~~that~~ shall include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. All CNAs shall also receive training in the prevention of patient abuse that shall include: definitions and signs and symptoms of abuse and neglect, reporting requirements and prevention strategies.
  - 2.4.2 CE Track commenced operations January 1, 2012. CE hours earned after January 1, 2012, must be recorded in CE Track in order to be counted for recertification.
  - 2.4.3 Education Providers shall enter courses in CE Track for Division approval prior to offering a class.
  - 2.4.4 Education Providers shall enter classes into CE Track.
  - 2.4.5 Education Providers shall enter CNA class attendance into CE Track within fourteen (14) working days from class completion. No CE hours will be considered for CNA recertification requirements if attendance is not entered by the Education Provider in CE Track.
- 2.5 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations §483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:
  - 2.5.1 The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.
  - 2.5.2 The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.
  - 2.5.3 The CNA must be in good standing in the jurisdiction where he/she is currently certified.

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- 2.5.4 The CNA submits \$30 to the Department to cover the costs associated with granting the reciprocity.
- 2.6 Nursing students who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a 75 hour clinical component in a long term care setting will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.
- 2.7 Nursing students who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.
- 2.8 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.
- 2.9 A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.
- 2.10 If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.
- 2.11 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

### 3.0 CNA Training Program Requirements

- 3.1 General. Program approval must be obtained from the Division prior to operating a CNA program. To obtain approval, the curriculum content for the Certified Nursing Assistant training programs shall meet each of the following requirements:
- 3.1.1 The curriculum shall include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program.
- 3.1.2 The program shall be a minimum of 150 hours in length, consisting of: (1) classroom instruction including laboratory time of 75 hours, and (2) clinical skills training of 75 hours in a ~~long term care setting~~ Delaware licensed skilled and Intermediate care nursing facility or a certified nursing facility defined in 42 CFR § 483.5(a). Additional hours may be added in either of these areas or both.
- 3.1.3 Classroom instruction and demonstrated proficiency in each skill shall be completed prior to students' performing direct resident care. Programs shall maintain documentation of required skills that each student has successfully demonstrated to the RN instructor.



- 3.1.4 The training of nursing assistant must be done by or under the general supervision of a RN who possesses a minimum of two years of nursing experience, at least 1 year of which must be in the provision of long term care facility services. The required one year of full-time (35-hours per week) long term care experience can be met by work experience in, or supervision or teaching of students in a certified Delaware licensed skilled and intermediate care nursing facility or a certified nursing facility defined in 42 CFR § 483.5(a).
- 3.1.5 All instructors (classroom and clinical) must have completed a course in teaching adults or have experience teaching adults in a group classroom/clinical setting or in the case of high school programs, be a state licensed high school teacher. Instructors do not have to have one year of long term care experience if the school has identified a RN supervisor as described in 3.1.4. The RN supervisor shall be available to all instructors, shall assist in developing lesson plans based on experience in taking care of nursing home residents, shall periodically ensure and document that instructors are operating effectively and that the program is operating in accordance with all state and federal regulations. Classroom ratios of student to instructor shall not exceed 24:1
- 3.1.6 LPN instructors are limited to instruction of students during the clinical phase of the CNA training program and must have at least three years of nursing experience and must work under the general supervision of a RN.]
- 3.1.7 Clinical instructors shall provide general supervision of students at all times during clinical instruction. Clinical instructors shall provide direct supervision to students in the clinical setting while the student is learning a competency until proficiency has been both demonstrated and documented. Clinical and laboratory ratios of student to Registered Nurse or Licensed Practical Nurse instructor shall not exceed 8:1.
- 3.1.8 Other personnel from the health profession may supplement the instructor, including but not limited to, registered nurses, licensed practical/vocational nurses, pharmacists, dieticians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activity specialist, speech/language/hearing therapists and resident rights experts. Supplemental personnel must have at least 1 year of experience in their respective fields.
- 3.1.9 Programs must notify the Division in writing (which may be faxed) at least 21 days prior to implementing permanent and/or substantial changes to the program or the program's personnel. Examples of substantial changes include, but are not limited to, instructor(s), clinical or classroom site, major revision of course structure, change in textbook. The 21 day time period may be waived by the Division for good cause shown.
- 3.2 Equipment
- All programs shall have available at a minimum the following equipment:
- 3.2.1 Audio/Visual (Overhead projector and/or TV with VCR)
- 3.2.2 Teaching Mannequin, Adult, for catheter and perineal care
- 3.2.3 Hospital Bed
- 3.2.4 Bedpan/Urinal
- 3.2.5 Bedside commode
- 3.2.6 Wheelchair
- 3.2.7 Scale
- 3.2.8 Overbed Table
- 3.2.9 Sphygmomanometer
- 3.2.10 Stethoscope
- 3.2.11 Resident Gowns, linens and at least four (4) pillow
- 3.2.12 Thermometers
- 3.2.13 Crutches
- 3.2.14 Canes (Variety)
- 3.2.15 Walker

# PROPOSED REGULATIONS

## 3.2.16 Gait Belt

3.2.167 Miscellaneous Supplies: i.e., Bandages, Compresses, Heating Pad, Hearing Aid, Dentures, Toothbrushes, Razors, bath and emesis basins and compression stockings.

3.2.178 Foley Catheter Drainage Bag

3.2.189 Hydraulic Lift

3.2.4920 Adaptive eating utensils/equipment

**\*Please note that no additional changes were made to the regulation, therefore the proposed regulation is not being published here in its entirety. A copy of the proposed regulation is available at:**

**3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

## DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1101 (16 Del.C. §1101)  
16 DE Admin. Code 3230

### 3230 Rest (Residential) Home Regulations

#### PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3230 – Rest (Residential) Home Regulations.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Thursday, November 1, 2012.

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

#### SUMMARY OF PROPOSED CHANGES

This regulatory proposal amends the existing regulations as outlined below:

- Updates language and care techniques.
- Updates environment, emergency preparedness and personnel requirements.
- Conforms records and reporting requirements for Rest (Residential) Homes to the standards in effect for all other licensed facilities.
- Eliminates the list of Notifiable Diseases and incorporates by reference current CDC standards.

#### Statutory Authority

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

### 3230 Rest (Residential) Home Regulations

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

**3230 Rest (Residential) Home Regulations**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 503(c) (31 Del.C. §503(c))  
16 DE Admin. Code 20320

### PUBLIC NOTICE

#### Medicaid Long-Term Care Services - Home Equity

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM) regarding eligibility for payment of Medicaid Long-Term Care Services, specifically, Home Equity Cap.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 31, 2012.

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

### SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance proposes to amend the Division of Social Services Manual (DSSM) regarding eligibility for payment of Medicaid Long-Term Care (LTC) services, specifically, Home Equity Cap.

#### Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

#### Background

The Deficit Reduction Act (DRA) of 2005 was signed into law on February 8, 2006. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

Section 6014 of the DRA amends section 1917 of the Social Security Act (the Act) to provide that in determining the eligibility of an individual to receive medical assistance payment for nursing facility services or other long-term care services, States must deny payment if the individual's equity interest in his or her home exceeds \$500,000. States have the option to substitute an amount exceeding \$500,000, but not in excess of \$750,000.

Included in section 6014(f) of the DRA was the provision that the dollar amount of value of the home equity is to be increased beginning in 2011. The amount is to be increased from year to year based on the percentage increase in the Consumer Price Index (CPI), rounded to the nearest \$1,000.

#### Summary of Proposal

Under section 6014 of the Deficit Reduction Act of 2005 (DRA), Medicaid will not pay for long-term care services for individuals whose equity interested in their home exceeds a federally issued mandated home equity cap. As a State option, a higher limit may be set that does not exceed a maximum home equity cap. Delaware has elected to use the minimum cap.

Therefore, the corresponding sections of the Division of Social Services Manual, 20320.7.B and 20320.7.E, have been revised to reflect this provision and the Federal standard change of the excess home equity provisions based on the Consumer Price Index effective January 1, 2011 and effective January 1, 2012.

This statement of policy is retroactive to January 1, 2011.

# PROPOSED REGULATIONS

## Fiscal Impact Statement

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

## DMMA PROPOSED REGULATION #12-46

### REVISIONS:

#### 20320.7.B Receiving LTC On/After 01-01-2006

If a Medicaid recipient started receiving LTC Medicaid on or after January 1, 2006, evaluate home equity at the next redetermination.

Verification of the equity value of the home is required. Equity value is determined by using the current market value of the home minus any mortgages or loans on the home.

Individuals with equity value in home property that exceeds ~~\$500,000~~ the home equity cap as set by federal regulations are NOT eligible for Medicaid payment of long-term care services unless the home is lawfully occupied by:

- a spouse,
- a dependent child under age 21 years, or
- a blind or disabled child of any age.

\*Note: this This is not a change in the general rule that excludes a home of any value for purposes of determining eligibility for Medicaid. It applies only to medical assistance payment for nursing facility services, or other long-term care services referred to in 1917(c)(i)(C)(i).

Individuals with substantial home equity may be eligible for Medicaid payment of other covered services if they meet all the other Medicaid eligibility requirements.

See DSSM 20320.7.E for current home equity cap.

#### 20320.7.E Substantial Home Equity Cap

Beginning in the year 2011, the limit on the substantial home equity will be increased yearly based on the Consumer Price Index (CPI).

<u>Effective Date</u>	<u>Home Equity Cap</u>
<u>January 1, 2006</u>	<u>\$ 500,000</u>
<u>January 1, 2011</u>	<u>\$ 506,000</u>
<u>January 1, 2012</u>	<u>\$ 525,000</u>

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 503(c) (31 **Del.C.** §503(c))  
16 **DE Admin. Code** 3034

### PUBLIC NOTICE

#### 3034 General Assistance Time Limits

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding General Assistance, specifically, *General Assistance Time Limits*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by October 31, 2012.

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

## SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding General Assistance, specifically, *General Assistance Time Limits*.

### Statutory Authority

31 Del.C. §503(c), *Eligibility for Assistance; General Assistance*

### General Assistance

General Assistance is a State-funded program designed to provide cash assistance to families and unemployable individuals who meet the financial eligibility requirements of the program and who do not qualify for federally funded programs, such as Temporary Assistance for Needy Families (TANF) or Social Security benefits.

### Summary of Proposed Change

~~DSSM 3034, *General Assistance Time Limits*~~ **RESERVED**: The agency had created a twenty-four (24) month limit for the receipt of General Assistance, effective February 1, 2010. This rule has not been implemented and is being repealed. The Division of Social Services (DSS) had implemented a 24-month time limit for the receipt of General Assistance (GA). Many recipients if not most of the GA caseload are destitute and have no access to other cash resources to meet basic needs. Given the unavailability of other resources, the vulnerability of the population in the program, and the relative stabilization of the General Assistance caseload, DSS is repealing the 24-month time limit.

### DSS PROPOSED REPEAL REGULATION #12-44 REVISION:

#### ~~3034 *General Assistance Time Limits*~~ **RESERVED**

#### ~~3034.1 *Determining Time Limits for General Assistance Recipients*~~:

~~This policy applies to General Assistance recipients who are 18 years old and older.~~

- ~~1. Effective to February 1, 2010 General Assistance is a time limited program for adult recipients.~~
- ~~2. After January 31, 2010 adults may only receive GA for up to 24 months.~~

~~Exception: GA recipients who have applied for SSI and whose SSI determination is pending may continue to receive GA past the 24 month time limit.~~

**13 DE Reg. 1333 (04/01/10)**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 503(c) (31 Del.C. §503(c))  
16 DE Admin. Code 11003.2.1

### 11003.2.1 Sanctioning TANF and Transitional Work Program Recipients

## PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Sanctioning TANF and Transitional Work Program Recipients*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by October 31, 2012.

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

## SUMMARY OF PROPOSAL

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *TANF and Transitional Work Program Sanctions*.

### Statutory Authority

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

### Summary of Proposed Change

**DSSM 11003.2.1, *TANF and Transitional Work Program Sanctions*:** The policy on TANF Sanctions includes sanctions that may be applied as a result of noncompliance with the Transitional Work Program (TWP). The Division of Social Services (DSS) proposes to remove policy language that addresses the requirements for clients who are working to cure a second or subsequent TANF and/or TWP sanction. These requirements have not been implemented operationally. The Division may reconsider for future rulemaking once these provisions can be supported by the Delaware Client Information System (DCIS), Delaware's integrated eligibility system.

### DSS PROPOSED REGULATION #12-45

#### REVISIONS:

#### 11003.2.1 Sanctioning TANF and Transitional Work Program Recipients

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

When TANF recipients receive a full family sanction or fail without good cause to comply with the Transitional Work Program (TWP), they lose their TANF Child Care. This means their child care case will close. In order to regain TANF Child Care, recipients must work to cure the sanction by cooperating with their TANF or TWP requirements.

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

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

~~[NOTE: Clients must use self arranged care each time they are sanctioned. This requirement applies until they cooperate with their TANF or TWP requirements for 12 consecutive months.]~~

~~See 11003.2.1 TANF & Transitional Work Program – History~~

~~See 11003.7.8 Special Needs~~

~~See 3017.1 Transitional Work Program~~

**13 DE Reg. 1337 (04/01/10)**

**14 DE Reg. 1373 (06/01/11)**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 104

### REGISTER NOTICE SAN 2012-04

#### 1. TITLE OF THE REGULATIONS:

104 Regulations for the Green Energy Program

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

The State of Delaware Green Energy Fund was created by House Bill 10 in 1999 as part of the deregulation of Delaware's electric utilities. Currently, the program regulations need to be revised due to changes to the program required by the recent legislative updates enacted by S.B. 266 in 2010. Additionally, revisions to the Green Energy Program regulations are needed to streamline the Green Energy Program requirements to increase process efficiency. The Green Energy Fund regulations are being revised to adhere to requirements in the Delaware Energy Act and to further streamline Green Energy Fund programs. The proposed draft regulations include changes to the programs which seek to make the administration of the programs more efficient and improve the sustainability of the Green Energy Fund programs.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this regulation.

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Green Energy Fund pursuant to 26 Del.C. Ch. 10, Section 1014 and 29 Del.C. Ch. 80, Subchapter 2, the Delaware Energy Act.

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

None

#### 6. NOTICE OF PUBLIC COMMENT:

DNREC will hold a public hearing for renewable energy installers and other interested parties on proposed revisions to the regulations for the Green Energy Fund on Wednesday, November 14, 2012 at 6:00 pm in the DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover. The hearing will present information about the proposed draft regulations and collect input from the public and stakeholders regarding these changes.

A copy of the proposed draft regulations and a summary of the major updates are available for review on DNREC's Green Energy Fund website [http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/GEF\\_Regulations\\_Update.aspx](http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/GEF_Regulations_Update.aspx). Interested parties may also obtain a copy of the proposed regulations by emailing [DNREC\\_GreenEnergyProgram@state.de.us](mailto:DNREC_GreenEnergyProgram@state.de.us).

Written comments on the proposed regulations will be accepted until November 29, 2012 and may be submitted to the DNREC Division of Energy and Climate, attention: Suzanne E. Sebastian, 1203 College Park Drive, Suite 101, Dover, DE 19904, or by emailing [DNREC\\_GreenEnergyProgram@state.de.us](mailto:DNREC_GreenEnergyProgram@state.de.us)

#### 7. PREPARED BY:

Suzanne E. Sebastian, Green Energy Program Manager, Planner IV,  
Division of Energy & Climate  
1203 College Park Drive, Ste. 101  
Dover, DE 19901  
(302) 735-3491                      09/06/12

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

**104 Regulations for the Green Energy Program**

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(b) and 903(e); (7 Del.C., §§901(b) & 903(e))  
**7 DE Admin. Code 3521**

**PUBLIC NOTICE**

**1. TITLE OF THE REGULATION:**

3521 Weakfish Size Limits; Possession Limits, Seasons.

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:**

The purpose of this action is to amend the definition of weekends and weekdays in 7 DE Admin. Code §3521 (5.0). Delaware was required to implement a 34-day commercial closure (when all fishing gear, except hook & line, were to be removed from the water) under the provision of Amendment III to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish (ISFMP). Delaware's present regulations include weeklong closures at the beginning of May and the end of June and all weekends in May and June to meet the ISFMP specifications. The Department has received several requests from the commercial fishing sector to change the weekend closure periods from Friday through Sunday to Saturday through Monday. This change would enable Delaware's commercial gill netters to more adequately supply the recreational bait market with fresh Atlantic menhaden for weekend anglers. The concept of the proposed action was endorsed by the Tidal Finfish Advisory Council at its June 20, 2012 meeting.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

§ 901(c & d), § 903(e) (2)a, Title 7 Delaware Code

**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to the weakfish regulation will be open October 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on October 31, 2012 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

**3521 Weakfish Size Limits; Possession Limits; Seasons.**

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any person to possess weakfish, *Cynoscion regalis*, taken with a hook and line, that measure less than thirteen (13) inches, total length.



- 
- 2.0 It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than one (1) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.
- 3.0 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for fishing equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.
- 3.1 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit to possess more than one hundred pounds (100 lbs) of weakfish per vessel per day (a day being 24 hours) or trip, whichever is the longer period of time.
- 4.0 It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than one (1) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of one (1) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.
- 5.0 It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:  
Every weekend day (defined as 12:01 AM on ~~Friday~~ Saturday through midnight ~~Sunday~~ Monday) in both May and June, plus contiguous weekdays (defined as 12:01 AM ~~Monday~~ Tuesday through midnight ~~Thursday~~ Friday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be mailed in advance to the affected public and published annually in the Delaware Fishing Guide.
- 6.0 The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of one (1) weakfish but not more than 100 pounds per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.
- 7.0 It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than one (1) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of one (1) weakfish.
- 

**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 **Del.C.** Chs. 60 and 63)  
7 **DE Admin. Code** 1302

**REGISTER NOTICE**  
**SAN # 2012-15****1. TITLE OF THE REGULATIONS:**

*Delaware's 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

# PROPOSED REGULATIONS

equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations. Some of the changes DNREC is proposing to make are already in effect at the federal level. Additionally, DNREC is proposing to adopt required federal regulations and miscellaneous changes to correct errors and add consistency or clarification.

### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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

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

None

### 6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Thursday, October 25, 2012 from 6:00 p.m. to 6:30 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 Section - (302) 739-9403

## **Amendments To Delaware's Regulations Governing Hazardous Waste**

### **2012 Proposed Amendments Post Workshop / Final Proposed Start Action Notice # 2012-15**

ID #	Description
1	Federal LDR Revision for Carbamate Wastes
2	Federal Technical Corrections (2)
3a	SQG Accumulation Requirements for Ignitable/Reactive Wastes
3b	Labeling Elucidation
3c	Accumulation Secondary Containment
3d	Small Quantity Generator Tanks >1000 gallons
3e	Tank Closure
3f	Correction (may be Minor)

#### **AMENDMENT 1:**

#### **LDR Revision for Carbamate Wastes**

Adopt Federal revision to Land Disposal Restrictions for carbamate wastes.

#### **Background:**

Delaware is proposing to adopt a previously issued Direct Final rule (Federal Register Volume 76, Number 113 (Monday, June 13, 2011), Pages 34147-34157) from the Federal Environmental Protection Agency (EPA or the Agency) to revise the Land Disposal Restrictions (LDR) treatment standards for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off- specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or

intended to be discarded. Currently, under the LDR program, most carbamate wastes must meet numeric concentration limits before they can be land disposed. However, the lack of readily available analytical standards makes it difficult to measure whether the numeric LDR concentration limits have been met. Therefore, DNREC is providing as an alternative standard the use of the best demonstrated available technologies (BDAT) for treating these wastes. In addition, this action removes carbamate Regulated Constituents from the table of Universal Treatment Standards.

## PART 268--LAND DISPOSAL RESTRICTIONS

Section 268.40, the Table of Treatment Standards in paragraph (b) is amended by revising the entries for:

K156	K157	K158	K159
K161	P127	P128	P185
P188	P189	P190	P191
P192	P194	P196	P197
P198	P199	P201	P202
P203	P204	P205	U271
U278	U279	U280	U364
U367	U372	U373	U387
U389	U394	U395	U404
U409	U410	U411	

to read as follows: **Insert Carbamate Revision Table (below)**

### § 268.40 Applicability of treatment standards.

\*\*\*\*\*

#### Treatment Standards For Hazardous Wastes

[Note: NA means not applicable]

Waste code	Waste description and treatment/Regulatory subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS <sup>2</sup> number	Concentration <sup>3</sup> in mg/L; or Technology Code <sup>4</sup>	Concentration <sup>5</sup> in mg/kg unless noted as "mg/L TCLP"; or Technology Code <sup>4</sup>
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	98-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl <sup>10</sup>	17804-35-2	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Benzene	71-43-2	0.14	10
		Carbaryl <sup>10</sup>	63-25-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST

## PROPOSED REGULATIONS

		Carbenzadim <sup>10</sup>	10605-21-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Carbofuran <sup>10</sup>	1563-66-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Carbosulfan <sup>10</sup>	55285-14-8	0.028; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl <sup>10</sup>	16752-77-5	0.028; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine <sup>10</sup>	121-44-8	0.081; or CMBST, CHOXD, BIODG or CARBN	1.5; or CMBST
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl <sup>10</sup>	16752-77-5	0.028; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Methylene chloride	75-09-2	0.089	30
		Methylethyl ketone	78-93-3	0.28	36
		Pyridine	110-86-1	0.014	16
		Triethylamine <sup>10</sup>	121-44-8	0.081 or CMBST, CHOXD, BIODG or CARBN	1.5; or CMBST
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes	Benzene	71-43-2	0.14	10

# PROPOSED REGULATIONS

		Carbenzadim <sup>10</sup>	10605-21-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Carbofuran <sup>10</sup>	1563-66-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Carbosulfan <sup>10</sup>	55285-14-8	0.028; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
K159	Organics from the treatment of thiocarbamate wastes	Benzene	71-43-2	0.14	10
		Butylate <sup>10</sup>	2008-41-5	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		EPTC (Eptam) <sup>10</sup>	759-94-4	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Molinate <sup>10</sup>	2212-67-1	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Pebulate <sup>10</sup>	1114-71-2	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Vernolate <sup>10</sup>	1929-77-7	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts	Antimony	7440-36-0	1.9	1.15 mg/L TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/L TCLP
		Carbon disulfide	75-15-0	3.8	4.8 mg/L TCLP
		Dithiocarbamates (total) <sup>10</sup>	NA	0.028; or CMBST, CHOXD, BIODG or CARBN	28; or CMBST
		Lead	7439-92-1	0.69	0.75 mg/L TCLP
		Nickel	7440-02-0	3.98	11.0 mg/L TCLP
		Selenium	7782-49-2	0.82	5.7 mg/L TCLP
P127	Carbofuran <sup>10</sup>	Carbofuran	1563-66-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
P128	Mexacarbate <sup>10</sup>	Mexacarbate	315-18-4	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST

# PROPOSED REGULATIONS

P185	Tirpate <sup>10</sup>	Tirpate	26419-73-8	0.056; or CMBST, CHOXD, BIODG or CARBN	0.28; or CMBST
P188	Physostigmine salicylate <sup>10</sup>	Physostigmine salicylate	57-64-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P189	Carbosulfan <sup>10</sup>	Carbosulfan	55285-14-8	0.028; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P190	Metolcarb <sup>10</sup>	Metolcarb	1129-41-5	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P191	Dimetilan <sup>10</sup>	Dimetilan	644-64-4	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P192	Isolan <sup>10</sup>	Isolan	119-38-0	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P194	Oxamyl <sup>10</sup>	Oxamyl	23135-22-0	0.056; or CMBST, CHOXD, BIODG or CARBN	0.28; or CMBST
P196	Manganese dimethyldithiocarbamate <sup>10</sup>	Dithiocarbamates (total)	NA	0.028; or CMBST, CHOXD, BIODG or CARBN	28; or CMBST
P197	Formparanate <sup>10</sup>	Formparante	17702-57-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P198	Formetanate hydrochloride <sup>10</sup>	Formetanate hydrochloride	23422-53-9	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P199	Methiocarb <sup>10</sup>	Methiocarb	2032-65-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P201	Promecarb <sup>10</sup>	Promecarb	2631-37-0	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P202	m-Cumenyl methylcarbamate <sup>10</sup>	m-Cumenyl methylcarbamate	64-00-6	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P203	Aldicarb sulfone <sup>10</sup>	Aldicarb sulfone	1646-88-4	0.056; or CMBST, CHOXD, BIODG or CARBN	0.28; or CMBST
P204	Physostigmine <sup>10</sup>	Physostigmine	57-47-6	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P205	Ziram <sup>10</sup>	Dithiocarbamates (total)	NA	0.028; or CMBST, CHOXD, BIODG or CARBN	28; or CMBST
U271	Benomyl <sup>10</sup>	Benomyl	17804-35-2	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U278	Bendiocarb <sup>10</sup>	Bendiocarb	22781-23-3	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U279	Carbaryl <sup>10</sup>	Carbaryl	63-25-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST

U280	Barban <sup>10</sup>	Barban	101-27-9	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U364	Bendiocarb phenol <sup>10</sup>	Bendiocarb phenol	22961-82-6	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U367	Carbofuran phenol <sup>10</sup>	Carbofuran phenol	1563-38-8	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U372	Carbendazim <sup>10</sup>	Carbendazim	10605-21-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U373	Propham <sup>10</sup>	Propham	122-42-9	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U387	Prosulfocarb <sup>10</sup>	Prosulfocarb	52888-80-9	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U389	Triallate <sup>10</sup>	Triallate	2303-17-5	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U394	A2213 <sup>10</sup>	A2213	30558-43-1	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U395	Diethylene glycol, dicarbamate <sup>10</sup>	Diethylene glycol, dicarbamate	5952-26-1	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U404	Triethylamine <sup>10</sup>	Triethylamine	121-44-8	0.081; or CMBST, CHOXD, BIODG or CARBN	1.5; or CMBST	
U409	Thiophanate-methyl <sup>10</sup>	Thiophanate-methyl	23564-05-8	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U410	Thiodicarb <sup>10</sup>	Thiodicarb	59669-26-0	0.019; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	
U411	Propoxur <sup>10</sup>	Propoxur	114-26-1	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST	

Footnotes to Treatment Standard Table 268.40

<sup>10</sup> The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at §268.42 Table 1 of this Part, for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at §268.42 Table 1 of this Part, for wastewaters.

[59 FR 48046, Sept. 19, 1994]

Editorial Note: For Federal Register citations affecting §268.40, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

§ 268.41 Treatment standards expressed as concentrations in waste extract.

Section 268.48, the Table of UTS--Universal Treatment Standards is amended by

a. Removing the entries for

Aldicarb sulfone	Barban	Bendiocarb
Benomyl	Butylate	Carbaryl

**PROPOSED REGULATIONS**

Carbenzadim	Carbofuran	Carbofuran phenol
Carbosulfan	m-Cumenyl methylcarbamate	Dithiocarbamates (total)
EPTC (Eptam)	Formetanate hydrochloride	Methiocarb
Methomyl	Metolcarb	Mexacarbate
Molinate	Oxamyl	Pebulate
Physostigmine	Physostigmine salicylate	Promecarb
Propham	Propoxur	Prosulfocarb
Thiodicarb	Thiophanate-methyl	Triallate
Triethylamin	Vemolate;	

and

**b. Removing and reserving footnote 6.**

**AMENDMENT 2:**  
Federal Technical Corrections

Adopt Federal revisions.

**Background:**

Delaware is adopting both Federal corrections as described in the Federal Register /Vol. 77, No. 72 / Friday, April 13, 2012 /22229.

The Environmental Protection Agency (EPA or the Agency) took final action on two of six technical amendments that were withdrawn in a June 4, 2010, Federal Register partial withdrawal notice. The two amendments that were the subject of the final rule were: A correction of the typographical error in the entry “K107” in a table listing hazardous wastes from specific sources; and a conforming change to alert certain recycling facilities that they have existing certification and notification requirements under the Land Disposal Restrictions regulations. The other four amendments that were withdrawn in the June 2010 partial withdrawal notice remain withdrawn until EPA determines action is warranted in the future.

**Section 261.32 Hazardous wastes from specific sources.**

(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix IX.

\*\*\*\*\*

Organic chemicals

\*\*\*\*\*

Industry and EPA Hazardous Waste No.	Hazardous waste	Hazard code
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines hydrazides.	(C,T)

\*\*\*\*\*

**Section 266.20 Applicability.**

\*\*\*\*\*

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a



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chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D of Part 268 (or applicable prohibition levels in §268.32 or 7 **Del.C.**, Chapter 63, where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain and the recycler complies with § 268.7(b)(6) of this chapter.

## **AMENDMENT 3a:**

### SQG Accumulation Requirements for Ignitable/Reactive Wastes

Require Small Quantity Generators (SQG) of hazardous waste to take precautions and post “No Smoking” signs at 180-(or 270) day accumulation areas.

#### **Background:**

Currently the accumulation requirements for SQG’s found in DRGHW §262.34(d) exempt the “Special requirements for ignitable or reactive waste” listed in DRGHW §265.176. Because the hazards of accumulating ignitable/reactive wastes are similar for both Large Quantity Generators (LQG) and SQG’s, the SHWMS has determined that similar precautions are required. Therefore, the SHWMS is proposing to partially remove this exemption for SQG’s. The SHWMS has determined that because of their size and locations, SQG’s may not be able to meet the 15 meter (50 foot) property boundary set-back required in §265.176(a), and will therefore retain that portion of the exemption.

#### **Section 262.34 Accumulation time.**

\* \* \* \* \*

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

\* \* \* \* \*

(2) The generator complies with the requirements of Subpart I of Part 265 of these regulations, except for §§ 265.176(a) and 265.178;

\* \* \* \* \*

#### **Section 265.176 Special requirements for ignitable or reactive waste.**

(a) Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility’s property line.

(b) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. “No smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

## **AMENDMENT 3b:**

### Labeling Clarification

Clarify when the container label must indicate the waste-like nature of the contents.

#### **Background:**

The SHWMS has determined that EPA’s original intent in the preamble language of the January 3, 1983 Proposed Rule (Federal Register Vol. 48, No. 1), “... and marks the containers with the words “Hazardous Waste” or with another description of their contents (e.g. “waste organics” or “waste solvent”).” deserves reiteration, and is therefore proposing to clarify the labeling requirements for Small and Large Quantity Generators under Satellite Accumulation Rules, and for Conditionally Exempt Small Quantity Generators. This proposal does not affect labeling requirements in 90/180 day accumulation areas.

## Conditionally Exempt Generators

### Section 261.5 Special conditions for hazardous waste generated by conditionally exempt small quantity generators.

\*\*\*\*\*

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

\* \* \* \* \*

(5) Marks his containers either with the words "Hazardous Waste" or with ~~other words that identify the contents of the containers~~ the word "Waste" and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent);

\*\*\*\*\*

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

\*\*\*\*\*

(5) Marks his containers either with the words "Hazardous Waste" or with ~~other words that identify the contents of the containers~~ the word "Waste" and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent);

\*\*\*\*\*

## Small or Large Quantity Generators

### Section 262.34 Accumulation time.

\* \* \* \* \*

(c)

(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) as applicable of this section provided he:

(i) Complies with §§265.171, 265.172, and 265.173(a) of these regulations; and

(ii) Marks his containers either with the words "Hazardous Waste" or with ~~other words that identify the contents of the containers~~ the word "Waste" and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent).

### AMENDMENT 3c:

#### Accumulation Secondary Containment

Add secondary containment to container accumulation requirements in §265 Subpart I - *Use and Management of Containers*.

#### Background:

Risks presented by liquid hazardous wastes at generator accumulation areas are similar to those at facilities, which are required to have spill provisions (secondary containment) for containers. The proposed provisions for generators are based upon the *Containment* requirements in DRGHW §264.175.

This will affect Large and Small Quantity Generators within the State of Delaware who manage hazardous waste containers in accumulation areas. The SHWMS envisions that secondary containment may range from portable "spill pallets" to engineered floor and drain systems, depending upon how the generator chooses to abate the specific risks posed by their liquid hazardous waste. Any release of hazardous waste to bodies of water or the soil will be considered a failure of the containment system.

#### Section 265.174 Inspections.

The owner or operator must inspect areas where containers are stored at least weekly, looking for leaking containers and for deterioration of containers and the containment system ~~leaks and for deterioration caused by~~

corrosion or other factors. A written record of the inspections must be maintained onsite for a minimum of 3 years. [Comment: See §265.171 for remedial action required if deterioration or leaks are detected.]

## **Section 265.175 ~~Reserved~~ Containment**

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided.

(b) Secondary containment may be provided by one of the three following methods:

(1) Accumulating containers inside a building with a base that underlies the containers and with walls or other curbing all of which are free of cracks or gaps and sufficiently impervious in order to contain leaks and spills until the collected material is detected and removed;

(2) Accumulating containers in a secondary containment system designed and operated as follows:

(i) A base that underlies the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(ii) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(iii) The containment system must have sufficient capacity to contain 10% of the total volume of all containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(iv) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (b)(2)(iii) of this section to contain any run-on which might enter the system;

(3) An equivalent method as approved by the Secretary.

(c) Spilled or leaked waste and accumulated precipitation must be removed immediately from the sump or collection area.

[Comment: If the collected material is a hazardous waste under Part 261 of these regulations, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262-266 of these regulations. If the collected material is discharged through a point source to waters of the United States

### **AMENDMENT 3d:**

#### SQG Tanks

Strengthen tank management standards for Small Quantity Generators in §265 Subpart J - *Tanks*.

### **Background:**

Risks presented by hazardous waste in tanks at Small Quantity Generators are similar to those at Large Quantity Generators. For tanks with a design capacity over 1,000 gallons some existing exemptions for Small Quantity Generators are being removed.

### **Section 262.34 Accumulation time.**

\*\*\*\*\*

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

\*\*\*\*\*

(3) The generator complies with the requirements of §265.201 in Subpart J of Part 265. If the tank capacity exceeds 1,000 gallons, the generator must comply with the requirements of §265.112(f) and Subpart J except §§265.191, 265.197, 265.200, 265.201, 265.202;

### **AMENDMENT 3e:**

#### Tank Closure

Add tank closure standards for Generators in §265 Subpart J - *Tanks*.

**Background:**

Currently there are no requirements to close (remove from service) hazardous waste tanks. For hazardous waste tanks at Large Quantity Generators, and Small Quantity Generator tanks with a design capacity over 1000 gallons, SHWMS is proposing to require a closure plan as described in §265.112 that is already applicable to other hazardous waste management units.

**Section 262.34 Accumulation time.**

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of §265.112(f) and Subparts J, AA, BB, and CC of Part 265 except §§ 265.197(c) and 265.200; and/or

\* \* \* \* \*

**265.112(f) Tank Closure at less than 90 day/180 day generator sites**

(1) The owner or operator of a tank used to accumulate hazardous waste under the requirements of Part 262 of these regulations at less than 90 day generator sites, or at 180/270 day generator sites with a tank capacity greater than 1000 gallons, must submit a written closure plan to the Secretary for approval at least 45 days prior to the date on which he expects to begin closure of one or more hazardous waste tank systems, so as to close his tank(s) in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this section.

(2) At a minimum the plan shall identify the steps necessary to perform final closure of each tank system to be removed from hazardous waste service. The plan is to include:

(a) A description of each hazardous waste tank system to be closed and how each hazardous waste tank system will be closed to achieve the requirements of §265.112(f)(1); and

(b) A detailed description of the steps necessary to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during closure, including but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and the criteria for determining the extent of decontamination necessary to satisfy the plan's closure performance standard; and

(c) A detailed description of other activities necessary during the closure period to ensure the closure satisfies the plan's stated closure performance standard; and

(d) A schedule for closure for each hazardous waste tank system; and

(e) Provisions if the closure performance standard cannot be achieved.

(3) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with waste. By removing all hazardous waste or hazardous constituents during closure, the owner or operator may generate hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of Part 262 of these regulations unless §261.3(d) of these regulations applies.

(4) If the owner or operator cannot demonstrate that the closure performance standard can be achieved or that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (3) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills. In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill and the owner or operator must meet all of the requirements for landfills specified in Subparts G and H of part 264.

(5) Within 60 days of completion of closure of each hazardous waste tank system, the owner or operator must submit to the Secretary, a written certification that the hazardous waste tank system was closed in accordance with

the specifications in the approved closure plan. The certification must be signed by the owner or operator. Documentation supporting the certification must be furnished to the Secretary upon request.

**AMENDMENT 3f:**  
Correction

Correct DRGHW §261.4(e)(2)(iii)(B)(1) by removing typographical error.

**Background:**

This is to correct an error of unknown origin. The nature of the correction may not (or may) be eligible as a Minor Correction by the State Registrar. If eligible as a Minor Correction, this amendment will be withdrawn, and the correction made using Minor procedures.

**Section 261.4 Exclusions.**

\* \* \* \* \*

(e) Treatability Study Samples.

\* \* \* \* \*

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

\* \* \* \* \*

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.

\* \* \* \* \*

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(1) The name, mailing address, and telephone number of the originator of the sample; ~~annual report.~~

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**DIVISION OF WATER**  
**Surface Water Discharges Section**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)  
7 DE Admin. Code 7101

**REGISTER NOTICE**  
**SAN #2008-29**

**1. Title Of The Regulations:**

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

**2. Brief Synopsis Of The Subject, Substance And Issues:**

Substantial revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems (On-site regulations) are proposed to incorporate the Guidance and Regulations Governing the Land Treatment of Wastes spray irrigation regulatory language. The on-site regulations have been revised to address large system site investigations, hydrogeological investigations, design considerations, operation and maintenance practices, updating of individual on-site wastewater treatment and disposal system design criteria, establishment of new licensees and inspection protocols, and to establish performance standards for small on-site systems utilizing alternative technologies and all large systems.

**3. Possible Terms Of The Agency Action:**

There is no sunset date for this regulation.

**4. Statutory Basis Or Legal Authority To Act:**

Title 7, Delaware Code, Chapter 60, Environmental Control

**5. Other Regulations That May Be Affected By The Proposal:**

Upon the effective date of revised regulations, the Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds, effective November 11, 2008, Sections 6.0, 7.0 and 8.0, may be affected.

**6. Notice Of Public Comment:**

The proposed revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems were initially published in this Register on April 1, 2012. The Department of Natural Resources and Environmental Control (DNREC) Division of Water then held a public hearing on these proposed revisions on May 3, 2012, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901, to address the proposed changes that have occurred over the past three years as a result of discussions, public workshops, committee meetings and literature searches.

Subsequent to the public hearing held on May 3, 2012, DNREC made additional revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, in order to thoroughly address the comments and concerns received to date in this matter. Accordingly, DNREC will now re-open the record in this matter for an additional thirty (30) days, beginning on Monday, October 1, 2012, through close of business on Tuesday, October 30, 2012, in order to vet these revisions to the public, and to enable DNREC to receive additional public comment on the aforementioned revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. Following the close of the record on October 30, 2012, the Secretary will review the entire record developed throughout this promulgation, and will issue his Order setting forth his final decision in this matter shortly thereafter.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

Department of Natural Resources and Environmental Control  
20653 DuPont Blvd, Unit 5  
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Water, Groundwater Discharges Section website:

<http://www.wr.dnrec.delaware.gov/Information/GWDInfo/Pages/GWDS%20Design%20Install%20Operate%20Info%20For%20Proposed%20Wastewater%20Treatment%20Regulations.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Jack Hayes, DNREC Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901, (302) 739-9948, [John.Hayes@state.de.us](mailto:John.Hayes@state.de.us).

Interested parties shall submit written statements and comments in writing on the proposed regulation revisions, beginning October 1, 2012, but no later than close of business on October 30, 2012, as designated herein, addressed to:

Jack Hayes  
DNREC - Division of Water  
Groundwater Discharges Section  
89 Kings Highway  
Dover, DE 19901

**7. Prepared By:**

Jack Hayes / (302) 739-9948, September 19, 2012, [John.Hayes@state.de.us](mailto:John.Hayes@state.de.us)

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

**7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 Del.C. §5206(1))  
24 DE Admin. Code 5200

### 5200 Board of Examiners of Nursing Home Administrators PUBLIC NOTICE

The Delaware Board of Examiners of Nursing Home Administrators pursuant to 24 Del.C. §5206 (1) proposes to revise their rules and regulations. The proposed revision to the rules increases the continuing education credits allowed for online and similar courses from 12 to 24 continuing education credits per renewal period. The proposed revision also allows Preceptors to receive 3 continuing education credits per student with a maximum of 6 credits allowed per licensure period.

A public hearing will be held on November 13, 2012 at 1:15 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Michele Howard, Administrative Assistant for the Delaware Board of Examiners of Nursing Home Administrators, 861 Silver Lake Blvd, Cannon Office Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until November 28, 2012.

### 5200 Board of Examiners of Nursing Home Administrators (Break in Continuity of Sections)

#### 5.0 Programs for Continuing Education Credits

- 5.1 Continuing education programs consisting of Board approved seminars, resident or extension courses, conferences and workshops totaling 48 classroom hours or more, on any of the subject areas enumerated in 5.2 below, are required for biennial licensure of a license as a Nursing Home Administrator. The following are requirements for license renewal:
  - 5.1.1 For licenses initially authorized during the first six months of the biennial period, 36 credit hours will be required for renewal.
  - 5.1.2 For licenses initially authorized during the second six months of the biennial period, 24 credit hours will be required for renewal.
  - 5.1.3 For licenses initially authorized during the third six months of the biennial period, 12 credit hours will be required for renewal.
  - 5.1.4 For licenses initially authorized during the fourth six months of the biennial period, no credit hours will be required for renewal.
  - 5.1.5 When continuing education units are not met, there will be no extensions, absent showing hardship.
- 5.2 Content of programs of continuing education shall include one or more of the following general subject areas or their equivalents:
  - 5.2.1 Applicable standards of environmental health and safety,
  - 5.2.2 Local health and safety regulations,
  - 5.2.3 General Administration,
  - 5.2.4 Psychology of patient care,

# PROPOSED REGULATIONS

- 5.2.5 Principles of medical care,
- 5.2.6 Personal and social care,
- 5.2.7 Therapeutic and supportive care and services in long-term care,
- 5.2.8 Department organization and management,
- 5.2.9 Community interrelationships, and,
- 5.2.10 Business or financial management.
- 5.3 Acceptable programs of continuing education are:
  - 5.3.1 Those conducted solely by accredited educational institutions.
  - 5.3.2 Those conducted jointly by accredited educational institutions and associations, professional societies, or organizations other than accredited colleges or universities.
  - 5.3.3 Those conducted solely by associations, professional societies, and other professional organizations other than accredited educational institutions.
  - 5.3.4 Those self-instruction or home study courses, videos, computer-assisted programs, ~~and teleconferences~~ online and webinar courses approved by the National Association of Boards (NAB) and or pre-approved by the Board, may be accumulated at no more than 24 hours per renewal period.
  - 5.3.5 Courses approved by the National Association of Boards (NAB).
- 5.4 Upon completion of an approved program of study, the sponsor or sponsors of the program shall issue certificates of attendance or other evidence of completion satisfactory to the Board.
- 5.5 Licensees appointed to the Delaware Board of Examiners of Nursing Home Administrators may receive 0.5 CE credits for every board meeting they attend, regardless of the length of the meeting. Members may be granted credit for a maximum of six meetings within a two-year licensure period, for a cap of 3.0 CE credits.
- 5.6 Preceptors shall receive 3 CE credits per student per licensure period with a maximum of 6 CE credits per licensure period.
  - 5.6.1 CE credits will not be awarded to the Preceptor until final approval of the AIT's final quarterly progress report by the Board.

15 DE Reg. 1770 (06/01/12)

**\*Please note that no additional changes were made to the regulation, therefore the proposed regulation is not being republished here in its entirety. A copy of the proposed regulation is available at:**

**5200 Board of Examiners of Nursing Home Administrators**

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## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) and 2235B(e)  
(5 Del.C. §121(b) and 2235B(e))

### 2210 Short-Term Consumer Loans

#### PUBLIC NOTICE

##### Summary

The State Bank Commissioner proposes to adopt new Regulation 2210, "Short-Term Consumer Loans". This proposed new Regulation implements 78 Del. Laws Chapter 278 dealing with a type of short-term consumer loan commonly known as a "payday loan". The proposed new Regulation establishes standards for the administration and enforcement of the new statute, including among other things, the applicability of the new statutory requirements for short-term consumer loans, new procedures for making such loans, and the use of a new database for tracking such loans.



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The State Bank Commissioner would adopt the proposed new Regulation 2210 on or after November 7, 2012. 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. Lookerman 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. November 7, 2012.

## Public Hearing

A public hearing on the proposed new Regulation will be held in the third floor hearing room of the Carvel State Office Building, 820 North French Street, Wilmington Delaware, 19801 on Wednesday, November 7, 2012, 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.

## 2210 Short-Term Consumer Loans

### **1.0 Application of Statute**

- 1.1 5 Del.C. §§2235A, 2235B and 2235C and this regulation apply to all short-term consumer loans made in the State of Delaware or to any resident of this State by a licensee.
- 1.2 5 Del.C. §§2235A, 2235B and 2235C and this regulation do not apply to any short-term consumer loan that is not made in the State of Delaware or to a resident of this State.

### **2.0 Definitions**

For the purpose of this regulation, the following definitions apply:

“Commissioner” means the State Bank Commissioner.

“Database” means the database established and maintained by the Commissioner pursuant to 5 Del.C. §2235B to verify requests from a licensee as to whether a potential borrower is eligible for a short-term consumer loan under 5 Del.C. § 2235A and to determine any other information a licensee may need in order to comply with 5 Del.C. Ch. 22 and this regulation.

“Licensee” means any person licensed under 5 Del.C. Ch.22.

“Right of rescission” means with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

“Rollover” means with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

“Short-term consumer loan” means a loan of \$1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle. This term also includes a rollover and a refinancing.

“Workout agreement” means an agreement between an individual borrower and a licensee for the repayment of an outstanding and unpaid indebtedness. The workout agreement must provide for payments in equal installments over a period of at least 90 days and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the loan into a workout agreement.

**3.0 Short-Term Consumer Loans**

- 3.1 All licensees shall comply with 5 Del.C. Ch. 22, all regulations issued thereunder, and all other applicable State and federal statutes and regulations. In addition, all short-term consumer loans shall be subject to the following:
- 3.1.1 Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-term consumer loan that would cause the borrower to have more than five short-term consumer loans from all licensees in any twelve-month period. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right to collect, receive, or retain any principal, interest, fees or other charges. A violation of 5 Del.C. §2235A is a violation of Chapter 25 of Title 6 of the Delaware Code.
- 3.1.2 No licensee shall make more than four rollovers of an existing short-term consumer loan. A licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.
- 3.1.3 No licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual borrower.
- 3.1.4 No licensee shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.
- 3.1.5 No licensee shall make a short-term consumer loan unless the application for the loan shall be written in both English and Spanish.
- 3.2 Nothing in this regulation prohibits a licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed by 5 Del.C. §2235A and this regulation.
- 3.3 In addition to such other disclosure requirements as are imposed pursuant to other provisions of 5 Del.C. Ch. 22, Subch. III and the regulations in 5 DE Admin. Code Ch. 22, no licensee shall make a short-term consumer loan unless the application for the loan contains a written disclosure, conspicuously displayed, that:
- 3.3.1 The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;
- 3.3.2 Additional fees may accrue if the loan is rolled over; and
- 3.3.3 Credit counseling services are available to consumers who are experiencing financial problems.
- 3.4 Every short-term consumer loan provider must post in plain view, in an area easily accessible to their customers at the entrance to the office and on any website, a schedule of fees and rates applicable to their loans, and a prominent statement that: "A payday loan is not intended to meet long-term financial needs."
- 3.5 A licensee or licensee's agent shall not engage in any device or subterfuge intended to evade the requirements of 5 Del.C. Ch. 22 and the regulations thereunder through any method including, but not limited to, mail, telephone, internet or any electronic means, including:
- 3.5.1 Offering, making, or assisting a borrower to obtain a loan in violation of 5 Del.C. §2235A and this regulation, or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance or ratification is necessary to create a legal obligation for the third party.
- 3.5.2 Disguising a short-term consumer loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of 5 Del.C. §2235A and this regulation.

**4.0 Short-Term Consumer Loan Database**

- 4.1 Prior to entering into a short-term consumer loan with a potential borrower, a licensee shall access the database to determine:
- 4.1.1 Whether a potential borrower has an outstanding short-term consumer loan;

- 4.1.2 The number of short-term consumer loans the borrower has outstanding;
- 4.1.3 Whether the borrower is eligible for a short-term consumer loan under 5 **Del.C.** §2235A and this regulation; and
- 4.1.4 Any other information necessary for the licensee to comply with 5 **Del.C.** Ch. 22.
- 4.2 Immediately upon entering into a short-term consumer loan with a borrower, a licensee shall accurately submit to the database in the appropriate format:
  - 4.2.1 The borrower's name, address, social security or employment authorization number, and gross monthly income;
  - 4.2.2 The amount of the transaction;
  - 4.2.3 The annual percentage rate of the transaction as computed under the federal Truth in Lending Act;
  - 4.2.4 The date of the transaction; and
  - 4.2.5 The anticipated date that the transaction will be paid off.
- 4.3 A licensee shall promptly submit to the database:
  - 4.3.1 The date that a short-term consumer loan is paid in full or is otherwise satisfied; or
  - 4.3.2 The date that a short-term consumer loan defaults and the amount of the default.
- 4.4 A licensee shall promptly correct any incorrect data entered into the database that was previously submitted.
- 4.5 A licensee must continue to enter and update all required information for any short-term consumer loans subject to 5 **Del.C.** §2235A that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by 5 **Del.C.** Ch.22.
  - 4.5.1 Within ten business days after ceasing to make such loans, the licensee must submit a plan for continuing compliance with 5 **Del.C.** §2235B(d) to the Commissioner for approval.
  - 4.5.2 The Commissioner must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with 5 **Del.C.** §2235B(d).
- 4.6 All borrower identifying information shall be deleted from the database on a regular and routine basis twelve months after the borrower's short-term consumer loan is paid off or otherwise satisfied.
- 4.7 All data collected pursuant to 5 **Del.C.** §2235B and this regulation shall be used only as prescribed by 5 **Del.C.** Ch.22 or for research and reporting as authorized by the Commissioner.

## **5.0 Fees**

- 5.1 In addition to the annual license fee required by 5 **Del.C.** §2203(b), each licensee making short-term consumer loans shall pay an annual high-cost loan license fee surcharge of \$1,500 for each licensed office.
- 5.2 Each licensee making short-term consumer loans shall pay a database fee for each transaction that the licensee submits to the database.
  - 5.2.1 The database fee shall be paid directly to the operator of the database, as agent of the Commissioner.
  - 5.2.2 Licensees shall not charge customers for the database fee.
- 5.3 The Commissioner shall establish the database fee as authorized by 5 **Del.C.** §2235B(e)(4).
  - 5.3.1 The database fee must reasonably reflect the costs necessary to defray the expenses associated with administering the provisions of 5 **Del.C.** §2235B.
  - 5.3.2 The Commissioner may revise the amount of the database fee as required from time to time based upon changes to those expenses.
  - 5.3.3 The Commissioner shall promptly notify all licensees in advance of any revisions to the amount of the database fee.

# PROPOSED REGULATIONS

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))  
26 DE Admin. Code 3008

IN THE MATTER OF THE ADOPTION OF  
RULES AND PROCEDURES TO IMPLEMENT THE  
RENEWABLE ENERGY PORTFOLIO STANDARDS  
ACT, 26 DEL.C. §§351-363, AS APPLIED TO  
RETAIL ELECTRICITY SUPPLIERS  
(OPENED AUGUST 23, 2005; REOPENED  
SEPTEMBER 4, 2007; AUGUST 5, 2008,  
SEPTEMBER 22, 2009; AUGUST 17, 2010;  
SEPTEMBER 6, 2011, SEPTEMBER 18, 2012

PSC REGULATION DOCKET NO. 56

### ORDER NO. 8219

**AND NOW**, this 18th day of September, 2012:

**WHEREAS**, in 2005 the General Assembly enacted, and the Governor signed into law, the "Renewable Energy Portfolio Standards Act," 26 Del.C. §§351-364 (the "RPS Act"), which, beginning in 2007, required every retail electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales in Delaware; and

**WHEREAS**, in 2006 the Delaware Public Service Commission (the "Commission") promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules") (Order No. 6931 dated June 6, 2006); and

**WHEREAS** the Commission has revised the RPS Rules from time to time to reflect amendments to the RPS Act (PSC Order No. 7377, dated Apr. 17, 2008; PSC Order No. 7494, dated Dec. 16, 2008; PSC Order No. 7653, dated Sep. 22, 2009; and PSC Order No. 7933 dated March 22, 2011); and

**WHEREAS**, on July 7, 2011, the Governor signed into law Senate Bill No. 124 as amended by Senate Amendment No. 1 (78 Del. Laws ch. 99) (July 7, 2011), which, among other things, amended various sections of the RPS Act; and

**WHEREAS**, by Order No. 8026 dated September 6, 2011, the Commission authorized the publication in the Delaware Register of Regulations of proposed amendments to the RPS Rules; and

**WHEREAS**, the Commission received several comments on the proposed amended RPS Rules; and

**WHEREAS**, Commission Staff convened several workshops to address commenters' concerns with the proposed RPS Rules; and

**WHEREAS**, the Commission Staff proposes to modify the RPS Rules to reflect the agreed-upon RPS Act amendments; and

**WHEREAS**, by Order No. 8102 dated January 31, 2012 we ordered that the proposed revised RPS Rules be published in the Delaware *Register of Regulations* and that notice of the rulemaking to develop final RPS Rules be published, with comments due on or before April 2, 2012; and

**WHEREAS**, the Commission scheduled a public hearing on the proposed RPS Rules for April 17, 2012; and

**WHEREAS**, the proposed amended RPS Rules were published in the March 2012 issue of the Delaware register of Regulations and the ordered notice was published in the *News Journal* and the *Delaware State News* newspapers; and

**WHEREAS**, the Commission received comments from Gary Myers, Esq. and Washington Gas Energy Services, Inc. ("WGES") on or before April 2, 2012; and

**WHEREAS**, on April 12, 2012 Staff filed a written response to the comments submitted by Mr. Myers and WGES; and

**WHEREAS**, the Commission met at its regularly-scheduled meeting on April 17, 2012 held a hearing on this matter and approved the proposed RPS as final in Minute Order No. 8139;

**WHEREAS**, on May 15th, 2012, the Commission memorialized its deliberation and decision from the April 17th meeting in Order No. 8150 and published a copy in the June 2012 Delaware *Register of Regulations*

**WHEREAS**, in Order No. 8150, the Commission directed Staff to reopen this regulation docket as soon as reasonable after the close of the legislative session to consider the proposed revisions raised by Mr. Gary Myers, as well as any other revisions that may become necessary if the RPS Act is further amended by legislation (id 41);

**WHEREAS**, Order No. 8150 states that Mr. Myers recommended revisions to the RPS Rules to remove exempted load industrial customers from any responsibility for Delmarva's RPS compliance costs in accordance with the statutory exemption for industrial customers with loads exceeding 1500 kW; to clarify that electric suppliers could only recover their actual compliance costs from customers; and to provide that Delmarva succeeds to the rights and obligations of retail electric suppliers.

**WHEREAS**, no legislative revisions occurred in the past session;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §362 and 29 **Del.C.** §10115, the Commission proposes to revise the RPS Rules as set forth herein in Exhibits "A". A copy of the RPS Rules in their current form as approved by the Commission in PSC Order No. 8139 (April 17, 2012) and 8150 (May 15, 2012) is attached as Exhibit "B" to this Order.

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations a copy of this Order, along with copies of the proposed and current RPS Rules (Exhibits "A" and "B", respectively).

3. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit "C" to be published in the Delaware *Register of Regulations*. In addition, the Secretary shall cause such Notice of Proposed Rulemaking to be published in *The News Journal* and the *Delaware State News* newspapers on or before September 25, 2012. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated retail electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, the commission encourages persons or entities to submit written comments, on or before November 9, 2012, but the last date to submit written comments will be on January 2, 2013, which is 15 days after the noticed public meeting or hearing. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on December 18, 2012 at 1:00 PM, at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on what, if any, comments regarding the proposed revisions to the RPS Rules are received, the Commission may then determine that it is necessary to appoint a Hearing Examiner.

6. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all retail electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provisions of 26 **Del.C.** §114(b)(1).

7. 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:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

**NOTICE OF PROPOSED RULE-MAKING AMENDING  
"RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD"**

**TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, ELECTRIC GENERATORS USING RENEWABLE RESOURCES, AND OTHER INTERESTED PERSONS**

In 2006, the Delaware Public Service Commission ("PSC") adopted "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"), 10 DE Reg. 151-157 (July 1, 2006). The PSC has amended the RPS Rules several times since then to conform to subsequent RPS Act amendments.

The PSC now proposes to revise the RPS Rules to incorporate comments made by Mr. Gary Meyers in April 2012 recommending revisions to the RPS Rules to remove exempted load industrial customers from any responsibility for Delmarva's RPS compliance costs in accordance with the statutory exemption for industrial customers with loads exceeding 1500 kW; to clarify that electric suppliers could only recover their actual compliance costs from customers; and to provide that Delmarva succeeds to the rights and obligations of retail electric suppliers.

You can review PSC Order No. 8219 (September 18, 2012) (the "Order") and the proposed revised RPS Rules in the October 2012 issue of the Delaware *Register of Regulations*. You can also review the Order and the proposed revised RPS Rules at the PSC's Internet website located at <http://dep.sc.delaware.gov>. If you wish to obtain written copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.50 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

If you would like to review documents at the Commission's offices, please contact Monica Hall at [monica.hall@state.de.us](mailto:monica.hall@state.de.us) to arrange a time for your review.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the Commission's website at <http://dep.sc.delaware.gov/default.shtml>. The Commission will respond to your request in accordance with the Delaware Freedom of Information Act, 29 **Del.C.** ch. 100.

If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone). You may also send questions regarding this matter by Internet e-mail addressed to [pamela.knotts@state.de.us](mailto:pamela.knotts@state.de.us).

The Commission encourages the public to submit written comments about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before November 9, 2012 but the last date to submit written comments will be on January 2, 2013, which is 15 days after the noticed public hearing. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Reg. Dckt. No. 56

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM disk or sent as an attachment to an Internet e-mail addressed to [pamela.knotts@state.de.us](mailto:pamela.knotts@state.de.us).

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on December 18, 2012 at 1:00 P.M. at the PSC's office at the address set forth above.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. Please e-mail Staff Analyst Pamela Knotts at [pamela.knotts@state.de.us](mailto:pamela.knotts@state.de.us). The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).

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

**3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 **Delaware Code** §302, §2708, §2709, §4362, §4363, and §4364  
(21 **Del.C.** §302, §2708, §2709, §4362, §4363, & §4364)  
2 **DE Admin. Code** 2222

### 2222 School Bus Driver Qualifications and Endorsements

#### PUBLIC NOTICE

The Delaware Division of Motor Vehicles gives notice of intent to implement proposed changes to The Division of Motor Vehicles Regulation 2222 relating to school bus driver qualifications and endorsements.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Summer Bowman, Management Analyst, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-2602 by November 7, 2012.

### 2222 School Bus Driver Qualifications and Endorsements

#### 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.

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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 the DMV when the applicant’s 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, the 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 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. The 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. The 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 an~~ (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 the 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 the 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 the 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 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~~ ~~e~~Criminal ~~history~~ background checks ~~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 the DMV.
- 5.1.2.8.3 Once the criminal background check is issued by the State Bureau of Identification for the purpose of obtaining an S endorsement, it is valid for a period of six months. An S endorsement applicant presenting an outdated criminal background check must apply for a new criminal background check and pay appropriate fees.
- 5.1.2.9 Have a valid physical examination certification (Green Card).

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- 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 the DMV when the applicant's ~~school bus~~ (S) endorsement is issued. The 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 their previous jurisdiction or jurisdictions to the DMV. The 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 the DMV. The 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 the DMV per 5.1.2.4, regardless of past experience, training or qualifications.
- 5.1.2.12 Any driver with an S endorsement that was issued the S endorsement in Delaware who has transferred his driver license out of Delaware and subsequently is attempting to transfer back into the State of Delaware may do so within 60 days of leaving the State without having to complete the requirements as outlined in 5.1.2 of this regulation.
- 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 for any reason.
- 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 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 an~~ (S) endorsement and is required to register as a sex offender with the DMV pursuant to 11 **Del.C.** §4120 and § 4121, shall have the ~~school bus~~ (S) endorsement removed.
- 5.1.3.8 The DMV will notify the S endorsement holder and the 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 employer when the endorsement is removed.

- 5.1.4 School Bus Endorsement Reinstatement: An ~~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 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 S endorsement was removed due to a suspension for a non-moving violation, the driver shall be eligible to reapply for the S endorsement upon the reinstatement of driving privileges given the period of suspension did not exceed one year.
- 5.1.4.23 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.
- 5.1.4.34 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.
- 5.1.4.45 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).
- 5.1.4.56 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 an ~~school bus~~ (S) endorsement or reinstatement regardless of the amount of time since the conviction.
- 5.1.4.67 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 an ~~school bus~~ (S) endorsement. The DMV may seek the guidance of the 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 the DOE, a school district or a school bus contractor, the 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 The 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 an ~~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~~, the DMV will attempt to send warning letters to S endorsement holder's, ~~with e~~Copies of such letters ~~being~~ will be sent to the DOE, when an S endorsement holder's driving record indicates a situation where additional violations could readily result in the withdrawal of driving authority or the ~~school bus~~ (S) endorsement.
- 5.2.3 Drivers moving to Delaware and requesting an ~~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. The DMV will electronically check the drivers' motor vehicle records. If the electronic

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check is unable to be performed, the driver will need to provide an official certified copy of his motor vehicle driving record to the 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.

**12 DE Reg. 519 (10/01/08)**

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## Symbol Key

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

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 804

## REGULATORY IMPLEMENTING ORDER

### 804 Immunizations

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 804 Immunizations to update the regulation to take into consideration the Interstate Compact on Education for Children of Military Families. The regulation was reviewed as part of the five year review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 4, 2012, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the change.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 804 Immunizations in order to update the regulation to take into consideration the Interstate Compact on Education for Children of Military Families. The regulation was reviewed as part of the five year review cycle.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 804 Immunizations. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 804 Immunizations attached hereto

as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 804 Immunizations 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** 804 Immunizations amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 804 Immunizations 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 20, 2012. 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 20<sup>th</sup> day of September 2012.

#### DEPARTMENT OF EDUCATION

Mark T. Murphy, Secretary of Education

Approved this 20<sup>th</sup> day of September 2012

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the Register at page 160 (16 DE Reg. 160). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**804 Immunizations**

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#### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 930

#### REGULATORY IMPLEMENTING ORDER

**930 Supportive Instruction (Homebound)**

#### 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** 930 Supportive Instruction (Homebound) in response to legislative action as well as other changes that have been brought forward through this review of the regulation. Legislation from the 146<sup>th</sup> General Assembly codified a requirement that Department of Education regulation define eligibility for supportive instruction for school district and charter school students; identify the licensed professional authorized to certify eligibility. Additionally, an amendment was made to address identification of those areas for supportive instruction that are not a result of sudden illness, injury, accident, episodic flare up of a chronic condition.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 4, 2012, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department made changes, pursuant to the comments received as follows:

- 1) Added charter school to several areas;
- 2) Added the allowance for a physician assistant employed by and with a written agreement with a supervising licensed physician to determine eligibility; and

- 3) Clarified that supportive instruction for students suspended, expelled or pending expulsion must be in conformity with 14 **Del.C.**, Chapter 16, §1604(8)

A concern was expressed by the Councils related to free and appropriate public education (FAPE) for students covered by federal laws. The provision of a FAPE to students with disabilities has always and shall continue to be provided as required by applicable federal and state laws.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) in order to in respond to legislative action as well as other changes that have been brought forward through this review of the regulation.

## **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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** 930 Supportive Instruction (Homebound) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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 20, 2012. 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 20<sup>th</sup> day of September 2012.

### **DEPARTMENT OF EDUCATION**

Mark T. Murphy, Secretary of Education

Approved this 20<sup>th</sup> day of September 2012

### **State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

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Gregory Coverdale

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Randall L. Hughes

## **930 Supportive Instruction (Homebound)**

### **1.0 Definition**

**"Supportive Instruction"** is an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature. **[Subject to 14 Del.C., §1604(8), This this]** may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student's local school district or charter school policy.

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 et.seq), and its regulations (34 CFR parts 300 and 301), 14 **Del.C.**, Ch. 31, and the Department of Education's regulations on Children with Disabilities (14 **DE Admin. Code** 922 through 929) shall be provided in accordance with these laws and shall be processed under the district's **[or charter school's]** special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 **Del.C.**, Chapter 31, and the Department of Education's regulations on Children with Disabilities.
- 1.3 Nothing in this regulation shall alter a district's **[or charter school's]** duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

## 2.0 **Eligibility for Conditions other than Suspension, Expulsion or Subject to Expulsion**

- 2.1 A student enrolled in a school district **[or charter school]** is eligible for supportive instruction when the district or charter school receives the required certification that an accident, injury, sudden illness or episodic flare up of a chronic condition will prevent the student from attending school for at least ten (10) school days.
  - 2.1.1 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, **[or a physician assistant employed by and who has a written agreement with a supervising licensed physician]** must certify absences due to a medical condition.
  - 2.1.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.
  - 2.1.3 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, **[or a physician assistant employed by and who has a written agreement with a supervising licensed physician]** must certify absences due to pregnancy complicated by illness or other abnormal conditions.
    - 2.1.3.1 A student does not qualify for supportive instruction for normal pregnancies unless there are complications.
    - 2.1.3.2 A student who remains enrolled in school is eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician **[or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician]**.
  - 2.1.4 Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

## 3.0 **Implementation**

- 3.1 Supportive instruction for a student shall begin as soon as the documentation required by 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with 2.4.
  - 3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.



- 3.1.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a 6 to 12th grade student. There is no minimum for in school transition.
- 3.1.1.2 Nothing in this regulation shall prevent a school district **[or charter school]** from providing additional hours of supportive instruction to an eligible student from other available funding sources.
- 3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

#### **4.0 Eligibility and Implementation for Suspension, Expulsion, or Subject to Expulsion**

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy[, which conforms with 14 Del.C., §1604(8), and any of its implementing regulations,] regarding eligibility and implementation.

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#### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 1101

#### **REGULATORY IMPLEMENTING ORDER**

#### **1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995)**

##### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to re-adopt 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995). The regulation is subject to the five year review cycle. Bus specifications are reviewed every five years to include changes that come from the National Congress on School Transportation (NCST). The NCST met in 2010, and there were no NCST changes affecting past regulations. The NCST will meet in 2015, and the Department will include any changes in a new regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 4, 2012, in the form hereto attached as *Exhibit "A"*. The department did not receive comments on the readoption.

##### **II. Findings of Facts**

The Secretary finds that it is appropriate to re-adopt 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) as part of the five year review cycle given that there are no changes from the National Congress on School Transportation (NCST).

##### **III. Decision to Re-adopt the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to re-adopt 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After

March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) attached hereto as *Exhibit "B"* is hereby re-adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) hereby re-adopted 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** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) re-adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) 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 20, 2012. 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 20<sup>th</sup> day of September 2012.

**DEPARTMENT OF EDUCATION**

Mark T. Murphy, Secretary of Education

Approved this 20<sup>th</sup> day of September 2012

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the Register at page 164 (16 DE Reg. 164). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998**

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#### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 1102

#### REGULATORY IMPLEMENTING ORDER

**1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000**

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to re-adopt 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000. The regulation is subject to the five year review cycle. Bus specifications are reviewed every five years to include changes that come from the National Congress on School Transportation (NCST). The NCST met in 2010, and there were no NCST changes

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affecting past regulations. The NCST will meet in 2015, and the Department will include any changes in a new regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 4, 2012, in the form hereto attached as *Exhibit "A"*. The department did not receive comments on the re-adoption.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to re-adopt 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000 as part of the five year review cycle given that there are no changes from the National Congress on School Transportation (NCST).

## **III. Decision to Re-adopt the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to re-adopt 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000 attached hereto as *Exhibit "B"* is hereby re-adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000 hereby re-adopted 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** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000 re-adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000 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 20, 2012. 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 20<sup>th</sup> day of September 2012.

**DEPARTMENT OF EDUCATION**

Mark T. Murphy, Secretary of Education

Approved this 20<sup>th</sup> day of September 2012

\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the *Register* at page 164 (16 DE Reg. 164). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 1103

### REGULATORY IMPLEMENTING ORDER

**1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007**

**(Terminology and School Bus Types are Those Described in the National School Transportation Specifications and Procedures (NSTSP), May 2005).**

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to re-adopt 14 DE Admin. Code 1103 Standards for School Bus Chassis and Bodies for Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). The regulation is subject to the five year review cycle. Bus specifications are reviewed every five years to include changes that come from the National Congress on School Transportation (NCST). The NCST met in 2010, and there were no NCST changes affecting past regulations. The NCST will meet in 2015, and the Department will include any changes in a new regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 4, 2012 in the form hereto attached as *Exhibit "A"*. The department did not receive comments on the readoption.

#### II. Findings of Facts

The Secretary finds that it is appropriate to re-adopt 14 DE Admin. Code 1103 Standards for School Bus Chassis and Bodies for Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005) as part of the five year review cycle given that there are no changes from the National Congress on School Transportation (NCST).

#### III. Decision to Re-adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to re-adopt 14 DE Admin. Code 1103 Standards for School Bus Chassis and Bodies for Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). The regulation is subject to the five year review cycle. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 1103 Standards for School Bus Chassis and Bodies for Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005) attached hereto as *Exhibit "B"* is hereby re-adopted. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 1103 Standards for School Bus Chassis and Bodies for Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005).

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies for Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005) re-adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies for Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005).

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 20, 2012. 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 20<sup>th</sup> day of September 2012.

**DEPARTMENT OF EDUCATION**

Mark T. Murphy, Secretary of Education

Approved this 20<sup>th</sup> day of September 2012

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the Register at page 165 (16 DE Reg. 165). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007**

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

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

16 **DE Admin. Code** 5000, 5001, 5300, 5304, 5312, 5403 and 5500

**REGULATORY IMPLEMENTING ORDER****Fair Hearing Practice and Procedures****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) regarding *Fair Hearing Practice and Procedures* specifically, *Expedited Fair Hearings*. 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 July 2012 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The purpose of this proposal is to amend the Division of Social Services Manual (DSSM) regarding Fair

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Hearing Practice and Procedures, specifically, *Expedited Fair Hearings*.

**Statutory Authority**

- 42 CFR Part 431, Subpart E, *Fair Hearings for Applicants and Recipients*
- 42 CFR Part §§435.911 - .920, *Determination/Redetermination of Medicaid Eligibility*
- 42 CFR Part 438, Subpart F, *Grievance System*
- 42 CFR §457.340, *Application for and enrollment in a separate child health program*
- 42 CFR §457.1120, *State plan requirement; Description of review process*

**Background**

Public entitlement programs, including Medicaid are secured by “due process procedures.” That is, once public entitlements are enacted into law, they are considered rights with safeguards to protect individuals. Grievances, appeals, notices and fair hearings provide significant protections for Medicaid applicants and beneficiaries. When an individual’s application has been denied or a recipient’s benefits have been or will be discontinued, reduced, or suspended, the individual can appeal.

**Agency Appeals Process**

Medicaid applicants and beneficiaries are entitled to adequate notice of state agency actions and a meaningful opportunity for a hearing to review those decisions whenever their claim for benefits is denied or not acted upon with reasonable promptness. This includes any action, or inaction, that affects *either* the person’s eligibility to be enrolled in Medicaid *or* the person’s receipt of a particular medical service covered by the program. The administrative agency hearings in the Medicaid appeals system are called “fair hearings.”

**MCO Appeals Process**

In addition to the state fair hearing process, Medicaid Managed Care Organizations (MCOs) must establish both internal appeal procedures for enrollees to challenge the denial of coverage or payment for medical assistance and a grievance process.

**Expedited Fair Hearings**

Federal regulations provide a 3 working-day timeframe for resolution of an expedited appeal (an appeal where a delay could seriously jeopardize the enrollee's life or health) and require States to have expedited fair hearings for expedited appeals when the issue is the denial of authorization for a service.

**Summary of Proposal**

The Centers for Medicare and Medicaid Services (CMS) reviewed the Division of Medicaid and Medical Assistance (DMMA) recently approved waiver amendment request submitted under the authority of Section 1115 of the Social Security Act to include additional populations in a mandatory managed care program. During the waiver review process, DMMA became aware that certain federal due process requirements that the agency follows are not reflected in the fair hearing regulations. These rules have long been in practice but have not heretofore been expressly set forth in the Division of Social Services Manual (DSSM).

DMMA is proposing this action as an Emergency Regulation as the most expedient way to reflect the appeals procedures currently in use and to conform the descriptions of these procedures to federal requirements.

The effects of these rules will be to reflect accurately the procedural safeguards described in the Code of Federal Regulations. The following sections of the DSSM are amended to codify the existing expedited hearings process for managed care clients as required by federal regulations:

DSSM 5000, *Definitions*

DSSM 5001, *Providing an Opportunity for a Fair Hearing*

DSSM 5300, *Providing Adequate and Timely Notices*

DSSM 5304.3, *Presiding Over Medicaid DMMA Managed Care Hearings*

DSSM 5312, *Responding to Fair Hearing Requests*

DSSM 5403, *Providing Documents to Appellants; and,*

DSSM 5500, *Issuing Fair Hearing Decisions.*

This proposed regulation was also published concurrently herein under "Emergency Regulations".

## Fiscal Impact Statement

The proposed revisions impose no increase in cost on the General Fund.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC and SCPD have the following concerns and recommendations regarding the proposed revisions.

First, §5304.3, Par. 1 (p. 36) indicates that the "MCO must issue an expedited resolution within 3 working days after receiving the appeal." Obviously, a claimant attempting to persuade an MCO to issue a favorable decision within the "3 working days" timeframe would ordinarily benefit from reviewing the MCO's case records to facilitate any submission of justification or expert medical evidence. Unfortunately, there is no DSS regulation addressing expedited access to MCO case records. It would be preferable to add a provision requiring prompt access to such records in the context of a request for expedited resolution.

**Agency Response:** DMMA revises §5304.3, Par. 1 as follows: *The MCO must provide for prompt access to MCO case records as specified in DSSM 5403. The MCO must also issue an expedited resolution within 3 working days after receiving the appeal. Expedited appeals must otherwise follow all other standard appeal requirements.*

Second, if a claimant requests a fair hearing to contest an MCO's adverse decision processed under the expedited resolution regulation [§5403.3, Par. 1], the DSS hearing officer is expected to issue a decision within 3 working days. See §5500, Par. 1; and 42 C.F.R. §431.244(f)(2). However, §5403, Par. 2, allows the MCO or agency to wait "3 working days" to provide access to case records. Thus, a claimant would be "hamstrung" in preparing for the expedited hearing since he/she would lack timely access to MCO or State agency case records. CMS regulations mandate that beneficiaries will have access to records before the date of hearing to allow meaningful participation in the appeal process. See, e.g., 42 C.F.R. §431.242(a). Therefore, we recommend that §5403, Par. 2, be revised as follows:

For expedited resolution requests, case records must be promptly made available within ~~3 working days~~ 1 working day of the receipt of the appeal.

**Agency Response:** DMMA revises §5403, Par. 2 as follows: *For expedited resolution requests, case records must be made available within 1 working day of the receipt of the appeal.*

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Fair Hearing Practice and Procedures, specifically, Expedited Fair Hearings*, is adopted and shall be final effective October 10, 2012.

Rita M. Landgraf, Secretary, DHSS

## DMMA FINAL ORDER REGULATION #12-43 REVISIONS:

### 5304.3 Presiding Over ~~Medicaid~~ DMMA Managed Care Hearings

42 CFR 438.408(f), 42 CFR 438.410

This policy applies to recipients enrolled in a managed care organization.

Recipients of medical services from the Division of Medicaid and Medical Assistance may appeal an adverse decision of a Managed Care Organization (MCO) to the Division. The decision of the DSS Hearing Officer is a final decision of the Department of Health and Social Services and is binding on the MCO.

The MCO is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case. The MCO is subject to the rules, practices, and procedures detailed herein.

These rules do not prevent an MCO from offering conciliation services or a grievance hearing prior to the fair hearing conducted by DSS.

**1. Recipients Are Entitled to an Expedited Resolution in Cases of Emergency**

The MCO is responsible for establishing and maintaining an expedited review process for appeals when the MCO determines or the provider indicates that taking the time for standard resolution could seriously jeopardize the claimant's life or health or ability to attain, maintain, or regain maximum function. The expedited review can be requested by the claimant or the provider on the claimant's behalf.

The MCO must [provide for prompt access to MCO case records as specified in DSSM 5403. The MCO must also] issue an expedited resolution within 3 working days after receiving the appeal. Expedited appeals must otherwise follow all other standard appeal requirements.

If the MCO denies a request for an expedited resolution of an appeal, it must:

- i. resolve the appeal within the standard time frame of 45 days.
- ii. make reasonable efforts to provide prompt oral notice of the denial and provide written notice of the denial to the claimant within 2 calendar days.

***(Break in Continuity of Sections)***

**5312 Responding to Fair Hearing Requests**

45 CFR 205.10

This policy applies anytime anyone requests a fair hearing due to a decision made by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA) for a program administered by DSS or DMMA.

**1. The Agency Prepares a Hearing Summary**

Within 5 working days of receipt of a request for a fair hearing, the agency (or MCO or other Contractor) will prepare a hearing summary and submit the summary to the Hearing Office.

**Exception:** For expedited hearings see DSSM 5304.3.

**2. Staff Ensure the Summary Contains Pertinent Information**

The hearing summary will contain enough information for the appellant to prepare his or her case. The summary must contain:

- A. Identifying information - Give the client's name, the client's address, and the DCIS identification number.
- B. Action taken – Indicate the basis of the client's appeal (rejection, reduction, closure, amount of benefits, etc.)
- C. Reason for action - Describe the specific action taken by the agency, as well as the factual basis for its decision.
- D. Has assistance continued? - Indicate whether or not the appellant's assistance was restored because the appellant filed a request for a hearing within the timely notice period.
- E. Policy basis - Cite the specific State [and federal] rules supporting the action taken.
- F. Persons expected to testify - This section lists the names and addresses (if any) of persons that the agency expects to call to testify.

**3. The Hearing Office Notifies the Appellant**

Upon receipt of the hearing summary, the Hearing Office will:

- A. Set a prompt date for the hearing.



- B. Send a notice conforming to the requirements of §5311. The notice will include the hearing summary.
- C. Notify all parties, including witnesses, of the date, time, and place of the hearing.

*(Break in Continuity of Sections)*

## 5403 Providing Documents to Appellants

This policy applies anytime an appellant or his or her representative requests a fair hearing.

### 1. Appellants May Examine Case Records and Documents

Prior to the hearing, the appellant and his or her representative will have adequate opportunity to examine all documents and records to be used by the State agency or its agent at the hearing. He or she may also examine his or her case records.

### 2. Staff Must Provide Case Records in a Timely Manner

Staff must make case records available to the appellant within 5 working days of the request. If copies of documents are requested for the hearing, they will be provided at no cost. For expedited resolution requests, case records must be made available within **[31]** working day[s] of the receipt of the appeal.

Exception: Staff must not release confidential information, such as

1. the names of individuals who have disclosed information about the household without its knowledge
2. the nature or status of pending criminal prosecutions

**\*Please Note: As the rest of the sections were not amended since the proposal in the July 2012 issue of the Register, they are not being published here. A complete copy of the final regulation is available at:**

**Fair Hearing Practice and Procedures**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### Medicaid Estate Recovery

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) to update current regulations regarding Medicaid Estate Recovery, *specifically 1) asset protections recognized for civil union partners; and, 2) eliminating Medicare cost-sharing expenses from estate recovery.* 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 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed amends the Division of Social Services Manual (DSSM) to update current regulations regarding Medicaid Estate Recovery, *specifically 1) asset protections recognized for civil union partners; and, 2) eliminating Medicare cost-sharing expenses from estate recovery.*

**Statutory Authority**

- 146<sup>th</sup> General Assembly, Senate Bill #30, *An Act to Amend Title 13 of the Delaware Code Relating to Civil Unions*
- Section 1917 of the Social Security Act, *Liens, Adjustments and Recoveries, and Transfers of Assets*
- 42 CFR §433.36, *Liens and Recoveries*
- State Medicaid Manual, Section 3810, *Medicaid Estate Recoveries*
- Title 25, Delaware Code, Chapter 50, *Liens and Estate Recoveries*
- Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), P.L. 110-275

**Background***Senate Bill #30*

Signed into law by the Governor on May 11, 2011, Senate Bill #30 is an Act that creates the recognized legal relationship of civil union in Delaware for eligible persons. This Act further recognizes as civil unions for all purposes under Delaware law legal unions between two persons of the same sex entered into in jurisdictions outside of Delaware provided that such union and the parties thereto meet the Delaware eligibility requirements to enter into a civil union in the State of Delaware. Parties who enter into a lawful civil union in Delaware, or whose legal union is recognized as a civil union under Delaware law, will have all of the same rights, benefits, protections and responsibilities as married persons under Delaware law. It is not the intent of the Delaware General Assembly to revise the definition or eligibility requirements of marriage under Delaware law or to require any religious institution to perform solemnizations of civil unions.

*State Medicaid Director Letter (SMDL) #11-006*

In a letter dated June 10, 2011 and entitled "*Same Sex Partners and Medicaid Liens, Transfers of Assets, and Estate Recovery.*" the Centers for Medicare and Medicaid Services (CMS) notified states that they may elect to provide same-sex spouse and domestic partners of long-term care Medicaid Beneficiaries certain asset protections regarding home ownership including protection from liens, recognition that denial of eligibility for transfer of a home can result in undue hardship, and exemption from estate recovery.

Specifically, CMS notified states that they may elect to:

- Add same-sex spouses and domestic partners of Medicaid beneficiaries to the list of people whose residence in the home of a Medicaid beneficiary prevents a state from imposing a lien;
- Include in the definition of their transfer-of-asset undue hardship exceptions transfers of the home between same-sex spouses or domestic partners;
- Include in the definition of their estate recovery undue hardship exceptions certain protections for the surviving same-sex spouses or domestic partners of Medicaid beneficiaries.

<http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD11-006.pdf>

**Summary of Proposal**

This regulatory action is based upon State Medicaid Director Letter guidance document provided by the Centers for Medicare and Medicaid Services (CMS), entitled, "*Same Sex Partners and Medicaid Liens, Transfers of Assets, and Estate Recovery.*" The proposed regulation changes take advantage of existing choices and flexibilities regarding spousal and domestic partner protections related to liens and estate recovery by adding a new definition, *Civil Union Partner* and adds *civil union partner* as an exception to the Lien policy. Estate Recovery may be waived if there is a civil union partner that has resided in the home for at least two years immediately prior to institutionalization. Also, definitions are placed in alphabetical order.

This action further adds language to comply with section 115 of Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Section 115 provides that medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligible individuals: qualified Medicare beneficiaries (QMB), specified low-income Medicare beneficiaries (SLMB), qualified individuals (QI), and qualified disabled and working individuals (QDWI). This protection extends to medical assistance for four Medicare cost sharing benefits including Part A and B premiums, deductibles, coinsurance and co-payments and is effective with dates of service on or after January 1, 2010, for duly eligible individuals who were over age 55 when the expense

was incurred.

The proposed changes affect the following policy sections:

DSSM 20500.1, *Application*

DSSM 20500.2, *Notification*

DSSM 20500.3, *Definitions*

DSSM 20500.5.3.2, *Individuals Eligible for Recovery Waiver*

DSSM 20500.6, *Liens*

DSSM 20500.6.1, *Exceptions to the Lien Policy*.

## Fiscal Impact Statement

The proposed regulation imposes no increase in costs on the General Fund.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

Specifically, DMMA proposes to amend §20500.5.3.2 to add “civil union partner” to the list of relatives who are eligible to request a waiver of estate recovery based on undue hardship. This is authorized by the CMS guidance at p. 3. Note that “spouses” are protected by a different regulation, §20500.5.1. In addition, DMMA proposes to amend §20500.6.1 to include “civil union partner” to the list of relatives whose presence in the home may justify deferral of a lien for costs of care while the beneficiary is in a nursing facility. This is authorized at pp. 1-2 of the CMS guidance. The same deferral will apply if the home is jointly owned with the civil union partner.

SCPD endorses the proposed regulation.

**Agency Response:** DMMA thanks the Council for their endorsement.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) to update current regulations regarding Medicaid Estate Recovery, *specifically 1) asset protections recognized for civil union partners; and, 2) eliminating Medicare cost-sharing expenses from estate recovery* is adopted and shall be final effective October 10, 2012.

Rita M. Landgraf, Secretary, DHSS

## Fiscal Impact Statement

The proposed regulation imposes no increase in costs on the General Fund.

## DMMA FINAL ORDER REGULATION #12-47

### REVISION:

\*Please note that no changes were made to the regulation as originally proposed and published in the August 2012 issue of the *Register* at page 166 (16 DE Reg. 166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Medicaid Estate Recovery**

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512th)  
16 **DE Admin. Code** 6001, 6002, 6003, 6004, 6005, 6006 & 6007

**ORDER****DSSM: 6001 - 6007 Emergency Assistance Services****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 *Emergency Assistance Services*. 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 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced August 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding *Emergency Assistance Services*.

**Statutory Authority**

- Social Security Act §404, *Use of Grants*
- 31 Delaware Code, Section 521, *Emergency and Disaster Assistance*

**Background**

The Division of Social Services (DSS) is the appointing authority for Emergency Assistance Services. Emergency Assistance funds for rent, utilities and emergency shelter are provided for eligible low-income persons in order to help to maintain self-sufficiency and prevent homelessness. The purpose of Emergency Assistance is to avoid, eliminate or alleviate an emergency condition caused by an unforeseen circumstance resulting in a situation that calls for immediate action. Services are provided through the Delaware Division of State Service Centers (DSSC).

**Summary of Proposed Changes**

**DSSM 6001 through DSSM 6007, *Emergency Assistance Services*:** The name of each affected section is being changed to more accurately indicate the content of the policy. All sections are reformatted and reworded for clarity. In addition:

- DSSM 6001, *Legal Base* is removed. It is no longer needed since legal authority is cited in the individual sections;
- DSSM 6004 is combined with 6003; and,
- DSSM 6007 is removed. It is procedure and not policy. Consequently, the policy manual is not the appropriate place for this information.

As noted above, applicable federal and state citations are also added to the policy section.

The proposed changes affect the following sections of the DSSM:

DSSM 6001, *Legal Base* RESERVED

DSSM 6002, *Eligibility* Determining Eligibility for Emergency Assistance

DSSM 6003, *Vendor Payments* Making Payments for Emergency Assistance Services

DSSM 6004, *Payment Limitation: Time Restriction* RESERVED

DSSM 6005, *Scope of Service Providing Assistance for Qualified Emergencies*

DSSM 6006, *Classification of Emergency Assistance Services – Content of Services Offering Emergency Assistance Services*

DSSM 6007, *Accountability Reports RESERVED*

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend its emergency assistance regulations. The proposed regulation was published as 16 DE Reg. 173 in the August 1, 2012 issue of the Register of Regulations. We have the following observations.

**Agency Response:** The Emergency Assistance Program is a Division of Social Services (DSS) program. DSS is responsible for the proposed change in the Emergency Assistance regulation. DSS is currently updating the DSS policies to a new format, the changes in the regulation are meant only to bring the Emergency Assistance policy into compliance with the new policy format. No substantive changes in the program are proposed.

First, in §6002, Par. 1.B, definition of "financial eligibility", the inclusion of "or" in Par. 2 and "and" in Par. 3 is confusing. There are items in a series (Pars. 1-4) and it's unclear if DMMA intends the references to be disjunctive or conjunctive. Perhaps Pars. 2 and 3 could be combined into a single subsection.

**Agency Response:** To provide the clarity requested the proposed policy will be changed to the following:

### B. Household Resources Are Limited

1. The emergency must have resulted from an unforeseen circumstance or combination of circumstances that are beyond the recipient's control.
2. Medicaid individuals and families cannot have resources immediately accessible to meet their needs.
3. The child cannot have resources immediately accessible to meet his or her needs or
  - a. the emergency assistance is necessary to avoid the destitution of the child, or
  - b. emergency assistance is necessary to provide the child living arrangements in a home.

Second, in the example involving A1 in §6003, Par. 3, first sentence, substitute "her" for "its" for consistency with other references to A1.

**Agency Response:** DSS will incorporate the suggested change in the policy.

Third, in the same example, fourth sentence, substitute "A1" for "they" since the regulation would otherwise have plural pronouns (they) with a singular antecedent (A1).

**Agency Response:** DSS will incorporate the suggested change in the policy.

Fourth, in §6005, Par. 1.A, it would be preferable to also authorize a home repair to provide "accessibility". For example, an individual may suffer an injury requiring use of a temporary ramp for access to a dwelling unit. See also 4603A(a)(1) [contemplating minor modifications of dwellings for accessibility] and attached description of DSAAPD program covering home modifications and assistive devices. DSAAPD funds are limited and are often exhausted before the end of the fiscal year.

**Agency Response:** Thank you for your suggestion; as noted earlier, DSS is not proposing substantive changes and is not proposing an expansion of the program at this time.

Fifth, there are many instances in which punctuation has been omitted. See, e.g., §6005, Par. 1.B.1.ii; §6005, Par. 1 I; and §6006. DMMA may wish to review these sections and insert appropriate punctuation.

**Agency Response:** DSS uses the Gregg Reference Manual for style and punctuation guidance. The punctuation used in the proposed regulation is consistent with the Gregg manual.

Sixth, in §6005, Par. 1.E, the criteria for “medical needs” could be expanded. For example, the enabling statute [Title 31 Del.C. §5002(6)] is relatively broad in scope. Moreover, query why prevention of short-term hospitalization or excessive pain or diversion from a nursing facility should not be qualifying justification for emergency medical services? Consider the following substitute:

A medical need is present if that need could result in serious impairment of health, prolonged hospitalization, institutionalization, excessive pain, or death.

**Agency Response:** Thank you for your suggestion; as noted earlier, DSS is not proposing substantive changes and is not proposing an expansion of the program at this time.

Seventh, §6005, Par. 1.H, categorically limits clothing funds to loss from theft or fire. This would literally exclude eligibility if loss were based on contamination (e.g. bedbugs; lice; skunk), flood, or other casualty. For example, mice will eat holes in clothes. Consider the following substitute:

Assistance in clothing is authorized only if the need results from casualty (e.g. fire; theft) or irremediable contamination.

**Agency Response:** Thank you for your suggestion; as noted earlier, DSS is not proposing substantive changes and is not proposing an expansion of the program at this time.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2012 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Emergency Assistance Services* is adopted and shall be final effective October 10, 2012.

Rita M. Landgraf, Secretary, DHSS

#### DSS FINAL ORDER REGULATION #12-48 REVISION

#### 6001 RESERVED

#### 6002 DETERMINING ELIGIBILITY FOR EMERGENCY ASSISTANCE

Title IV §404(a)(2), 31 Del. Code §521

This policy applies to Delaware residents who are experiencing a crisis due to unforeseen circumstances. Services are provided through the Division of State Service Centers (DSSC).

##### 1. DHSS Staff Determine Eligibility

Individuals or families must meet technical and financial eligibility criteria.

##### Technical Eligibility

Only the following Delaware residents may participate:

##### A. Individual or family receiving the following types of cash assistance:

1. Temporary Assistance for Needy Families (TANF)
2. General Assistance (GA)
3. Supplemental Security Income (SSI)

##### B. Individual or family receiving or eligible for the following types of Medicaid:

1. 1931 Medicaid
2. Transitional Medicaid
3. Prospective Medicaid
4. Poverty-related Pregnant Women, Infants and Children Medicaid

- C. Family has children at risk of removal from their home due to abuse or neglect, or the children are suspected at risk of abuse or neglect
- D. Family has children at risk of removal from the community
- E. Family has children removed from their home due to abuse or neglect, or the children were suspected at risk of abuse or neglect
- F. Family has children removed from the community

**Financial Eligibility**

- A. Household Income Is Limited  
Income eligibility is met if the family meets the technical eligibility criteria above.
- B. Household Resources Are Limited  
~~1. Medicaid individuals and families cannot have resources immediately accessible to meet their needs.~~  
~~2. The child cannot have resources immediately accessible to meet his or her needs;~~  
~~or~~  
~~3. The emergency assistance is necessary to avoid the destitution of a child or to provide living arrangements for him in a home; and~~  
~~4. The emergency is one that resulted from an unforeseen circumstance or combination of circumstances that are beyond the recipient's control.~~
  - 1. The emergency must have resulted from an unforeseen circumstance or combination of circumstances that are beyond the recipient's control.
  - 2. Medicaid individuals and families cannot have resources immediately accessible to meet their needs.
  - 3. The child cannot have resources immediately accessible to meet his or her needs,
    - or
    - a. the emergency assistance is necessary to avoid the destitution of the child, or
    - b. emergency assistance is necessary to provide the child living arrangements in a home.]

**2. DHSS Staff Limits Assistance to Recipients**

This section only applies to those who are technically eligible due to receipt of cash or medical assistance as listed in Technical Eligibility above.

- A. Applicants for assistance must have a qualifying emergency. A qualifying emergency is one that resulted from an unforeseen circumstance or combination of circumstances that are beyond the recipient's control.

NOTE: A recipient whose money is stolen may receive assistance if the recipient provides a police report of the incident.

DHSS will not authorize emergency assistance when the emergency was due to a recipient's failure to comply with a requirement of a Division of Social Services program. This includes individuals whose grant was reduced as the result of a sanction or disqualification.

Example:

- a. Mary was sanctioned which resulted in a reduction of her TANF grant. Because she has less money she is not able to pay her electric bill. She is not eligible for

emergency assistance because a grant reduction is a foreseeable consequence of a sanction.

- b. Joey was disqualified which resulted in a reduction of his TANF grant. Because he has less money he is not able to pay his rent. At the same time his refrigerator breaks down. This is not a result of his disqualification (grant reduction) and Joey could be eligible for emergency assistance to repair or replace his refrigerator.

### **6003 MAKING PAYMENTS FOR EMERGENCY ASSISTANCE SERVICES**

**31 Del.Code §521**

This policy applies any time a payment is issued for Emergency Assistance Services.

#### **1. DHSS Makes Payments to Vendors**

Payments for Emergency Assistance Services are made by check directly to the vendor.

<u>Exception: Payments for food may be made directly to the recipient.</u>
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#### **2. DHSS Limits Amounts and Frequency of Payments to Vendors**

A household can receive approval for a payment from each of the following categories. Payment is limited to one period of 30 consecutive days in any twelve consecutive months.

Payments authorized within the 30-day period may cover needs which will arise during the 60 consecutive days beginning on the day after the end of the 30-day period.

Payments authorized within the 30-day period may cover debts which became due and payable within the 60 consecutive days immediately prior to the day the recipient applies for assistance.

The maximum payment a household can receive during the 30 day period is:

- A. \$1,200 for emergency shelter certified by the Department of Health and Social Services (DHSS)
- B. \$450 for mortgage or rent assistance
- C. \$200 for other costs related to the self-sufficiency of the household

#### **3. Payment Limits Apply to the Original Household**

The payment limitation and time restrictions apply only to the original household.

Former members of a household that received emergency assistance may themselves receive assistance if they had not requested funds while part of the original household. For example, a household (F1) contains two TANF cases (A1) and (A2).

A1 receives emergency assistance to purchase a refrigerator in July. In September A2 moves to ~~the~~ **her** own apartment. Several months later in December A2 needs money to pay the rent because her money was stolen. A2 can receive help because she is no longer part of the F1 household and while part of the F1 household had not requested assistance. If A1 asked for help, ~~they~~ **A1** would be denied because ~~they~~ **A1** received an emergency assistance payment less than twelve months ago.

**\*Please Note: As the rest of the sections were not amended since the proposal in the August 2012 issue of the Register, they are not being published here. A complete copy of the final regulation is available at:**

**DSSM: 6001 - 6007 Emergency Assistance Services**



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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(b) and 903(e)(2)a  
(7 Del.C. §901(b) & §903(e)(2)a)  
7 DE Admin. Code 3507

**Secretary's Order No.: 2012-F-0036**

**Date of Issuance: September 18, 2012**

**Effective Date of the Amendment: October 11, 2012**

**3507 Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers proposed regulations to amend 7 DE Admin. Code 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-08. The Department published its initial proposed regulation Amendments as an Emergency Regulation, pursuant to Secretary Order No. 2012-F-0019, in the June 1, 2012 *Delaware Register of Regulations*, and then as formal proposed regulation Amendments in the August 1, 2012 *Delaware Register of Regulations*. The Department then held a public hearing on August 30, 2012. The public hearing record remained open at that time for public comment through September 14, 2012.

The Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass. Addendum XXII established a regional management approach, and required the southern region states (Delaware to North Carolina) to implement management measures consistent with those required for federal waters. The Department was notified on May 17, 2012 by the National Oceanic and Atmospheric Administration that this newly approved federal rule included an open season for the recreational black sea bass fishery from May 19 through October 14. In response, the Department issued an Emergency Order (Secretary Order No. 2012-F-0019) to remain consistent with Addendum XXII, and to prevent Delaware anglers and dependent businesses from being disadvantaged by remaining closed to recreational sea bass fishing through May 21. This present promulgation seeks to formally revise Delaware's Tidal Finfish Regulation 3507 with regard to Black Sea Bass, so that Delaware will remain compliant with Addendum XXII subsequent to the expiration of the aforementioned Emergency Order.

The Department is now promulgating revisions to Delaware Tidal Finfish Regulation No. 3507 to formally adopt the full provisions of the federal rule for the recreational black sea bass fishery, and to remain compliant with Addendum XXII. The federal rule establishes the following: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession limits. It should be noted that, based on the stock projections completed in 2011, the black sea bass stock is not overfished, nor is overfishing occurring. The projections indicate the stock is at about 111% of its biomass target.

The proposed Amendments were thoroughly vetted by the Department at the public hearing on August 30, 2012. No member of the public attended said hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September

17, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

### Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, no members of the public attended the hearing held on August 30, 2012, and no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession limit.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on both the initial proposed Amendments, as well as the proposed Amendments, including at the public hearing held on August 30, 2012;
- 3.) The Department held a public hearing on August 30, 2012 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession limit;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; (2) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by both the NMFS and the ASMFC; and lastly, because (3) the amendments are well supported by documents in the record;
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

#### **3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought,

sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.  
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each day's landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. ~~January~~ March 1, and ending midnight May ~~24~~ 18, and beginning at 12:01 a.m. October ~~42~~ 15 and ending mid-night October 31.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 19 through October 14 and during the period November 1 through December 31.
- 12.2 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational

fisherman's personal abode or temporary or transient place of lodging during the period January 1 through February 28.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1790 Acupuncture Advisory Council**

Statutory Authority: 24 Delaware Code, Section 1796 (24 **Del.C.** §1796)  
 24 **DE Admin. Code** 1790

**1790 Acupuncture Advisory Council**

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on June 21, 2012 before the Acupuncture Advisory Council ("Council") which functions under the auspices of the Delaware Board of Medical Licensure and Discipline ("Board") to consider adoption of rules and regulations governing the practice of acupuncture detoxification using auricular point protocol by acupuncture detoxification specialists in the State of Delaware. Pursuant to 24 **Del.C.** §1796(c) the Council proposed rules and regulations to clarify and implement provisions of Subchapter X of the Medical Practice Act governing acupuncture detoxification specialists (ADS). See 24 **Del.C.** §1799F.

As required by the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed rules and regulations was published on February 1, 2012 in the Delaware *Register of Regulations* at 15 DE Reg 1137. A hearing originally noticed for April 19, 2012 was also published in two Delaware newspapers of general circulation. Due to a lack of quorum the April 19<sup>th</sup> hearing was rescheduled and notice of the rescheduled hearing was published in the Delaware *Register of Regulations* at 15 DE Reg 1778 on June 1, 2012 and in two Delaware newspapers of general circulations at least 20 days in advance of the hearing.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Council received no written comments and there were no verbal comments at the public hearing. The following notices were admitted as exhibits and made a part of the record:

**Council Exhibit 1:** *News Journal* Affidavit of Publication.

**Council Exhibit 2:** *Delaware State News* Affidavit of Publication.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed rules and regulations.
2. The Council did not receive any written comments and no members of the public attended the hearing to offer verbal comment.
3. The licensure of acupuncture detoxification specialists (ADS) was enacted to allow qualified individuals performing auricular point protocol to continue to practice with a license issued by the Council and the Board.
4. The Council solicited input from acupuncture detoxification specialists during the drafting of the regulations.
5. The regulations address the requirements and documentation necessary to obtain initial licensure, limit the settings in which an ADS may practice and establish requirements for renewal and demonstration of continued competency at the time of renewal.
6. Pursuant to 24 **Del.C.** §1796(c) the Council has statutory authority to promulgate regulations governing the practice of acupuncture after a public hearing and subject to the approval of the Board of Medical Licensure and Discipline.
7. The Council finds that the proposed amendments to the rules and regulations are necessary to meet the

Council's statutory mandate to promulgate rules and regulations governing the practice of acupuncture detoxification specialists in the State of Delaware. There were no modifications to the rules and regulations as a result of the public hearing and they are recommended for approval as originally published in the *Register of Regulations* on February 1, 2012.

8. The Council recommends to the Board of Medical Licensure and Discipline that it approve the regulations as published to govern the practice of acupuncture detoxification specialists in the State of Delaware.

### **RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

**NOW, THEREFORE**, the Acupuncture Advisory Council, by the unanimous affirmative vote of the undersigned members, hereby adopts the rules and regulations as published in the *Register of Regulations* of February 1, 2012 at 15 **DE Reg.** 1137 and recommends approval of such rules and regulations to the Board of Medical Licensure and Discipline.

If approved by the Board of Medical Licensure and Discipline these rules and regulations will be effective ten (10) days after publication of the Board's final order in the *Register of Regulations*.

### **APPROVED AND RECOMMENDED BY THE UNANIMOUS VOTE OF THE ACUPUNCTURE ADVISORY COUNCIL ON THIS 21st DAY OF June, 2012.**

Lorna Lee, L.Ac., **Chairperson**

Vincent Lobo, D.O., Physician Member

Jennifer Baust, R.N., L.Ac.

Alan Keith Tillotson, L.Ac.

Jeffrey S. Meyers, M.D., is an Ex-Officio non-voting member of the Council.

**AND NOW**, this 24<sup>th</sup> day of July, 2012, the Board of Medical Licensure and Discipline having considered the attached Recommendation of the Acupuncture Advisory Council for approval of rules and regulations related to acupuncture detoxification;

**AND**, the Board of Medical Licensure and Discipline having determined to approve the aforesaid rules and regulations as proposed by the Acupuncture Advisory Council;

### **NOW, THEREFORE, IT IS ORDERED:**

1. That the rules and regulations recommended by the Acupuncture Advisory Council to govern the practice of acupuncture detoxification by licensed acupuncture detoxification specialists (ADS) in the State of Delaware are hereby approved by the Board of Medical Practice.

2. The rules and regulations shall be effective ten (10) days after publication of this Order in the *Register of Regulations*.

### **BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

Stephen Cooper, M.D., President

Anthony M. Policastro, M.D.

Garrett H. Colmorgen, M.D.

Leslie C. Ramsey, Public Member

Vincent Lobo, D.O.

Karyl Rattay, M.D.

Raymond Moore, Public Member

Malvine Richard, Ed.D., Public Member

Joseph Parise, D.O.

### **1790 Acupuncture Advisory Council**

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2012 issue of the *Register* at page 1137 (15 DE Reg. 1137). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1790 Acupuncture Advisory Council**

# FINAL REGULATIONS

## DIVISION OF PROFESSIONAL REGULATION

### BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a) (24 Del.C. §2706(a))  
24 DE Admin. Code 2700

#### 2700 Board of Registration for Professional Land Surveyors

#### ORDER

Pursuant to 29 Del.C. §10113(b)(2) and 24 Del.C. §2706(a)(1), the Delaware Board of Professional Land Surveyors issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 Del.C. §10113(b)(2), regulation 10.4.1 of the Board of Professional Land Surveyors must be changed without prior publication as it is a rule of practice and procedure used by the agency exempt from prior publication.

#### SUMMARY OF THE EVIDENCE

1. Rule 10.4.1 now states: "Each licensee applying for renewal shall attest to satisfying the continuing education requirements outlined in Rule 10.1, 10.2, and 10.3 in the period defined in Section 10.1 of these rules. Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted."

2. The Board makes the following change to its regulations (additions are underlined, removals are stricken through):

10.4.1 Each licensee applying for renewal shall attest to satisfying the continuing education requirements outlined in Rule 10.1, 10.2, and 10.3 in the period defined in Section 10.1 of these rules. ~~Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.~~

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on October 1, 2012.

**IT IS SO ORDERED** this 16<sup>th</sup> day of August, 2012.

James Bielicki, Jr.

Mary Chvostal

Laurence R. McBride

Kenneth Monroe

Thomas Plummer

Mark Rosenthal

Michael T. Szymanski

#### 2700 Board of Registration for Professional Land Surveyors

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2012 issue of the *Register* at page 1137 (15 DE Reg. 1137). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**2700 Board of Registration for Professional Land Surveyors**

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3606 (24 Del.C. §3606)  
24 DE Admin. Code 3600

### ORDER

#### 3600 Board of Geologists

Pursuant to 29 Del.C. §10118 and 24 Del.C. §3606(a)(1), the Delaware Board of Registration of Geologists issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on August 10, 2012, the Board makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the July 1, 2012 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. The Board proposed to completely rework its regulations in an attempt to better organize and clearly establish the standards governing licensed Geologists in the State of Delaware.

2. The Board received no written comments up to the hearing date. The Board held a public hearing on August 10, 2012 and received no public comments. The public hearing was continued until September 7, 2012 so as to allow written comment up to fifteen (15) days after the hearing. The Board received no written comment during that fifteen (15) day period.

3. The Board proposed to update the regulations by clarifying provisions related to lapsed and expired licenses, adding online courses and web seminars to the courses acceptable for continuing education in place of home study, and updating the list of sponsored organizations that receive automatic approval of continuing education programs offered to licensees to meet the continuing education requirements. The revisions also add manslaughter to the list of crimes the Board has determined to be substantially related to the practice of geology. Finally, the proposal corrects several grammatical errors.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on July 1, 2012.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on October 1, 2012.

**IT IS SO ORDERED** this 7<sup>th</sup> day of September, 2012.

William Schenck, PG, President

Scott Blaier, PG, Vice President

Amos Aiken, Public Member

Patricia Ennis, Public Member

Maureene LaFate, Public Member

Douglas Rambo, PG

David Reinhold, PG, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2012 issue of the *Register* at page 51 (16 DE Reg. 51). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3600 Board of Geologists**

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# GENERAL NOTICES

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

### Performance Framework (Pursuant to 14 DE Admin Code 275 Charter Schools)

This is a notice of publication of the Performance Framework that has been established by the Department of Education, as assented to by the State Board of Education on September 20, 2012. The Performance Framework is required by 14 **DE Admin. Code** 275, published as final in the August 2012 *Register of Regulations*. The Performance Framework can be found at the Delaware Department of Education website:

<http://www.doe.k12.de.us/infosuites/schools/charterschools/files/CharterPerfFramework.pdf>

A copy of the Performance Framework may also be requested by contacting the Charter School Office, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901.

### 275 Charter Schools

#### 1.0 Purpose and Effect

- 1.1 The purpose of these regulations is to provide rules to govern the implementation of 14 **Del.C.** Ch. 5 (hereafter, the "Charter School Law") develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:
  - 1.1.1 Agency commitment and capacity;
  - 1.1.2 Application process and decision-making;
  - 1.1.3 Performance-based accountability;
  - 1.1.4 Ongoing oversight and evaluation; and
  - 1.1.5 Renewal and revocation decision-making.
- 1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.
- 1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff administrators and boards of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.
- 1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by, or transferred to the Department with the consent of the State Board.

#### 2.0 Definitions

- 2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:
  - "Accountability Committee"**: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.
  - "Applicant"**: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the Renewal or modification of such a charter, as the context indicates.
  - "Audit"**: An informal financial, programmatic, or compliance audit of a charter school.
  - "Charter Holder"**: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.
  - "Charter School"**: A non home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to the Department with the approval of the State Board for the personal physical attendance of all students.



- “**Delaware Comprehensive Assessment System (DCAS)**” means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities.
- “**Department**”: The Delaware Department of Education.
- “**Financial Audit**”: The audit required to be conducted pursuant to 14 **Del.C.** 513(a).
- “**First Instructional Day**”: The first day a Charter School is open with students in attendance.
- “**Formal Review**”: The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school’s operations and educational programs.
- “**Founding Board of Directors**”: The Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.
- “**Highly successful charter school operator**”: A charter school with sustained high levels of student achievement and sustained financial stewardship. A highly successful charter school is one which has been in operation for at least three years and which, during the three years prior to filing a charter application in Delaware, has a combined student performance which exceeds the statewide average student performance in the state in which the highly successful charter school is located based upon that state’s performance score or measure on its statewide assessment for purposes of the Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof. In addition, during the same three year period the school must have had no adverse financial findings and successfully completed any required financial audits in the state in which it is located, and be able to demonstrate that it will be economically viable.
- “**Parent**”: The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. “Parent” also includes individuals authorized to act as Relative Caregivers under the provisions of 14 **Del.C.** §202(e)(2).
- “**Performance Agreement**”: The document which describes the academic performance expectations, identifies economic viability requirements, defines organizational responsibilities, and outlines accountability of the Charter School. An approved charter school application serves as the basis for the performance agreement, which is for a specified term and as prescribed by the Department with the assent of the State Board of Education. The Performance Agreement is enforceable as part of the school’s charter.
- “**Performance Framework**”: A rubric based tool established by the Department with the assent of the State Board of Education, as amended from time to time, which contains the details, utilizing multiple measures, used by the Department to assess compliance with the Performance Agreement in the areas of academic performance, economic viability, organizational responsibilities and accountability of the Charter School. The completed frameworks will be provided to the Charter School Accountability Committee, Secretary and State Board of Education to inform their decision making for Renewals, modifications and formal reviews.
- “**Performance Review**”: The process by which the Charter School’s compliance with its Performance Agreement is evaluated annually to inform Renewal, major modification and formal review decisions. Compliance with the charter and the Performance Agreement, as assessed through the Performance Framework, is the basis for the Performance Review. Review and results will be reported in the Department’s annual report.
- “**Renewal**”: The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for four years. Renewal decisions are based on the criteria set forth in 14 **Del.C.** §512, and informed by a Charter School’s compliance with its Performance Agreement as evaluated by the Performance Framework.
- “**Secretary**”: The Secretary of the Delaware Department of Education.
- “**State Assessment System**” means the statewide assessment used to measure student achievement of the Delaware academic content standards including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, and other

assessments such as, but not limited to, the National Assessment for Educational Progress (NAEP), a college readiness assessment, an assessment for English Language Learners (ELL), a norm-referenced assessment that may be administered or required as determined by the Department of Education.

“**State Board**”: The Delaware State Board of Education.

### **3.0 Application Process**

- 3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the first day of school of the second school year thereafter, unless otherwise agreed upon by the authorizer and the applicant to allow the applicant to serve students who would otherwise be displaced because of the closure of an existing charter school.
- 3.2 All applications, whether for an original charter, a modification of a charter or the renewal of a charter, shall be made on forms approved by the Department.
- 3.3 An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered; an electronic copy shall also be submitted at the same time either as an attachment to an e-mail message or by electronic portable storage. The electronic copy shall be identical in all respects to the original application. Incomplete applications, or applications received after the deadline, will not be considered.
- 3.4 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.
- 3.5 An application is not complete unless all of the following requirements are met:
  - 3.5.1 All questions on the application form are answered.
  - 3.5.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.
- 3.6 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications; except for an application submitted by a Highly successful charter operator for the purpose of operating a charter school at a site of and serving students currently attending a charter school whose charter has been revoked, has not been renewed, or whose charter is on formal review and whose Board of Directors has agreed to abandon their charter.
- 3.7 Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.
- 3.8 The State Board of Education may designate one or more of its members to sit as nonvoting members of the Accountability Committee.
- 3.9 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter, the renewal of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the Performance Framework (not applicable for new applications), the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee’s final report and any written or electronic comments received at or before any such public hearing. In the case of the renewal, major modification, or formal review of a charter, the record shall also include performance documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, compliance with the school’s Performance Agreement, audits and performance reviews, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and

electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.

- 3.10 Applicants and Charter Holders shall make the financial disclosures relating to ownership and financial interest as required by 14 **Del.C.** §511(o). A charter school founder or member of a charter school board has a “financial interest” in the charter school if that person receives compensation in excess of \$5,000.00 from the charter school in any calendar year. Compensation means money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by a charter school founder or member of a charter school board. “Ownership” shall have the meaning commonly ascribed to it as appropriate in context.

## 4.0 Standards and Criteria for Granting Charter

### 4.1 Applicant Qualifications

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

- 4.1.1.1 Research based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.
- 4.1.1.2 Business management, including but not limited to accounting and finance.
- 4.1.1.3 Personnel management.
- 4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.
- 4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.
- 4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant’s bylaws must be submitted with the application and must demonstrate that:

- 4.1.3.1 At the time at which the school commences its instructional program and all times thereafter, the board of directors of the charter holder must include a Delaware certified teacher employed as a teacher at a charter school operated by the Applicant in Delaware and also include at least one parent of a student enrolled in a charter school operated in Delaware by the charter holder; further provided a single individual shall not represent both the certified teacher and parent role on the board;
- 4.1.3.2 The Applicant’s business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.
- 4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School’s business.

### 4.2 Performance Requirements

#### 4.2.1 Minimum Requirements

- 4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and the Department’s implementing rules and regulations including without limitation those relating to the State Assessment System.
- 4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the applicable assessments administered pursuant to the State Assessment System, and a timetable for accomplishment of those goals.
- 4.2.1.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the State Assessment System, the application and performance agreement must specifically identify those additional standards or assessments and include a planned baseline

acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the State Assessment System.

4.2.1.4 Following charter approval, but not later than a date established by the Department, the Applicant must enter into a Performance Agreement approved by the Department with the assent of the State Board, which shall address the organizational, academic and financial performance expectations of the Applicant during the term of the charter. The Department, with the assent of the Board, shall establish and publish a Performance Framework which shall be used to assess the school's compliance with its Performance Agreement. Nothing contained herein shall be interpreted to relieve an applicant of its obligation to comply with any approval criteria or requirement set forth in 14 **Del.C.** Ch. 5. The Department shall conduct annual audits using the Performance Framework to ensure ongoing compliance with the school's Performance Agreement.

4.2.1.5 For an Applicant proposing to serve students at risk of academic failure, the school's Performance Agreement shall specify what, if any, portion of the Performance Framework shall or shall not apply to the school, or whether the Performance Framework shall be modified to more appropriately measure the performance of the school.

#### 4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 **Del.C.** §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** 922 through 929, specifically including a plan for having a continuum of educational placements available for children with disabilities.

4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

#### 4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional

purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start up period prior to the opening of the school.

- 4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.
- 4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.
- 4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, or the construction or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.
- 4.5 Attendance, Discipline, Student Rights and Safety
  - 4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.
    - 4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §7151) and Department Regulation ~~878~~ 605.
    - 4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.
  - 4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:
    - 4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.
    - 4.5.2.2 11 **Del.C.** Ch. 85 and 14 **Del.C.** §511(p), and Department regulations regarding criminal background checks for public school related employment.
    - 4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.
    - 4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.
    - 4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.
  - 4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services

of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

## **5.0 Nature of Charter**

- 5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.
  - 5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.
- 5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

## **6.0 Funding**

- 6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.
- 6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.
- 6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.
- 6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

## **7.0 Financial Audit**

After July 1st of each year, each Charter Holder shall contract to have an audit of the business and financial transactions, records, and accounts of the school, in a form and manner satisfactory to the Department, and shall provide the audit results to the Department.

## **8.0 Enrollment Preferences, Solicitations and Debts**

- 8.1 Enrollment Preferences
  - 8.1.1 An Applicant to establish a new Charter School shall indicate in its application whether children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.
- 8.2 Solicitations.

- 8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.
- 8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."
- 8.3 Debts
  - 8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

## 9.0 Modifications of Charters

- 9.1 A charter holder may apply to the Department for a modification of the charter following the granting of the charter.
- 9.2 The application shall be submitted on a form approved by the Department and shall specify the exact modification requested and describe the need for the modification.
- 9.3 The standards for deciding a modification application shall be as provided in Section 4.0 of these regulations for the original grant of the charter.
- 9.4 The following are considered applications for a new charter and shall not be processed or considered as a modification application:
  - 9.4.1 An application to collectively change the mission, goals for student performance and educational program of the charter school; or
  - 9.4.2 An application, at any time before the First Instructional Day, to offer educational services at a site other than the site approved as part of the school's charter, when the charter has previously been amended to change the school's site; or
  - 9.4.3 An application to replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter holder at any time before the First Instructional Day.
- 9.5 An application for a major or minor charter modification may not be filed while a school's charter is on formal review, except where the Secretary determines that the requested modification is unrelated to the reason the school's charter has been placed on formal review or where the modification addresses the reason the school was placed on formal review provided the modification is filed before the preliminary report is approved by the Accountability Committee.
- 9.6 A charter shall not be modified to permit a charter school's first instructional day to occur later than the third September 15th after the date the charter is originally granted. In the event that the first instructional day does not occur by that date, the charter shall be deemed forfeited and the authority to open and operate a charter school expired. Further, no charter shall be modified to permit a charter school to obtain a certificate of occupancy, either temporary or final, for all or any part of the premises to be occupied by the school, later than June 15 immediately preceding the authorized opening date of the school.
- 9.7 An increase or decrease of up to 5% in a charter school's current authorized enrollment shall not be considered a modification of the school's charter. Any modification application to increase or decrease a charter school's current authorized enrollment by more than 5% must be filed between November 1<sup>st</sup> and December 31<sup>st</sup> and, if approved, shall be effective the following school year.
- 9.8 Major modifications.
  - 9.8.1 A major modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which would:

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## GENERAL NOTICES

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- 9.8.1.1 Replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter school at anytime on or after the First Instructional Day; or
  - 9.8.1.2 Alter enrollment preferences; or
  - 9.8.1.3 Result in an increase or decrease in the school's total authorized enrollment of more than 15%, provided further the major modification request must be filed between November 1<sup>st</sup> and December 31<sup>st</sup> and, if approved, shall be effective the following school year; or
  - 9.8.1.4 Alter grade configurations; or
  - 9.8.1.5 At any time after the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, except where such change is the unavoidable result of a loss by fire or other "casualty" as that term is defined in Black's Law Dictionary; or
  - 9.8.1.6 At any time before the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, provided that the charter has not previously been amended to change the school's site; or
  - 9.8.1.7 Alter any two of the following: the school's mission, goals for student performance, or educational program; or
  - 9.8.1.8 Alter the charter school's performance agreement with the Department; or
  - 9.8.1.9 Alter the charter school's charter to satisfy the provisions of "restructuring" as prescribed in the federal Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof.
  - 9.8.1.10 Transfer of the charter, and of oversight of that charter school, from another authorizer to the Department, before the expiration of the charter term, shall be made by filing a written petition with the Department, on a form approved by the Department, by the public charter school or its original authorizer. The Department will approve a transfer only where the Charter School is fully in compliance with the current terms of its charter and any applicable rules, regulations and statutes. The Department may impose conditions upon the transfer in order to ensure continuing compliance with the approval criteria and the regulations of the Department.
- 9.9 Minor modifications.
- 9.9.1 A minor modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which is not a major modification. Minor modifications include, but are not limited to:
    - 9.9.1.1 Changes to the name of either the charter school or charter holder; or
    - 9.9.1.2 The first extension of any deadline imposed on the charter school or charter holder by thirty (30) working days or less (or by 15 calendar days in the case of the First Instructional Day); or
    - 9.9.1.3 In the case of a charter school which is open with students in attendance, offering educational services at a site other than, or in addition to, the site approved as part of the school's charter, when use of the approved site has unavoidably been lost by reason of fire or other casualty as that term is defined in Black's Law Dictionary; or
    - 9.9.1.4 An increase or decrease in the school's total authorized enrollment of more than 5%, but not more than 15%, provided further the minor modification request must be filed between November 1<sup>st</sup> and December 31<sup>st</sup> and, if approved, shall be effective the following school year; or
    - 9.9.1.5 Alter, expand or enhance existing or planned school facilities or structures, including any plan to use temporary or modular structures, provided that the applicant demonstrates that the school will maintain the health and safety of the students and staff and remain economically viable as provided in 4.4 above; or



- 9.9.1.6 Any change in the school's agreement with an educational management organization other than as set forth in 9.4.3 and 9.8.1.1 above; or
- 9.9.1.7 A change to the current authorized number of hours, either daily or annually, devoted to actual school sessions. Regardless of any proposed change, the school shall maintain the minimum instructional hours required by 14 **Delaware Code**; or
- 9.9.1.8 A change in the terms of the current site facilities arrangements including, but not limited to, a lease to a purchase or a purchase to a lease arrangement; or
- 9.9.2 The Secretary may decide the minor modification application based on the supporting documents supplied with the application unless the Secretary finds that additional information is needed from the applicant.
- 9.9.3 The Secretary may refer a minor modification request to the Accountability Committee for review if the Secretary determines, in her/his sole discretion, that such review would be helpful in her/his consideration of the application. If the Secretary refers a minor modification application to the Accountability Committee, she/he may decide the application based on any report from the Committee and the supporting documents related to the application. The applicant for a minor modification shall be notified if the minor modification request has been forwarded to the Accountability Committee. The applicant may be asked to provide additional supporting documentation.
- 9.9.4 The Secretary may deny a minor modification request if the supporting documentation is incomplete or insufficient provided the applicant has been advised additional information was needed
- 9.9.5 Upon receiving an application for a minor modification, the Secretary shall notify the State Board of the application and her/his decision on whether to refer the application to the Accountability Committee.
- 9.9.6 The meeting and hearing process provided for in Section 511(h), (i) and (j) of the Charter School Law shall not apply to a minor modification application even where the Secretary refers the application to the Accountability Committee.
- 9.9.7 Decisions for minor modifications to a charter may be decided by the Secretary, with the concurrence of the State Board of Education, within 30 working days from the date the application was filed, unless the timeline is waived by mutual agreement of the Secretary and the applicant, or in any case where the Secretary, in the sole discretion of the Secretary, deems that it would be beneficial to either refer the matter to the Accountability Committee or to seek advice from the State Board prior to deciding the matter.

## 10.0 Renewals

- 10.1 Charters are granted for an initial period of 4 years of operation and are renewable every 5 years thereafter.
- 10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.
- 10.3 Charters shall be renewed only if the school receives a satisfactory performance review. Performance reviews shall be conducted by the Department using the Performance Framework approved by the Department with the assent of the State Board.
- 10.4 The Department shall conduct annual performance reviews based on the Performance Framework.

## 11.0 Public Hearings

- 11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

## 12.0 Background Checks

In addition to the criminal background check and Child Protection Registry check required by law to be provided during the application process, whenever a new member shall be elected to the board of directors of a charter school, the school shall promptly provide the name and mailing address of such new member to the Department of Education, Charter School Office; the newly elected member of the board shall, within 45 days of election to the board, provide the Department of Education with any authorization necessary to conduct the Child Protection Registry check and with a copy of that member's criminal background check.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)

#### **REGISTER NOTICE**

**1. TITLE OF THE REGULATIONS:**

State Implementation Plan (SIP) Revision to address the requirements of Clean Air Act (CAA) §§110(a)(2)(E)(ii) and 128.

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

The Department of Natural Resources and Environmental Control (DNREC), Division of Air Quality (DAQ) is proposing to revise the SIP to include a document that address the requirements of CAA §§110(a)(2)(E)(ii) and 128, which relate to disclosure and conflicts of interest. The SIP document consists of a determination that the applicable requirements of 29 **Del.C.**, Ch. 58, "*Laws Regulating the Conduct of Officers and Employees of the State*," meet the requirements of CAA §110(a)(2)(E)(ii) and 128, and proposes to include these requirements into the SIP.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 **Delaware Code**, Chapter 60

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

None

**6. NOTICE OF PUBLIC COMMENT:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, October 23, 2012 beginning at 6:00 PM in the DNREC's Richardson & Robbins Building Auditorium, 89 Kings Hwy, Dover, DE 19901. Interested parties may submit comments in writing to: Ron Amirikian, DNREC Division of Air Quality, 655 S. Bay RD, Suite 5N, Dover, DE 19901.

**7. PREPARED BY:**

Ronald A. Amirikian (302) 739-9402 ronald.amirikian@state.de.us September 12, 2012

**Revision to Delaware's State Implementation Plan To Address Clean Air Act §110(a)(2)(E)(ii) and §128  
September 12, 2012**

**1.0 Introduction and Background**

A State Implementation Plan ("SIP") is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("NAAQS"). The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as

plans and emission inventories.

Delaware's initial SIP was approved by the US Environmental Protection Agency (EPA) on May 31, 1972. Since this initial approval the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. The revisions consisted of updated plans and inventories, and new and revised regulatory control requirements. Delaware's SIP is compiled at 40 C.F.R. Part 52 Subpart I.

Clean Air Act (CAA) §110(a)(2)(E)(ii) requires the SIP to provide "*requirements that the State comply with the requirements respecting State boards under section 128 of this title.*" CAA §128, "State Boards," requires:

(a) *Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—*

- (1) *any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and*
- (2) *any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.*

*A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.*

The purpose of this document is to revise Delaware's SIP to meet the requirements of CAA §110(a)(2)(e)(ii) and §128.

## **2.0 Delaware's plan to comply with CAA §110(a)(2)(e)(ii) and §128.**

The requirements of CAA §128(a)(1) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of CAA §128(a)(2) are applicable to Delaware because the Department of Natural Resources and Environmental Control (DNREC) cabinet level Secretary (i.e., the head of an executive agency) makes the referenced decisions.

The conduct of the DNREC Secretary, and that of his employees, is subject to the requirements of 29 **Del.C.** Chapter 58, Laws Regulating the Conduct of Officers and Employees of the State. State employees are required to follow the laws in Chapter 58 regarding employee conduct and Delaware is incorporating the relevant provisions of Chapter 58 into its SIP. The State of Delaware hereby presents the following portions of Chapter 58, Subchapter 1, *State Employees', Officers' and Officials' Code of Conduct*, and Subchapter II, *Financial Disclosure*, for incorporation into the Delaware SIP:

### **§5804. Definitions.**

*For the purposes of this subchapter:*

- (1) *"Close relative" means a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.*
- (2) *"Commission" means the State Public Integrity Commission established by this chapter.*
- (3) *"Commission Counsel" means the legal counsel appointed by the Commission pursuant to this chapter.*
- (4) *"Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.*
- (5) *A person has a "financial interest" in a private enterprise if:*
  - a. *The person has a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market);*
  - b. *The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000 for services as an employee, officer, director, trustee or independent contractor; or*

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## GENERAL NOTICES

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- c. *The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).*
- (6) *"Honorary state official" means a person who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive not more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses).*
- (7) *"Matter" means any application, petition, request, business dealing or transaction of any sort.*
- (8) *"Person" means an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.*
- (9) *"Private enterprise" means any activity conducted by any person, whether conducted for profit or not for profit and includes the ownership of real or personal property. Private enterprise does not include any activity of the State or of any political subdivision or of any agency, authority or instrumentality thereof.*
- (10) *"State" means the State of Delaware and includes any state agency.*
- (11) *"State agency" means any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction:*
- a. *Is limited to a political subdivision of the State or to a portion thereof; or*
  - b. *Extends beyond the boundaries of the State.*
- (12)a. *"State employee" means any person:*
1. *Who receives compensation as an employee of a state agency;*
  2. *Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or*
  3. *Who is an elected or appointed school board member.*
- b. *"State employee" does not include:*
1. *Members of the General Assembly;*
  2. *The Chief Justice and Justices of the Supreme Court;*
  3. *The Chancellor and Vice-Chancellors of the Court of Chancery;*
  4. *The President Judge and Judges of Superior Court;*
  5. *The Chief Judge and Judges of Family Court;*
  6. *The Chief Judge and Resident Judges of the Court of Common Pleas;*
  7. *The Chief Magistrate and Justices of the Peace;*
  8. *State officers; or*
  9. *Honorary state officials.*
- (13) *"State officer" means any person who is required by subchapter II of this chapter to file a financial disclosure statement but does not include:*
- a. *Members of the General Assembly;*
  - b. *The Chief Justice and Justices of the Supreme Court;*
  - c. *The Chancellor and Vice-Chancellors of the Court of Chancery;*
  - d. *The President Judge and Judges of Superior Court;*
  - e. *The Chief Judge and Judges of Family Court;*
  - f. *The Chief Judge and Judges of the Court of Common Pleas; or*
  - g. *The Chief Magistrate and Justices of the Peace.*

§5805. *Prohibitions relating to conflicts of interest.*

*(a) Restrictions on exercise of official authority. --*

*(1) No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter.*

*(2) A person has an interest which tends to impair the person's independence of judgment in the performance of the person's duties with respect to any matter when:*

- a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or*
- b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.*

*(3) In any case where a person has a statutory responsibility with respect to action or nonaction on any matter where the person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided, that promptly after becoming aware of such conflict of interest, the person files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.*

*(b) Restrictions on representing another's interest before the state. --*

*(1) No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.*

*(2) No state officer may represent or otherwise assist any private enterprise with respect to any matter before the State.*

*(3) This subsection shall not preclude any state employee, state officer or honorary state official from appearing before the State or otherwise assisting any private enterprise with respect to any matter in the exercise of such person's official duties.*

*(c) Restrictions on contracting with the state. -- No state employee, no state officer and no private enterprise in which a state employee or state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations. For the period of July 1, 1990 through June 30, 1991, nothing in this subsection shall prohibit a state employee, a state officer, or a private enterprise in which a state employee or a state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) from contracting with a public school district and/or the State Board of Education for the transportation of school children without public notice and competitive bidding as is permitted under § 6923 of this title.*

*(f) Criminal sanctions. --*

*(1) Any person who knowingly or willfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than 1 year and by a fine not to exceed \$10,000.*

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## GENERAL NOTICES

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(2) A prosecution for a violation of this section shall be subject to the time limitations of §205 of Title 11.

(3) The Superior Court shall have exclusive jurisdiction over prosecution for all criminal violations of this section.

(g) *Contracts voidable by court action.* -- In addition to any other penalty provided by law, any contract entered into by any state agency in violation of this subchapter shall be voidable by the state agency; provided, that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the state agency shall consider the interests of innocent 3rd parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the state agency involved has, or should have, knowledge of such violation.

(h) *Exceptions for transportation contracts with school districts.* -- Except for transportation supervisors for any school district within this State, nothing in this section shall prohibit an employee or the employee's spouse or children (natural or adopted) from contracting for the transportation of school children. Such transportation contracts may be entered into by an employee or the employee's spouse or children without public notice and competitive bidding as is provided in §6916 of this title.

### §5806. Code of conduct.

(c) No state employee, state officer, or honorary state official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the State.

(d) Any state employee or state officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any state agency (and any honorary state official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the state agency on which the official serves as an appointee) shall file with the Commission a written statement fully disclosing the same. Such disclosure shall be confidential and the Commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the State.

### §5812. Definitions.

(a) "Business enterprise" means corporation, partnership, sole proprietorship or any other individual or organization carrying on a business or profession.

(b) "Capital gain" means capital gains required to be reported to the Internal Revenue Service pursuant to federal internal revenue laws.

(c) "Commission" means the State Public Integrity Commission.

(d) "Constructively controlled" means:

(1) A financial interest in the name of another which is controlled by a public officer by virtue of any relationship of the public officer to another person and which directly benefits the public officer;

(2) Any financial interest of a public officer held jointly with the spouse or child of such public officer;

(3) Any financial interest of the spouse or minor child of a public officer.

(e) "Debt instrument" means bonds, notes, debentures, mortgages or other securities having a fixed yield if not convertible to equity instruments.

(f) "Equity instrument" means any ownership interest in a corporation or other legal entity giving rights to the holder upon liquidation of the entity.

(g) "Fair market value" means, if a security, the quoted price as of January 1 of the year in which the report required by §5813 of this title is filed, or, if not a security, the price at which the public officer would sell as of January 1 of the year in which the report required by §5813 of this title is filed.

- (h) "Gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a spouse or any relative within the 3rd degree of consanguinity of the person or person's spouse or from the spouse of any such relative.
- (i) "Honoraria" means fees received for speeches, written articles and participation in discussion groups and similar activities, but does not include reimbursement for expenses.
- (j) "Income for services rendered" means income from a single source and includes salary, wages, consulting fees and professional services.
- (k) "Instrument of ownership" includes, but is not limited to, common or preferred stock, rights, warrants, articles of partnership, proprietary interest, deeds and debt instruments, if convertible to equity instruments.
- (l) "Position of management" means officer, director, partner, proprietor or other managerial position in a business enterprise.
- (m) "Professional organization" means an individual engaged in, or an association organized pursuant to, federal or state law for the practice of medicine, law, accounting, engineering or other profession.
- (n)(1) "Public officer" shall mean:
- a. Any person elected to any state office; and
  - b. Any person appointed to fill a vacancy in an elective state office; and
  - c. Any candidate who has filed for any state office; and
  - d. The Research Director and Controller General of the Legislative Council; and
  - e. The Chief Justice and Justices of the Supreme Court; and
  - f. The Chancellors and Vice-Chancellors of the Court of Chancery; and
  - g. The President Judge and Judges of Superior Court; and
  - h. The Chief Judge and Judges of Family Court; and
  - i. The Chief Judge and Judges of the Court of Common Pleas; and
  - j. The Chief Magistrate and justices of the peace; and
  - k. The State Court Administrator and the administrators of Superior Court, Family Court, the Court of Common Pleas, and the Justice of the Peace Courts; and
  - l. The Public Guardian, the Executive Director of the Victims' Compensation Assistance Program, the Executive Director of the Child Placement Review Board; and
  - m. All Cabinet Secretaries and persons of equivalent rank within the Executive Branch; and
  - n. All division directors and persons of equivalent rank within the Executive Branch; and
  - o. The State Election Commissioner and the Directors and Deputy Directors of the Department of Elections; and
  - p. The State Fire Marshal and the Director of the State Fire School; and
  - q. The Adjutant General of the Delaware National Guard; and
  - r. The Alcoholic Beverage Control Commissioner and the members of the Appeals Commission, pursuant to §306(c) of Title 4.
- (2) For purposes of this subchapter, the term "public officer" does not include elected and appointed officials of political subdivisions of the State, of public school districts of the State, and of state institutions of higher learning.
- (o) "Reimbursement for expenditures" means any payments to a public officer for expenses incurred by that public officer.
- (p) "Time or demand deposits" means checking and savings account in banks or deposits or share in savings and loan institutions, credit unions or money market funds.

§5813. Report disclosing financial information.

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## GENERAL NOTICES

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- (a) Every public officer as defined in §5812 of this title shall file a report disclosing financial interests, as hereinafter provided. Each report shall be on a form prescribed by the Commission, shall be signed by the public officer and shall include at least the following information:
- (1) The name and position of the public officer; and
  - (2) The name, instrument and nature of ownership, and any position of management held by, or constructively controlled by, the public officer in any business enterprise in which legal or equitable ownership is in excess of \$5,000 fair market value or from which income of more than \$5,000 was either derived during the preceding calendar year or might reasonably be expected to be derived during the current calendar year. Time or demand deposits in a financial institution, or any debt instrument having a fixed yield shall not be listed unless convertible to an equity instrument; and
  - (3) The name, address and type of practice, without reference to the identity of any individual clients served, of any professional organization in which the public officer is the sole practitioner, officer, director or partner, or serves in any advisory capacity, or which is constructively controlled by the public officer, from which income of more than \$5,000 was either derived during the preceding year or might reasonably be expected to be derived during the current calendar year; provided, however, that any such organization construed as a business enterprise and reported pursuant to paragraph (a)(2) of this section need not be reported under this subsection; and
  - (4) The source of each of the following items received during the preceding calendar year, or reasonably expected to be received during the current calendar year:
    - a. Any income derived for services rendered exceeding \$1,000 from a single source, unless such income is otherwise identified pursuant to paragraph (a)(2) or (3) of this section; or
    - b. Any capital gain exceeding \$1,000 from a single source other than from the sale of a residence occupied by the public officer; or
    - c. Any reimbursement for expenditures exceeding \$1,000 from a single source; or
    - d. Any honoraria; or
    - e. Any gift with a value in excess of \$250 received from any person, identifying also in each case the amount of each such gift. For purposes of compliance with this gift reporting obligation, the recipient may rely in good faith upon the representation of the source of the gift as to the gift's value; and
  - (5) Each creditor to whom the public officer was indebted for a period of 90 consecutive days or more during the preceding calendar year in an aggregate amount in excess of \$1,000.
    - (b) Each report required by this section shall contain a certification by the public officer that the officer has read the report, and that to the best of the officer's knowledge and belief it is true, correct and complete, and that the officer has not and will not transfer any assets, interests or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.
    - (c) Not later than 14 days after becoming a public officer as defined in §5812 of this title, the report required by this subchapter shall be filed. Thereafter, the report shall be filed on March 15 of each year.
    - (d) Each report required by this section shall be filed with the Commission.

§5813A. Report disclosing council or board membership.

- (a) Every person elected to a state office or appointed to fill a vacancy in an elective state office, or who has filed as a candidate for an elective state office shall disclose in writing to the Commission, and the Commission shall record in its public officer docket, the name and address of every nonprofit organization, excluding religious organizations, civic association, community association, foundation, maintenance organization, or trade group incorporated in the State or having activities in the State, or both, of which the person is a council member or board member.



(b) *The disclosure required by subsection (a) of this section must be submitted along with, or as part of, the financial disclosure information required to be provided to the Commission pursuant to §5813 of this title.*

**§5815. Violations; penalties; jurisdiction of Superior Court.**

(a) *Any public officer who wilfully fails to file a report in violation of §§5813, 5813A of this title shall be guilty of a class B misdemeanor.*

(b) *Any public officer who knowingly files any report required by §§5813, 5813A of this title that is false in any material respect shall be guilty of a class A misdemeanor.*

(c) *The Commission may refer to the Commission Counsel for investigation and/or may refer any suspected violation of this subchapter to the Attorney General for investigation and prosecution; provided however, that the Commission shall refer any suspected violation of this subchapter by a member of the General Assembly or the Judiciary to the Attorney General, who shall have the exclusive authority to investigate and prosecute or otherwise recommend remedies or sanctions for such suspected violation.*

(d) *Superior Court shall have jurisdiction over all offenses under this subchapter.*

The portions of 29 **Del.C.** Chapter 58, Subchapter I and 58, Subchapter II not specifically identified above are not included in the SIP because they are unrelated to CAA §110(a)(2)(E). and §128.

### 3.0 Conclusion

Through this revision to the Delaware SIP, the State of Delaware meets the requirements of CAA §110(a)(2)(E)(ii) and §128, relating to conflicts of interest by members of boards and the heads of executive agencies. Delaware meets these requirements because the requirements of 29 **Del.C.** Chapter 58 are more stringent than those required by CAA §110(a)(2)(E)(ii) and §128.

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## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)

### REGISTER NOTICE

**SAN# 2012-14**

#### 1. TITLE OF SIP REVISION:

*State Implementation Plan (SIP) Revision: Delaware Redesignation Request and Maintenance Plan under the 1997 Annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS)*

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

Effective April 5, 2005 the EPA designated the Philadelphia-Wilmington, PA-NJ-DE area as non-attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. This area included New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. The attainment date for this area was as expeditiously as practicable, but not later than five years from the date of designation (e.g., no later than April, 2010). In response to this non-attainment designation Delaware developed various regulations to reduce the emission of PM<sub>2.5</sub>, and its precursors of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>). Monitoring data for 2007-2011 has confirmed attainment of the daily PM<sub>2.5</sub> NAAQS for the entire Philadelphia Area. This action begins the process of submitting to the United States Environmental Protection Agency (EPA) SIP documents that request New Castle County be redesignated to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

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# GENERAL NOTICES

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**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Chapter 60, Environmental Control

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

None

**6. NOTICE OF PUBLIC COMMENT:**

Interested parties may submit comments in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, October 23, 2012 beginning at 6:00 pm, in DNREC's Auditorium, R & R Building, 89 Kings Hwy, Dover, DE 19901.

**7. PREPARED BY:**

Jack Sipple (302) 739-9402 September 14, 2012 john.sipple@state.de.us

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

***State Implementation Plan (SIP) Revision: Delaware Redesignation Request and Maintenance Plan under the 1997 Annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS)***

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## DIVISION OF AIR QUALITY

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

### REGISTER NOTICE

**SAN# 2012-13**

**1. TITLE OF SIP REVISION:**

*State Implementation Plan (SIP) Revision: Delaware Redesignation Request and Maintenance Plan under the 2006 Daily PM<sub>2.5</sub> National Ambient Air Quality Standard.*

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

Effective December 14, 2009 the EPA designated the Philadelphia-Wilmington, PA-NJ-DE area as non-attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. This area included New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. The attainment date for this area was as expeditiously as practicable, but not later than five years from the date of designation (e.g., no later than December, 2014). In response to this non-attainment designation Delaware developed various regulations to reduce the emission of PM<sub>2.5</sub>, and its precursors of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>). Monitoring data for 2008-2011 has confirmed attainment of the daily PM<sub>2.5</sub> NAAQS for the entire Philadelphia Area. This action begins the process of submitting to the United States Environmental Protection Agency (EPA) SIP documents that request New Castle County be redesignated to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Chapter 60, Environmental Control

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

None

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**6. NOTICE OF PUBLIC COMMENT:**

Interested parties may submit comments in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, October 23, 2012 beginning at 6:00 pm, in DNREC's Auditorium, R & R Building, 89 Kings Hwy, Dover, DE 19901.

**7. PREPARED BY:**

Jack Sipple (302) 739-9402 September 14, 2012 john.sipple@state.de.us

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

**State Implementation Plan (SIP) Revision: Delaware Redesignation Request and Maintenance Plan under the 2006 Daily PM2.5 National Ambient Air Quality Standard.**

**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, October 18, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3220 - Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Thursday, November 1, 2012.

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

This regulatory proposal amends the existing regulations by establishing reporting requirements for Certified Nurse Aide training program providers and makes some minor revisions in training curricula.

**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**3230 Rest (Residential) Home Regulations**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3230 – Rest (Residential) Home Regulations.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Deborah Gottschalk, Chief Policy Advisor, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Thursday, November 1, 2012.

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

This regulatory proposal amends the existing regulations as outlined below:

- Updates language and care techniques.
- Updates environment, emergency preparedness and personnel requirements.
- Conforms records and reporting requirements for Rest (Residential) Homes to the standards in effect for all other licensed facilities.
- Eliminates the list of Notifiable Diseases and incorporates by reference current CDC standards.

**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**  
**3034 General Assistance Time Limits**

General Assistance is a State-funded program designed to provide cash assistance to families and unemployable individuals who meet the financial eligibility requirements of the program and who do not qualify for federally funded programs, such as Temporary Assistance for Needy Families (TANF) or Social Security benefits.

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding General Assistance, specifically, *General Assistance Time Limits*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by October 31, 2012.

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

**DIVISION OF SOCIAL SERVICES**  
**11003.2.1 Sanctioning TANF and Transitional Work Program Recipients**  
**PUBLIC NOTICE**

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *TANF and Transitional Work Program Sanctions*.

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Sanctioning TANF and Transitional Work Program Recipients*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by October 31, 2012.

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**OFFICE OF THE SECRETARY**  
**104 Regulations for the Green Energy Program**  
**PUBLIC NOTICE**

The State of Delaware Green Energy Fund was created by House Bill 10 in 1999 as part of the deregulation of Delaware's electric utilities. Currently, the program regulations need to be revised due to changes to the program required by the recent legislative updates enacted by S.B. 266 in 2010. Additionally, revisions to the Green Energy Program regulations are needed to streamline the Green Energy Program requirements to increase process efficiency. The Green Energy Fund regulations are being revised to adhere to requirements in the Delaware Energy Act and to further streamline Green Energy Fund programs. The proposed draft regulations include changes to the programs which seek to make the administration of the programs more efficient and improve the sustainability of the Green Energy Fund programs.

DNREC will hold a public hearing for renewable energy installers and other interested parties on proposed revisions to the regulations for the Green Energy Fund on Wednesday, November 14, 2012 at 6:00 pm in the DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover. The hearing will present information about the proposed draft regulations and collect input from the public and stakeholders regarding these changes.

A copy of the proposed draft regulations and a summary of the major updates are available for review on DNREC's Green Energy Fund website [http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/GEF\\_Regulations\\_Update.aspx](http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/GEF_Regulations_Update.aspx). Interested parties may also obtain a copy of the proposed regulations by emailing [DNREC.GreenEnergyProgram@state.de.us](mailto:DNREC.GreenEnergyProgram@state.de.us).

Written comments on the proposed regulations will be accepted until November 29, 2012 and may be submitted to the DNREC Division of Energy and Climate, attention: Suzanne E. Sebastian, 1203 College Park Drive, Suite 101, Dover, DE 19904, or by emailing [DNREC.GreenEnergyProgram@state.de.us](mailto:DNREC.GreenEnergyProgram@state.de.us)

**DIVISION OF AIR QUALITY**  
**REGISTER NOTICE**

**TITLE OF THE REGULATIONS:**

State Implementation Plan (SIP) Revision to address the requirements of Clean Air Act (CAA) §§110(a)(2)(E)(ii) and 128.

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The Department of Natural Resources and Environmental Control (DNREC), Division of Air Quality (DAQ) is proposing to revise the SIP to include a document that address the requirements of CAA §§110(a)(2)(E)(ii) and 128, which relate to disclosure and conflicts of interest. The SIP document consists of a determination that the applicable requirements of 29 **Del.C.**, Ch. 58, "*Laws Regulating the Conduct of Officers and Employees of the State*," meet the requirements of CAA §110(a)(2)(E)(ii) and 128, and proposes to include these requirements into the SIP.

**NOTICE OF PUBLIC COMMENT:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, October 23, 2012 beginning at 6:00 PM in the DNREC's Richardson & Robbins Building Auditorium, 89 Kings Hwy, Dover, DE 19901. Interested parties may submit comments in writing to: Ron Amirikian, DNREC Division of Air Quality, 655 S. Bay RD, Suite 5N, Dover, DE 19901.

**DIVISION OF AIR QUALITY**  
**REGISTER NOTICE**  
**SAN# 2012-14**

**TITLE OF SIP REVISION:**

*State Implementation Plan (SIP) Revision: Delaware Redesignation Request and Maintenance Plan under the 1997 Annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS)*

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Effective April 5, 2005 the EPA designated the Philadelphia-Wilmington, PA-NJ-DE area as non-attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. This area included New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. The attainment date for this area was as expeditiously as practicable, but not later than five years from the date of designation (e.g., no later than April, 2010). In response to this non-attainment designation Delaware developed various regulations to reduce the emission of PM<sub>2.5</sub>, and its precursors of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>). Monitoring data for 2007-2011 has confirmed attainment of the daily PM<sub>2.5</sub> NAAQS for the entire Philadelphia Area. This action begins the process of submitting to the United States Environmental Protection Agency (EPA) SIP documents that request New Castle County be redesignated to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS.

**NOTICE OF PUBLIC COMMENT:**

Interested parties may submit comments in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, October 23, 2012 beginning at 6:00 pm, in DNREC's Auditorium, R & R Building, 89 Kings Hwy, Dover, DE 19901.

**DIVISION OF AIR QUALITY**  
**REGISTER NOTICE**  
**SAN# 2012-13**

**1. TITLE OF SIP REVISION:**

*State Implementation Plan (SIP) Revision:* Delaware Redesignation Request and Maintenance Plan under the 2006 Daily PM<sub>2.5</sub> National Ambient Air Quality Standard.

Effective December 14, 2009 the EPA designated the Philadelphia-Wilmington, PA-NJ-DE area as non-attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. This area included New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. The attainment date for this area was as expeditiously as practicable, but not later than five years from the date of designation (e.g., no later than December, 2014). In response to this non-attainment designation Delaware developed various regulations to reduce the emission of PM<sub>2.5</sub>, and its precursors of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>). Monitoring data for 2008-2011 has confirmed attainment of the daily PM<sub>2.5</sub> NAAQS for the entire Philadelphia Area. This action begins the process of submitting to the United States Environmental Protection Agency (EPA) SIP documents that request New Castle County be redesignated to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Interested parties may submit comments in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, October 23, 2012 beginning at 6:00 pm, in DNREC's Auditorium, R & R Building, 89 Kings Hwy, Dover, DE 19901.

**DIVISION OF FISH AND WILDLIFE**  
**3521 Weakfish Size Limits; Possession Limits; Seasons.**  
**PUBLIC NOTICE**

The purpose of this action is to amend the definition of weekends and weekdays in 7 DE Admin. Code §3521 (5.0). Delaware was required to implement a 34-day commercial closure (when all fishing gear, except hook & line, were to be removed from the water) under the provision of Amendment III to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish (ISFMP). Delaware's present regulations include weeklong closures at the beginning of May and the end of June and all weekends in May and June to meet the ISFMP specifications. The Department has received several requests from the commercial fishing sector to change the weekend closure periods from Friday through Sunday to Saturday through Monday. This change would enable Delaware's commercial gill netters to more adequately supply the recreational bait market with fresh Atlantic menhaden for weekend anglers. The concept of the proposed action was endorsed by the Tidal Finfish Advisory Council at its June 20, 2012 meeting.

The hearing record on the proposed changes to the weakfish regulation will be open October 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on October 31, 2012 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**  
**Delaware's Regulations Governing Hazardous Waste (DRGHW)**  
**PUBLIC NOTICE**

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

The public hearing on the proposed amendments to DRGHW will be held on Thursday, October 25, 2012 from 6:00 p.m. to 6:30 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**DIVISION OF WATER**  
**Surface Water Discharges Section**  
**REGISTER NOTICE**  
**SAN #2008-29**

**Title Of The Regulations:**

Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

**Brief Synopsis Of The Subject, Substance And Issues:**

Substantial revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems (On-site regulations) are proposed to incorporate the Guidance and Regulations Governing the Land Treatment of Wastes spray irrigation regulatory language. The on-site regulations have been revised to address large system site investigations, hydrogeological investigations, design considerations, operation and maintenance practices, updating of individual on-site wastewater treatment and disposal system design criteria, establishment of new licensees and inspection protocols, and to establish performance standards for small on-site systems utilizing alternative technologies and all large systems.

**Notice Of Public Comment:**

The proposed revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems were initially published in this Register on April 1, 2012. The Department of Natural Resources and Environmental Control (DNREC) Division of Water then held a public hearing on these proposed revisions on May 3, 2012, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901, to address the proposed changes that have occurred over the past three years as a result of discussions, public workshops, committee meetings and literature searches.

Subsequent to the public hearing held on May 3, 2012, DNREC made additional revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, in order to thoroughly address the comments and concerns received to date in this matter. Accordingly, DNREC will now re-open the record in this matter for an additional thirty (30) days, beginning on Monday, October 1, 2012, through close of business on Tuesday, October 30, 2012, in order to vet these revisions to the public, and to enable DNREC to receive additional public comment on the aforementioned revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. Following the close of the record on October 30, 2012, the Secretary will review the entire record developed throughout this promulgation, and will issue his Order setting forth his final decision in this matter shortly thereafter.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

Department of Natural Resources and Environmental Control  
20653 DuPont Blvd, Unit 5  
Georgetown, DE 19947



The proposed regulation revisions may be inspected on the DNREC Division of Water, Groundwater Discharges Section website:

<http://www.wr.dnrec.delaware.gov/Information/GWDInfo/Pages/GWDS%20Design%20Install%20Operate%20Info%20For%20Proposed%20Wastewater%20Treatment%20Regulations.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Jack Hayes, DNREC Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901, (302) 739-9948, [John.Hayes@state.de.us](mailto:John.Hayes@state.de.us).

Interested parties shall submit written statements and comments in writing on the proposed regulation revisions, beginning October 1, 2012, but no later than close of business on October 30, 2012, as designated herein, addressed to:

Jack Hayes  
DNREC - Division of Water  
Groundwater Discharges Section  
89 Kings Highway  
Dover, DE 19901

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**5200 Board of Examiners of Nursing Home Administrators**  
**PUBLIC NOTICE**

The Delaware Board of Examiners of Nursing Home Administrators pursuant to 24 **Del.C.** §5206 (1) proposes to revise their rules and regulations. The proposed revision to the rules increases the continuing education credits allowed for online and similar courses from 12 to 24 continuing education credits per renewal period. The proposed revision also allows Preceptors to receive 3 continuing education credits per student with a maximum of 6 credits allowed per licensure period.

A public hearing will be held on November 13, 2012 at 1:15 p.m.in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Michele Howard, Administrative Assistant for the Delaware Board of Examiners of Nursing Home Administrators, 861 Silver Lake Blvd, Cannon Office Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until November 28, 2012.

**OFFICE OF THE STATE BANK COMMISSIONER**  
**2210 Short-Term Consumer Loans**  
**PUBLIC NOTICE**

The State Bank Commissioner proposes to adopt new Regulation 2210 ,“Short-Term Consumer Loans”. This proposed new Regulation implements 78 **Del. Laws** Chapter 278 dealing with a type of short-term consumer loan commonly known as a “payday loan”. The proposed new Regulation establishes standards for the administration and enforcement of the new statute, including among other things, the applicability of the new statutory requirements for short-term consumer loans, new procedures for making such loans, and the use of a new database for tracking such loans.

The State Bank Commissioner would adopt the proposed new Regulation 2210 on or after November 7, 2012. 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. Lookerman 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. November 7, 2012.

A public hearing on the proposed new Regulation will be held in the third floor hearing room of the Carvel State Office Building, 820 North French Street, Wilmington Delaware, 19801 on Wednesday, November 7, 2012, 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.

### **PUBLIC SERVICE COMMISSION**

#### **3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)**

In 2006, the Delaware Public Service Commission ("PSC") adopted "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"), 10 DE Reg. 151-157 (July 1, 2006). The PSC has amended the RPS Rules several times since then to conform to subsequent RPS Act amendments.

The PSC now proposes to revise the RPS Rules to incorporate comments made by Mr. Gary Meyers in April 2012 recommending revisions to the RPS Rules to remove exempted load industrial customers from any responsibility for Delmarva's RPS compliance costs in accordance with the statutory exemption for industrial customers with loads exceeding 1500 kW; to clarify that electric suppliers could only recover their actual compliance costs from customers; and to provide that Delmarva succeeds to the rights and obligations of retail electric suppliers.

You can review PSC Order No. 8219 (September 18, 2012) (the "Order") and the proposed revised RPS Rules in the October 2012 issue of the Delaware Register of Regulations. You can also review the Order and the proposed revised RPS Rules at the PSC's Internet website located at <http://depsec.delaware.gov>. If you wish to obtain written copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.50 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

If you would like to review documents at the Commission's offices, please contact Monica Hall at [monica.hall@state.de.us](mailto:monica.hall@state.de.us) to arrange a time for your review.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the Commission's website at <http://depsec.delaware.gov/default.shtml>. The Commission will respond to your request in accordance with the Delaware Freedom of Information Act, 29 Del. C. ch. 100.

If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone). You may also send questions regarding this matter by Internet e-mail addressed to [pamela.knotts@state.de.us](mailto:pamela.knotts@state.de.us).

The Commission encourages the public to submit written comments about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before November 9, 2012 but the last date to submit written comments will be on January 2, 2013, which is 15 days after the noticed public hearing. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Reg. Dckt. No. 56

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM disk or sent as an attachment to an Internet e-mail addressed to [pamela.knotts@state.de.us](mailto:pamela.knotts@state.de.us).

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on December 18, 2012 at 1:00 P.M. at the PSC's office at the address set forth above.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. Please e-mail Staff Analyst Pamela Knotts at [pamela.knotts@state.de.us](mailto:pamela.knotts@state.de.us). The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF MOTOR VEHICLES**  
**2222 School Bus Driver Qualifications and Endorsements**  
**PUBLIC NOTICE**

The Delaware Division of Motor Vehicles gives notice of intent to implement proposed changes to The Division of Motor Vehicles Regulation 2222 relating to school bus driver qualifications and endorsements.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Summer Bowman, Management Analyst, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-2602 by November 7, 2012.