
Delaware Register of Regulations

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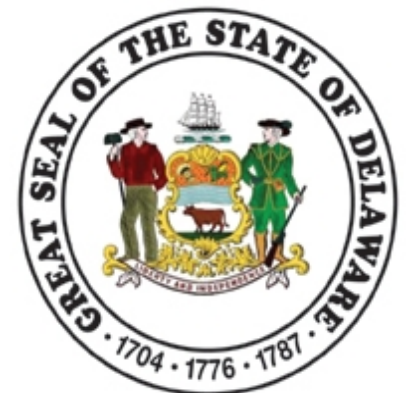
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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 15, 2011.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
 - Governor's Appointments
 - Agency Hearing and Meeting Notices
 - Other documents considered to be in the public interest.
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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.** 24-47 (07/01/11)

Refers to Volume 15, pages 24-47 of the *Delaware Register* issued on July 1, 2011.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
October 1	September 15	4:30 p.m.
November 1	October 17	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION****Delaware Standardbred Breeders' Fund**

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)b.2.D (29 **Del.C.** §4815(b)(3)b.2.D)
3 **DE Admin. Code** 502

PUBLIC NOTICE**502 Delaware Standardbred Breeders' Fund Regulations**

The Delaware Standardbred Breeders' Fund Board ("the Board") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed amended regulations clarify the definition of "Breeder" and add a definition for "Owner." The proposed amendment of regulation 4.2 establishes a racing program for four year old horses with bonuses to breeders and owners, which is an effort by the Board to keep Delaware's harness racing industry competitive with those of neighboring states. The Board proposes to delete language from its regulation 6.0 that currently and improperly calls for the program Administrator to request and certify the social security and tax identification numbers of owners and their agents when registering for the program. The Board proposes to adopt a regulation expanding the recording duty of the Administrator pertaining to the program and bonuses for four year olds. The proposed amended regulations delete two words from the heading of regulation 10. The proposed amendment to regulation 13.1 makes clear its applicability to the two and three year old racing programs only. The proposed amendment to regulation 14 adds the nomination payment requirements for eligibility in the new program for four year olds.

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

Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by October 1, 2011.

502 Delaware Standardbred Breeders' Fund Regulations

1.0 Introduction

- 1.1 These regulations are authorized pursuant to 29 **Del.C.** §4815(b)(3)b.2.D, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:
 - 1.1.1 Standardbred horses;
 - 1.1.2 that are bred in a manner prescribed in Section 2.0;
 - 1.1.3 that are the product of a registered Delaware stallion;
 - 1.1.4 that are registered, and whose sire is registered with the Administrator of the Program; and,
 - 1.1.5 listed in their registry books.
- 1.2 Those horses eligible to race under said Delaware Standardbred Breeder's Program shall be any foal of any registered Delaware stallion standing at a Delaware breeding farm and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will stand the stallion for that full season on a Delaware breeding farm. A copy of any such lease shall be filed with the United States Trotting Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.
- 1.3 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:
 - 1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;
 - 1.3.2 Nominating, sustaining and entry fees on horses and races;
 - 1.3.3 Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;
 - 1.3.4 Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,
 - 1.3.5 Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.
- 1.4 The funds for the Program and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with state laws and procedures. A report shall be prepared and filed annually by the Secretary of Agriculture with the Delaware Harness Racing Commission and the Board of the Breeder's Program Fund setting forth an itemization of all deposits to and expenditures from said fund.
- 1.5 Races in the Program shall be contested at each licensed harness track in the State of Delaware. Purses and awards for program races, shall be in compliance with the rules and regulations of the Board and the Delaware Harness Racing Commission.
- 1.6 The Board can propose to amend these regulations by the affirmative vote of eight of its eleven members. Changes to the rules of eligibility for the Program will be effective at the beginning of the next breeding season and the corresponding racing season.

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

2.0 Definitions

The following words and terms, when used in this part for purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise. Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

"Bred" means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. This qualification shall also apply to the same mare owner (s) and official owner (s) or legal entities of record, of four (4) year olds beginning in 2012.

"Breeder" means the owner of the dam at the time of breeding ~~through foaling~~.

"Breeding Season" is the season during which reproduction occurs and which runs from February 1st to August 1st of the calendar year.

"Delaware-bred Horse" means a Standardbred by a Delaware sire and registered with the Administrator by May 15th of the yearling year.

"Delaware Resident" means a person as defined in 3 Del.C. §10032.

"Delaware Sire" means a Standardbred stallion that regularly stands for a breeding season in Delaware and is registered with the Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a the lease filed with the Administrator of the Program at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and a non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above. A Delaware Sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races within or without the State of Delaware, only after the breeding season in Delaware ends. A violation of this regulation will disqualify the Standardbred stallion from being registered with the Breeders' Program for the breeding season of the year following the violation.

"Owner" means any person(s) or legal entity listed on the horse's registration papers as the official owner at the time of the race.

"Private Treaty" No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the breeding fee.

"Registrant" is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

"Satisfactory Performance Line" means the path of the Standardbred on the racetrack as charted by the licensed charter at Dover Downs and/ or Harrington Raceway during which the horse does not break stride for any reason.

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

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

9 DE Reg. 111 (7/1/05)

10 DE Reg. 982 (12/01/06)

3.0 Eligibility for Delaware-bred Races

- 3.1 To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2-year old registered with the Administrator by May 15th of its yearling year or a 3-year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare

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shall have been registered with the Department of Agriculture by March 1, 2000 and said 3-year old registered with the Administrator by May 15th of its yearling year.

- 3.2 To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3-year old registered with the Administrator by May 15th of its yearling year.

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

4.0 Eligibility of Breeders for Bonus Payments

- 4.1 Bonus payments of eight percent (8%) of money earned in the Program by a foal shall be paid to the owner of the mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by a foal shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Administrator of the Breeder's Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2 year olds.

- 4.2 Beginning in race year 2012, any four year old horse that was nominated by May 15th of its yearling year or supplemented by March 15th of its two year old year will be eligible to earn a bonus in overnight races conducted by a licensed harness race track in Delaware. A bonus payment of ten percent (10%) of any overnight purse earned shall be paid to the breeder of the eligible four year old and ten percent (10%) of any overnight purse earned shall be paid to the owner(s) or legal entity of record at the time of the race.

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

13 DE Reg. 496 (10/01/09)

5.0 Eligibility of Owners of Delaware Sires for Awards

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the Administrator of the Breeder's Program during each breeding season when the sire inseminated the dams that, as a result of that insemination, produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

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

6.0 Records of Registration

Foals and sires eligible for registration shall be registered on official registration forms approved and maintained by the Administrator of the Program. The Administrator shall certify thereon the name and address of the Owner, or agent, ~~social security number and or tax id number~~. If registration is made by an agent, the name and address of the owner ~~and social security number and or tax id number~~ shall also be provided. Breeding information must include name, color, sex, gait, sire, and dam. For sires, the address and contact information for the breeding farm where the stallion will be collected, and current phone number, address and contact information for where the stallion actually resides, if different from where semen collection occurs. The registration records shall be maintained by the Administrator of the Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

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

7.0 Duties and Powers of the Fund Administrator; Public Hearings; Appeals

- 7.1 In addition to the duties of the Fund's Administrator that are set forth elsewhere in these regulations, the Administrator is charged with receiving and reviewing for compliance with all rules and regulations

of the Fund, information submitted by registrants who are seeking to register or renew the registration of horses for participation in the Program.

- 7.2 If, after performing the review set forth in the immediately preceding section, the Administrator determines, in his or her sole discretion, that the information supplied by a registrant is incomplete or false, the Administrator has the power to: deny any application for registration; deny an application to renew an existing registration; and to suspend or revoke an existing registration.
- 7.3 The Administrator must provide the registrant with a written decision explaining the reason(s) why the registration, or application for renewal of registration, has been denied, suspended or revoked. Such written decision shall inform the registrant of the right to file a request for an administrative hearing before the Fund. Such a request for a hearing shall be considered timely filed with the Fund if it is received by the Fund within ten (10) days of the date the Administrator mails his or her written decision to the registrant. Such a request for a hearing challenging the Administrator's written decision must state with specificity the ground(s) upon which the Administrator's written decision is being contested.
- 7.4 No more than thirty (30) days after receiving a registrant's request a public hearing before the Fund will be scheduled and at which the registrant will be permitted to subpoena, call and cross-examine witnesses, and to introduce documentary evidence challenging the Administrator's decision. The formal rules of evidence will not apply to such proceeding. The proceeding will be conducted in such a way as to allow for the creation of a verbatim transcript of the proceeding should either party wish to obtain one, the cost of such a transcript to be born by the requestor.
- 7.5 The Fund will, after considering all the evidence, and within thirty (30) days from the close of the public hearing, mail a written decision to the Administrator of the Fund and to the registrant stating its Findings of Fact and Conclusions of Law. An appeal from the decision by the Fund will be to the Superior Court of the State of Delaware on the record made before the Fund.

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

8.0 Records of Expenses

The Administrator of the Breeders' Program shall maintain a complete record of reasonable and necessary expenses and will submit bills to the Department of Agriculture following the normal procedures of the State of Delaware as set forth by the Finance Department within the Department of Agriculture. The Secretary of Agriculture has the responsibility to authorize all travel and major purchases.

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

9.0 Purses and Bonus Awards

- 9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The Administrator shall send a confirmation to the Department of Agriculture on a race week basis which will state the amount owed for purses of the Program.
- 9.2 Administrator of the Program shall compile bonus payments earned by breeders of Delaware Sires and Dams maintain a separate ledger of them. Starting in race year 2012, the Administrator of the Program shall compile bonus payments earned by breeders and owners of Delaware Standardbred Breeders' Fund four year olds in overnight races at each racing meet and maintain a separate ledger for them. Bonus payments will be paid out at the end of the racing year.
- 9.3 A person interested in the bonus payments and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Program shall be responsible for taking written appeals to the Board in the manner provided for appeals from decisions of the Administrator pertaining to registrations.
- 9.4 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Program.

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

13 DE Reg. 496 (10/01/09)

10.0 Responsibilities-Owners or Lessees of Standardbred Stallions and Mares

- 10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Administrator of the Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program at the time of application for registration in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application established by the Administrator of the Program.
- 10.2 An owner or lessee of a stallion eligible for the Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records of the stallion and the records of the breeding farm and complying with the requirements of the Program. The "Authorized Agent" information shall be incorporated into the stallion registration form and filed as such.
- 10.3 No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee.

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

11.0 Sire Registration Fees

- 11.1 Sires shall initially register for the Delaware Standardbred Breeder's Program no later than December 1st of the approaching breeding season, or no later than January 1st with an additional supplemental registration fee equal to the regular registration fee.
- 11.2 All fees must accompany this registration and must be submitted by registered or certified mail.
- 11.3 Registration fees for the Delaware Standardbred Breeder's Program are non-refundable.
- 11.4 Sire registration fee for a stallion shall be \$500.00. The supplemental registration fee shall be \$1,000.00.
- 11.5 The annual stallion registration fees may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Program.
- 11.6 An owner of a Standardbred stallion registered with the Administrator shall submit by September 1st after the breeding season which the stallion serviced mares a copy of the USTA "Mares Bred Report."

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

12.0 Sire Renewal Fees

- 12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.
- 12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

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

13.0 Races

- 13.1 The purses for all races for two and three year old horses under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Walkovers receive 50% of the purse. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through eight shall receive 4-3-2 points, respectively.
- 13.2 In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in one elimination in order to start in the final. All horses shall be on the gate in eliminations and the final.
- 13.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.
- 13.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Program.
- 13.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

- 13.5.1 Age;
- 13.5.2 Sex; and
- 13.5.3 Gait.

- 13.6 Beginning in 2004, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$15,000.00 and the finals shall be \$100,000.00. The Board of the Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit, or decrease purses in the event of insufficient funds.
- 13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

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

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

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

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

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

14 DE Reg. 646 (01/01/11)

14.0 Nomination and Sustaining Payments

- 14.1 Nomination and sustaining payments shall be made to the Program in U.S. funds.
- 14.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section. If the date due is on a Sunday and/or a legal federal holiday which falls on a Saturday, payment is due by the following Monday. If the due date falls on a Monday that is a legal

PROPOSED REGULATIONS

holiday, such payment is due on Tuesday. Payment made by commercial delivery services shall be treated the same as those made by letters bearing a postmark.

- 14.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:
- 14.3.1 Forty (40) dollars each; and
- 14.3.2 Due by May 15th of the yearling year.
- 14.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.
- 14.5 The May 15th nomination payment or the March 15th \$350 supplement nomination must be made to be eligible to the four (4) year old bonus program.
- 14.56 If the May 15th deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if it is received by March 15th of the two (2) year old year. This payment is in addition to the regular sustaining payment due on March 15th.
- 14.67 Sustaining payments shall be as follows:
- 14.67.1 Two (2) Year Old payments
- | | |
|-----------------|--|
| March 15th | \$100 (must be made to ensure eligibility as a three (3) year old) |
| May 15th | \$200 |
| Declaration Fee | \$500 (for each track) |
- 14.67.2 Three (3) Year Old payments
- | | |
|---------------------------|------------------------|
| February 15 th | \$300 |
| Declaration Fee | \$500 (for each track) |
- 6 DE Reg. 1497 (5/1/03)**
5 DE Reg. 1274 (12/1/01)
13 DE Reg. 496 (10/01/09)

15.0 Investment Plan and Use of Fees

- 15.1 All proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware a Delaware Standardbred Breeder's Program and any interest earned on these monies shall be invested in an endowment account until race year 2002.
- 15.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program, shall be deposited in the endowment account.
- 15.3 For race year 2003, two million dollars (\$2,000,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on the endowment fund in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year.
- 15.4 For the year 2004 and each race year thereafter, three million dollars (\$3,000,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year.
- 15.5 Any monies from the purse account for the Program at the end of the race year shall revert to the endowment account of the Program.
- 5 DE Reg. 1274 (12/1/01)**
8 DE Reg. 336 (08/01/04)

14 DE Reg. 646 (01/01/11)

THOROUGHBRED RACING COMMISSIONStatutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 DE Admin. Code 1001**1001 Thoroughbred Racing Rules and Regulations****PUBLIC NOTICE**

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposal amends the rules and regulations to test for steroids in blood.

A public hearing will be held on September 20, 2011 at 10:00 a.m. in the second floor conference room of the Horseman's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

1001 Thoroughbred Racing Rules and Regulations*(Break in Continuity of Sections)***15.0 Medication; Testing Procedures***(Break in Continuity within Section)*

15.17 Androgenic-Anabolic Steroids

15.17.1 No Androgenic-Anabolic Steroids shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances, boldenone and testosterone, at concentrations less than the indicated thresholds:

15.17.1.4 ~~Concentrations of these Androgenic Anabolic Steroids shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates):~~

~~15.17.1.1.1 16-Hydroxystanozolol (metabolite of stanozolol (Winstrol®))—1 ng/ml in urine for all horses regardless of sex.~~

~~15.17.1.1.2 Boldenone (Equipose® is the undecylenate ester of boldenone) in male horses other than geldings—15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.~~

~~15.17.1.1.3 Nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester)~~

~~15.17.1.1.3.1 In geldings—1 ng/ml in urine.~~

~~15.17.1.1.3.2 In fillies and mares—1 ng/ml in urine.~~

~~15.17.1.1.4 Testosterone~~

~~15.17.1.1.4.1 In geldings—20 ng/ml in urine.~~

~~15.17.1.1.4.2 In fillies and mares—55 ng/ml in urine.~~

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15.17.1.1 With respect to nandrolone, boldenone, stanozolol and testosterone in fillies, mares, and geldings (testosterone and nandrolone in intact male horse samples are treated separately in 15.17.1.2):

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

15.17.1.1.2 Any test result at plasma concentration levels at or above 100 picograms per milliliter will be considered a positive test result.

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

15.17.1.2.1 Nandrolone

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

15.17.1.2.1.2 Any test result at and above plasma concentrations of 500 picograms per milliliter will be considered a positive test.

15.17.1.2.2 Testosterone

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

15.17.2.2.2 Any test result at and above plasma concentrations of 2000 picograms per milliliter will be considered a positive test.

15.17.2 All other Androgenic - Anabolic Steroids are prohibited in racing horses.

15.17.3 Post-race samples collected from intact males shall be identified to the laboratory.

15.17.4 Any horse to which one of these Androgenic - Anabolic Steroids has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in ~~urine~~ plasma. After the concentration has fallen below the designated threshold for the administered Androgenic - Anabolic Steroids, the horse is eligible to be removed from the list.

1 DE Reg. 508 (11/1/97)

1 DE Reg. 1184 (2/1/98)

3 DE Reg. 754 (12/1/99)

4 DE Reg. 179 (7/1/00)

4 DE Reg. 1131 (1/1/01)

4 DE Reg. 1821 (5/1/01)

6 DE Reg. 641 (11/1/02)

6 DE Reg. 1205 (3/1/03)

7 DE Reg. 766 (12/1/03)

7 DE Reg. 1540 (5/1/04)

8 DE Reg. 1699 (6/1/05)

10 DE Reg. 546 (09/01/06)

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

11 DE Reg. 1374 (04/01/08)

12 DE Reg. 1514 (06/01/09)

14 DE Reg. 1047 (04/01/11)

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

[1001 Thoroughbred Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 245

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****245 Michael C. Ferguson Achievement Awards Scholarship****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 245 Michael C. Ferguson Achievement Awards Scholarship to take into consideration changes from the Delaware Student Testing Program (DSTP) to the current state assessment system, titled the Delaware Comprehensive Assessment System (DCAS). Additionally, amendments are being made to a provision for military obligations and clarification that the scholarship may also be used in US territories.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 4, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments update the regulation to reflect the changes in the state assessment system. This program provides an incentive for students to do well on the state assessments.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments update the regulation to reflect the changes in the state assessment system and do not specifically address equity of education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments update the regulation to reflect the changes in the state assessment system and do not specifically address the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments update the regulation to reflect the changes in the state assessment system and do not specifically address the legal rights of students.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? There are no changes to the decision making authority or accountability.

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 amendments are consistent with other state educational policies.

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

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

245 Michael C. Ferguson Achievement Awards Scholarship

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

1.0 Basis for Granting Scholarships

- 1.1 Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student's score on the results of the annual spring summative administration of the Delaware Student Testing Program state assessment. The student's score that is used for federal Adequate Yearly Progress (AYP) shall be used to determine this award. Scores from re-testing shall not be considered. Students who have completed the eighth grade prior to first participating in the eighth grade assessment(s) pursuant to 14 Del.C. §151 shall not be eligible to receive an eighth grade scholarship. The Scholarships may be awarded to a maximum of 300 eighth grade students in the content areas of reading, ~~writing~~ and mathematics and to a maximum of 300 tenth grade students in the content areas of reading, ~~writing~~, and mathematics.
- 1.2 The awards shall be provided to the highest scoring eighth and tenth grade students in the state in reading and mathematics as well as the highest scoring eighth and tenth grades students in the state in reading and mathematics who participate in the free and reduced lunch program pursuant to the provisions below:
- 1.2.1 The highest scoring eighth and tenth grade students in the state in reading, ~~in writing~~ and in mathematics shall receive the scholarships.
- 1.2.1.1 The eighth grade awards may be given to a maximum of 150 students in the areas of reading ~~writing~~ and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible ~~and the~~. The unassigned awards shall be awarded in the priority order of reading, then mathematics ~~and writing~~.
- 1.2.1.2 The tenth grade awards may be given to a maximum of 150 students in the areas of reading ~~writing~~ and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. ~~and the~~ The unassigned awards shall be allocated in the priority order of reading then mathematics ~~and writing~~.
- 1.2.2 The highest scoring eighth and tenth grade students in the state in reading, ~~in writing~~ and in mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in section ~~4-4. 1.2~~ shall receive the scholarships.
- 1.2.2.1 The eighth grade awards may be given to a maximum of 150 students in the areas of reading, ~~writing~~ and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible ~~and the~~. The unassigned awards shall be allocated in the priority order of reading, then mathematics ~~and writing~~.
- 1.2.2.2 The tenth grade awards may be given to a maximum of 150 students in the areas of reading, ~~writing~~ and mathematics. The number of awards shall be as close to fifty in each area as possible ~~and the~~. The unassigned awards shall be allocated in the priority order of reading, then mathematics ~~and writing~~.
- 1.3 A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C. Ferguson Achievement Award Scholarship.

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

7 DE Reg. 998 (2/1/04)
12 DE Reg. 780 (12/01/08)

2.0 Eligibility for More Than One Scholarship

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

5 DE Reg. 1906 (4/1/02)
12 DE Reg. 780 (12/01/08)

3.0 Use of Scholarship Funds

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

5 DE Reg. 1906 (4/1/02)
12 DE Reg. 780 (12/01/08)

4.0 Higher Education (Commission) Office Account and Notification Procedures

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

4.12 Funds deposited for scholarships through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a post secondary institution within five calendar years after graduating from high school. Provided further that a recipient may have one additional year of availability of the funds for each year the recipient serves as an active duty member of the military.

4.23 It is the responsibility of the parent or guardian to notify the Delaware Higher Education Commission Office of any change of address during the scholarship eligibility period. Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary institution.

4.34 The Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships.

4.45 The Delaware Higher Education ~~Commission~~ Office shall send a "Request for Information" form to Michael C. Ferguson Scholarship recipients annually to update their account information.

4.45.1 The Delaware Higher Education ~~Commission~~ Office shall send enrollment verification forms to institutions identified by recipients. When completed verification forms are received by the Delaware Higher Education ~~Commission~~ Office, disbursement of scholarship funds will be made to the institution.

4.45.2 If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the parent or guardian's responsibility to provide timely notification to the Delaware Higher Education ~~Commission~~ Office prior to enrollment in order to receive payment of the scholarship.

4.45.3 Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education ~~Commission~~ Office of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

4 DE Reg. 224 (7/1/00)
5 DE Reg. 1906 (4/1/02)
7 DE Reg. 998 (2/1/04)
12 DE Reg. 780 (12/01/08)

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1104 Standards for School Buses placed in production on or after January 1, 2012

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 1104 Standards for School Buses placed in production on or after January 1, 2012 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2010- available at <http://www.ncstonline.org>). This regulation is necessary in order to add new standards for buses built after January 2012 and update the document for current equipment terminology, production capabilities and additional safety features.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **October 3, 2011** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses standards for building school buses.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses standards for building school buses.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses standards for building school buses, and the standards help ensure the health and safety of students riding the buses.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses standards for building school buses.
5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.
8. Will the new 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 new regulation will be consistent with and not be an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The statute requires the Department to make regulations concerning standards for school buses.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The state pays for all costs associated with purchases of new district operated buses that will meet the new standards. The state pays 90% (districts 10%) of the costs associated with purchases of new contractor buses that will meet the new standards.

1104 Standards for School Buses placed in production on or after January 1, 2012

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

[1104 Standards for School Buses placed in production on or after January 1, 2012](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))

16 DE Admin. Code 3220

PUBLIC NOTICE

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

A statutory change to 29 Del.C. §7903 which added a paragraph (10) directs the DHSS Secretary to adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia.

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 John Thomas Murray, Deputy Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291 by Monday, October 3, 2011.

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

SUMMARY OF PROPOSED CHANGES

Background

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

Summary of Proposal

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

The proposed changes affect the following policy sections:

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

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*(Break in Continuity of Sections)***2.0 General Training Requirements And Competency Test**

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

- 2.1 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.
- 2.3 Nursing Assistants shall take the competency test within 30 days of completion of an approved program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test. The certificate of completion of an approved program, a prerequisite to testing, must be dated within 24 months of the available testing date. Nursing assistants who are trained in a facility and are counted for staffing purposes pursuant to 16 Del.C. §1162(f) must pass the test within 90 days of completion of the facility program to continue to be counted in staffing calculations.
- 2.4 In order to qualify for recertification, a CNA must, during each 24 month certification period: (1) complete 24 hours of approved continuing education 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 must pass the competency test again. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.
 - 2.4.1 ~~A CNA who provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall annually receive dementia specific training that must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. All CNAs shall annually receive dementia specific training that must 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.~~
- 2.5 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations §483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:
 - 2.5.1 The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.
 - 2.5.2 The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a

training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.

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

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

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

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

15 DE Reg. 192 (08/01/11)

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

[3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants](#)

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Concurrent Hospice Care for Children Under Age 21 Years

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 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *concurrent hospice care for children under age 21 years*.

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 September 30, 2011.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding *election of hospice services for children under age 21 years*.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act
- 1905(o)(1) of the Social Security Act, *Hospice care*
- 2110(a)(23) of the Social Security Act, *Hospice Care*

Background

Specifically, this regulatory action provides for the mandatory implementation of section 2302 of the Affordable Care Act, entitled "Concurrent Care for Children." Section 2302 of the law amends sections 1905(o)(1) and 2110(a)(23) of the Social Security Act to remove the prohibition of receiving curative treatment upon the election of the hospice benefit by or on behalf of a Medicaid or Children's Health Insurance Program (CHIP) eligible child.

Hospice services are covered under the Medicaid and CHIP programs as an optional benefit. However, the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) provision requires Medicaid and CHIP programs operating as Medicaid expansions to provide all medically necessary services, including hospice services, to children under age 21. In order to qualify for the hospice service in either Medicaid or CHIP, a physician must certify that the eligible person is within the last 6 months of life.

The Affordable Care Act does not change the criteria for receiving hospice services; however, prior to enactment of the new law, curative treatment of the terminal illness ceased upon election of the hospice benefit. This new provision requires States to make hospice services available to children eligible for Medicaid and children eligible for Medicaid-expansion CHIP programs without forgoing any other service to which the child is entitled under Medicaid for treatment of the terminal condition. These services and supports may include pain and symptom management and family counseling provided by specially-trained hospice staff. Implementation of this new provision is vitally important for children and their families seeking a blended package of curative and palliative services.

States are required to comply with these requirements in advance of amending their state plans.

This provision was effective upon enactment of the Affordable Care Act on March 23, 2010 and is subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Summary of Proposal

While the State already covers this service, the State plan is amended in accordance with the provisions of Section 2302 of the Affordable Care Act. This provision allows hospice care to be available to recipients under age 21 without forgoing any other medically necessary curative services to which the child is entitled under Medicaid or the Delaware Healthy Children Program. Attachment 3.1-A is amended by establishing hospice care for children concurrent with curative treatment of the child's terminal illness.

The Affordable Care Act (ACA) does not change the eligibility criteria for receiving hospice care. The ACA only removes the prohibition of receiving curative treatment upon the election of the hospice benefit.

Please note that States, like Delaware that currently cover hospice services in its CHIP program do not need to submit a State Plan amendment (SPA) to modify the hospice definition, but States are expected to implement these services in compliance with the Affordable Care Act. Hospice policy of the Delaware Healthy Children Program will remain consistent with Medicaid hospice policy.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact

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

DMMA PROPOSED REGULATION #11-34

REVISION:

Revision: HCFA-PM-86-20 (BERC) ATTACHMENT 3.1-A
SEPTEMBER 1986 Page 7

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Delaware

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

18. Hospice care (in accordance with section 1905(o) of the Act).

- | | | | | | |
|-------------------------------------|-------------------|--------------------------|----------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Provided: | <input type="checkbox"/> | No limitations | <input checked="" type="checkbox"/> | <u>Provided in accordance with section 2302 of the Affordable Care Act</u> |
| <input type="checkbox"/> | With limitations* | <input type="checkbox"/> | Not provided. | | |

*Description provided on attachment.

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Freestanding Birth Center Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan to reflect the addition of *freestanding birth center services* as a mandatory Medicaid benefit, in compliance with the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148.

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 September 30, 2011.

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

SUMMARY OF PROPOSAL

The proposed amends the Delaware Title XIX Medicaid State Plan to reflect the addition of *freestanding birth center services* as a mandatory Medicaid benefit, in compliance with the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148.

Statutory Authority

- Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, enacted on March 23, 2010
- 1905(a)(28) of the Social Security Act,
- Freestanding Birth Center Services

Background

The Patient Protection and Affordable Care Act, Section 2301, added freestanding birth center services to section 1905(a) of the Social Security Act as a mandatory Medicaid state plan service, effective March 23, 2010. This provision ensures Medicaid coverage of care provided in freestanding birth centers. Section 2301 requires States that recognize freestanding birth centers to provide coverage and separate payments for freestanding birth center facility services and services rendered by certain professionals providing services in a freestanding birth center, to the extent the State licenses or otherwise recognizes such providers under State law.

States will need to submit amendments to their Medicaid State plans that specify coverage and separate reimbursement of freestanding birth center facility services and professional services in order to comply with this provision.

Summary of Proposal

While the State already covers this service, this state plan amendment (SPA) establishes services provided by birthing centers as a Medicaid state plan services and modifies reimbursement methodology to allow birthing centers and providers furnishing services in birthing centers to receive payment as mandated under the Patient Protection and Affordable Care Act. Attachment 3.1-A and Attachment 4.19-B are amended by identifying birthing centers as eligible Medicaid providers and providing for direct Medicaid payments for birthing center services.

Fiscal Impact Statement

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

DMMA PROPOSED REGULATIONS #11-30**REVISION:**

REVISION

ATTACHMENT 3.1-A

Page 11

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWAREAMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE
AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

25. (i) Licensed or Otherwise State-Approved Freestanding Birthing Center Services
Provided: ___ No limitations X With limitations* ___ None licensed or approved
Please describe any limitations: *See ATTACHMENT 3.1-A Page 11 Addendum*
25. (ii) Licensed or Otherwise State-Recognized covered professionals in the Freestanding Birthing Center Services
Provided: ___ No limitations X With limitations* (please describe below)
___ Not Applicable (there are no licensed or State approved Freestanding Birth Centers)
Please describe any limitations: *See ATTACHMENT 3.1-A Page 11 Addendum*
Please check all that apply:
X (a) Practitioners furnishing mandatory services described in another benefit category and otherwise covered under the State plan (i.e., physicians and certified nurse midwives).
X (b) Other licensed practitioners furnishing prenatal, labor and delivery, or postpartum care in a freestanding birth center within the scope of practice under State law whose services are otherwise covered under 42 CFR 440.60 (e.g., lay midwives, certified professional midwives (CPMs), and any other type of licensed midwife). *
___ (c) Other health care professionals licensed or otherwise recognized by the State to provide these birth attendant services (e.g., doulas, lactation consultant, etc.).*

*For (b) and (c) above, please list and identify below each type of professional who will be providing birth center services:

(Break in Continuity of Sections)

REVISION

ATTACHMENT 3.1-A

Page 11 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DelawareLIMITATIONS ON AMOUNT, DURATION, AND SCOPE OF MEDICAL AND
REMDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

25. Licensed or Otherwise State-Approved Freestanding Birth Center Services

PROPOSED REGULATIONS

- (a) Subject to the specifications, conditions, limitations, and requirements established by the single state agency or its designee, birth center facility services, under this State Plan, are limited to birth centers licensed by the State of Delaware and in compliance with regulations found in the Delaware Administrative Code or other legally authorized licensing authority under applicable state laws.
- (b) Birth center facility services are those services determined by the attending physician (MD or DO) or certified nurse-midwife (CNM) or licensed midwife to be reasonable and necessary for the care of the mother and newborn child following the mother's pregnancy. The center and attending physician or CNM must be licensed at the time and place the services are provided. Reimbursable services are limited to services provided by the birthing center during the labor, delivery, and postpartum periods.
- (c) Services provided by a physician or CNM or licensed midwife are not considered to be birth center services by the Delaware Medical Assistance Program.
- (d) For services other than birth center facility services, other applicable provisions of the Title XIX State Plan and the Delaware Medical Assistance Program will apply.

(Break in Continuity of Sections)

ATTACHMENT 4.19-B

Page 22

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – FREESTANDING BIRTH CENTER SERVICES

Medicaid providers of freestanding birth center services are reimbursed as follows:

Reimbursement of freestanding birthing centers is based on a fee-for-service basis. The payment for freestanding birthing center services is limited to the lower of the billed or allowed amount. Established procedure code and revenue code rates govern the birthing center payments. The Medicaid procedure codes are set at a percentage of the Medicare rates for HCPC and CPT codes and a percentage of Medicare rates for lab and x-ray codes. The HCPC and CPT code fee schedules are available on the Delaware Medical Assistance Program (DMAP) website, at: <http://www.dmap.state.de.us/home/index.html>.

The revenue code rates were established by Medicaid. Except as noted in the State Plan, state-developed fee schedule rates are the same for both governmental and private individual practitioners and the fee schedule and any annual/periodic adjustments to the fee schedule are published on the Delaware DMAP website. The agency's fee schedule rate was set as of March 1, 2011, and is effective for services provided on or after that date. All rates are published on the Delaware DMAP website, located at: <http://www.dmap.state.de.us/home/index.html>.

The revenue codes used for the reimbursement of freestanding birthing center services will be indexed forward on an annual basis (Medicare HCPC cycle) using the Medicare outpatient hospital market basket update.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Medicaid Nonpayment and Reporting Requirements For Provider Preventable Conditions

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 and with 42 CFR

§447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *Medicaid nonpayment and reporting requirements for provider preventable conditions*.

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 September 30, 2011.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding *Medicaid nonpayment and reporting requirements for provider preventable conditions*.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act;
- 42 CFR §434.6, *General requirements for all contracts and subcontracts*;
- 42 CFR §438.6, *Contract requirements*;
- 42 CFR §447.26, *Prohibition on payment for provider-preventable conditions*.

Background

On June 6, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a final rule outlining its planned implementation of non-payment for Medicaid healthcare-associated conditions (HCACs). The final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-06/pdf/2011-13819.pdf>. The rule implements Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010, which prohibits federal payments to state Medicaid programs for the costs associated with HCACs.

In addition, the law allows states to identify other conditions for which they may deny provider payments. States must ensure that any non-payment rules they put into effect do not result in a loss of access to care or services for Medicaid beneficiaries. The rule requires providers to self-report the occurrence of HCACs through their existing claims systems.

Section 2702 of the ACA requires the Secretary to identify current State practices that prohibit Medicaid payment for health care-acquired conditions (HCACs), determine which practices are appropriate for the Medicaid program, and apply them to the Medicaid program through regulations to be effective July 1, 2011. The regulations are to prohibit federal payment for specified HCACs and ensure that the prohibition will not result in loss of access to care for Medicaid beneficiaries. For this purpose, HCACs are defined as medical conditions for which an individual was diagnosed that could be identified by a secondary diagnostic code described in the Medicare requirements at section 1886(d)(4)(D)(iv) of the Social Security Act. (In the Medicare program, this section applies to prohibition of certain inpatient hospital payments, and the identified conditions are referred to as Hospital Acquired Conditions, or HACs.) In implementing the Medicaid payment prohibition, the Secretary must apply, as appropriate, the Medicare inpatient hospital payment regulations promulgated under section 1886(d)(4)(D). In doing so, the Secretary may exclude certain Medicare HACs if they are inapplicable to Medicaid beneficiaries.

While the rule's requirements will take effect July 1, 2011, as required by the statute, CMS intends to delay compliance action on the provision until July 1, 2012.

Summary of Proposal

In response to the requirements outlined in Section 2702 of the Affordable Care Act (ACA), the Delaware Medical Assistance Program (DMAP) is implementing new policy that prohibits Medicaid payment for services

PROPOSED REGULATIONS

related to Provider Preventable Conditions (PPCs). In addition, DMAP will require that providers self-report the occurrence of a PPC. DMAP will implement Section 2702 and prohibit Medicaid payments for care associated with PPCs. The new policy is effective for dates of service on and after July 1, 2011.

Specifically, upon receipt of CMS-approved state plan amendment preprint templates, the Medicaid state plan will be amended at Attachment 3.1-A and Attachment 4.19-B to allow enforcement of payment prohibitions for services related to provider preventable conditions. The DMAP will update its payments systems to improve enforcement and, consistent with Section 2702 of the ACA, which takes effect July 1, 2011, implement policies to prohibit Medicaid payment for provider preventable conditions. DMAP provider manual(s) will also be updated, as appropriate. DMAP provider manual(s) will also be updated, as appropriate.

The provision of this state plan amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact

It is anticipated that there will be minimal fiscal impact to the General Fund as these Provider Preventable Conditions are generally not billed to the Medicaid program.

DMMA PROPOSED REGULATION #11-35

REVISION:

Delaware Medical Assistance Program Provider Specific Policy Manual

(Policy Number Undetermined) Provider Preventable Conditions

The following applies to any healthcare service provided to Medicaid recipients and dual eligible beneficiaries:

(1) In accordance with 76 FR 32837, which is incorporated by reference, the Delaware Medical Assistance Program (DMAP) will not reimburse providers or contractors for provider preventable conditions (PPCs) as defined in this Centers for Medicare and Medicaid Services (CMS) rule. Providers and contractors are prohibited from submitting claims for payment of these conditions except as permitted in 76 FR 32837 when the provider preventable condition existed prior to the initiation of treatment by the provider.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider preventable conditions whether or not reimbursement for the services is sought.

(3) Providers must report the occurrence of a PPC through the appropriate claim(s) type submission process.

(4) DMAP will not accept Medicare primary, Medicaid secondary professional, or institutional crossover claims resulting in zero liability.

(5) DMAP will align with Medicare's policy and billing guidelines for all providers impacted by this policy, and adopt CMS' changes.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Tobacco Cessation Counseling Services

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 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is

proposing to amend the Title XIX Medicaid State Plan regarding *comprehensive Medicaid coverage of tobacco cessation services for pregnant women and all Medicaid beneficiaries*.

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 September 30, 2011.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding *Medicaid coverage of comprehensive tobacco cessation services for pregnant women and all Medicaid beneficiaries*.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act;
- 42 CFR §434.6, *General requirements for all contracts and subcontracts*;
- 42 CFR §438.6, *Contract requirements*;
- 42 CFR §447.26, *Prohibition on payment for provider-preventable conditions*.

Background

On June 24, 2011, the Centers for Medicare and Medicaid Services (CMS) issued guidance on the mandatory implementation of Section 4107 of the Patient Protection and Affordable Care Act (Affordable Care Act), P.L. 111-148, which amended Title XIX (Medicaid) of the Social Security Act (the Act) to provide for Medicaid coverage of comprehensive tobacco cessation services for pregnant women, including both counseling and pharmacotherapy, without cost sharing. The period for which these services must be covered includes the prenatal period through the postpartum period.

Section 1905(bb)(2) of the Act defines the new tobacco cessation coverage for pregnant women as services recommended in the 2008 Public Health Service (PHS) Guideline, or any subsequent modification of this Guideline, and such other services that the Secretary recognizes to be effective for cessation of tobacco use by pregnant women. This publication can be accessed at www.surgeongeneral.gov/tobacco/treating_tobacco_use08.pdf.

This new coverage offers States flexibility with respect to how the services shall be provided: 1) by or under the supervision of a physician; 2) by any other health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services; or 3) by any other health care professional legally authorized to provide tobacco cessation services under State law and who is designated by the Secretary to provide these services.

In addition to this new benefit requirement for pregnant women described above, States are required to cover tobacco cessation services for children when medically necessary and may rely on optional Medicaid benefit categories to provide coverage of tobacco cessation services to other Medicaid beneficiaries.

To implement this new benefit requirement, States should submit an amendment to their Medicaid State plans as soon as possible.

This provision was effective October 1, 2010.

Summary of Proposal

In accordance with the requirements and options outlined in Section 4107 of the Affordable Care Act (ACA), the Delaware Medical Assistance Program (DMAP) is proposing to identify comprehensive tobacco cessation

services as a covered Medicaid benefit for the Medicaid eligible population effective for dates of service on and after July 1, 2011.

The Medicaid state plan will be amended at Attachment 3.1-A and Attachment 4.19-B to reflect coverage for diagnostic, therapy and counseling services. DMAP already provides, within program limitations, reimbursement for rebated tobacco cessation products and Nicotine Replacement Therapy (NRT) products; as well as, cessation counseling services through the Delaware Tobacco Quitline.

Tobacco cessation services shall be provided by licensed providers practicing within their scope of practice and the recommended pharmacotherapy shall be based on the most current Public Health Service (PHS) guidelines.

Tobacco Cessation Telephone Quitlines as Allowable Medicaid Administrative Activities

The Delaware Division of Public Health works to prevent the use of tobacco products through its Tobacco Prevention and Control Program (TPCP). The Tobacco Program offers the Delaware Tobacco Quitline and is available to any Delaware resident to help smokers quit and is not limited to Medicaid beneficiaries. The Quitline program is a free comprehensive tobacco treatment service that follows the evidence-based protocols set forth in the PHS Guideline. This State plan amendment will also allow the State to claim expenditures related to Quitlines as administration at the 50 percent Federal Medicaid matching rate, as specified in 42 CFR §433.15(b)(7).

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

Delaware currently has a smoking cessation program that covers all of its citizens; so, there is no increase in costs on the General Fund. In addition, telephone "quitlines" will be coverable for the first time as an optional administrative activity in Medicaid and the State will be eligible for the 50 percent federal matching rate.

DMMA PROPOSED REGULATION #11-36

REVISION:

Revision:

ATTACHMENT 3.1-A
Page 3 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Delaware

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

6.d. Other Practitioners' Services

6.d.2. Comprehensive Tobacco Cessation Services, as recommended in the 2008 Public Health Service (PHS) Guideline or any subsequent modification of this Guideline, and provided by 1) by or under the supervision of Medicaid-enrolled physician; or 2) by any other Medicaid-enrolled health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services under State law to include the following:

1. Assessment of tobacco dependence, including a written tobacco cessation treatment plan of care;
2. Face-to-face counseling; and,
3. If appropriate, prescribing tobacco cessation pharmacotherapy, as medically necessary.

Vendors that contract with the State may be included in the group of eligible tobacco cessation service providers.

(Break in Continuity of Sections)

Revision:

Attachment 3.1-A
Page 8 AddendumSTATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: DELAWARELIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE CATEGORICALLY NEEDY20. a. & b. Extended Services to Pregnant Women

Those services normally covered by Medicaid for all eligibles are available to pregnant women.

~~In addition, the~~ The following extended services are available with prior authorization include:

- Nutrition assessment, counseling and education.
- Nursing assessment, education and referral to needed medical services.
- Social services as medically necessary to assure that home, family, community and environmental issues are not complicating the pregnancy.

Prior authorization will be based on complicating and social problems that would have a negative impact on the outcome of the pregnancy.

In addition, the following extended services available without prior authorization include:

- Comprehensive tobacco cessation services, as recommended in the 2008 Public Health Service (PHS) Guideline or any subsequent modification of this Guideline, to include the following:

1) Assessing the pregnant and postpartum woman's tobacco dependence, including a written tobacco cessation treatment plan of care;

2) Face-to-face counseling; and,

3) If appropriate, prescribing tobacco cessation pharmacotherapy, as medically necessary.

Extended services to pregnant women will include the above services when given as part of a medical service provided: 1) by agencies organized, and licensed by the State of Delaware, to provide medical care or under the supervision of Medicaid-enrolled physician; or 2) by any other Medicaid-enrolled health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services under State law.

Vendors that contract with the State may be included in the group of eligible tobacco cessation service providers.

(Break in Continuity of Sections)

ATTACHMENT 4.19-B
Page 2 AddendumSTATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: DelawareMETHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARETobacco Cessation Counseling Services

To maximize the effectiveness of tobacco cessation medications, counseling services are available for Medicaid beneficiary use in conjunction with cessation medication.

PROPOSED REGULATIONS

Counseling services must be prescribed by a licensed practitioner participating in the Delaware Medical Assistance Program (DMAP).

Clinicians and other licensed practitioners must bill their usual and customary charges and must use the appropriate CPT/CDT Codes to bill for their counseling services. Services supplied by contracted vendors are reimbursable under the terms of the agreement with the State of Delaware.

State developed fee schedule rates and any annual periodic adjustments to the fee schedule and its effective dates are published at <http://www.dmap.state.de.us/downloads/hcpcs.html>

Assurances – Cost Sharing Exemption for Tobacco Cessation Services

The State assures that cost-sharing is prohibited for tobacco cessation services for pregnant women. In accordance with Section 1916(a)(2)(B) and section 1916A(b)(3)(B)(iii) of the Act, the State does not permit cost sharing for services furnished to pregnant women, if such services are related to the pregnancy or to any other medical condition which may complicate the pregnancy. The State assures that the prohibition on cost-sharing for pregnant women specifically includes “counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1905(bb)).”

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(w) (16 Del.C. § 122(3)(w))
16 DE Admin. Code 4451

4451 Body Art Establishments

PUBLIC NOTICE

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed amendments to the Delaware Regulations Governing Body Art Establishments. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On September 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

The public hearing will be held on September 22, 2011 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the September 1, 2011 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Friday, September 30, 2011 at:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700
Fax: (302) 739-6659

4451 Body Art Establishments

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

[4451 Body Art Establishments](#)

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 31 Delaware Code, Chapter 51 (31 Del.C. Ch. 51)

PUBLIC NOTICE

6002 Mental Health Patients' Grievance Procedure

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 22, Delaware Health and Social Services (DHSS)/ Division of Substance Abuse and Mental Health (DSAMH) is proposing to establish by regulation a revised Mental Health Patients' Grievance Process.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Susan Robinson, Deputy Director, Delaware Psychiatric Center, Division of Substance Abuse and Mental Health, Springer Building, 1901 North DuPont Highway, New Castle, Delaware 19720-0906 or by fax to (302) 255-4418 by September 30, 2011.

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

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends Standards for Substance and Abuse and Treatment Programs.

Statutory Authority

16 Del.C. Chapter 51.

Summary of Proposed Changes

This revision updates Delaware's Mental Health Bill of Rights by revising the grievance procedure for patients in hospitals.

6002 Mental Health Patients' Grievance Procedure

1.0 Purpose

The Department is issuing this regulation to add various protections to the Mental Health Patients' Bill of Rights Act, including an enhanced patient grievance system for DPC patients.

2.0 Authority and Applicability

House Bill 37, An Act to Amend Title 16 of the Delaware Code Relating to the Mental Health Patients' Bill of Rights was signed by the Governor and thereby enacted into law on July 15, 2010. One of the elements of this legislation was to amend 16 Del.C. §5161(b)(15) to require DHSS to establish the (enhanced) grievance system for Delaware Psychiatric Center.

3.0 Definitions

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

“Adjunct and alternative therapy” means a specific modality of therapy based on a specific valid body of knowledge, provision of which requires specific credentials. Examples include, but are not limited to, Psychodrama; Art Therapy; Music Therapy; Acupuncture; Massage Therapy; EMDR; etc.

“Administrator” means an individual who is authorized by the governing body to provide overall management of the agency.

“Admission” means the point in a client’s relationship with a program when the intake process has been completed and the program begins to provide additional services.

“Advisory Council” means a group of individuals approved by the governing body, to provide community input and recommendations to the governing body.

“Agency” means any partnership, corporation, association, or legal entity except for an individual practitioner, that provides, is seeking to provide, or holds itself out as providing alcohol and/or other drug treatment or rehabilitation services. An agency may operate more than one program.

“Applicant” means any agency that has submitted a written application for a license to operate an alcohol and/or other drug abuse treatment or rehabilitation program in Delaware.

“Client” means an individual who receives, or has received services from an agency.

“Client Record” means the official legal written file for each client containing all the information required by these regulations, and maintained to demonstrate compliance with these regulations.

“Cultural Competence” means acceptance and respect for difference, continuing self-assessment regarding culture, careful attention to the dynamics of difference, continuous expansion of cultural knowledge and resources, and a variety of adaptations to service models in order to better meet the needs of minority populations. Culturally competent agencies work to hire unbiased employees, seek advice and consultation from the minority community, and actively decide what they are and are not capable of providing to minority clients. (March, 1989, Towards a Culturally Competent System of Care, Volume 1, National Technical Assistance Center for Children’s Mental Health, Georgetown University Child Development Center, p. 17.)

“Day” unless otherwise specified, one (1) day is a calendar day.

“Deemed status” means a licensure standing approved by DSAMH and bestowed upon programs that have been accredited by an accreditation body approved by DSAMH.

Programs that have been granted Deemed Status will be inspected in accordance with Section 4.3.2 of these standards.

“Department” means the Department of Health and Social Services, except that Department means the Department of Services for Children, Youth and Their Families for facilities certified under §§ 5135 and 5001(4) of this title.

“Designee” means the person who is delegated tasks, duties, and responsibilities when such designation is permitted by these regulations.

“Discharge” means the point at which a client’s active involvement with an agency is terminated.

“Division/DSAMH” means the Delaware Division of Substance Abuse and Mental Health within the Delaware Department of Health and Social Services.

“Division Director” means the Director of the Delaware Division of Substance Abuse and Mental Health within the Delaware Department of Health and Social Services, or his/her designee.

“Documentation” means a written record acceptable as evidence to substantiate compliance with these regulations.

“DSM” means the Diagnostic and Statistical Manual of Mental Disorders, most recent edition, as published by the American Psychiatric Association.

“Facility” means the physical area, grounds, building(s) or portions thereof, under direct program administrative control.

“Follow-up” means the process for determining the status of an individual who has been referred to an outside resource for services or who has been discharged from services OR the process for determining an agency’s compliance with these standards after an agency audit has been completed.

“Governing Body” means the individual or individuals responsible for the overall management of an agency, responsible for ensuring compliance with 5.0 of these regulations.

“Initial Recovery Plan” means the first recovery plan developed on the first day of treatment. The initial recovery plan is a working document created with input from the client and program staff.

“Intake” means the gathering of personally identifying and clinical data required to determine whether a client should be admitted to a program.

“Intern” means a student who performs counseling functions under the supervision of a Clinical supervisor.

“License” means the document issued by the Division that authorizes a program to provide alcohol and/or other drug treatment or rehabilitation.

“Licensed Nurse” means a Registered Nurse or a Licensed Practical Nurse.

“Licensed Practical Nurse” means a person licensed by the State of Delaware as a Practical Nurse or a person licensed by a state that participates in the National Licensure Compact (NLC).

“Licensure” means the process by which the Division determines whether or not a program is in compliance with these regulations.

“Medical history” means history of and any treatment of allergies, head injuries, nervous disease/ disorders, seizure disorder, or delirium tremens, surgery, major accidents, fractures, venereal diseases, cardiovascular, respiratory, endocrine, gastrointestinal diseases or disorders, and gynecological-obstetrical history, including current involvement in prenatal care and current medical treatment by a Primary Care Physician or other medical doctor.

“Needs Assessment” means a systematic evaluation of current system and programmatic operations and projected needs. This evaluation is performed as part of the Quality Assurance Plan and focuses on the changing needs of the community and population served.

“Nurse Practitioner” means a person licensed by the State of Delaware as a Nurse Practitioner or a person licensed by a state that participates in the National Licensure Compact (NLC).

“Periodic Recovery Plan Review/Revision” is a process whereby the clinical supervisor, and counselor, review prior recovery plans and establish new goals based on the client’s progress and/or changing needs through out treatment.

“Physician” means a person licensed to practice medicine in the State of Delaware.

“Physician Assistant” means a person licensed by the State of Delaware as a Physician Assistant.

“Policy” means a statement of the principles that guide and govern the activities, procedures and operations of a program.

“Procedure” means a series of activities designed to implement the policies of a program.

“Program” means the location or facility where an agency provides or offers to provide any of the various modalities of service when such services are provided or offered on a regularly scheduled basis. Clinical participation records of clients are EITHER stored on-site OR readily available to staff in electronic format using computer hardware that is installed or regularly available on-site.

“Protection and advocacy agency” means the Community Legal Aid Society, Inc. or successor agency designated the state protection and advocacy system pursuant to the following:

- a. Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. § 10801 et seq.);
- b. Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 15001 et seq.); or
- c. Protection and Advocacy for Individual Rights (29 U.S.C. § 794(e)).

“Protocols” means a written rule developed by an agency to govern specific procedures or certain activities.

“Provisional License” means the document issue by the Division that authorizes a program to provide alcohol and/or other drug treatment or rehabilitation for up to one hundred and eighty (180)

PROPOSED REGULATIONS

days when the applicant is not in compliance with these regulations or is applying for licensure for the first time.

“Public place” means an area accessible to clients, employees or visitors; the main entry or hallway; the reception area or foyer; or the dining or multipurpose room.

“Qualified Medical Personnel” means a physician, physician’s assistant, or nurse practitioner, licensed by the State of Delaware.

“Qualified Psychiatric Practitioner” means a physician or nurse practitioner, licensed by the State of Delaware with specific clinical experience in the treatment of substance use disorders as well as mental health disorders. Qualified Psychiatric Practitioners must have specific training in the use of buprenorphine and Opioid antagonist medications as well as the use of psychotropic medications used with individuals who have a mental health diagnosis.

“Quality Assurance” means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of client care to identify and resolve identified issues.

“Readmission” means the point in a client’s relationship with an agency when a client has been discharged, subsequently reapplied for admission, intake has been completed, and the agency begins to provide services again.

“Registered Nurse” means a person licensed by the State of Delaware as a registered nurse or a person licensed by a state that participates in the National Licensure Compact (NLC).

“Shall” means a mandatory procedure, the only acceptable method under these regulations.

“Signature/Signed” means, at a minimum, the writers’ first initial, last name, title or credentials and date or an authentic digital signature OR the client or legal guardian’s first and last name and/or date when required.”

“Significant other ” means an individual, whether or not related by blood or marriage, on which another individual relies for support.

“Staff” means full-time and part-time employees, consultants and volunteers, students/interns.

“Treatment” means the process a client undergoes to understand his or her alcohol or drug use and/or mental health diagnosis and choices made to change his or her behavior. For purposes of persons admitted pursuant to Chapter 55 of this title, the term "treatment" includes habilitation and the term "patient" means resident.

“Volunteer” means a person who, without direct financial compensation, provides services to a program.

“Waiver” means the exemption from compliance with a requirement of these regulations.

4.0 **Grievance Procedures**

4.1 **Publication**

4.1.1 Any hospital or residential center that admits persons pursuant to Chapter 50, 51, or 55 of this title shall prominently post in English and Spanish the list of patients rights set forth in this subsection. In addition to the posting, the Department shall distribute a copy of the list to each patient and to other persons, as provided in Department regulations. Each patient shall have the rights listed below, which shall be liberally construed to fulfill their beneficial purposes. Furthermore, in defining the scope or extent of any duty imposed by this section, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments as well as certification standards of accrediting agencies may be considered.

4.2 **Process**

4.2.1 Each patient, and, if the patient is a minor, the minor’s parent or legal guardian, shall have the right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure provided for or by the facility. Without diminution of such right, the facility may also establish a supplemental mediation system to resolve grievances. The Department shall establish the grievance system for the Delaware Psychiatric Center, through regulation, which shall include the following features:

-
- 4.2.1.1 Availability of patient assistance in preparation and submission of grievance:
 - 4.2.1.2 Right to present grievance in person or with the assistance of a representative, including the protection and advocacy agency, to an individual or group impartial decision-maker;
 - 4.2.1.3 Right to decision on routine grievance within reasonable time not to exceed 15 calendar days;
 - 4.2.1.4 Availability of expedited processing for urgent or time-sensitive grievance; and
 - 4.2.1.5 Availability of patient appeal to impartial review officer selected by the Department from an approved list compiled by the State Council for Persons with Disabilities and submitted to the Department.
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DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 2301A(j)
(19 Del.C. §2301A(j))
19 DE Admin. Code 1331

PUBLIC NOTICE

1331 Industrial Accident Board Regulations

The Industrial Accident Board proposes to amend the Industrial Accident Board (IAB) Regulations, in accordance with 19 Del.C. §2301A(j). These proposals comprehensively revise all sections of the IAB rules, which have not been updated since 1998.

A public meeting will be held before the Industrial Accident Board at 9:00 a.m. on October 18, 2011, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from John Kirk, Deputy Director, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward these to the IAB at the above address. The final date to receive written comments will be at the public meeting.

The Industrial Accident Board will consider adopting the revised IAB Rules at the meeting following the public meeting.

1331 Industrial Accident Board Regulations

1.0 Address of the Board: Office Hours

~~All communications to the Board shall be addressed to "Industrial Accident Board, State of Delaware" at 4425 North Market Street, Wilmington, DE 19802. The office is open daily from 8:00 a.m. to 4:30 p.m., except Saturdays, Sundays, and Legal Holidays. Unless otherwise notified, the Board's address is 4425 N. Market Street, Wilmington, Delaware, 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays and Legal Holidays.~~

1 DE Reg. 938 (1/1/98)

2.0 Sessions

- 2.1 Hearings on petitions will be held during the normal work week at such locations and at such times as may be set upon notice by the Department of Labor.
- 2.2 Special sessions of the Board for the transaction of business may be held at any time and place in the State of Delaware as may be scheduled by the Board with notice as provided by law.

1 DE Reg. 938 (1/1/98)

PROPOSED REGULATIONS

3.0 ~~The Administrator of the Office of Workers' Compensation: Filing of Papers~~

- 3.1 The Administrator of the Office of Workers' Compensation shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, including the transcripts of the testimony and exhibits with all papers and requests filed in proceedings, the minutes of all action taken by the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations, and approved forms.
- 3.2 All orders and other actions of the Board or a Hearing Officer shall be signed by the Board member or Hearing Officer issuing the order and authenticated by the Administrator of the Office of Workers' Compensation.
- 3.3 All pleadings or papers required to be filed with the Board shall be filed in the Department of Labor's offices at in Wilmington or other location designated by the Department for that purpose, within the time limit, if any, fixed by law or Board Rule for such filing; ~~and similarly all requests for official information, copies of official records or opportunity to inspect public records shall be made to the Administrator of the Office of Workers' Compensation. After the Petition to Determine Compensation Due is filed, all communication shall contain the assigned case file number. All written communication shall contain the assigned case file number.~~
- 3.4 Written Communications addressed to the Board and all petitions and other pleadings, all reports, exhibits, depositions, transcripts, orders, and other papers or documents, received or filed ~~in the office kept with the Department of Labor and retained~~ by the Administrator of the Office of Workers' Compensation shall be stamped showing the date of the receipt of filing thereof.
- 3.5 All requests for information, copies of official records or the opportunity to inspect public records shall be made in writing to the Administrator of the Office of Workers' Compensation, or his or her designee.
- 3.6 All sections of the petition must be completed. The Department in its discretion, may reject a filing for incompleteness.

1 DE Reg. 938 (1/1/98)

4.0 ~~Notice of Denial of Liability Repealed~~

- 4.1 An insurance carrier or self insurer shall, within 15 days after receipt of knowledge of a work-related injury, advise the Department and the claimant in writing of the following:
- 4.1.1 ~~The date the notice of the claimant's alleged industrial accident was received by the insurance carrier or self insured employer; and~~
- 4.1.2 ~~If the claim is accepted by the insurance carrier or self insured employer; or~~
- 4.1.3 ~~If the claim is denied by the insurance carrier or self insured employer giving the reason for the denial;~~
- 4.1.4 ~~State that the insurance carrier or self insured employer presently cannot accept or deny the claim, giving the reasons therefor; and stating approximately when the determination will be made.~~
- 4.2 All medical expenses shall be paid by the carrier within 30 days after bills for said expenses are sent to the carrier for payment, unless the carrier notifies the claimant or his/her attorney in writing that said expenses are contested or that further verification is required.
- 4.3 ~~Should Claimant allege to the Board that the insurance carrier or self insured has failed in its responsibilities under Sections (A) and (B), the Department will schedule a hearing. The claimant and the insurance carrier or self insured employer will present their respective positions. After the hearing, if warranted, the Board will assess a fine of not less than \$100.00 nor more than \$1,000.00.~~

1 DE Reg. 938 (1/1/98)

5.0 Forms Provided by the Department

- 5.1 In all cases ~~where in which~~ forms are ~~provided~~ approved by the Department, all papers filed with the Board shall be on such approved forms, and all applicable ~~questions~~ sections shall be answered completed.
- 5.2 Petitions shall be signed by a non-corporate party or an attorney who is a member of the Bar of the Supreme Court of Delaware.

- 5.3 ~~An application to terminate a claimant's benefits shall be by petition. Forms are approved by and adopted by the Department.~~

1 DE Reg. 938 (1/1/98)

6.0 Formal Pleadings Not Required

- 6.1 No formal pleading or formal statement of claim or formal answer shall be required of any party to any action before the Board, ~~but~~ However, each person making written request for a hearing shall file with the Department, on forms to be ~~furnished~~ promulgated by the Department, ~~a statement giving substantially the~~ as referenced in Rule 5, a statement giving substantially information requested on said forms.
- 6.2 ~~If, during the progress of any hearing, it shall appear to the Board that persons other than those named or referred to in the claim petition are, or may be entitled to receive or liable to pay compensation, the Board may inquire into and ascertain the rights and liabilities of such parties at an adjourned hearing of said case upon due notice to all such parties in interest. After the rights of all such parties are determined, the Board may amend the title of the cause in such a manner as may be right and proper. If any time after the filing of a petition, including during the progress of any hearing, it shall appear to the Board that persons other than those named or referred to in the petition are, or may be entitled to receive or may be liable to pay compensation, the Board may inquire into and ascertain the rights and liabilities of such parties upon notice to all such parties in interest. The Board may require additional information from any party appearing before the Board to assist in adequately ascertaining the rights and liabilities of such parties. In determining the rights of all such parties, the Board may amend the title of the petition in such a manner as may be right and proper. Either party may, upon motion to the Board pursuant to Rule 8, join other entities to include, but not limited to, other employers or insurance carriers.~~

1 DE Reg. 938 (1/1/98)

7.0 ~~Agreements for Scheduled Loss Mediation~~

~~All agreements for any scheduled loss or loss of function must be accompanied by appropriate doctor's reports. At any time prior to thirty (30) days after the pre-trial hearing, any party to a proceeding before the Board may request mediation. A request for mediation shall be filed in accordance with Board Rule No. 3(C). Mediation shall be conducted within thirty (30) days of the proper filing of the request.~~

8.0 Motions Concerning Legal Issues

- 8.1 ~~Except for motions contemplated by Rule No. 10 and 11, where a motion is filed with the Department which make a legal argument, a supporting brief containing citations shall be filed with such motion. A motion may not be filed without proof that a copy of said motion has been served upon the non-moving party. When a motion is filed with the Board, the motion shall contain a brief statement of the legal and factual basis for the motion and the relief sought. It shall have attached a proposed form of order, unless it is an evidentiary hearing. A copy of said motion shall be served on opposing party in the same manner and on the same day as it is filed with the Board.~~
- 8.2 ~~An answering brief shall be filed with the Department by the non-moving party within 15 days of receipt of the supporting brief. An answering brief may not be filed without proof that a copy of said answering brief has been served upon the moving party. If the motion is opposed, the matter will be scheduled for the next available motion day at which both parties may be heard. If the responding party chooses to respond to the motion in writing, such response shall state, in brief, the factual and legal basis for opposing the motion, and request the motion be denied or request an alternative proposed order. The response shall be sent not less than 4 days before the date of the motion is scheduled to be heard, to the opposing party by regular mail and by hand delivery or by fax or email at the same time as it is filed with the Department. The lack of a written response shall not be a waiver of the right to oppose the motion of the hearing. The hearing, unless there is a contrary agreement of the parties, shall take place at the same location that the hearing on the pending petition is to be heard.~~

PROPOSED REGULATIONS

- 8.3 ~~A reply brief may be filed with the Department by the moving party in the discretion of the moving party, but in no event will a reply brief be accepted by the Department after 7 days from the receipt by the moving party of the non-moving party's answering brief. A reply brief may not be filed without proof that a copy of said reply brief has been served upon the non-moving party. No order involving a matter submitted under this Rule shall be issued by the Board against the non-moving party until the non-moving party has been given an opportunity to be heard on the issue.~~
- 8.4 ~~After the briefs have been filed with the Department, an oral argument may be scheduled by the Department in the Board's discretion. Parties may submit a stipulation and proposed order for agreed upon matters. An unopposed motion stating the position of the opposing party known to the filing counsel shall be an acceptable substitute. If the Board rejects the proposed order, notice to the parties shall be given and include the reason for the rejection. The parties may re-submit a stipulation and proposed order which satisfies the Board's objection.~~
- 8.5 ~~Motions of a procedural nature need not be accompanied by supporting briefs. No order involving a procedural matter requested by the moving party shall be issued by the Board against the non-moving party until the non-moving party has been given an opportunity to be heard on the issue. All motions filed with the Board by an unrepresented party shall be promptly scheduled for hearing on motion day with adequate notice of the date, time, and location of the hearing. The Department shall send a copy of the motion to all parties when there is an unrepresented party filing the motion.~~
- 8.6 ~~Anytime after the employer's first report of injury has been filed with the Department, the Department's scheduling officer may be notified either by oral, telephonic or written communication of the request by a party or party's legal counsel for a legal hearing. The Department's scheduling officer will have the discretion of requiring a written argument from the parties or the parties' legal counsel on the legal issue. Should one or both of the parties fail to accept the scheduling officer's decision, the parties must reduce their respective positions to written memorandums. The memorandums will be submitted to the Department by the parties on a date chosen by the scheduling officer. The Board will review the memorandums and issue a written decision. Corporate entities may not appear for motions without counsel. If no attorney for the carrier or corporate self-insured employer has entered an appearance, the Board shall schedule a hearing on any motion filed by a party, with notice to the carrier or self-insured corporate employer that it must obtain counsel. If the unrepresented corporate entity appears without counsel, the Board shall enter an order granting appropriate relief.~~
- 8.7 ~~Parties may submit a proposed stipulation order for cooperation with reasonable vocational rehabilitation to the Board for approval without a legal hearing.~~
- 8.8 ~~If an unreported or memorandum opinion, whether of the Board or of any court, is cited or relied upon by any party, whether in a written submission or during any oral presentation, a copy thereof shall be provided to the Board and the opposing party. If, during an oral presentation, the party relying on the unreported case does not have a copy of such case immediately available, copies will be provided promptly after the hearing but in no case later than the end of the next business day following the hearing.~~

1 DE Reg. 938 (1/1/98)

1 DE Reg. 1621 (4/1/98)

9.0 ~~Formulation of Issues~~ Pretrial Procedure Pre-Trial Scheduling Conference and Pre-Trial Memorandum

9.1 Pre-Trial Scheduling Conference

- 9.1.1 ~~In any action, The Department of Labor shall conduct a pretrial conference. The Pretrial Scheduling Officers shall be responsible for noticing and conducting such pretrial conferences. Such conference shall be held telephonically, unless either party is unrepresented by counsel in which case, the conference may be held at the Department of Labor offices servicing the county where the accident occurred. The Scheduling Officer shall set a date and time for the hearing on the issues which are the subject of the petition convenient to all parties and counsel and subject to the provisions of 19 ~~Del.C.~~ 2348 (c). Hearings as to all other Petitions will be scheduled at the convenience of all parties and counsel to the extent possible. At such conference, the parties may~~

consider: In any action, including remands, a pre-trial scheduling conference shall be held. The Department shall designate an employee to arrange the time and date for the pre-trial conference. The designated employee will have discretionary power to re-schedule the pre-trial scheduling conference, if necessary. The employee designated by the Department in accord with this Rule shall be responsible for noticing such pre-trial scheduling conference.

~~9.1.1 Means and methods to simplify the issues(s);~~

~~9.1.2 The necessity or desirability of amendments to the papers filed or for additional papers to be filed;~~

~~9.1.3 The possibility of obtaining stipulations; admissions of fact and of documents which will avoid unnecessary proof;~~

~~9.1.4 The limitation of the number of expert witnesses;~~

~~9.1.5 Such matters as may aid in the disposition or expedition of the action.~~

9.1.2 The pre-trial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pre-trial scheduling conference regarding the petition at issue. The designated employee of the Department may grant a continuance of the pre-trial scheduling conference.

9.1.3 Such pre-trial scheduling conference may be held telephonically or by email, unless a party is unrepresented by counsel, in which case, the pre-trial scheduling conference shall be held at the Department of Labor offices servicing the county where the accident occurred.

9.1.4 The Department shall set a date and time for the hearing on the issues that are the subject of the petition, subject to the provisions of 19 Del.C. §2348.

9.2 Pre-Trial Memorandum

~~9.2 The Board may make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or on their behalf as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. Such order when entered controls the subsequent course of the action unless modified to prevent manifest injustice.~~

9.2.1 In any action, including remands, a joint Pre-Trial Memorandum shall be completed by the parties and filed with the Department.

~~9.3 The Department shall designate the pretrial officer to arrange for and preside over pretrial hearings. The pretrial officer will have discretionary power to see that the pretrials are conducted in an effective manner.~~

9.2.2 At the time the Department issues the notice of pre-trial scheduling conference, the Department will send an original Pre-Trial Memorandum form with the notice of the pre-trial scheduling conference to counsel for petitioner. Petitioner's counsel shall complete the form and send it to respondent's counsel. Respondent's counsel shall complete respondent's portion and return it to petitioner's counsel who shall file it with the Department and send a copy to respondent's counsel. Should any party be unrepresented, the Pre-Trial Memorandum shall be completed by that party.

9.2.3 In the event the Pre-Trial Memorandum has not been filed with the Department before the pre-trial scheduling conference or within the time specified in the notice provided by the Department, either party may file a motion pursuant to Rule 8 seeking an Order from the Board to compel the opposing party to complete and/or file a completed Pre-Trial Memorandum by a date certain.

9.2.4 Any party may object to any matter in the Pre-Trial Memorandum. If the parties cannot agree to resolve the objection, any party may file a motion in accordance with Rule 8. The basis for an objection may include, but is not limited to, that an item in the Pre-Trial Memorandum is not permitted, or that a matter stated in the Pre-Trial Memorandum should be dismissed, altered, supplemented or filed as another petition under Rule 26.

~~9.4 At the time of the noticed pretrial, the following information or documentation must be provided:~~

~~9.4.1 Names and addresses of prospective medical and lay witnesses.~~

~~9.4.2 A complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses, either by petition or when raised as an issue in the pretrial~~

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- ~~conference on employer's petition, copies of the bills shall be provided to counsel with the Petition, at least 30 days before the hearing. The requirement can be waived by a Pretrial Officer.~~
- ~~9.4.3 Complete statement of defenses to be used by the opposing party.~~
- ~~9.4.4 A copy of the medical report upon which a petition for benefits under 19 Del.C. §2326 is based shall be provided to opposing counsel.~~
- ~~9.4.5 A clear statement of the basis for a petition under 19 Del.C. §2347.~~
- ~~9.4.6 Notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed.~~
- 9.3 The Pre-Trial Memorandum shall contain:
- 9.3.1 names (and, if requested, the addresses) of prospective medical and lay witnesses;
- 9.3.2 a complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses either by petition or when raised as an issue at the pre-trial hearing or in the Pre-Trial Memorandum on the employer's petition, copies of the bills shall be provided to counsel with the petition or at least 30 days before the hearing;
- 9.3.3 a complete statement of defenses to be used by the opposing party;
- 9.3.4 a copy of the medical report upon which a petition for benefits under 19 Del.C. §2326 is based shall be provided;
- 9.3.5 a clear statement of the basis for a petition under 19 Del.C. §2347;
- 9.3.6 notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed;
- 9.3.7 an accurate estimate of the time necessary for hearing. This requirement includes an ongoing responsibility to update to Board as to any changes in the estimated trial time that may arise before hearing.
- ~~9.5 Either party may modify a pretrial memorandum at any time prior to thirty (30) days before the hearing. If the thirtieth day prior to a hearing falls on a weekend or holiday, the last day to amend the pretrial shall be the last business day which is at least thirty days prior to the hearing date. Should a party wish to amend the pretrial to list additional witnesses, the party shall provide the names and addresses of such witnesses. Notice of any modification to the pretrial shall be sent to the opposing counsel or to a party directly if the party is unrepresented in a fashion insuring timely receipt of the same. The thirty day notice requirement regarding amendments to a pretrial memorandum may be waived by consent of the parties upon written stipulation or by the Pretrial Scheduling Officer or the Board upon written application. However, only the party who filed the petition which forms the subject of the pretrial memorandum may amend the petition subject to the provisions of Board Rule 26.~~
- ~~9.6 Subject to the pretrial officer's discretion, a hearing date for a petition may be scheduled even if one or both parties fail to attend the pretrial. Only the pretrial scheduling officer can grant a continuance of a pretrial hearing.~~
- ~~9.7 Responsibility does attach to the requesting party to arrange to have medical witness(es) present for the Board's scheduled hearing date. Such arrangements must be coordinated with and approved by the pretrial scheduling officer. Unless specifically asked for, no subpoena will be issued to expert witnesses since parties make their own arrangements for expert appearance.~~
- ~~9.8 The pretrial officers, at their discretion, may schedule an additional pretrial hearing upon request of either party or the Board.~~
- ~~9.9 In the absence of unusual circumstances, the party filing a petition shall file with said petition a pretrial memorandum with the petitioner's portion completed. The pretrial memorandum shall be sent to the opposing party's counsel by the Department of Labor upon the filing of an entry of appearance. In the event that the opposing party is represented, the petitioning party may send the pretrial directly to opposing counsel with notice to the Board that the same has been done.~~
- ~~9.10 The pretrial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pretrial conference regarding the petition at issue. In the event that the pretrial memorandum has not yet been filed with the Department of Labor, the Board shall issue an Order compelling the submission of the same by a date certain, not to exceed fifteen (15) days.~~

9.4 Amendments:

- 9.4.1 Either party may modify a Pre-Trial Memorandum at any time prior to thirty (30) days before the hearing. Amending the Pre-Trial Memorandum by written notice to the opposing party and the designated employee of the Department of Labor may be made in accord with this Rule. If a party objects to an amendment, the party requesting relief shall file a motion in accord with Rule 8.
 - 9.4.2 If the thirtieth day prior to a hearing falls on a weekend or legal holiday, the last day to amend the Pre-Trial Memorandum shall be the next business day following that date.
 - 9.4.3 Should a party wish to amend the Pre-Trial Memorandum to list additional witnesses, the party shall provide the names (and, if requested, the addresses) of such witnesses.
 - 9.4.4 Notice of any modification to the Pre-Trial Memorandum shall be sent to the opposing counsel or unrepresented party in the same manner and on the same day as it is submitted to the Department.
 - 9.4.5 The thirty-day notice requirement regarding amendments to the Pre-Trial Memorandum may be waived or modified by consent of the parties upon written stipulation, or by the Board upon written motion pursuant to Rule 8.
- 9.5 The designated employee of the Department of Labor will review the Pre-Trial Memorandum, note a time and date for the hearing, sign the form and send copies of the completed Pre-Trial Memorandum to the Parties. Such Pre-Trial Memorandum controls the subsequent course of the action unless amended by the Board to prevent manifest injustice.
- 9.6 Parties are responsible for arranging the appearance of noticed witnesses including the issuance of any subpoenas and the sending of notices of date and place of the hearing as well as the scheduled time of that witness' testimony.
- 1 DE Reg. 938 (1/1/98)
1 DE Reg. 1621 (4/1/98)

10.0 Depositions Upon Oral Examination

- 10.1 ~~After a petition has been filed with the Department, any party to a proceeding before the Board may apply to the Board for an Order to provide for obtaining evidence by oral deposition within the State of Delaware for use in hearings before the Board. The application shall be made by motion, presented upon notice, showing good cause for obtaining such evidence by oral deposition or use in such proceeding. The procedure for obtaining such evidence shall conform to the Rules of Civil Procedure of the Superior Court of the State of Delaware insofar as may be practicable. After a petition has been filed with the Department, any party to a proceeding before the Board may obtain testimony by oral deposition of a expert witness, or a healthcare provider listed as a party pursuant to 19 Del.C. §2346, for use in a hearing before the Board, in lieu of personal appearance before the Board.~~
- 10.2 The date, time and location of oral deposition shall be agreed upon by the parties with notice of date and time served by the party taking the oral deposition.
- 10.3 The procedure for obtaining such testimony shall conform to the Rules of Civil Procedure of the Superior Court of the State of Delaware insofar as may be practicable, and not inconsistent with this Rule.
- 10.24 ~~The term "good cause", within the meaning of this rule shall mean cases where unusual circumstances exist, such as when a witness is about to leave the State or who will otherwise be unavailable to testify at the time of the hearing, or when a witness is too ill to appear and testify in person. The taking of depositions will not be ordered as a matter of course. Any party to a proceeding objecting to obtaining such testimony by oral deposition for use in such proceeding shall object by motion, presented upon notice, showing good cause for the objection.~~
- 10.35 ~~After notice and argument, the Board shall rule on each such motion unless, prior to motion or argument, the parties stipulate in writing to the taking of the deposition, in which case the oral deposition may be taken, without the Board sanction, before any person, at any notice, and in any manner and when so taken may be used like other depositions. The taking of fact witness depositions may not proceed without Board approval.~~

- 10.46 The deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.
- 10.57 The party placing a deposition into evidence during a Board hearing, must supply the Board with the original and three copies of that the deposition transcript at the time of the hearing. If the parties have agreed to allow a Hearing Officer to conduct the hearing, the party placing the deposition into evidence must supply the Hearing Officer with the original and one copy of the deposition transcript at the time of the hearing. The party placing the deposition into evidence may provide the Board or Hearing Officer a disc or other electronic format of the deposition in addition to providing the copies above.
- 10.68 Medical witness fees pursuant to 19 **Del.C.** §2322(e) shall include the costs of depositions taken pursuant to this rule. Costs shall also include the taking of videotape depositions. The amount of such fees and costs shall be consistent with guidelines established pursuant to 19 **Del.C.** §2322B(m).
- 10.79 All videotape depositions must be accompanied by a written transcripts.

1 DE Reg. 938 (1/1/98)

**11.0 ~~Discovery and Production of Documents and Things for Inspection, Copying, or Photographing~~
Request for the Production and Inspection of Documents And Other Evidence: Healthcare Authorizations
And Copying or Photocopying**

- 11.1 ~~After a petition has been filed, any party may serve on any other party a request to produce and permit the party making the request, or someone acting in his behalf, to inspect and copy or photograph, any designated documents which constitute or contain evidence relating to any matter which is relevant to the subject matter involved in the pending hearing and not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served. After a petition has been filed, a claim for workers' compensation benefits has been made, or workers' compensation benefits are being paid, any party may serve on any other party a written request for the production and/or inspection of any designated documents or other items which contain or constitute evidence relevant to the claim or petition and which are not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served.~~
- 11.2 ~~The request shall set forth the items to be inspected or produced either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts for compliance with the request.~~
- 11.3 ~~The party upon whom the request is served shall serve a written response within 15 day after the service of the request. The response shall state, with respect to each item or category, that the production and/or inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to a part of an item or category, the objected part shall be specified. The party submitting the request may move for an order from the Board compelling discovery with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. The Board shall rule upon any such motion after notice and argument.~~
- 11.4 ~~The Board authorized the following medical authorization form for Workers' Compensation Cases:~~

~~"I, _____, do hereby authorize any doctor or hospital or other health care provider to supply any and all medical records and reports to the bearer of the original or a copy of this petition regarding any medical condition provided all requests for this information are in writing."~~

~~Legal counsel for the insurance carrier or self insured employers will go through the claimant's legal counsel to obtain any medical information concerning the claimant. Legal counsel for one party may speak to the opposing party's medical witness(es) with the oral or written consent of the opposing party's legal counsel.~~

~~Medical authorization must be signed and returned or objected to, in writing, within 15 working days of its receipt.~~

- 11.4 Any claimant receiving or seeking workers' compensation benefits under the Delaware Workers' Compensation Act shall sign a healthcare records authorization for use in Delaware Workers' Compensation cases. Healthcare records authorization must be signed and returned, or objected to in writing within fifteen (15) calendar days of its receipt.
- 11.5 If a claimant is represented by legal counsel, the employer, employer's insurance carrier or legal counsel for the employer or insurance carrier must obtain the required healthcare records authorization through the claimant's legal counsel. The employer, employer's insurance carrier or legal counsel for the employer or insurance carrier shall provide copies of all claimant's healthcare records obtained through the use of the healthcare records authorization or which are otherwise in their possession to the claimant's legal counsel upon written request. Claimant's legal counsel shall provide to the employer, carrier or the employer or carrier's legal counsel all claimant's healthcare records in their possession or control upon written request.
- 11.6 If a claimant is represented by legal counsel, legal counsel for the employer, the employer's insurance carrier or the employer may have direct contact with the claimant's healthcare provider only with the written or oral consent of the claimant's legal counsel. Legal counsel for the employer or the employer's insurance carrier may submit the healthcare records authorization to any healthcare provider for the production of existing healthcare records with notice to claimant's legal counsel.
- 11.7 Video surveillance recordings that are submitted by the parties for viewing by the Board at the time of the hearing should be limited to a total of one-half (1/2) hour of viewing time unless the Board approves an extension for valid reasons. Requests for an extension shall be made before the video is shown at the time of the hearing.
- 11.8 In the event the Board permits a video surveillance recording lasting longer than one-half (1/2) hour, the Board requires a written index to accompany the submission of such video. Said index shall specify the segments of the video which are believed to have probative value.

1 DE Reg. 938 (1/1/98)**12.0 Continuances**

- 12.1 A request for a continuance shall be in writing and shall be addressed to the Department of Labor Pre-Trial Scheduling Officer. A request for a continuance may be granted upon showing of the appropriate cause under the statute. ~~19 Del.C. §2348.~~ The Scheduling Officer shall rule upon the request within three (3) business days of the receipt of the written request unless the request is made within three (3) business days of the hearing in which case the matter shall be ruled upon on the day of the request. Said ruling may be issued verbally to the parties as long as a written decision is issued within three (3) business days of the ruling. The written decision shall set forth the reason(s) for the grant or denial of the request. A request for continuance shall be in writing, include a proposed form of order, and provide notice that a copy was sent to the opposing party. A request for a continuance may be granted upon a showing of cause under ~~19 Del.C. §2348.~~
- Should a party object to the Department's decision, it may by motion, seek Board review and the Board shall hear the matter de novo. Upon such motion, the Department of Labor shall then set the matter for a legal hearing before the Board on the next Board Motion day or as expeditiously as possible. Should a party object to the decision, it may by motion seek re-argument. Upon such motion, the Department shall then set the matter for a legal hearing as expeditiously as possible before the Board or a Hearing Officer who heard the original request.
- Once a H~~earing~~ on the M~~erits~~ has begun, ~~only the Board may grant~~ a continuance may only be granted should it become necessary to continue the case in order to prevent a miscarriage of justice.
- 12.2 For the purposes of determining whether a requesting party has made the required showing of "good cause" or "extraordinary circumstances" under the statute ~~19 Del.C. §2348,~~ the Department and the Board shall use the following definitions of those terms:
- 12.2.1 "Good Cause" shall include:
- 12.2.1.1 the unavailability of a previously scheduled medical or other material witness;
 - 12.2.1.2 the unavailability of an attorney for a party due to an ~~unintended~~ conflicting court appearance;

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- 12.2.1.3 the illness of a party, a party's attorney, or a material witness (including, if appropriate, illness which affects the ability of necessary person to participate in the deposition of a medical or other material witness);
- 12.2.1.4 an unexpected justifiable absence from the State of a party, a party's attorney or material witness;
- 12.2.1.5 a justifiable substitution of counsel for one party (this shall not include a transfer of files within a law firm);
- 12.2.1.6 the unavailability of a medical witness whose deposition cannot be scheduled despite due and prompt diligence on the part of the requesting party;
- 12.2.1.7 inadequate notice from the Department and/or the Board which would justifiably prevent a party from having a full and fair opportunity to be heard; and
- 12.2.1.8 any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

~~The Department and/or the Board's decision must set forth the facts in sufficient detail to support its decision.~~

12.2.2 "Extraordinary Circumstances" shall include:

- 12.2.2.1 the sudden unavailability of a previously scheduled medical or other material witness;
- 12.2.2.2 an emergency mandatory court appearance which precludes the appearance of a party's attorney at the hearing;
- 12.2.2.3 a serious personal or medical emergency on the part of a party or a party's attorney; and
- 12.2.2.4 any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

~~The Department's and/or Board's decision must set forth the facts in sufficient detail to support its decision.~~

1 DE Reg. 938 (1/1/98)

13.0 Opening Statements and ~~Summations~~ Closing Statements

- 13.1 ~~The attorney for the petitioner may make an opening address. The attorney for the respondent may make an opening address either before any testimony is taken on behalf of the petitioner or at the close of petitioner's testimony and before any testimony is offered on behalf of the respondent. Either party or their attorney, if represented, may make an opening statement. The petitioner or the petitioner's attorney may make an opening statement prior to any testimony being presented. The respondent or the respondent's attorney may make an opening statement either before any testimony is presented on behalf of the petitioner or at the close of the petitioner's testimony and before any testimony is offered on behalf of the respondent.~~
- 13.2 ~~Regarding summations, the petitioner shall be permitted to open and close and the respondent shall be permitted to respond. Opening statements shall be limited to five (5) minutes unless an extension of this time limit has been approved by the Board for a valid reason.~~
- 13.3 ~~Regarding closing statements, the petitioner, or the petitioner's attorney, shall be permitted to present a closing statement and a rebuttal closing statement. The respondent, or the respondent's attorney, shall be permitted a closing statement in response to petitioner's closing statement. Both the petitioner's and the respondent's closing statements shall be limited to ten (10) minutes each unless an extension of this time limit has been approved by the Board; such approval shall not be withheld without cause. Petitioner's rebuttal closing statement shall be limited to five (5) minutes, unless an extension of this time limit has been approved by the Board; such approval shall not be withheld without cause.~~

14.0 Evidence

- 14.1 Stipulation of Facts. At all hearings on the merits, the parties, when represented by counsel, shall submit a written stipulation of facts to the Board. The document shall be signed by the parties'

counsel. An original and three (3) copies shall be submitted to the Board at the beginning of such hearing and shall become part of the record in the matter.

14.42 All witnesses shall be sworn in for all proceedings before the Board.

14.23 The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable; however, that evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent ~~men~~ persons in the conduct of their affairs. The Board may, in its discretion, disregard any customary rules of evidence and legal procedures so long as such a disregard does not amount to an abuse of its discretion.

15.0 Leading Questions

Leading questions of expert witnesses are permissible by either party to a controversy. In accordance with Rule 14, leading questions of expert witnesses are permissible by any party.

16.0 Attorneys, ~~Questions and Facts~~

16.1 ~~The Department shall forthwith be notified of representation by an attorney for an employer or an employee or any matter pending before the Board. An attorney may withdraw his appearance without obtaining the Board's permission where such withdrawal will leave a member of the Delaware Bar appearing as attorney of record for the party. Otherwise, no appearance shall be withdrawn except on order of the Board. Requests by attorneys to withdraw shall be in writing and state the last known address of their client. The Department shall be notified of representation by an attorney for any party on any matter pending before the Board. An attorney's appearance may be withdrawn without obtaining the Board's permission when another member of the Delaware Bar has entered an appearance as attorney of record for the party or when there is no petition pending before the Board. Such notification of withdrawal shall be in writing to the Department stating the last known address of the client, with a copy sent to the client and to the opposing parties. Otherwise, no appearance shall be withdrawn except by Order of the Board after motion by the attorney with notice to the client and to the opposing parties.~~

16.2 ~~When employees, employers, or their insurance carriers or self insurers are represented by an attorney in hearings before the Board, only the attorney can examine or cross examine witnesses at the hearing. Further, the attorney must be a member of the Bar of the State of Delaware and duly licensed to practice in the Courts of this State. Otherwise, there must be an associate counsel with the above qualifications. When any party is represented by an attorney in a matter before the Board, only that attorney can examine or cross examine witnesses at the hearing on behalf of that party. That attorney must either be a member of the Bar of the State of Delaware and duly licensed to practice in the Courts of this State or an attorney properly admitted pro hac vice and accompanied by an attorney who is a member of the Delaware Bar.~~

1 DE Reg. 938 (1/1/98)

17.0 Exhibits

17.1 ~~Exhibits submitted at Industrial Accident Board hearings are to be kept by the Department during passage of time of appeal. When time for appeal has passed, the exhibits may be returned to their proper owner or destroyed. Exhibits submitted at Board hearings are to be kept by the Department until final disposition of all appeals and/or pending petitions. After the expiration of all appeals and/or pending petitions, it is the duty of the party, or the party's attorney, who submitted the exhibits to retrieve their exhibits from the Department. The Department will dispose of all exhibits not retrieved in accordance with State of Delaware record retention policies.~~

1 DE Reg. 938 (1/1/98)

18.0 Copies of Evidence Available to Applicants

18.1 ~~Typewritten copies of evidence taken in any case before the Board shall not be furnished to the parties, but persons entitled thereto may purchase same from the reporter who has recorded such~~

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evidence. A transcript of the evidence before the Board shall not be furnished to the parties, but parties may purchase a copy of the transcript from the person who transcribed the evidence.

- 18.2 ~~In cases of appeal to the Superior Court, a typewritten copy of the evidence shall be furnished as provided by statute. When a case is appealed to the Superior Court, a transcript of the evidence shall be furnished as provided by statute.~~

19.0 Filing of Agreement After Awards

- 19.1 ~~In case of an award by the Board which is not appealed or if appeal is sustained by the Court of last appeal, the insurance carrier or self insurer shall make payments pursuant to and in compliance with the provisions of said award. An award of the Board shall be considered as self executing. Nevertheless, for administrative purposes, an agreement reflecting the provisions of an award of the Board shall be entered into between the parties and filed with the Department. A final receipt shall be filed with the Department when the agreement is paid in full. In the case of an award by the Board which is not appealed or if the appeal is sustained by the Court of last appeal, the insurance carrier or self-insurer shall make payments in compliance with the provisions of said award. An award of the Board shall be considered as self-executing. For the Department to maintain accurate record keeping, the parties to an award shall file an agreement reciting the provisions of the award within 14 days. A Receipt for Compensation shall be filed with the Department when the award is paid in full.~~
- 19.2 ~~In absence of the final ~~r~~Receipt for Compensation mentioned in 21.1 above, payments of compensation shall not be ended except on an award made according to the provisions of 19 Del.C. §2347, as amended. A final ~~r~~Receipt for Compensation signed by the injured employee will be accepted by the Board as prima facie evidence that the disability of such injured employee has ceased.~~

1 DE Reg. 938 (1/1/98)

20.0 Time for Draft for First Payment of Compensation Payment in Uncontested Awards

- 20.1 ~~An insurance carrier for the employer or the self insurer shall enter into an agreement and make the first payment of compensation within fifteen (15) days after a compensable injury unless liability is denied, in which case Rule No. 4 shall apply. Said agreement must be filed with and approved by the Department. When an award has been made by the Board and an appeal of that award has been taken by the employer or its insurance carrier, no compensation shall be paid during the pendency of the appeal for those portions of the award that are appealed. If the final disposition of the case is adverse to the employer or its insurance carrier, first payment of compensation shall be made to the claimant not later than fourteen (14) days after the Board's award becomes final and binding, irrespective of whether an agreement has at that time been entered into between the parties pursuant to Rule No. 19.1.~~
- 20.2 ~~When an award has been made by the Board, the first payment of compensation shall be drawn to the claimant's order but not later than seven (7) days after the appeal period has run, irrespective of whether an agreement has at that time been entered into between the parties pursuant to section 19.1.~~
- 20.3 ~~When an award has been made by the Board, and an appeal has been taken therefrom by the employer or its insurance carrier, no compensation shall be paid during the pendency of the appeal. If the final disposition of the case is adverse to the employer or its insurance carrier, first payment of compensation shall be drawn to the claimant's order not later than seven (7) days after the Board's award becomes final and binding, irrespective of whether an agreement has at that time been entered into between the parties pursuant to section 19.1.~~
- 20.4 ~~Unless otherwise agreed, the proceeds of all settlements of cases pending before the Board, except in commutation cases, shall be paid within 30 days after a letter correctly memorializing the settlement is sent to either party by the other.~~

1 DE Reg. 938 (1/1/98)

21.0 Further Hearing, Reopening or Rehearing Post Hearing Motions

21.1 Applications for (1) further hearing in a proceeding after the closing of testimony and before final submission on oral argument or brief, or for (2) reopening a proceeding after final submission and before decision, or for (3) rehearing or reargument after decision, must be made by petition, duly verified, within ten (10) days after the date of such closing of testimony, final submission or decision, as the case may be. Such petition shall state specifically the grounds relied upon, and shall be filed with the Department and a copy served by the petitioner upon each adverse party, or his or her attorney, who appeared at the hearing, or oral argument, if any, or on brief. The Board may permit additional testimony or argument after the close of a hearing. This may occur before the Board renders a decision or after the Board renders a decision. A party requesting that the Board permit additional testimony or argument shall do so by written motion.

A copy of each decision will be mailed by certified mail, return receipt requested to all interested parties. The ten days will commence upon receipt of the certified mail decision. A properly submitted application for rehearing or reargument within ten (10) days of a parties' receipt of a Board decision will toll the Statute of Limitations under 19 **Del.C.** §2349. The time under §2349 will begin anew when the published decision of the rehearing or reargument is received by the parties.

21.2 ~~If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence after submission and before decision, the nature and purpose of the evidence to be adduced must be briefly stated, and it must appear not to be merely cumulative. If a party's motion requests additional testimony or argument after the close of a hearing and before the Board renders a decision, the nature and purpose of the evidence shall be stated. Such evidence shall not be merely cumulative. Such motion shall be filed not later than ten days after the date of the last testimony, oral argument or the filing of any brief requested by the Board. The first day shall commence on the day following such testimony, oral argument or the filing of such brief. The date of last testimony, oral argument or the filing of any brief requested by the Board shall be stated in the motion. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.~~

21.3 ~~If the application be for rehearing or reargument after decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. If thereby any order of the Board is sought to be vacated, repealed, enlarged, or modified, the matter so relied upon must be full set forth in the petition. If the motion requests additional testimony or argument after the close of a hearing and after the Board renders a decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. Such motion must be filed with the Board not later than ten days after receipt of the Board's decision. The first day shall commence on the day following receipt of the Board's decision. The date the party received the Board's decision shall be set forth in the motion. Such motion, properly filed, will toll the period for perfecting appeals under 19 **Del.C.** §2349 and the time under § 2349 will begin anew after the subsequent decision is received by the parties. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.~~

21.4 ~~The non-moving party shall file an answer within ten (10) days and serve a copy upon each adverse party, or his attorney, who appears at the hearing, or oral argument, if any, or on the brief. When a motion is filed under Section (B) or (C) of this Rule, the non-moving party may file an answer not later than ten days after receipt of the motion and serve a copy of the answer upon the attorney for each party and upon each unrepresented party in accordance with Rule 8. The first day shall commence on the day following receipt of the motion. The date of receipt of the motion shall be set forth in the answer.~~

1 DE Reg. 938 (1/1/98)

22.0 Commutation of Compensation

22.1 Commutation of compensation pursuant to 19 **Del.C.** §2358 is to be favorably considered by the Board where there are sound and convincing reasons substantiated by dependable evidence and such

commutation will be in the best interests of the injured employee or the dependents of a deceased employee.

22.2 The Board may ~~lay down~~ set guidelines and impose such conditions as it may deem advisable for the disbursement of all funds commuted.

22.3 The Board or a Hearing Officer may approve a commutation by a hearing with live testimony, by teleconference or by consideration of an appropriate stipulation and order, with an accompanying affidavit in support of request for commutation, at the discretion of the Board or Hearing Officer.

1 DE Reg. 938 (1/1/98)

23.0 Attorney's Fees

23.1 ~~The claimant's attorney shall file with the Board and serve upon the other party at the time of hearing a completed Affidavit Regarding Attorney's Fees, said forms being provided by the Department]. Said affidavit shall be reviewed by the Board so as to assist it in awarding a reasonable attorney's fee in those cases where an attorney's fee may be awarded to the claimant. Objections, if any, to the contents thereof will be heard by the Board during the summation of the employer's or its carrier's attorney. The claimant's attorney shall file with the Board and serve upon the other party in the same manner and at the same time as filing with the Board, a completed affidavit regarding attorney's fees, with a copy of the attorney's fee agreement attached. Said affidavit and fee agreement shall be reviewed by the Board, so as to assist in awarding a reasonable attorney's fee in those cases when an attorney's fee may be awarded to the claimant. Objections, if any, to the contents of the affidavit shall be heard by the Board during closing arguments.~~

1 DE Reg. 938 (1/1/98)

24.0 Reimbursement From the Workers' Compensation Fund

24.1 No petition of an employer or its insurance carrier for reimbursement from the Workers' Compensation Fund as provided in 19 Del.C. §2327 will be accepted by the Department unless the employer or its insurance carrier first notified by certified mail the Deputy Attorney General assigned to defend said fund, of its intention to seek reimbursement from said Fund, and supply the Department with proof of compliance when its petition is filed. Any application for reimbursement from said Fund shall be by petition with supporting medical documentation attached. The petition shall identify with specificity, by dates of injury and part(s) of the body affected, all prior and subsequent injuries for which reimbursement under 19 Del.C. §2327 is claimed.

1 DE Reg. 938 (1/1/98)

25.0 Expedited Hearings Pursuant to 19 Del.C. §2348(g)

25.1 ~~If a claimant who is receiving no wages or benefits, or is out of work without income or substantial income, desires to have his/her petition heard at the earliest possible time, or is out of work without income or substantial income, he/she may file with the petition which, or thereafter, a in addition to the benefits being sought also Requests for an Expedited Hearing, which shall state the grounds for the Request and shall be accompanied by the following:~~

25.1.1 A copy of the Department standard Pre-Trial Memorandum, filled out as completely as possible with regard to the Claimant's case.

25.1.2 A copy of a medical report, hospital record, or similar documentation, which fairly describes the nature of claimant's injury and disability and the cause thereof; if such documentation is unavailable, or incomplete, claimant shall submit a supplementary statement describing, to the best of his/her knowledge and understanding, the nature of his/her injury and disability and the cause thereof.

25.1.3 A statement identifying: (a) the name and address of employer's insurer, if known; and (b) the name of the person, if known, who denied the claimant and his/her office address and telephone number.

- 25.2 Upon filing of a ~~Request for~~ petition requesting an Expedited Hearing, it shall be reviewed for completeness by ~~a Pre-Trial Officer~~ the Department. Unless substantially lacking in compliance with the requirements of 25.1, a copy of the Request and supporting papers shall promptly be sent by certified mail, return receipt requested, to the employer and its insurance carrier, if known, together with a copy of this Rule (or a resume summary of its requirements) and a notice as to the name and telephone number of the ~~Pre-Trial Officer handling the case~~ Department.
- If the filed ~~Request~~ petition does not fully comply with the requirements of 25.1, the ~~Pre-Trial Officer~~ Department may direct the claimant to submit further information or documentation before the ~~Request~~ petition will be sent to employer or its insurer, or the ~~officer~~ Department personnel may direct Claimant to submit the additional material directly to the employer, its insurer, and the Department.
- 25.3 Within five (5) business days after receipt of a ~~Request for~~ petition requesting an Expedited Hearing, the employer or its insurer shall notify the ~~designated Pre-Trial Officer by telephone, or by~~ Department writing delivered within the allowed time, the following:
- 25.3.1 ~~Whether the Request is opposed and, if so, the reasons therefor. If additional time for this decision is requested, the Pre-Trial Officer may, for good cause, allow up to five (5) additional days, and shall notify claimant if this is done. Whether the request for expedited hearing is~~ opposed and, if so, the reasons therefore:
- 25.3.2 The name and address of the lawyer who will represent it.
- 25.3.3 The name and address of each physician or other expert being engaged to examine or test claimant and the dates of appointments. If additional time for scheduling appointments is requested, the ~~Pre-Trial Officer~~ Department may, for good cause, allow up to ten (10) additional days for submission of this information, and shall notify claimant if this is done.
- 25.3.4 Whether a formal pre-trial conference is requested.
- 25.4 If a formal pre-trial conference is requested, it shall be scheduled as promptly as practicable ~~by the Pre-Trial Officer~~. Otherwise, the Pre-Trial Memorandum shall be completed, served on claimant, and filed with the Department within ten (10) business days after the deadline for the response under section 25.3.1.
- 25.5 As soon as it is determined (~~by consent or by ruling~~) that a case will have an Expedited Hearing, the ~~Pre-Trial Officer~~ Department shall confer with the parties to set a date and time for hearing. Should it appear to the ~~Pre-Trial Officer~~ Department that undue delay is threatened, due to difficulty in securing pertinent records or a timely appointment for examination or other cause, the ~~Pre-Trial Officer~~ Department may endeavor to resolve the cause for delay by direct communication with any person responsible, and both parties shall cooperate in supporting efforts to secure an early hearing date. As soon as the ~~Pre-Trial Officer~~ Department is satisfied that all responsible efforts to secure an early date have been completed, the ~~officer~~ Department shall schedule a hearing and notify both parties.

1 DE Reg. 938 (1/1/98)**26.0 Additional Issues**

- 26.1 ~~Whenever a petition is pending before the Industrial Accident Board, either party may assert an additional issue or file an additional petition in the manner prescribed below: When a petition is pending before the Board, either party may assert an additional issue or file an additional petition for consideration by the Board. The following issues shall be added to a pending petition through a letter request, timely filed with the Department and sent to opposing counsel in the same manner as service is made upon the Department:~~
- 26.2 ~~The following issues shall be added to a then pending petition through a letter request, timely filed with the Department and sent to opposing counsel in the same manner as service is made upon the Department:~~
- 26.21.1 A request for the payment of medical expenses.
- 26.21.2 A request for reimbursement of travel expenses; or

PROPOSED REGULATIONS

~~26.21.3~~ A request for partial disability benefits if the then-pending petition is claimant's petition for an ongoing period of total disability benefits or the employer's request for the review of an open agreement as to compensation.

~~26.32~~ A party wishing to assert one or more of the following issues must file a formal petition and serve the same in accordance with the statute: When a petition is pending before the Board, either party may assert an additional issue but a party wishing to assert one or more of the following issues must file a formal petition and serve the same in accordance with the statute unless otherwise permitted by the Board pursuant to Rule 8.

~~26.32.1~~ A request to review an open compensation agreement.

~~26.32.2~~ A claim for permanent impairment benefits.

~~26.32.3~~ A claim for a recurrence of temporary, total and/or partial disability.

~~26.32.4~~ A petition claim for disfigurement benefits; or

26.2.5 a forfeiture of the right to compensation pursuant to 19 Del.C. §2353.

~~26.43~~ A subsequently filed petition may be consolidated with a then-pending matter petition only upon:

~~26.4.1~~ The agreement of the parties; or

~~26.4.2~~ A motion by the party seeking to consolidate the petitions approved by the Board after due notice to opposing counsel and the opportunity for counsel to be heard under Rule 8.

1 DE Reg. 938 (1/1/98)

27.0 Form of Orders

~~27.1~~ Any party seeking relief from the Industrial Accident Board on any of the matters listed below shall present the Board with a proposed form of order, suitable for immediate signatures by the Board member(s) hearing the request for relief. This rule shall apply to: Any party seeking relief from the Industrial Accident Board shall present the Board or Hearing Officer with a proposed form of Order, suitable for immediate signature.

~~27.1.1~~ Motion to Compel production of documents.

~~27.1.2~~ Motion to Compel claimant to execute a medical or other authorization (including a copy of the proposed authorization).

~~27.1.3~~ Motions to Dismiss for failure to prosecute.

~~27.1.4~~ Uncontested petitions to terminate temporary, total or temporary, partial disability benefits.

~~27.1.5~~ Uncontested petitions for approval of commutation of benefits.

~~27.1.6~~ Application to take the deposition of a witness unavailable for trial.

~~27.1.7~~ Application for reconsideration of a Pre-Trial Officer's decision.

1 DE Reg. 938 (1/1/98)

28.0 Time

~~28.4~~ The Department of Labor and the Industrial Accident Board shall follow the provisions of Superior Court Civil Rule 6 unless otherwise specified in the statute, 19 Del.C. §2301 et. seq. or the Administrative Procedures Act, 29 Del.C. §10001 et. seq.

1 DE Reg. 938 (1/1/98)

29.0 Legal Hearings/Motion Day

~~29.1~~ Upon the receipt of a written request, with proper notice to opposing counsel, for a legal hearing or other pre-hearing motion before the Board, the Department shall hold a conference amongst the parties for the purposes of scheduling the same. The conference call shall take place no later than the third calendar day following the receipt of the request by the Department of Labor. The Board shall hold Motion Day at each location where the Board hears matters. The Board may hear testimony and make rulings upon miscellaneous matters including, but not limited to, legal hearings, motions, uncontested matters, commutations, and other matters contemplated by these Rules.

29.2 ~~Upon the receipt of a written request, with proper notice to opposing counsel, that the Department issue a subpoena, the Department shall act upon the request within three (3) calendar days of the date the request is received by the Department of Labor. Any matter brought before the Board at Motion Day shall comply with the provisions of Rule No. 8, although the Department and Board shall give due consideration to requests for expedited relief which will affect a hearing close in time to the request. In such event, the Department or Board shall make reasonable effort to schedule the matter at the next available Motion Day.~~

1 DE Reg. 938 (1/1/98)

30.0 ~~Repealed~~ Interpreters

In any proceeding before the Board where the claimant, or the claimant's witness(es), require the services of an interpreter, the claimant shall request a list of Department approved court interpreters or approved telephonic interpretation services to provide interpretation services for the claimant. The claimant shall be responsible for arranging all service of the court interpreter or telephonic interpretation service. The Department will be responsible for the payment of all reasonable fees for usage of its approved interpreters.

1 DE Reg. 1621 (4/1/98)

31.0 ~~Repealed~~ Timely Notification of Settlement

Attorneys for all parties shall appear on the date and at the time of the hearing scheduled before the Board unless notification of settlement has been received by the Office of Workers' Compensation from the petitioning attorney by 12:00 p.m. on the last work day preceding the hearing date. Failure to provide timely notification of settlement shall require the appearance of the attorneys for all parties as scheduled unless excused by the Board. Timely notification of settlement will automatically excuse the appearance of the attorneys and the cases will be removed from the calendar.

1 DE Reg. 1621 (4/1/98)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)
7 DE Admin. Code 1144

PUBLIC NOTICE

1144 Control of Stationary Generator Emissions

SAN # 2011-07

1. TITLE OF THE REGULATIONS:

Amendment to 7 **DE Admin. Code** 1144 Control of Stationary Generator Emissions

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

The Division of Air Quality (DAQ) is proposing to amend 7 **DE Admin. Code** 1144 to update the language based upon recent EPA promulgations for similar engines, and to make minor corrections to the regulatory requirements. When finalizing 7 **DE Admin. Code** 1144 in 2005, DAQ stated that the EPA's "Tier 4" standards would not be required for new, emergency generators if Tier 4 standards ultimately required aftermarket controls to meet the limits. Because Tier 4 standards do require aftermarket controls, DAQ plans to amend the regulation to

be consistent with EPA's New Source Performance Standards for internal combustion engines by requiring new, emergency generators to simply meet the Tier 2 or 3 standards, as the regulation already requires.

DAQ is also proposing new recordkeeping and reporting requirements for certain non-emergency generators which are operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator. These new recordkeeping and reporting requirements will allow the DAQ to better understand how many non-emergency generators are participating in such programs, and will help the DAQ to gauge their compliance.

Additionally, the regulation will be amended to lower the diesel sulfur requirement of the regulation from 500ppm to 15ppm to be consistent with EPA requirements. Other planned amendments include removing the sulfur content provisions for natural gas, since the generator owner has no control of the sulfur content in the pipeline natural gas which is received. Also, various definitions and regulatory requirements will be clarified and minor errors in the regulatory text shall be corrected.

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, September 22, 2011 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: Mark A. Prettyman, DNREC Division of Air Quality, 655 S. Bay RD, Suite 5N, Dover, DE 19901.

7. PREPARED BY:

Mark A. Prettyman (302) 739-9402 mark.prettyman@state.de.us August 11, 2011

1144 Control of Stationary Generator Emissions

~~01/11/2006~~ XX/XX/2011

1.0 General

1.1 Purpose. The purpose of this regulation is to ensure that emissions of nitrogen oxides (NO_x), nonmethane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from stationary generators in the State of Delaware do not adversely impact public health, safety, and welfare.

1.2 Applicability.

1.2.1 This regulation applies to new and existing, emergency and distributed, stationary generators, except for:

1.2.1.1 a generator covered by a permit which imposes a NO_x emission limitation established to meet Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER);

1.2.1.2 an emergency generator located on a residential property where no commercial or industrial activity is carried on, and operated solely to provide emergency electric power to

- the domestic residence and structures on that property housing no more than three families;
- 1.2.1.3 a generator which is mobile;
 - 1.2.1.4 a generator with a standby power rating of 10 kW or less; or
 - 1.2.1.5 existing, emergency, stationary generators installed at the stations of the member companies of the Delaware Volunteer Firemen's Association (DVFA), listed in 9.0 of this regulation. However, the provision of 1.2.2 of this regulation applies to the generators at the stations listed in 9.0 of this regulation.
- 1.2.2 On or after January 11, 2006, a new or existing, stationary generator installed at any of the stations of the member companies of the Delaware Volunteer Firemen's Association, listed in 9.0 of this regulation, shall only operate as an emergency generator.
- 1.2.3 The requirements of this regulation are in addition to all other applicable State and Federal requirements.
- 1.2.4 Any stationary generator which is moved from one location to another in an apparent attempt to circumvent the residence time requirement of 12 consecutive months shall not be included within the category of "mobile" as set out in 1.2.1.3 and the owner and operator of the unit shall comply with the requirements of this regulation for stationary generators.
- 1.3 Dates
- 1.3.1 The owner of a new stationary generator shall submit the information required in 1.4.1 and 1.4.2 of this regulation and comply with the requirements of this regulation by the date of installation.
- 1.3.2 The owner of an existing stationary generator shall submit the information required in 1.4.1 and 1.4.2 of this regulation no later than April 11, 2006.
- 1.3.2.1 If the generator is to be classified as an emergency generator, the owner shall comply with the requirements of this regulation by April 11, 2006.
 - 1.3.2.2 If the generator is to be classified as a distributed generator, and is subject to 3.2.1.1 of this regulation, the owner shall comply with the requirements of this regulation by April 1, 2007. The owner may request an extension of this compliance date, up to one year, if the owner demonstrates to the Department that the additional compliance time is needed, based upon the requirements of 1.3.4 of this regulation.
 - 1.3.2.3 If the generator is to be classified as a distributed generator, and is subject to 3.2.1.2 of this regulation, the owner shall comply with the requirements of this regulation by April 11, 2006.
- 1.3.3 If a generator is to be reclassified from an emergency generator to a distributed generator, or vice versa, the owner of a stationary generator shall submit to the Department a letter stating that the generator is to be reclassified, and the owner shall comply with the requirements of this regulation before this reclassification.
- 1.3.4 The owner of an existing, distributed generator may request, and the Department may grant, an extension of the April 1, 2007 compliance date, up to one (1) year, if the owner demonstrates to the Department's satisfaction that additional compliance time is necessary by providing an analysis to the Department which:
- 1.3.4.1 details the economical or technological reasons, or both, for the extension request; and
 - 1.3.4.2 demonstrates that Delaware's attainment of the National Ambient Air Quality Standards for the 8-hour ozone, or fine particulate matter, will not be delayed due to the generator's delayed compliance.
- 1.3.5 Both the owner of a stationary generator and a curtailment service provider which enter into a contract for a generator to participate in a voluntary demand-reduction program or any other interruptible power supply arrangement shall submit the information required in 1.4.3 of this regulation by the following dates:
- 1.3.5.1 no later than 30 days after the date upon which the contract is signed, if the contract is signed on or after XX XX, 2011; or

PROPOSED REGULATIONS

- 1.3.5.2 no later than [30 days after effective date], if the contract is signed before XX XX, 2011.
- 1.4 Initial Notification.
- 1.4.1 The owner of a stationary generator shall submit to the Department the following information:
- 1.4.1.1 the generator owner's name and telephone number;
- 1.4.1.2 the physical address where the generator is installed, or will be installed;
- 1.4.1.3 a description of the generator including the make, model number, and serial number;
- 1.4.1.4 the year of manufacture for the generator;
- 1.4.1.5 the standby power rating or the prime power rating for the generator, or both power ratings if both are known; and
- 1.4.1.6 the date of installation for existing generators, or the expected date of installation for new generators.
- 1.4.2 The owner of a stationary generator shall submit to the Department a letter stating whether the generator is to be classified as an emergency generator or a distributed generator.
- 1.4.3 On and after XX XX, 2011, both the owner of a stationary generator and the curtailment service provider who enter, or have entered, into a contract for a generator to participate in a voluntary demand-reduction program or any other interruptible power supply arrangement, shall submit to the Department the following information:
- 1.4.3.1 the name of the voluntary demand-reduction program or other interruptible power supply arrangement, and company or organization operating the program, in which the generator will be participating;
- 1.4.3.2 the date upon which the contract was signed, the date upon which the generator will begin participating in the program, and the date (if known) which the generator will stop participating in the program;
- 1.4.3.3 the expected annual hours the generator will operate each year when participating in the program;
- 1.4.3.4 the name, address, and telephone number of the curtailment service provider, as well as a contact name if the curtailment service provider is an organization or company;
- 1.4.3.5 the generator owner's name, address, and telephone number;
- 1.4.3.6 the physical address where the generator is installed, or will be installed;
- 1.4.3.7 a description of the generator including the make, model number, and serial number;
- 1.4.3.8 the year of manufacture for the generator;
- 1.4.3.9 the rated engine capacity (in horsepower), the standby power rating or the prime power rating for the generator (in kilowatts), or both power ratings if both are known; and
- 1.4.3.10 the date of installation for an existing generator, or the expected date of installation for a new generator.

01/11/2006 XX/XX/2011

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meanings:

"Biodiesel" means a renewable fuel for diesel engines derived from natural oils like soybean oil, and which meets the specifications of ASTM D 6754-03a 6751-11a, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," ASTM International, hereby incorporated by reference.

"Biodiesel Blend" means a blend of biodiesel and diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Pure biodiesel is designated as B100.

"Combined heat and power" or **"CHP"** means a generator that sequentially produces both electric power and thermal energy from a single source, where the thermal energy is wholly or partly used for either industrial processes or other heating or cooling purposes.

“Combustion turbine” means an internal combustion engine in which expanding gases from the combustion chamber drive the blades of a turbine to generate mechanical energy in the form of a rotating shaft.

“Commercial poultry producing premises” means any location in the State of Delaware where live, commercial poultry (i.e., poultry wholly owned by a corporate enterprise that controls the entire growing cycle of the birds, from the breeder flock to the processing plant) is kept.

“Curtailment service provider” or **“CSP”** means an independent company, utility, other market participant, or system operator (e.g., Delmarva Power, Delaware Electric Cooperative, PJM, etc.) which enters into a contract with end-use customers in order for the end-user to participate in a voluntary demand-reduction program or any other interruptible power supply arrangement, and administers such a program for the end-user.

“Department” means Department of Natural Resources and Environmental Control as defined in 29 Del.C. Ch 80, as amended.

“Design system efficiency” means for CHP, the sum of the full load design thermal output and electric output divided by the heat input.

“Diesel fuel” means any fuel sold in any state or Territory of the United States and suitable for use in diesel motor vehicles, diesel motor vehicle engines, or diesel nonroad engines, and which is commonly or commercially known or sold as diesel fuel.

“Digester gas” means gas generated by the anaerobic digestion of organic wastes, which include, but are not limited to, livestock manure, industrial wastewater, or food processing waste.

“Distributed generator” means a stationary generator that may be used during an emergency, during testing, and for maintenance purposes, as well as for any other purpose at times other than during an emergency.

“Emergency” means:

- an electric power outage due to: a failure of the electrical grid; on-site disaster; local equipment failure; or public service emergencies such as flood, fire, natural disaster, or severe weather conditions (e.g., hurricane, tornado, blizzard, etc.); or
- when there is a deviation of voltage or frequency from the electrical provider to the premises of 3% or greater above, or 5% or greater below, standard voltage or frequency.

“Emergency generator” means a stationary generator used only during an emergency, during testing, and for maintenance purposes. ~~An emergency generator may not be operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator (e.g., Delmarva Power, Delaware Electric Cooperative, PJM, etc.).~~

“Existing” means a generator which is not new. An existing generator shall not be considered new if it is relocated and reinstalled on the same property, nor if it is reclassified from an emergency generator to a distributed generator or vice versa.

“Gaseous fuel” means a fuel which is neither solid nor liquid, and includes but is not limited to natural gas, propane, landfill gas, waste gas, and anaerobic digester gas.

“Generator” means an internal combustion engine, except for a combustion turbine, and associated equipment that converts primary fuel (including fossil fuels and renewable fuels) into electricity, or electricity and thermal energy. Use of the term “generator” in this regulation shall refer to any and all generators subject to the requirements of this regulation unless the type of generator being referred to is otherwise specified.

“Installation” and **“install”** mean:

- for generators which are not required to obtain a permit, the date upon which the emplacement of a generator is commenced; or
- for generators which are required to obtain a permit, the date upon which the owner has all necessary preconstruction approvals or permits and either has:

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- begun, or caused to begin, a continuous program of actual on-site emplacement of the generator, to be completed within a reasonable time; or
- entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual emplacement of the generator to be completed within a reasonable time.

“Landfill gas” means gas generated by the decomposition of organic waste deposited in a landfill (including municipal solid waste landfills) or derived from the evolution of organic compounds in the waste.

“Maintenance” means the recurrent, periodic, or scheduled work necessary to repair, prevent damage, or sustain existing components of a generator or any ancillary equipment associated with its use.

“Mobile” means a generator powered by an internal combustion engine that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as converting primary fuel into electricity, or electricity and thermal energy); is intended to be propelled while performing its function; or that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another (i.e., a generator which is not stationary).

“New” means a generator which is installed or repowered on or after January 11, 2006.

“Operator” means the owner, person, or organization, which is directly responsible for the startup and shutdown of a generator and includes those capable of startup or shutdown of a unit by remote, or who cause or require the use of a generator through a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator.

“Owner” means the owner of, or person responsible for, a generator.

“Power to heat ratio” means, for a CHP unit, the design electrical output divided by the design recovered thermal output in consistent units.

“Prime power rating” means the maximum amount of power a generator is capable of supplying during continuous duty, as specified by the manufacturer.

“Repower” means the replacement of the internal combustion engine of a generator with another internal combustion engine.

“Standby power rating” means the amount of power a generator is capable of supplying during a power outage for the duration of the interruption, as specified by the manufacturer.

“Stationary” means a generator powered by an internal combustion engine which is not propelled or intended to be propelled while performing its function, that is used either in a fixed application, or in a portable (or transportable) application in which the engine will stay at a single location on a property (which includes the land, the buildings, and all improvements thereon) for more than 12 consecutive months (i.e., a generator which is not mobile). ~~Any stationary generator which is moved from one location to another in a deliberate attempt to circumvent the residence time requirement of 12 consecutive months shall be deemed stationary.~~

“Supplier” means a person or firm that manufactures, assembles, or otherwise supplies generators.

“Testing” means determining the capability of a generator to meet the specified requirements of this regulation or determining if the generator and any ancillary equipment associated with its use are functioning correctly.

“US EPA” means the United States Environmental Protection Agency.

“Waste gas” means manufacturing or mining byproduct gases that are not used and are otherwise flared or incinerated. A manufacturing or mining byproduct is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation, and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a

manufacturing or mining process and is typically processed through the next step of the process within a short time.

01/11/2006 ~~XX/XX/2011~~

3.0 Emissions

A generator shall not exceed the following standards (in pounds per megawatt-hour (lbs/MWh) of electricity output) under full load design conditions or at the load conditions specified by the applicable testing methods.

3.1 Emergency generator.

3.1.1 Existing emergency generator. The owner or operator of an existing emergency generator shall operate the generator in conformance with the generator manufacturer's instructions, such as following maintenance and operating requirements to help minimize emissions.

3.1.2 New emergency generator. A new emergency generator shall meet the applicable emissions standards set by the US EPA; ~~for non-road engines (40 CFR 89, 90, 91, 92, 94, 1039, or 1048 July 1, 2004 Edition).~~

3.1.2.1 for non-road engines (40 CFR 89, 90, 91, 92, 94, 1039, or 1048 July 1, 2004 Edition) if the generator is installed on or after January 11, 2006 and before XX XX, 2011; or

3.1.2.2 in the New Source Performance Standards (NSPS) for internal combustion engines (40 CFR 60, Subparts IIII and Subparts JJJJ, July 1, 2011 Edition) if the generator is installed on or after XX XX, 2011.

3.2 Distributed generator. The following standards do not apply to distributed generators while operating to provide emergency electric power during an emergency.

3.2.1 Existing distributed generator.

3.2.1.1 Except as provided for in 3.2.1.2 of this regulation, an existing distributed generator shall meet the following emission standards:

Pollutant	Emission Standard (lbs/MWh)
Nitrogen Oxides	4.0
Nonmethane Hydrocarbons	1.9
Particulate Matter (liquid-fueled reciprocating engines only)	0.7
Carbon Monoxide	10.0
Carbon Dioxide	1,900

3.2.1.2 As an alternative to the owner of an existing distributed generator installed on commercial poultry producing premises, to generate electricity to those premises, the generator shall be exempt from the emission standards of 3.2.1.1 of this regulation if one of the following requirements are met:

3.2.1.2.1 the owner of such a generator is participating or is signed up to participate in a Department approved, emission control strategy cost-share program for generators offered by either the Kent Conservation District or the Sussex Conservation District; or

3.2.1.2.2 the generator is gaseous fueled.

3.2.2 New distributed generator.

3.2.2.1 Except as provided for in 3.2.2.2 of this regulation, a new distributed generator shall meet the following emission standards:

PROPOSED REGULATIONS

Pollutant	Emission Standards (lbs/MWh)		
	Installed On or After January 1, 2008 <u>January 11, 2006</u>	Installed On or After January 1, 2008	Installed On or After January 1, 2012
Nitrogen Oxides	2.2	1.0	0.6
Nonmethane Hydrocarbons	0.5	0.5	0.3
Particulate Matter (liquid-fueled reciprocating engines only)	0.7	0.7	0.070 <u>0.044</u>
Carbon Monoxide	10.0	10.0	2.0
Carbon Dioxide	1,900	1,900	1,650

- 3.2.2.2 A new distributed generator that uses waste, landfill, or digester gases shall be exempt from the emission standards of 3.2.2.1 of this regulation and shall meet the following emission standards:

Pollutant	Emission Standards (lbs/MWh)
	Installed on or After January 1, 2008 <u>January 11, 2006</u>
Nitrogen Oxides	2.2
Nonmethane Hydrocarbons	0.7
Carbon Monoxide	10.0
Carbon Dioxide	1,900

- 3.3 By January 11, 2010 the Department shall complete a review of the state of, and expected changes in, technology and emissions rates; as well as a review of generators operating within the State of Delaware, and their emissions. This review shall be used by the Department in considering whether these standards in this regulation should be amended, or new standards adopted, to ensure the continued improvement of the ambient air quality of the State of Delaware. Any amendment to these standards shall be in accordance with the requirements of 7 **Del.C. Ch 60 and 29 Del.C. Ch 101**.

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4.0 Operating Requirements

- 4.1 An emergency generator may operate for an unlimited number of hours during an emergency.
- 4.2 An emergency generator may operate for an unlimited number of hours during testing or for maintenance purposes, pursuant to the definition of an emergency generator, except as restricted by 4.4 of this regulation.
- 4.3 A distributed generator may operate at any time, except as restricted by 4.4 of this regulation.
- 4.4 No emergency or distributed generator shall be used during testing or for maintenance purposes before 5 p.m. on a day which has a Ground Level Ozone Pollution Forecast or Particle Pollution Forecast of "Code Red" or "Code Orange" as announced by the Department.

- 4.5 Despite of this regulation, an emergency generator may be tested on any day that such testing is required to meet National Fire Protection Association (NFPA) or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards.
- 4.6 An emergency generator may not be operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator. No operator shall utilize an emergency generator in a manner that is not in accordance with the definition of "emergency" in 2.0 of this regulation.

~~01/11/2006~~ XX/XX/2011

5.0 Fuel Requirements

- 5.1 Each shipment of diesel fuel or a biodiesel blend, received for use in a generator on or after ~~April 11, 2006~~ XX XX, 2011, shall have a sulfur content equal to or less than ~~0.050~~ 0.0015% (15 ppm) by weight.
- 5.2 Gaseous fuels, except for natural gas, propane, waste, landfill, or digester gases, combusted in a generator on or after April 11, 2006 shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) ~~on a daily average~~.
- 5.3 Waste, landfill, or digester gases combusted in a generator on or after April 11, 2006 shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) on a daily average. An alternative total sulfur limit for waste, landfill, or digester gases shall be allowed based upon a case-by-case determination.
- 5.4 Natural gas combusted in a generator on or after April 11, 2006 shall meet the definition of "natural gas" or "pipeline natural gas" as these terms are defined by US EPA at 40 CFR 72.2 (July 1, 2011 Edition).
- 5.5 Propane combusted in a generator on or after April 11, 2006 shall meet the Gas Processors Association (GPA) Standard 2140-97 Liquefied Petroleum Gas Specification and Test Methods.

~~01/11/2006~~ XX/XX/2011

6.0 Record Keeping and Reporting

- 6.1 Record-Keeping Requirements. The owner of a generator shall maintain the following records on the property where the generator is installed, or at such other readily accessible location that the Department approves in writing:
- 6.1.1 An owner shall monitor the monthly and yearly amounts of fuel, or fuels, consumed by their generators. Yearly fuel consumption shall be calculated and recorded each calendar month by recording (for each fuel) the current calendar month's fuel consumption and adding it to those of the previous eleven consecutive months.
- 6.1.2 A non-resettable hour metering device shall be used by an owner to continuously monitor the monthly and yearly operating hours for each of their generators. Yearly operating hours shall be calculated and recorded each calendar month by recording the current calendar month's operating hours and adding them to those of the previous eleven consecutive months.
- 6.1.3 Monthly and yearly operating hours for an emergency generator. Yearly operating hours during which testing or maintenance occurred shall be calculated and recorded each calendar month by recording the current calendar month's testing or maintenance hours and adding them to those of the previous eleven consecutive months. A brief description of each testing or maintenance performed shall also be recorded.
- 6.1.4 Except as provided for in 6.1.5 of this regulation, for each shipment of liquid fuel (other than liquefied petroleum gas), received for use in a generator, a shipping receipt and certification shall be obtained from the fuel distributor which identifies:
- 6.1.4.1 the type of fuel delivered; and
- 6.1.4.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

PROPOSED REGULATIONS

6.1.5 As an alternative to 6.1.4 of this regulation, the owner may have the fuel in the generator's fuel tank certified by a third party laboratory, after each shipment of liquid fuel. This certification shall identify:

6.1.5.1 the type of fuel delivered; and

6.1.5.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

6.2 Availability of Records. The owner shall maintain each record required by 6.1 of this regulation for a minimum of five years after the date the record is made. The owner may retain hard copies (e.g., paper) or electronic copies (e.g., compact discs, computer disks, magnetic tape, etc.) of the records. An owner shall promptly provide the original or a copy of a record or records to the Department upon request.

6.3 Annual Report Requirement for Curtailment Service Providers (CSPs)

6.3.1 A CSP that administers a voluntary demand-reduction program or any other interruptible power supply arrangement for a generator or generator owner in the State shall provide the following information to the Department in an annual report:

6.3.1.1 The name and address of each participating generator or generator owner, and the telephone number and name of a contact person;

6.3.1.2 The identification of each participating generator at a facility, including:

6.3.1.2.1 The serial number, rated engine capacity (in horsepower), and standby power rating (in kilowatts), of each generator;

6.3.1.2.2 The manufacturer and model;

6.3.1.2.3 The installation date;

6.3.1.2.4 The type of fuel used in each generator;

6.3.1.2.5 The PJM Interconnection, LLC utility zone for the participating facility;

6.3.1.3 A description of the voluntary demand-reduction program or other interruptible power supply arrangement for each participating generator, that is, the name of program and the company or organization operating the program in which the generator will be participating;

6.3.1.4 The dates upon which each generator was requested to operate during the year and the hours of operation on each date, including:

6.3.1.4.1 The reason for operating the generator under the voluntary demand-reduction program or other interruptible power supply arrangement;

6.3.1.4.2 The starting and ending times when each generator was requested to operate as called for by the CSP; and

6.3.1.4.3 The total kilowatt hours of generation during each operation for the voluntary demand-reduction program or other interruptible power supply arrangement;

6.3.1.5 A list of curtailment activities at each participating facility, the total hours and the total kilowatt hours of generation curtailment as called for by the CSP;

6.3.1.6 A brief description of any significant increase or decrease in the total hours of operation for the voluntary demand-reduction program or other interruptible power supply arrangement compared to total operation during the previous year; and

6.3.1.7 An attestation from the CSP that the CSP has:

6.3.1.7.1 Attempted to collect the required information from each participating facility or other appropriate source; and

6.3.1.7.2 Provided information that is true and correct to the best of their knowledge and is not misleading.

6.3.2 The annual report, including one hard copy and one electronic copy, shall be submitted to the Department by no later than April 1 of the following year, beginning April 1, 2012, for calendar year 2011.

01/11/2006 ~~XX/XX/2011~~

7.0 Emissions Certification, Compliance, and Enforcement

- 7.1 Emissions Certification of New Distributed Generators by a Supplier. A supplier may seek to certify that its generators, which are meant to be installed as new distributed generators, meet the provisions of this regulation.
- 7.1.1 Certification Process. Emissions of nitrogen oxides, nonmethane hydrocarbons, particulate matter, carbon monoxide, and carbon dioxide from the generator shall be certified in pounds of emissions per megawatt hour (lb/MWh) at International Organization for Standardization (ISO) conditions or at the load conditions specified by the applicable testing methods in ~~Emissions Compliance with this regulation shall be demonstrated through testing using the applicable EPA Reference Methods, California Air Resources Board methods, or equivalent test methods approved by the Department if:~~ 7.5.1 of this regulation. If the design of a certified generator is modified, the generator will need to be re-certified. Certification means that a generator meets the required emissions standards of this regulation and can be installed, as supplied, for use as a distributed generator. With respect to nitrogen oxides, nonmethane hydrocarbons, carbon monoxide, and carbon dioxide, test results from US EPA Reference Methods, California Air Resources Board methods, or equivalent testing may be used to verify this certification. When testing the output of particulate matter from liquid-fuel reciprocating engines, ISO Method 8178 shall be used. Test results shall be provided upon request to the Department. A statement attesting to certification shall be displayed on the nameplate of the unit or on a label attached to the unit with the following text:
- This generator has met the standards defined by **7 DE Admin. Code** 1144 and is certified as meeting applicable emission levels when it is maintained and operated in accordance with the supplier's instructions.
- 7.1.2 Responsibility of Supplier. Certification will apply to a specific make and model of generator. For a make and model of a generator to be certified, the supplier shall certify that the generator is capable of meeting the requirements of this regulation for the lesser of 3,000 hours of operation or five years.
- 7.2 Emissions Certification of New Emergency Generators by a Supplier. An engine that has been certified to meet the currently applicable US EPA non-road or NSPS emissions standards for internal combustion engines shall be deemed to be certified for use in new emergency generators.
- 7.3 Emissions Verification by an Owner. An owner shall verify, by each generator's respective compliance date as detailed in 1.3 of this regulation, that a generator complies with its respective emission requirements of 3.0 of this regulation by submitting any or all of the following types of data to the Department for review:
- 7.3.1 any emissions certification of a new distributed generator as detailed in 7.1 of this regulation;
- 7.3.2 any emissions certification of a new emergency generator as detailed in 7.2 of this regulation;
- 7.3.3 any maintenance or operating requirements/instructions provided by the generator manufacturer;
- 7.3.4 the type, or a description, of any emission control equipment used; or
- 7.3.5 emissions test data for the generator (such as a manufacturer's technical data sheet), any supporting documentation for any emission control equipment used, any supporting calculations, any quality control or assurance information, and any other information needed to demonstrate compliance with the requirements.
- 7.4 Reverification. To ensure continuing compliance with the emissions limitations, the owner or operator shall verify a distributed generator's compliance with the emission standards every five years. This verification may be accomplished by following a maintenance schedule that the manufacturer certifies will ensure continued compliance with the required standards, by third party testing of the distributed generator using appropriate test methods to demonstrate that the distributed generator still meets the required emission standards, or by some other means as proven to the Department.
- 7.5 Testing

PROPOSED REGULATIONS

- 7.5.1 Emissions. Compliance with this regulation shall be demonstrated through testing using the applicable US EPA Reference Methods including those specified in 40 CFR Parts 89, 90, 91, 92, 94, 1039, or 1048 (July 1, 2004 Edition) and 40 CFR Part 60, Subparts IIII and JJJJ (July 1, 2011 Edition), California Air Resources Board methods, or equivalent test methods approved by the Department or US EPA if:
- 7.5.1.1 a supplier is seeking to certify that one of its generators meets the provisions of this regulation, pursuant to 7.1 of this regulation;
 - 7.5.1.2 an owner owns a generator that is not certified or verified under the terms of 3.1.2, 7.1, 7.2, or 7.3 of this regulation; or
 - 7.5.1.3 an owner of a generator is seeking to reverify the generator via third party testing pursuant to 7.4 of this regulation.
- 7.5.2 Sulfur Content.
- 7.5.2.1 Sulfur limits pursuant to 5.1 of this regulation shall be determined using the applicable sampling and testing methodologies set forth in 40 CFR 80.580 (July 1, ~~2004~~ 2011).
 - 7.5.2.2 Sulfur limits pursuant to 5.2, 5.3, 5.4, or 5.5 of this regulation shall be determined using the applicable sampling and testing methodologies set forth in the Gas Processors Association (GPA) Standard 2140-97 Liquefied Petroleum Gas Specification and Test Methods, Appendix D of 40 CFR 75 (July 1, 2004), or in the South Coast Air Quality Management District's Rule 431.1 "Sulfur Content of Gaseous Fuels" (June 12, 1998).
- 7.6 Duty to Comply. An owner or operator shall comply with the requirements of this regulation. Neither certification nor compliance with this regulation relieves owners or operators from compliance with any other applicable state and federal regulations or permitting requirements.
- 7.7 This regulation is enforceable by the Department as provided by law.

01/11/2006

8.0 Credit for Concurrent Emissions Reductions

- 8.1 Flared Fuels. If a generator uses fuel that would otherwise be flared (i.e., not used for generation or other energy related purpose), the emissions that were or would have been produced through the flaring can be deducted from the actual emissions of the generator, for the purposes of calculating compliance with the requirements of this regulation. If the actual emissions from flaring can be documented, they may be used as the basis for calculating the credit, subject to the approval of the Department. If the actual emissions from flaring cannot be documented, then the following default values shall be used:

Emissions	Waste, Landfill, Digester Gases
Nitrogen Oxides	0.1 lbs/MMBtu
Particulate Matter	N/A
Carbon Monoxide	0.7 lb/MMBtu
Carbon Dioxide	117 lb/MMBtu

- 8.2 Combined Heat and Power.
- 8.2.1 CHP installations shall meet the following requirements to be eligible for emissions credits related to thermal output:
- 8.2.1.1 At least 20% of the fuel's total recovered energy shall be thermal and at least 13% shall be electric. This corresponds to an allowed power-to-heat ratio range of between 4.0 and 0.15.
 - 8.2.1.2 The design system efficiency shall be at least 55%.

8.2.2 A CHP system that meets the requirements of CHP installations shall meet the following requirements to be eligible for emissions credits related to thermal output: of this regulation may receive a compliance credit against its actual emissions based on the emissions that would have been created by a conventional separate system used to generate the same thermal output. The credit shall be subtracted from the actual generator emissions for purposes of calculating compliance with the limits in 3.1 or 3.2 of this regulation. The credit will be calculated according to the following assumptions and procedures:

8.2.2.1 The emission rates for CHP facilities that replace existing thermal systems (e.g., boiler) for which historic emission rates can be documented shall be the historic emission rates in lbs/MMBtu, but not more than the emission rates for new facilities that displace a thermal system, which are:

Emissions	Maximum Rate
Nitrogen Oxides	0.2 lbs/MMBtu
Particulate Matter	N/A
Carbon Monoxide	0.08 lbs/MMBtu
Carbon Dioxide	117 lbs/MMBtu

8.2.2.2 The emissions rate of the thermal system in lbs/MMBtu will be converted to an output-based rate by dividing by the thermal system efficiency. For new systems the efficiency of the avoided thermal system will be assumed to be 80% for boilers or the design efficiency of other process heat systems. If the design efficiency of the other process heat system cannot be documented, an efficiency of 80% will be assumed. For retrofit systems, the historic efficiency of the displaced thermal system can be used if that efficiency can be documented and if the displaced thermal system is either enforceably shut down and replaced by the CHP system, or if its operation is measurably and enforceably reduced by the operation of the CHP system.

8.2.2.3 The emissions per MMBtu of thermal energy output will be converted to emissions per MWh of thermal energy by multiplying by 3.413 MMBtu/MWh_{thermal}.

8.2.2.4 The emissions credits in lbs/MWh_{thermal}, as calculated in 8.2.2.3 of this regulation, will be converted to emissions in lbs/MWh_{emissions} by dividing by the CHP system power-to-heat ratio.

8.2.2.5 The credit, as calculated in 8.2.2.4 of this regulation, will be subtracted from the actual emission rate of the CHP unit to produce the emission rate used for compliance purposes.

8.2.2.6 The mathematical calculations set out in 8.2.2.1 through 8.2.2.4 of this regulation are expressed in the following formula:

$$\text{Credit lbs/MWh}_{\text{emissions}} = \frac{(\text{boiler limit lbs/MMBtu})}{(\text{boiler efficiency})} \times \frac{3.413}{(\text{power to heat ratio})} \quad (8-1)$$

8.3 Non-Emitting Resources. When electricity generation that does not produce any of the emissions regulated herein is installed and operated simultaneously at the facility where the generator is installed and operated, then the electricity savings supplied by the non-emitting electricity source shall be added to the electricity supplied by the generator for the purposes of calculating compliance with the requirements of this regulation, subject to the approval of the Department and in accordance with the following formula for determining such savings:

$$\text{Rate}_{\text{EF}} = \text{Rate}_A \times \frac{\text{Size}_A}{\text{Size}_A + \text{Size}_{\text{NER}}} \quad (8-2)$$

where

Rate_{EF} = effective emission rate of generator, accounting for non-emitting

resource or sources (lb/MWh);

Rate_A = actual emission rate of generator alone (lb/MWh);

Size_A = actual prime power rating of generator (MW);

Size_{NER} = total generating capacity of non-emitting resource or sources (MW).

01/11/2006

9.0 DVFA Member Companies.

The provisions of 1.2.1.5 and 1.2.2 of this regulation apply to the following stations:

- 9.1 Aetna Hose, Hook & Ladder Company, Inc., Stations 7, 8, and 9
- 9.2 Belvedere Volunteer Fire Company, Station 30
- 9.3 Bethany Beach Volunteer Fire Company, Station 70
- 9.4 Blades Volunteer Fire Company, Station 71
- 9.5 Bowers Fire Company, Inc., Station 40
- 9.6 Brandywine Hundred Volunteer Fire Company No. 1, Station 11
- 9.7 Bridgeville Volunteer Fire Company, Station 72
- 9.8 Camden-Wyoming Volunteer Fire Company, Station 41
- 9.9 Carlisle Fire Company, Station 42
- 9.10 Cheswold Volunteer Fire Company, Station 43
- 9.11 Christiana Fire Company, Stations 3, 6, and 12
- 9.12 Citizens' Hose Company, No. 1, Station 44
- 9.13 Claymont Fire Company, Station 13
- 9.14 Clayton Fire Company, No. 1, Station 45
- 9.15 Cranston Heights Fire Company, Station 14
- 9.16 Dagsboro Volunteer Fire Company, Station 73
- 9.17 Delaware City Fire Company, No. 1, Station 15
- 9.18 Delmar Volunteer Fire Company, Station 74
- 9.19 Dover Air Force Base Fire Department, Station 58
- 9.20 Ellendale Volunteer Fire Company, Station 75
- 9.21 Elsmere Fire Company, No. 1, Station 16
- 9.22 Farmington Volunteer Fire Company, Station 47
- 9.23 Felton Community Fire Company, Station 48
- 9.24 Five Points Fire Company, Station 17
- 9.25 Frankford Volunteer Fire Company, Station 76
- 9.26 Frederica Volunteer Fire Company, Station 49
- 9.27 Georgetown American Legion Ambulance Service, Station 93
- 9.28 Georgetown Volunteer Fire Company, Station 77
- 9.29 Good-will Fire Company, No. 1, Station 18
- 9.30 Greenwood Fire Company, No. 1, Station 78
- 9.31 Gumboro Volunteer Fire Company, Station 79
- 9.32 Harrington Fire Company, Station 50
- 9.33 Hartly Volunteer Fire Company, Station 51
- 9.34 Hockessin Volunteer Fire Company, Station 19
- 9.35 Holloway Terrace Volunteer Fire Company, No. 1, Station 20
- 9.36 Houston Volunteer Fire Company, Station 52
- 9.37 Indian River Volunteer Fire Company, Station 80
- 9.38 Laurel Fire Department, Station 81

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- 9.39 Leipsic Volunteer Fire Company, Station 53
 - 9.40 Lewes Volunteer Fire Company, Station 82
 - 9.41 Little Creek Volunteer Fire Company, Station 54
 - 9.42 Magnolia Volunteer Fire Company, Station 55
 - 9.43 Marydel Volunteer Fire Company, Station 56
 - 9.44 Memorial Volunteer Fire Company, Station 89
 - 9.45 Mid Sussex Rescue Squad, Station 91
 - 9.46 Mill Creek Fire Company, Stations 2 and 21
 - 9.47 Millsboro Volunteer Fire Company, Station 83
 - 9.48 Millville Volunteer Fire Company, Station 84
 - 9.49 Milton Volunteer Fire Company, Station 85
 - 9.50 Minquadale Fire Company, Station 22
 - 9.51 Minquas Fire Company, No.1, Station 23
 - 9.52 Odessa Fire Company, Stations 4 and 24
 - 9.53 Port Penn Fire Company, Station 29
 - 9.54 Rehoboth Beach Volunteer Fire Company, Station 86
 - 9.55 Robbins Hose Company, No. 1, Station 46
 - 9.56 Roxana Volunteer Fire Company, Station 90
 - 9.57 Seaford Volunteer Fire Company, Station 87
 - 9.58 Selbyville Volunteer Fire Company, Station 88
 - 9.59 Smyrna-Clayton American Legion Ambulance, Station 64
 - 9.60 South Bowers Beach Volunteer Fire Company, Station 57
 - 9.61 Talleyville Volunteer Fire Company, Station 25
 - 9.62 Townsend Fire Company, Inc., Station 26
 - 9.63 Volunteer Hose Company, Station 27
 - 9.64 Wilmington Fire Department
 - 9.65 Wilmington Manor Volunteer Fire Company, Stations 28 and 32.

9 DE Reg. 1084 (01/01/06)

12 DE Reg. 347 (09/01/08)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b) and 903(e)(2)a
(7 Del.C. §901(b); 7 Del.C. §903(e)(2)a)
7 DE Admin. Code 3531

PUBLIC NOTICE

3531 Tautog; Size Limits, Creel Limits and Seasons

SAN # 2011-09

1. TITLE OF THE REGULATION:

3531 Tautog; Size Limits, Creel Limits and Seasons.

PROPOSED REGULATIONS

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

The purpose of this action is to amend Delaware's tidal finfish regulation 3531 to reduce tautog (*Tautoga onitis*) landings by 53% in compliance with Addendum VI to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Tautog. A 2011 stock assessment update indicated that the tautog stock continues to be overfished and that overfishing is occurring. Tautog biomass has not responded to previous management measures and fishing pressure and fishing mortality rates have increased. Spawning stock biomass has remained at low levels for the past decade and a significant reduction in the target fishing mortality rate is necessary.

Four options to achieve the required 53% reduction in tautog landings were developed and have been approved by the ASMFC Tautog Management Board. These options will serve as the basis for the proposed regulatory change and are presented in the table below.

Option 1	<u>Season</u>	<u>Creel Limit</u>	<u>Size Limit (Total Length)</u>
	Jan 1 – Mar 31	3	14"
	Apr 1 – May 11	3	15"
	Sep 29 – Dec 31	3	14"
Option 2	<u>Season</u>	<u>Creel Limit</u>	<u>Size Limit (TL)</u>
	Jan 1 – Mar 31	3	14"
	Apr 1 – May 11	3	15"
	Jul 1 – Aug 31	3	14"
	Oct 20 – Dec 31	3	14"
Option 3	<u>Season</u>	<u>Creel Limit</u>	<u>Size Limit (TL)</u>
	Jan 1 – Mar 31	5	16"
	Apr 1 – May 11	3	16"
	Jul 17 – Aug 31	5	16"
	Sep 29 – Dec 31	5	16"
Option 4	<u>Season</u>	<u>Creel Limit</u>	<u>Size Limit (TL)</u>
	Jan 1 – Mar 31	5	16"
	Apr 1 – May 11	3	16"
	Jul 1 – Aug 31	5	16"
	Oct 6 – Dec 31	5	16"

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

§901(b), §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 tautog regulation will be open September 1, 2011. 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 5, 2011 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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David E. Saveikis, Director

3531 Tautog; Size Limits, Creel Limits and Seasons.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~fourteen (14) inches~~ [TBD] in total length during the period ~~beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing~~ [TBD].
- 2.0 It shall be unlawful for any person to possess any tautog less than ~~fifteen (15) inches~~ [TBD] in total length during the period ~~beginning at 12:01 a.m. on April 1 and ending at 12:00 p.m. on June 30, next ensuing~~ [TBD].
- 3.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, it shall be unlawful for any person to possess more than ~~three (3)~~ [TBD] tautog during the period ~~beginning at 12:01 on April 1 and ending at 12:00 p.m. on June 30, next ensuing~~ [TBD], at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.
- 4.0 It shall be unlawful for any person to possess more than ~~ten (10)~~ [TBD] tautog during the period ~~beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing~~ [TBD], at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.
- 5.0 Notwithstanding the provisions of subsections 1.0, 2.0, 3.0 and 4.0 of this regulation, it shall be unlawful for any person to possess any tautog during the period ~~beginning at 12:01 a.m. on May 12 and ending at 12:00 p.m. on June 30 and during the period beginning at 12:01 a.m. on September 1 and ending at 12:00 p.m. on September 28, next ensuing~~ [TBD], except in said person's personal abode or temporary or transient place of lodging.

1 DE Reg. 1771 (05/01/98)

6 DE Reg. 1360 (04/01/03)

11 DE Reg. 1257 (03/01/08)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE SECRETARY

Statutory Authority: 16 Delaware Code, Section 10404
(16 Del.C., §10404)

PUBLIC NOTICE

Regulations Governing Community Firearm Recovery Programs

The Delaware Department of Safety and Homeland Security hereby gives notice of its intent to adopt these proposed regulations pursuant to the General Assembly's delegation of authority found at 16 Del.C. §10404 in order to implement the pilot program for the Community Firearm Recovery Program.

The Department solicits and will consider timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such written comments will be thirty days after the proposed regulations are promulgated in the *Delaware Register of Regulations*, or by October 1, 2011. Any such submissions should be mailed or hand delivered to Terry Pepper whose address is; Department of Safety and Homeland Security, Public Safety Building, Suite 220, 303 Transportation Circle, Dover, DE 19901, on or before the deadline.

PROPOSED REGULATIONS

Regulations Governing Community Firearm Recovery Programs

1.0 Definitions

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

“Agency” means any local municipal police department, the New Castle County Police Department and the Delaware State Police.

“CFRP” means Community Firearm Recovery.

“DSHS” means Delaware Department of Safety and Homeland Security.

“Firearm” means any firearm as defined in Sec 222(12), Title 11, Delaware Code.

“Gift Card” means type of payment used by a police agency to pay for surrendered- firearms such as a VISA or MasterCard gift card.

“Pilot Period” means July 6, 2011 to May 15, 2012.

“Secretary” means the Secretary of Delaware Department of Safety and Homeland Security.

2.0 Application by Requesting Police Agency:

2.1 Funds allocated pursuant to 16 Del.C. Ch. 104 shall be maintained in the DSHS, Office of the Secretary.

2.1.1 Administrative costs incurred pursuant to the recovery of the weapons, the purchase and redemption of gift cards, and, upon approval by the Secretary, publication and advertising of the CFRP event shall be reimbursable through the funds allocated under 16 Del.C. Ch. 104 and these regulations.

2.1.2 Administrative costs shall be requested by the police agency in advance of the CFRP event pursuant to section 2.3 of these regulations.

2.2 Request for funds:

2.2.1 An agency may participate in the CFRP and receive funds, upon approval by the Secretary, by submitting a letter of request, at least 14 days in advance of the event, indicating its desire to do so and stating the following:

2.2.1.1 The date, time, location and duration of the event;

2.2.1.2 Any civic and/or community organization participating in the event in collaboration or partnership with the requesting agency;

2.2.1.3 The person in the requesting agency responsible for maintaining the funds and/or inventory allocated by DSHS as well as any funds and/or inventory contributed by sponsoring entities;

2.2.1.4 An estimate of firearms the requesting agency believes it will receive as a result of the CFRP event;

2.2.1.5 The estimated costs of publication and advertising; and,

2.2.1.6 The estimated costs to administer the program.

2.3 Agencies may, and are encouraged to, convert any funds received from DSHS for a CFRP event to gift cards redeemable for merchandise in the amounts stated in Sections 3.3 and 3.4 of these regulations, to the extent possible.

2.4 Within seven (7) days after the conclusion of the CFRP event, the police agency shall submit to the Secretary an accounting of all funds allocated by DSHS under these regulations.

2.5 All unused funds shall be returned to DSHS in the form of U.S. currency, check or money order within seven (7) days of the CFRP event.

3.0 Collection and Disposition of Recovered Firearms:

3.1 Upon surrender, all firearms shall be tagged or marked by the collecting agency as to where collected, whom collected by, the date of collection, make, model and serial number.

- 3.2 All ammunition received shall be disposed of at the discretion of the host agency in accordance with their policies.
- 3.3 Funds shall be issued for firearms which, upon preliminary inspection, appear to be operational, in amounts not to exceed the following:
- | | |
|-----------------------|-----------------|
| <u>Assault Rifles</u> | <u>\$200.00</u> |
| <u>Hand Guns</u> | <u>\$150.00</u> |
| <u>Rifles</u> | <u>\$100.00</u> |
| <u>Shotguns</u> | <u>\$100.00</u> |
- 3.4 The agency shall have the discretion to pay an amount not to exceed \$75.00 for parts of firearms and ammunition received during a CFRP event.
- 3.5 Within seven (7) business days after the conclusion of a CFRP event, a complete list of all firearms collected shall be supplied to the Secretary containing information listed in section 3.1 of these regulations.
- 3.6 It shall be the responsibility of the police agency holding a CFRP event to dispose of the firearms collected. Disposal may include any, or a combination, of the following:
- 3.6.1 Sale or transfer of firearms to a federal licensed dealer, (defined as a person licensed as a firearms collector, dealer, importer, or a manufacturer under the provisions of 18 U.S.C. section 922). The proceeds of any such sale shall be utilized by the agency for any law enforcement or charitable purpose as established by the agency conducting the CFRP event.
- 3.6.2 Destruction in a manner causing total destruction of the firearm through such methods as melting or shredding.
- 3.6.3 Return any firearms determined to be stolen to the rightful owner.
- 3.7 Agencies, upon disposition of firearms, shall furnish a list of all disposed firearms to the Secretary.

4.0 General Rules:

- 4.1 An agency conducting a CFRP event shall be responsible for the security of the site, the surrounding area, the surrendered firearms, transportation of surrendered firearms and all unused funds and inventory.
- 4.2 To ensure safety, any agency conducting a CFRP event shall have at least one person on site knowledgeable in the operation and safety of firearms.
- 4.3 Any individual who elects to surrender a firearm anonymously at a CFRP event may do so and personal identification shall not be required to be presented at the time of the redemption.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2500 BOARD OF PHARMACY

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 Del.C. §2506(a)(1))
24 DE Admin. Code 2500

PUBLIC NOTICE

2500 Board of Pharmacy

PROPOSED REGULATIONS

The Delaware Board of Pharmacy, pursuant to 24 **Del.C.** §2506(a)(1), proposes to revise its rules and regulations. The proposed addition to the rules require pharmacies to post signage advising patrons that they may request the lot number and expiration date of their dispensed medication at the time a prescription is dropped off at the pharmacy.

The Board will hold a public hearing on the proposed rule change on November 16, 2011 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Catherine Simon, Administrator of the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

2500 Board of Pharmacy

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

[2500 Board of Pharmacy](#)

DIVISION OF PROFESSIONAL REGULATION

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))
24 **DE Admin. Code** 3000

PUBLIC NOTICE

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

The Delaware Board of Professional Counselors of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to better define the certification requirements of Professional Counselors of Mental Health.

The Board will hold a public hearing on the proposed rule change on September 28, 2011 at 12:00 pm., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

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

[3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals](#)

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Driver Services

Statutory Authority: 21 Delaware Code, Sections 302, 2711 and 3102
(21 **Del.C.** §§302, 2711 and 3102)
2 **DE Admin. Code** 2217

PUBLIC NOTICE

2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents

The Department of Homeland Security (DHS) Regulation 6 CFR Part 37, as amended from time to time, establishes minimum standards for the state-issued driver licenses and identification cards that are acceptable for official purposes. The Division of Motor Vehicles hereby deletes its interim Administrative Code 2217 in its entirety and incorporates the policies contained in that regulation into this more comprehensive document.

1.0 Authority.

The authority to promulgate this regulation is 21 **DeI.C.** Sections 302, 2711 and 3102 and the Department of Homeland Security's final regulation published in 6 CFR Part 37 or its equivalent, as amended from time to time.

2.0 Purpose.

This administrative rule sets forth regulations and procedures used when issuing Delaware compliant and non-compliant driver licenses and identification cards based on the referenced statutes listed in Section 1 of this administrative rule. The applicant has the option to obtain a Delaware compliant document or Delaware non-compliant document provided the applicant meets the minimum qualifications and standards presented in this administrative code.

3.0 Definitions.

"Birth Certificate" means the record related to a birth that is permanently stored, either electronically or physically, at the State Office of Vital Statistics or equivalent agency in a registrant's state of birth.

"Certified Copy of a Birth Certificate" means a copy of the whole or part of a birth certificate registered with the state that the state considers being the same as the original birth certificate on file with the State Office of Vital Statistics or equivalent agency in a registrant's state of birth.

"Compliant Driver License" means a driver license that has been issued by Delaware or any other state and has been verified by the Department of Homeland Security to be compliant with 6 CFR 37 or its equivalent as amended from time to time. These compliant documents will be accepted by federal agencies for official purposes and shall bear a DHS-approved security marker that reflects the card's level of compliance.

"Compliant Identification Card" means an identification card that has been issued by Delaware or any other state and has been verified by the Department of Homeland Security to be compliant with 6 CFR 37 or its equivalent as amended from time to time. These compliant documents will be accepted by federal agencies for official purposes and shall bear a DHS-approved security marker that reflects the card's level of compliance.

"DHS" means the United States Department of Homeland Security.

"Domestic Violence and Dating Violence" have the meanings given the terms in Section 3, Universal Definitions and Grant Provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-119 Stat. 2960, 2964, Jan. 5, 2006); codified in Section 40002, Definitions and Grant Provisions, 42 U.S.C. 13925, or state laws addressing domestic and dating violence.

"Identification Documents" includes both state-issued driver licenses and identification cards.

"Non-Compliant Driver License" means a driver license that gives the license holder the appropriate driving authority but is not in full compliance with rules established by the Secretary of the Department of Homeland Security. The card must clearly state on the front and in the machine readable zone that the card is not acceptable for official purposes.

"Non-Compliant Identification Card" means an identification document issued by the division that is not in full compliance with rules established by the Secretary of the Department of Homeland Security. The card must clearly state on the front and in the machine readable zone that the card is not acceptable for official purposes.

PROPOSED REGULATIONS

"Full Legal Name" means an individual's first name(s), middle name(s), and last name(s) or surname without the use of initials or nicknames unless otherwise acceptable in Section 7 of this document.

"Lawful Status" means a person in lawful status is a citizen or national of the United States or an alien, lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in a refugee status; has a valid non-immigrant status in the United States; has an application for asylum in the United States; has an application for temporary protected status (TPS) in the United States; has approved deferred action status; or has an application for lawful permanent residence (LPR) or conditional permanent resident status.

"License" means any license, temporary instruction permit, or temporary license that is Delaware compliant or Delaware non-compliant issued under the laws of this State pertaining to the licensing of individuals to operate motor vehicles.

"Material Change" means any change to the personally identifiable information of an individual as defined in Title 21 and this administrative code. Notwithstanding the definition of personally identifiable information below, a change of address of principal residence does not constitute a material change.

"Official Purpose" means accessing federal facilities, boarding federally-regulated commercial aircraft, and entering nuclear power plants.

"Passport" means a passport booklet or card issued by the United States Department of State that can be used as a travel document to gain entry into the United States and that denotes identity and citizenship as determined by the United States Department of State.

"Personally Identifiable Information" means any information which can be used to distinguish or trace an individual's identity, such as the individual's name, driver license or identification card number, social security number, biometric record, including a digital photograph or signature, alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as a date and place of birth or address whether it is stored in a database, on a driver license or on an identification card.

"Principal Residence Address" means the location where a person currently resides (i.e. presently resides even if at a temporary address) in conformance with the residency requirements of the state issuing the driver license or identification card, if such requirements exist.

"SAVE" means the Department of Homeland Security's Systematic Alien Verification for Entitlements system or such successor or alternate verification system at the DHS secretary's discretion.

"Sexual Assault and Stalking" have the meanings given the terms in Section 3, Universal Definitions and Grant Provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, 119 Stat, 2960, 2964, Jan. 5, 2006); codified at Section 40002, Definitions and Grant Provisions, 42 U.S.C. 13925, or state laws addressing sexual assault and stalking.

"Source Document(s)" means original or certified copies (where applicable) of documents presented by an applicant as required under this regulation to the Division of Motor Vehicles to apply for a driver license or identification card.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands.

"State Address Confidentiality Program" means any state-authorized or state-administered program that: (1) allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking to keep, obtain, and use alternative addresses; or (2) provides confidential recordkeeping regarding the addresses of such victims or other categories of persons.

"Temporary Lawful Status" means a person in temporary lawful status is a person who has a valid non-immigrant status in the United States; has an pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has an application for LPR or conditional permanent resident status.

"Verify" means procedures to ensure that the source document is genuine and has not been altered (i.e. "document authentication") and the identity data contained on the document is valid ("data verification").

4.0 Delaware Driver Licenses and Identification Cards.

4.1 Application document.

4.1.1 Every application for a Delaware compliant and non-compliant driver license or identification card shall be made on an application furnished by the Delaware Department of Transportation. The original application shall be verified by the applicant before a person authorized by the division to administer oaths. Employees who are specifically trained and assigned duties to issue state identification documents are hereby designated as being able to administer oaths under this section. The applicant will certify on the application if he holds a compliant or non-compliant driver license or identification card in this or any other state. The original application will be electronically scanned and stored.

4.2 Delaware Identification Documents.

4.2.1 When Delaware self certifies to the DHS, and the DHS determines that Delaware has met the requirements of 6 CFR 37 or its equivalent as amended from time to time, the division may issue Delaware compliant identification documents, which will be accepted by federal agencies for official purposes.

4.2.2 Unless otherwise specified, identification documents issued in accordance with this administrative code shall be considered compliant identification documents and shall be accepted by federal agencies for official purposes.

4.2.2.1 To be considered eligible for a compliant identification document, the division must reverify, scan, and electronically retain all original source documents of current Delaware driver license and identification card holders upon renewal or reissuance of that person's identification documents.

4.2.2.2 Unless otherwise specified, once verified, scanned, and electronically retained, a compliant identification document holder will not be required to again present the division with the original source document except in cases where a material change occurs or when an applicant's lawful status must be verified.

4.2.3 It will be clearly indicated on the face of the identification documents and in the machine readable zone that the license is either a Delaware compliant or non-compliant driver license, temporary driver license, identification card, temporary identification card or limited-term driver license.

4.3 Non-Compliant Driver Licenses and Identification Cards.

4.3.1 Non-compliant driver licenses and identification cards will clearly state on their faces and in the machine readable zones that the card is not acceptable for official purposes.

4.3.2 The division may issue non-compliant identification documents and non-compliant temporary or limited-term identification documents in lieu of Delaware compliant documents to persons who:

4.3.2.1 Are citizens of the United States, aliens with permanent resident status, or aliens with acceptable proof of lawful status in accordance with 2 DE Admin. Code 2220 who want to operate a motor vehicle or have a state-issued identification card, but who do not need or want a Delaware compliant identification document to enter federal facilities, board federally-regulated commercial aircraft, or enter nuclear power plants;

4.3.2.2 Are unable to present an authorized source document and must rely upon alternative documents, when approved by the Driver Services Manager, Chief of Driver Services, Deputy Director or Director, to establish a person's name, date of birth, principle residence address, SSN or use alternative documents to demonstrate U.S. citizenship or lawful presence.

4.3.2.3 Have lawful status in the United States, but:

4.3.2.3.1 Are ineligible for a SSN because of their immigration status;

PROPOSED REGULATIONS

4.3.2.3.2 Are able to provide a temporary residential address (such as a motel or homeless shelter) but do not have a principal residence address in this State (reference Section 9);

4.3.2.3.3 Are able to provide documentation confirming their SSN and/or lawful status, but the division is temporarily unable to electronically verify this data.

4.4 Temporary or Limited-Term Documents.

4.4.1 The division shall issue a temporary or limited-term compliant driver license or identification card, or temporary or limited-term non-compliant driver license or identification card to those persons who have temporary lawful status in the United States in accordance with 2 **DE Admin. Code** 2220 and 21 **Del.C.**, Sections 2715(a) and 3103(a). Before issuing or renewing these limited term documents, the applicant must provide valid documentary evidence, verifiable through SAVE or other DHS-approved means, that the person has lawful status in the United States. These documents may not be issued for a time period longer than the expiration of the applicant's authorized stay in the United States, or if there is no expiration date, for a period no longer than one year or no longer than the maximum term of a driver license or identification card, whichever date is less. Temporary or limited term identification documents must clearly indicate on their faces and in the machine readable zone that they are temporary or limited-term driver licenses or identification cards.

4.5 Renewal of Delaware Driver Licenses and Identification Cards.

4.5.1 Delaware compliant and non-compliant driver licenses will be renewed in person every five years and identification cards will be renewed in person every four years in accordance with 21 **Del.C.**, Sections 2715 and 3103, unless they are designated as temporary or limited-term documents.

4.5.2 Delaware compliant identification documents must be renewed in person unless otherwise specified in Sections 4.5.4 and 9.2.1 of this document.

4.5.3 Holders of temporary or limited-term Delaware compliant or non-compliant driver licenses and identification cards must present evidence of continued lawful status and have their lawful status verified via SAVE or other methods approved by the DHS when renewing their driver licenses or identification cards. The documents must be set to expire when the individual's lawful status expires.

4.5.4 The division may allow a remote renewal but must ensure the Social Security number (SSN) and lawful status is verified before renewing. However, a remote renewal is prohibited when there is a material change in any personally identifiable information. The applicant must have his identification document reissued in person and present a source document that is retained and verified when material changes occur.

4.6 Reissued Driver Licenses and Identification Cards.

4.6.1 Delaware compliant and non-compliant driver licenses will be reissued in accordance with 21 **Del.C.**, Sections 2720 and 3105.

4.6.2 Delaware compliant and non-compliant identification documents must be reissued in person unless otherwise specified in Sections 4.6.3 and 9.2.1 of this administrative code.

4.6.3 The division may allow a remote renewal but must ensure the social security number (SSN) and lawful status is verified before reissuance. However, a remote issuance is prohibited when there is a material change in any personally identifiable information. The applicant must reissue in person and present an original source document that is retained and verified when material changes occur.

5.0 Personal Identity: Name, Date of Birth and Gender.

5.1 Identity: Full Legal Name, Date of Birth and Gender.

5.1.1 The name and date of birth on the face of the license or identification card must be the same as the name and date of birth on the source document presented by the applicant to establish identity. When the individual has only one name, that name should be entered in the last name or

family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, FNU, LNU and NA shall not be used.

- 5.1.2 If the names, as listed on various source documents (to substantiate the applicant's name, date of birth, gender, SSN and lawful status), are different, the applicant must contact the agency who issued the source document and change the name so that the names on all source documents match.

5.2 Identification Source Documents.

- 5.2.1 To establish an applicant's full legal name, date of birth, and gender, the applicant must present one or more of the following source documents:

- 5.2.1.1 Valid, unexpired United States passport;
- 5.2.1.2 Certified copy of a birth certificate filed with a state Office of Vital Statistics or equivalent agency in the individual's state of birth;
- 5.2.1.3 Consular Report of Birth Abroad (CRBA) issued by the United States Department of State, Form FS-240, DS-1350 or FS-545;
- 5.2.1.4 Valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security (DHS) or Citizenship and Immigration Services (CIS);
- 5.2.1.5 Unexpired employment authorization document (EAD) issued by the DHS, Form I-766 or Form I-688B;
- 5.2.1.6 Unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States. Applicants presenting these documents must present a SSN or demonstrate non-work authorization status;
- 5.2.1.7 Certificate of Naturalization issued by the DHS, Form N-550 or Form N-570;
- 5.2.1.8 Certificate of Citizenship, Form N-550 or Form N-561, issued by the DHS;
- 5.2.1.9 Compliant driver license or identification card issued in compliance with the standards established by 6 CFR 37 or its equivalent as amended from time to time;
- 5.2.1.10 Such other documents as the DHS may designate by notice published in the Federal Register.

5.3 Name change/exceptions.

- 5.3.1 If an applicant wants to establish a name other than the name that appears on the original source document, the applicant must provide proof of the name change by presenting a valid marriage certificate, divorce decree, adoption papers or court order substantiating the name change.

- 5.3.2 The driving record alias file contains name changes to enable the division to verify the names the applicant used over time. The division must be notified within 30 days after the name change occurs.

- 5.3.3 Exceptions: Older applicants may not have birth certificates because they were born in rural areas not under the care of a physician or for other reasons. If an applicant is unable to present any of the documents listed in Section 5.2 to prove his identity and date of birth, the applicant should contact the Office of Vital Statistics in the state in which he was born to issue a "delayed or alternate" birth certificate in accordance with state procedures.

- 5.3.4 If the procedures listed in Section 5.3.3 are not feasible, as a last resort, the division may issue a non-compliant identification document provided the applicant has sufficient proof (school records, employment documents, social security card, and other records) demonstrating he has used this name, date of birth and gender consistently over a long period of time. The driving record will be annotated showing the identification documents were approved as exceptions and copies of the documents will be retained on file. Exceptions to name change procedures must be approved by Driver Services Manager, Chief of Driver Services, Deputy Director or Director.

5.4 Date of Birth Changes.

- 5.4.1 To establish the applicant's date of birth, an individual must present at least one document included in Section 5.2 or a court order that establishes a new date of birth.

5.5 Gender/gender changes.

5.5.1 The applicant's personal identity will be verified using one or more of the approved source documents listed in Section 5.2. To change a person's gender, the applicant must complete the Request for Gender Change form detailing the applicant's request to have the gender designation on his/her driver license or identification card changed. The form requires the applicant's medical or social service provider to certify that, in his/her professional opinion, what the applicant's true gender identity is. The medical or social service provider's practice must treat patients, including the applicant, seeking gender identity changes.

6.0 **Lawful Status.**

6.1 All driver license and identification card applicants must establish legal presence in the United States to be eligible for a Delaware compliant or Delaware non-compliant identification document. Proof of an applicant's lawful status will be determined in accordance with 2 **DE Admin. Code** 2220, 2 **Del.C.** 21, 2715(a) and 3103(a). Any document not listed in 2 **DE Admin. Code** 2220 that is presented as proof of lawful status must be approved by the DHS as satisfactory evidence of lawful status. Lawful status must be verified through SAVE.

6.2 Exceptions.

6.2.1 Alternate documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. For example, a document issued by a state Office of Vital Statistics that substantiates the person was born in that state and establishes the individual's name and date of birth in lieu of the original birth certificate.

6.2.2 Persons born overseas to parents who were U.S. citizens and one was a member of the U.S. military, but who are unable to provide a Consular Report of Birth Abroad, Certificate of Naturalization or Certificate of Citizenship may present military and hospital records substantiating these facts after they exhausted their attempts to obtain the aforementioned documents. They may be issued a Delaware non-compliant card upon approval from the Director or Chief of Driver Services. The driving record will be annotated to show they submitted lawful status documents under the exception provision and the documents will be retained on file.

7.0 ~~Name change/exceptions.~~

~~**7.1** If an applicant wants to establish a name other than the name that appears on the original source document, the applicant must provide proof of the name change by presenting a valid marriage certificate, divorce decree, adoption papers or court order substantiating the name change.~~

~~**7.1.1** The State of Delaware does not recognize same sex marriages in this state or any other state as a valid marriage. Therefore, a same sex marriage certificate cannot be accepted as a legal document for an official name change.~~

~~**7.2** The driving record alias file contains name changes to enable the division to verify the names the applicant used over time. The division must be notified within 30 days after the name change occurs.~~

~~**7.3** Exceptions: Older applicants may not have birth certificates because they were born in rural areas not under the care of a physician or for other reasons. If an applicant is unable to present any of the documents listed in Section 5.2 to prove his identity and date of birth, the applicant should contact the Office of Vital Statistics in the state in which he was born to issue a "delayed or alternate" birth certificate in accordance with state procedures.~~

~~**7.4** If the procedures listed in Section 7.3 are not feasible, as a last resort, the division may issue a non-compliant identification document provided the applicant has sufficient proof (school records, employment documents, social security card, and other records) demonstrating he has used this name, date of birth and gender consistently over a long period of time. The driving record will be annotated showing the identification documents were approved as exceptions and copies of the documents will be retained on file. Exceptions to name change procedures must be approved by Driver Services Manager, Chief of Driver Services, Deputy Director or Director.~~

~~**7.5** Date of Birth Changes.~~

~~7.5.1 To establish the applicant's date of birth, an individual must present at least one document included in Section 5.2 or a court order that establishes a new date of birth.~~

~~7.6 Gender/gender changes:~~

~~7.6.1 The applicant's gender will be verified using one of the approved source documents listed in Section 5.2. To change a person's gender, the applicant must provide a letter from a physician licensed in this State or the physician who completed the gender change procedure stating a gender change has been completed and a letter from the applicant requesting the division to change his gender designation in its files.~~

87.0 Social Security Number (SSN).

87.1 Every applicant must present a valid social security source document. The SSN will be electronically verified using the Social Security On-Line Verification (SSOLV) system, and the source document will be electronically stored.

87.2 SSN Exception:

87.2.1 Those applicants whose immigration status places them in a non-working status are ineligible for a SSN. Therefore, those applicants who enter the United States with the source document listed in Section 5.2 may present a letter from the Social Security Administration (SSA) verifying that their non-working immigration status prevents them from being issued a SSN. They are ineligible for a compliant identification card and may be issued a non-compliant identification document that expires with their immigration status expiration date until such time as they have a valid SSN. In every case, the applicant should either return home or his immigration status must be changed allowing him to work by the time he comes back to the DMV for renewal. Therefore, the immigrant must provide a verifiable SSN or an approval letter from the SSA verifying that his non-working immigration status prevents him from obtaining a SSN and new immigration documents at the time of renewal.

87.3 SSN Disclosure Statement:

87.3.1 Disclosure of the applicant's SSN is mandatory. Federal and state laws authorize such disclosure (see Public Law 109-13, and 21 **Del.C.**, Sections 2718(a) and 3104(a)). The division will use SSNs solely for the administration of the driver license and identification card program to ensure accurate identification. SSNs will not be released to businesses or private individuals but may be released to state agencies to carry out their governmental functions. If you obtained an identification document without a SSN and have subsequently obtained a SSN, it is your responsibility to notify the Division of Motor Vehicles within 30 days.

98.0 Principal Residence Address.

98.1 The division and Delaware State Police must be able to contact every identification document holder at the physical location where he lives in this State. Therefore, every applicant must provide two documents that show the individual's name and principal Delaware residence using such documents as utility bills, auto or life insurance policies, W-2 or filed tax forms, voter registration card, bank account records, credit card statements, employment records, signed contract to purchase home in this State, rental agreement or any other document specifically approved by the Chief of Driver Services or Director. These source documents will be electronically stored and when possible, verified. The applicant should notify the division within 30 days after he changes his address. No proof is needed to change a person's address, and it can be accomplished by mail. A Delaware compliant driver license or identification card will not be issued to an applicant unless the applicant has established a principal residence address in this State at the time of application.

98.2 Principal Address Exceptions.

98.2.1 Military members.

98.2.1.1 Members of the U.S. military and their dependents that were issued a Delaware driver license or identification card may renew and retain these identification documents when transferred by the military to another state or country until such time as their active military

PROPOSED REGULATIONS

service is terminated. They cannot upgrade to a Delaware compliant document unless they appear in person and meet all other requirements. Upon renewal the division will only issue non-compliant identification documents to members of the military and their dependents living in another state unless they currently hold a Delaware compliant driver license or identification card issued by Delaware.

98.2.1.2 The eye examination is waived and the digital photograph on file will be used when the military member is unable to renew in person provided the photograph was taken within the last 16 years. Upon renewal the military member must provide the division with a valid, unexpired military ID showing his active duty status, his principal residence address, and mailing address in the out-of-state location. At times the dependent's address will be different than the military member's.

98.2.1.3 Military members and their dependents that are transferred into this State have the option of applying for a Delaware identification document or retaining their out-of-state driver license or identification card while serving in the military in this State.

98.2.2 Homeless - Temporary Lodging.

98.2.2.1 After meeting all other requirements, persons living in temporary lodging such as a homeless shelter or motel may be issued a non-compliant identification document provided they substantiate: (1) they are living in temporary quarters in this State pending their subsequent move into a designated principal residence address; and (2) the agency offering temporary lodging certifies they are allowed residency for 30 or more days, and they may receive mail at this address.

98.2.3 Those Living on Boats or in Recreational Vehicles.

98.2.3.1 Those applicants whose principal residence address is on a personally-owned boat and who do not have another residency in this or any other state must provide proof that the boat is registered in their name in this State; have a 12-month or longer boat slip contract with a Delaware company; and provide a valid mailing address.

98.2.3.2 Those persons whose principal residence address is in a recreational vehicle on land in this State and who do not have a residency in this or any other state must provide proof that they have a 12-month or longer contract with a recognized Delaware RV campground or trailer court, or reside at the Dover Air Force Base RV campground, and have a valid mailing address.

98.2.3.3 Those living on a boat or in a recreational vehicle will be issued a non-compliant identification document because the nature of their residency suggests frequent travel away from the place where they live and the State cannot be assured they can be easily contacted when away from their designated boat slip or campground.

98.2.4 Mailing Address.

98.2.4.1 If mail cannot be delivered to the applicant's principal residence address or if he is living in temporary quarters without mail service, he must provide the division with a mailing address. Those under the confidential address program must submit a mailing address.

98.3 Confidentiality program.

98.3.1 Law Enforcement Confidential Program.

98.3.1.1 States are not required to comply with compliant requirements when issuing compliant driver licenses or identification cards in support of federal, state, or local criminal justice agencies or other programs that require special licensing or identification to safeguard persons in support of their official duties. The Delaware State Police and DOT IT Support Section will manage the confidential licenses and identification cards for all law enforcement and criminal justice agencies. The program will follow the guidelines established under the memorandum of understanding between the Delaware State Police, Department of Transportation and Division of Motor Vehicles.

98.3.2 Victims of domestic violence, dating violence, sexual assault, stalking, or other forms of abuse may use an alternative address under the State's Victims of Abuse Address Confidentiality

Program. The Victims of Abuse Address Confidentiality Program will follow the guidelines established under the memorandum of agreement between Delaware's Department of Justice, Department of Transportation and Division of Motor Vehicles.

409.0 Verification Requirements and Other Restrictions/Limitations.**409.1 Verification of Source Documents.**

409.1.1 The division will verify the source documents used to determine an applicant's name, date of birth, SSN, principal residence address, lawful status, gender or any material changes to this data with the issuer of the source document whenever. An electronic validation of the document and identity data will occur as systems become available or by alternative methods approved by the DHS. All source documents and identification document applications will be scanned and electronically retained by the division.

409.1.2 A SSN check (SSOLV) and lawful status verification check (SAVE) will be conducted upon initial issue and/or renewal when a material change occurs, and whenever a new identification document is produced. If an applicant has previously proven/established United States citizenship, a SAVE check may not be required.

409.1.3 The division may not remotely reissue a Delaware compliant driver license or identification card where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established by an applicant applying in person at a division facility and presentation of an original source document that is verified before the material change is accepted.

409.1.4 A Delaware compliant or non-compliant identification document may be issued remotely as long as the SSN and lawful status is verified.

409.1.5 The division will electronically verify information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so.

409.2 Electronic Verification Details.**409.2.1 Systematic Alien Verification for Entitlements (SAVE).**

409.2.1.1 Any documents listed in Section 5.2 and issued by the DHS, including the I-94, will be verified through the SAVE system or alternate method approved by the DHS. If two DHS-issued documents are shown, only one must be verified. In the event of a non-match, the division must not issue a Delaware compliant or non-compliant identification document to an applicant and must refer the individual to the U.S. Citizenship and Immigration Services for resolution. The division will not issue a compliant or non-compliant identification document unless the applicant has lawful status in the United States.

409.2.2 Social Security On-Line Verification (SSOLV).

409.2.2.1 The division will verify SSNs with the Social Security Administration (SSA) using SSOLV or though another method approved by the DHS. In the event of a non-match with the SSA, the division will use existing procedures to resolve non-matches. If unable to resolve non-matches, the division will deny issuance to those applying for their first Delaware identification document. A Delaware compliant or non-compliant identification document will not be issued until the mismatch condition is resolved. However, upon renewal of a Delaware-issued identification document, the document holder may be issued one 60-day temporary non-compliant identification document to give him time to resolve the mismatch condition with the SSA. The division may establish procedures and exceptions through memorandums.

409.2.3 Commercial Driver License Information Systems (CDLIS).

409.2.3.1 Mandated by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, the division will verify all driver license transactions through CDLIS to ensure the applicant does not hold a commercial motor vehicle compliant or non-compliant identification document in another jurisdiction. If a match is found in another jurisdiction, the applicant must surrender his existing identification document from the other jurisdiction to obtain a Delaware compliant

or non-compliant identification document. During the renewal process, if a match is found with a status of "not eligible", the applicant must downgrade his Delaware commercial compliant or non-compliant identification document to a Class D and be issued a 60-day temporary non-compliant identification document until the status becomes "eligible". At that time the applicant may be reissued his Delaware commercial compliant or non-compliant identification document.

409.2.4 Problem Driver Pointer System (PDPS).

409.2.4.1 In conjunction with the National Driver Registry (NDR), the division will verify all driver license transactions through PDPS to ensure the applicant's eligibility to obtain valid driving authority and carry a compliant or non-compliant identification document. If a match is found from another jurisdiction with a status of "not eligible" during an initial or transfer transaction, the applicant is denied a Delaware compliant or non-compliant identification document until the jurisdiction reports a status of "eligible". During an identification document change, duplicate or renewal process, if a "not eligible" status is found, the applicant is issued a 60-day temporary non-compliant identification document until the status becomes "eligible". At that time the applicant may be reissued his Delaware compliant or non-compliant identification document.

409.2.5 Electronic Verification of Vital Events (EVVE).

409.2.5.1 Birth certificates must be verified by using the EVVE system or other electronic systems whenever the system or records become available. If the document does not appear authentic upon inspection or the data does not match, a Delaware compliant or non-compliant identification document will not be issued until the information is verified. The applicant must return to the issuing agency for resolution.

409.2.6 Department of State Documents.

409.2.6.1 Documents issued by the Department of State will be verified with the Department of State or through methods approved by the DHS when or if the verification system becomes available.

409.2.7 Compliant Documents.

409.2.7.1 Compliant identification documents will be verified with the state of issuance when or if the verification system becomes available.

409.3 Non-Match Verification Results and System Failure Procedures.

409.3.1 Initial Issue and Transfer.

409.3.1.1 The division will deny the initial issuance of a Delaware compliant or non-compliant identification document whenever a verification check (SSOLV, SAVE or EVVS) results in a non-match condition.

409.3.2 Renewal - Missing Source Document.

409.3.2.1 A Delaware resident holding a valid driver license or identification card who is unable to present the required source documents at the time of renewal may be issued a Delaware non-compliant identification document until they can provide the required source documents and meet all other requirements for a Delaware compliant identification document. There is no additional fee for changing a non-compliant identification document to a compliant identification document.

409.3.3 Renewal - Mismatch Condition.

409.3.3.1 Should a mismatch condition occur for those applicants renewing a Delaware-issued identification document, they may be issued a 60-day temporary non-compliant identification document to give them time to resolve the problem with the issuing agency.

409.4 Renewal and Verification System Failure.

409.4.1 If an electronic verification system fails when an applicant is renewing his Delaware-issued identification document, the following may occur depending on which verification system failed:

409.4.1.1 The applicant may be denied issuance;

409.4.1.2 The applicant may be issued a 60-day temporary non-compliant identification document;

- 409.4.1.3 The applicant may be permitted to renew his identification document when the SAVE verification fails if all other systems have passed. However, the SAVE verification must be immediately performed when the system comes back online. The applicant's immigration documents must show an expiration date that can be used on the renewal for a Delaware non-compliant identification document. The comment section of the driving record must be annotated to reflect what transpired.
- 409.4.1.4 Delaware compliant identification documents require full verification of all systems for initial issuance.
- 409.4.2 If a verification system fails when the applicant is applying for his initial Delaware identification document, the application will be denied until the verification check is completed.
- 409.4.3 Regardless of the above procedures, no identification documents will be issued if there is reason to believe the applicant is attempting to commit fraud by presenting altered or fraudulent source documents or by finding non-matching or inconsistent data on various electronic databases, or by other factors that would lead a reasonable person to conclude the applicant is attempting to commit fraud. In such instances, an electronic record will be established, a digital photograph will be captured, the record will be annotated as denied, and fraudulent or altered documents will be confiscated. A division investigator or a law enforcement officer will be asked to investigate to determine future action.
- 409.5 Prohibition Against Holding More Than One Compliant ID Card or More Than One Driver License.
- 409.5.1 The division will ensure the applicant does not have more than one valid compliant or non-compliant driver license issued in this or any other state, thereby supporting the one driver license, one driving record concept as expressed in the Driver License Agreement.
- 409.5.2 An individual may hold only one compliant identification document. Nothing shall preclude an individual from holding a compliant driver license and a non-compliant identification card or vice versa. If a person holds a compliant identification document in another state, he will not be issued a Delaware compliant identification document in this State until the individual or division has terminated the compliant identification document issued by another state.
- 409.5.3 Problem Driver Pointer System (PDPS), Commercial Driver License Information System (CDLIS), National Law Enforcement Telecommunication System (NLETS) and other national systems may be used to electronically verify, within the limits of each network, whether or not an applicant has a valid compliant identification document issued by another state.
- 409.5.4 Motor Vehicle System software performs name and social security cross checks to identify persons who are mistakenly assigned multiple driving or identification card records on the division's files. Multiple records will be combined into one record when discovered.
- 409.5.5 An applicant's identity will be verified each time a Delaware compliant or non-compliant identification document is renewed or reissued to ensure that the individual receiving a Delaware identification document is the same individual to whom the document was originally issued.
- 409.5.6 An applicant must be denied a Delaware-issued compliant identification document until the compliant document issued by another state is terminated or soon to be terminated. If the applicant must terminate a compliant identification document issued by another state, then the division, as allowed under the Driver License Compact, may act on behalf of the applicant and inform that state that Delaware has issued a Delaware compliant identification document in this State and request the other state cancel the one issued by its agency. A Delaware compliant identification document will be issued pending the termination of the out-of-state document.
- 409.6 Other Restrictions/Limitations.
- 409.6.1 If the division discovers a person holds a compliant or non-compliant identification document in multiple or different names issued by this or any other state, the division may deny issuance of an identification document, investigate the matter and suspend the applicant pursuant to Title 21, Section 2733(a)(5).
- 409.6.2 An applicant cannot obtain his initial Delaware driver license or transfer a license from another state if his driver license is suspended or revoked in any state for a violation that would result in a suspension or revocation in this State. Renewal exception: Those applicants renewing a valid

Delaware-issued driver license may be issued a 60-day, non-compliant temporary driver license to give them an opportunity to resolve the out-of-state suspension or revocation. Once the out-of-state suspension or revocation is cleared, the applicant may be issued a valid Class D license. If a driver holds a CDL, he must downgrade to a Class D license before being issued a temporary license.

140.0 Other Mandatory Data Collection and Source Documents Retention.

140.1 Digital photograph images.

140.1.1 An identification document shall not be valid unless it contains the applicant's full facial image and signature. The mandatory facial image must be captured and retained even if no identification document is issued. The applicant for an initial Delaware compliant identification document must appear in person to update his full facial digital image. Upon approval by the Director of the Division of Motor Vehicles, at the Director's discretion, the requirements for this appearance may be waived for those with an existing Delaware-issued compliant or non-compliant identification document whose full facial digital image and electronic signature is on file when circumstances prevent the applicant from appearing on or near the time of renewal or reissue provided the full facial digital image printed on the license was taken within the previous 16 years.

140.1.2 The digital photograph must be full faced and provide an unobstructed view of the person's facial features. This enables the photograph on the license to be used as a means of proper identification for motor vehicle, emergency and public safety purposes. For more specific details consult current Division photograph image procedures. Digital imaging driver license facial recognition one-to-many technology compares each digital photograph taken against all other digital photographs on file to ensure the driver license or identification card applicant does not have multiple identification documents in different or same names on file in this State. One-to-many facial comparisons will be conducted on all initial issuance and transfers of compliant and non-compliant identification documents. This same technology completes a one-to-one verification check by comparing the latest digital photograph taken against all other photographs on an applicant's current record. One-to-one facial comparisons will be conducted on all compliant and non-compliant identification document renewals. This is designed to prevent a digital photograph from appearing on another person's identification document. Whenever the facial recognition technology pinpoints potential duplication, fraud or mistaken assignment of a photo, the applicant will not be issued an identification document until the discrepancy is resolved.

140.1.3 A new digital photo image will be made every time a person appears in person to renew his identification document, have his identification document reissued, materially changed, or have his address changed on his identification document.

140.1.4 If the division issues an identification document without a photo image or one that does not meet division standards, the customer will be notified in writing that he must return to a division facility within seven days to replace the deficient document. If he fails to comply, his identification document status will be changed to "denied", and the driver will be notified of the change. Identification document holders will be denied renewal or reissued documents until the photo image meets division standards.

140.2 Signature.

140.2.1 Every holder of an identification document shall sign an application under the penalty of perjury that the information on the application is true and correct. The applicant will use his normal signature. The identification document shall not be valid until signed by the applicant. By signing the application he acknowledges the following and any other information that may be included on the application in the future:

140.2.2 He is a bona fide resident of Delaware;

140.2.3 Consent to chemical tests of his breath, blood or urine to determine the amount of alcohol or drugs in his blood;

140.2.4 That convicted sex offenders must register with the Delaware State Police within seven days after coming into this State (Megan's Law);

140.2.5 That the division will send personal information pertaining to male applicants under the age of 26 years to the Selective Service for the purpose of registration in the Selective Service System as required by federal and state laws;

140.2.6 That he is physically and mentally able to safely operate a motor vehicle;

140.2.7 That he must report if he holds a license in another state or if his driving privileges are suspended or revoked in any state.

140.3 Retaining Source Documents.

140.3.1 The source documents submitted by the applicant to the division are used to determine the person's name, date of birth, gender, SSN (if eligible), address of principal residence, unless enrolled in a state address confidentiality program, and lawful status and shall be retained by the division in either paper or electronic format. The identification document application signed by the applicant will also be retained.

140.4 Miscellaneous.

140.4.1 For identification purposes, the division will also collect the applicant's height, weight, and eye color based upon verbal information provided by the applicant.

121.0 Source Document Retention Period.

121.1 At a minimum the division will retain the following documents including copies of the application, declarations, source documents and documents used to establish all names recorded by the division. The division will protect any personally identifiable information collected. The division may retain these documents for a longer time period than the period specified in the following:

121.2 The full facial image/photograph will be retained by the Department of Transportation for at least five years if no identification document is issued and at least two years beyond the expiration date of the identification document;

121.3 All paper copies of source documents must be retained for a minimum of seven years;

121.4 Microfiche documents must be retained for a minimum of ten years;

121.5 Digital images of source documents must be retained for a minimum of ten years;

121.6 Digital, microfiche and paper identification document applications and declarations will be retained for a minimum of ten years;

121.7 All photograph images must be stored and be retrievable by the division if properly requested by statute or regulation;

~~12.8 Upon request by an applicant, the division may record and retain the applicant's name, date of birth, certificate numbers, date filed, and issuing agency in lieu of an image or copy of the applicant's birth certificate if such procedures are required by State law.~~

132.0 Division Databases.

132.1 The Division must maintain a motor vehicle database that contains, at a minimum:

132.1.1 All data fields printed on identification documents issued by this State, individual serial numbers of the documents and SSNs;

132.1.2 A record of the full legal name and recorded name, as applicable, without truncation;

132.1.3 All additional data fields included in the machine readable zone (MRZ) but not printed on the identification document; and

132.1.4 Motor vehicle driver's histories, including motor vehicle violations, revocations, disqualifications, suspensions, and points on driver's licenses.

132.1.5 The Division must protect the security of personally identifiable information as prescribed in State law and information technology policies and procedures.

143.0 Severability.

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

154.0 Effective Date.

The following regulation shall be effective ten 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.**, Section 10118(e). Delaware compliant identification documents will become available once Delaware self certifies to the DHS and the DHS determines Delaware has met the requirements of 6 CFR 37 or its equivalent as amended from time to time, the division may issue Delaware compliant identification documents, which will be accepted by federal agencies for official purposes.

13 DE Reg. 1226 (03/01/10)

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.

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

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

REGULATORY IMPLEMENTING ORDER**775 New Teacher Hiring Date Reporting****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation, 775 New Teacher Hiring Date Reporting. This regulation is a result of Senate Bill No. 16 as amended by Senate Amendment No. 1 and House Amendment No. 1 passed by the 146th General Assembly and signed by the Governor. The legislation requires the Department to promulgate a regulation to ensure that hiring information collected and reported by the school districts uses uniform terminology.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 5, 2011, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation, 775 New Teacher Hiring Date Reporting in order to ensure that hiring information collected and reported by the school districts uses uniform terminology as noted in the summary above.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation, 775 New Teacher Hiring Date Reporting. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE**

Admin. Code by adding a new regulation, 775 New Teacher Hiring Date Reporting attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** by adding a new regulation, 775 New Teacher Hiring Date Reporting 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** by adding a new regulation, 775 New Teacher Hiring Date Reporting amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** by adding a new regulation, 775 New Teacher Hiring Date Reporting 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 August 18, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August 2011.

Department of Education

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

Approved this 18th day of August 2011

775 New Teacher Hiring Date Reporting

1.0 Purpose

The purpose of this regulation is to outline the criteria and process related to new teacher hiring data collection and reporting by school districts as required by 14 **Del.C.** §1725.

2.0 Definitions

"Contract Offer Date" shall mean the date an authorized agent or representative of the district notifies the successful candidate of the intent to hire.

"Critical Curricular Area " shall mean an area identified as a critical area by the Department of Education and approved by the State Board of Education.

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

"Department" means the Delaware Department of Education.

"New Teacher Hiring Date" shall mean, for purposes of this regulation, the Contract Offer Date as defined herein.

"Position Availability Date" shall mean the date the district Human Resources Office knows the available position is released for a new full-time teacher hire.

"Position Title" shall mean the appropriate teaching position as offered to the teacher from the list of teacher position titles as provided in the Delaware Educator Data System (DEEDs).

"Position Type" shall mean the appropriate instructional level of the teacher or whether the teacher is in a critical curricular area.

3.0 New Teacher Hiring Data Report

On or before December 1st of each year, each District shall annually submit a New Teacher Hiring Date Report to the Department on a format approved by the Department that includes, but is not

limited to, Contract Offer Date, Position Availability Date, and Position Title. The report shall reflect the district new teacher hiring activity from the "estimated unit count" as that term is defined pursuant to 14 Del.C. §1704 until November 15th of that same calendar year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 922

REGULATORY IMPLEMENTING ORDER

922 Children With Disabilities Subpart A, Purposes and Definitions

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 DE Admin. Code 922, Children With Disabilities, Subpart A, Purposes and Definitions.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 Del.C. Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 922 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 DE Admin. Code 922 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2011 in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities related to the use of the term "intellectual disability" in lieu of the term "mental retardation" as it appears in Section 3.0. The Department agrees, and has made the revisions.

A public hearing was held on July 27, 2011 and there were no participants.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 922 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 922. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 922, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 922 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 922 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 922 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 18, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August, 2011.

Department of Education

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

Approved this 18th day of August, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

922 Children with Disabilities Subpart A, Purposes and Definitions

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

1.0 Purposes

1.1 *Regulations 922 to 929 (14 DE Admin. Code 922 to 929) implement, complement and supplement the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 et seq.), its implementing regulations (34 CFR part 300), and 14 Del.C. Ch. 31 (with the exception of Subchapter IV). They are designed and intended to insure compliance with state and federal laws concerning the education of children with disabilities. To the extent these regulations conflict with the federal regulations implementing Part B of the Individuals with Disabilities Education Act, the federal regulations shall prevail. Further, the purposes of these regulations are:*

- 1.1.1 To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- 1.1.2 To ensure that the rights of children with disabilities and their parents are protected;
- 1.1.3 To assist local educational agencies, educational service agencies, and *public* agencies to provide for the education of all children with disabilities; and
- 1.1.4 To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d); 14 **Del.C.** §3110)

10 DE Reg. 1816 (06/01/07)

2.0 Applicability of These Regulations to State and Local Agencies

2.1 These regulations apply to the State of Delaware as a recipient of payments under Part B of the Individuals with Disabilities Education Act, as amended.

- 2.2 Public agencies within the State of Delaware. The provisions of these regulations apply to all political subdivisions of the State of Delaware that are involved in the education of children with disabilities, including:
- 2.2.1 The Delaware Department of Education.
 - 2.2.2 Local educational agencies (“LEAs”), educational service agencies (“ESAs”), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.
 - 2.2.3 *Any other State agency or school involved in the education of children with disabilities, including but not limited to, the Delaware School for the Deaf, the Delaware Autism Program, the Department of Services for Children, Youth and Their Families, and its divisions, programs, or schools, and the Department of Health and Social Services, and its divisions, units, or programs.*
 - 2.2.4 *Any juvenile or adult correctional facility involved in the education of children with disabilities, including but not limited to, facilities operated by the Department of Services for Children, Youth and Their Families and its divisions, and the Department of Corrections (through “the Prison Education Program”) and are binding on each public agency in Delaware that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.*
 - 2.2.5 Private Schools and Facilities: Each public agency in the State of Delaware is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of 14 **DE Admin. Code** 923.48.0.

(Authority: 20 U.S.C. 1412; 14 **Del.C.** §3110th

10 DE Reg. 1816 (06/01/07)

3.0 Definitions Applicable to Regulations 922 to 929:

“**Act**” means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a); 14 **Del.C.** §3110th

“**Assistive Technology Device**” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1); 14 **Del.C.** §3110th

“**Assistive Technology Service**” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2); 14 **Del.C.** §3110)

“**Charter School I**” means given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221(i)(1); 14 **Del.C.** §§3110 and 505(a))

“Child with a Disability” means a child evaluated in accordance with 14 DE Admin. Code 925.4.0 through 925.12.0 as having ~~mental retardation~~ **intellectual disability**, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these regulations as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

Except as further provided in this paragraph, if it is determined, through an appropriate evaluation under 14 DE Admin. Code 925.4.0 through 925.12.0, that a child has one of the disabilities identified in the definitions of disability terms below, but only needs a related service and not special education the child is not a child with a disability under these regulations. If, consistent with the definition of Special Education in this section, the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

Child with a disability for children aged three (3) through nine (9), subject to the conditions described in 14 DE Admin. Code 923.11.0, includes a child who is experiencing developmental delays, as defined in the eligibility requirements for 14 DE Admin. Code 925, measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

Definitions of Disability Terms: The specific disability terms used in this definition of a child with a disability are defined as follows:

“Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the other criteria in this definition are satisfied.

Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in this section.

“Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

“Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

“Emotional Disturbance” means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.

“Hearing Impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. *The term “hard of hearing” is sometimes used as a substitute for the term “hearing impairment” and shall be considered an equivalent term for purposes of these regulations.*

~~["Mental Re-tardation Intell ectual Di sability"]~~ means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. The terms "mental [disability retardation]" or "[intellectual mental] disability" are sometimes used as substitutes for t he term ["mental-retardation intellectual disability"] and shall be considered equivalent terms for purposes of these regulations.

"Multiple Disabilities" means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. ~~Nothing in these regulations shall be construed to require that a child with a disability be identified or classified as having multiple disabilities so long as the child receives the special education and related services the child needs to receive a free appropriate public education.~~

"Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

"Other Health Impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, and adversely affects a child's educational performance.

"Specific Learning Disability" means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, or mental retardation.

"Speech o r La nguage Impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

"Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

"Visual Impairment Including Blindness" means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30); 14 Del.C. 3110)

"Consent" means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was

revoked). If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(Authority: 20 U.S.C. 1414(a)(1)(D); 14 Del.C. §3110)

14 DE Reg. 1053 (04/01/11)

“Core Academic Subjects” means English, reading or language arts, mathematics, science, world languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4); 14 Del.C. §3110)

“Day” means calendar day unless otherwise indicated as business day or school day.

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“Business Day” means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“School Day” means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“Department of Education” or “DOE” means the Delaware Department of Education

“Educational Service Agency” means a regional public multi service agency authorized by the State of Delaware to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State of Delaware. The term includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school and includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5); 14 Del.C. §3110)

“Elementary School” means a nonprofit institutional day or residential school (including a public elementary charter school) that provides elementary education, as determined under Delaware law.

(Authority: 20 U.S.C. 1401(6); 14 Del.C. §3110)

“Equipment” means machinery, utilities, and built in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7); 14 Del.C. §3110)

“Evaluation” means procedures used in accordance with 14 DE Admin. Code 925.4.0 through 925.12.0 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c); 14 Del.C. §3110)

“Excess Costs” means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting amounts received under Part B of the Act; under Part A of Title I of the ESEA; under Parts A and B of Title III of the ESEA; and any State or local funds expended for programs that would qualify for assistance under any of the foregoing federal programs, but excluding any amounts for capital outlay or debt service.

(Authority: 20 U.S.C. 1401(8); 14 Del.C. §3110)

“Free Appropriate Public Education” or “FAPE” means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the

standards of the DOE, including the requirements of these regulations; include an appropriate preschool, elementary school, or secondary school education in Delaware; and are provided in conformity with an individualized education program (IEP) that meets the requirements of 14 **DE Admin. Code** 925.20 through 925.24.0; provide significant learning to the child with a disability; and confer meaningful benefit on the child with disability gauged to the child with a disability's potential.

(Authority: 20 U.S.C. 1401(9); 14 **Del.C.** §3110)

14 DE Reg. 1053 (04/01/11)

“Highly Qualified Special Education Teachers” means:

- 1.0 Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term “highly qualified” has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also include the requirements described in 2.0 of this definition, and the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs 3.0 and 4.0 of this definition.
- 2.0 Requirements for special education teachers in general. When used with respect to any public elementary school or secondary school special education teacher teaching in Delaware, highly qualified requires that the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in Delaware as a special education teacher, (except that when used with respect to any teacher teaching in a public charter school, “highly qualified” means that the teacher meets the certification or licensing requirements set forth in Delaware’s charter school law (14 **Del.C.** Ch. 5)). In addition, the teacher must not have had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis and must hold at least a bachelor's degree.
 - 2.1 A teacher will be considered to meet the standard in 2.0 of this definition if the teacher is participating in an alternative route to special education certification program under 14 **Del.C.** Ch. 12, Subch. VI.
 - 2.2 Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the requirements in 2.0 of this definition or the teacher holds at least a bachelor's degree and meets the requirements in 2.1 of this definition.
- 3.0 Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), “highly qualified” means the teacher, whether new or not new to the profession, must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards.
- 4.0 Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, “highly qualified” means that the teacher must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c); or, in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not

new to the profession under 34 CFR 200.56(c); or, in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two (2) years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c).

- 5.0 Rule of construction: Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular DOE or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under 14 **DE Admin. Code** 923.51.0 through 923.53.0 about staff qualifications with the DOE.
- 6.0 Applicability of definition to ESEA; and clarification of new special education teacher. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA. For purposes of 4.0 of this definition, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.
- 7.0 Private school teachers not covered. The requirements in this definition do not apply to private school teachers hired or contracted by local education agencies to provide equitable services to parentally placed private school children with disabilities under 14 **DE Admin. Code** 923.38.

(Authority: 20 U.S.C. 1401(10); 14 **Del.C.** §3110)

“Homeless Children” has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

(Authority: 20 U.S.C. 1401(11); 14 **Del.C.** §3110)

“Include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

Authority: 20 U.S.C. 1221e-3; 14 **Del.C.** §3110)

“Individualized Education Program” or **“IEP”** means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0.

(Authority: 20 U.S.C. 1401(14); 14 **Del.C.** §3110)

“Individualized Education Program Team” or **“IEP Team”** means a group of individuals described in 14 **DE Admin. Code** 925.21.0 that is responsible for developing, reviewing, or revising an IEP for a child with a disability

(Authority: 20 U.S.C. 1414(d)(1)(B); 14 **Del.C.** §3110)

“Institution of Higher Education” has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); an also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

(Authority: 20 U.S.C. 1401(17); 14 **Del.C.** §3110)

“Limited English Proficient” has the meaning given the term in section 9101(25) of the ESEA.

(Authority: 20 U.S.C. 1401(18); 14 **Del.C.** §3110)

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

(Authority: 20 U.S.C. 1401(19); 14 **Del.C.** §3110)

“Native Language” means, when used with respect to an individual who is limited English proficient, the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except that when used in reference to direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, “native language” means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C.1401(20); 14 **Del.C.** §3110)

“Parent” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver’s School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.19.0 or section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 **Del.C.** §3110)

“Parent Training and Information Center” means a center assisted under sections 671 or 672 of the Act, *and includes the Parent Information Center of Delaware, Inc.*

(Authority: 20 U.S.C. 1401(25); 14 **Del.C.** §3110)

“Personally Identifiable” means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier (such as the child's social security number or student number); or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a); 14 **Del. C.** §3110)

“Public Agency” means the Department of Education, LEAs, ESAs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11); 14 **Del.C.** §3110)

“Related Services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, nothing in this exception limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in the preceding paragraph) that are determined by the IEP Team to be necessary for the child to receive FAPE; or limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external

component of a surgically implanted device to make sure it is functioning properly, as required in 14 DE Admin. Code 923.13.2.

Definitions of Related Services Terms: The specific related services terms used in this definition are defined as follows:

“Audiology” includes the identification of children with hearing loss, and determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parents, and teachers regarding hearing loss; and determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

“Counseling Services” includes services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

“Early identification and Assessment of Disabilities in Children” means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

“Interpreting Services” means the following when used with respect to children who are deaf or hard of hearing: Oral transliteration services; cued language transliteration services; sign language transliteration and interpreting services and transcription services such as communication access real time translation (CART), C Print, and Type Well; and special interpreting services for children who are deaf blind.

“Medical Services” includes services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

“Occupational Therapy” means services provided by a qualified occupational therapist; and includes: improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.

“Orientation and Mobility Services” means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching children the following, as appropriate:

Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

The use of a long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

To understand and use remaining vision and distance low vision aids; and

Other concepts, techniques, and tools.

“Parent Counseling and Training” means assisting parents in understanding the special needs of their child, providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

“Physical Therapy” means services provided by a qualified physical therapist.

“Psychological Services” includes administering psychological and educational tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.

“**Recreation**” includes assessment of leisure function, therapeutic recreation services recreation programs in schools and community agencies and leisure education.

“**Rehabilitation Counseling Services**” means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

“**School Health Services**” and “**School Nurse Services**” means health services designed to enable a child with a disability to receive FAPE as described in the child’s IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

“**Social Work Services**” in schools includes preparing a social or developmental history on a child with a disability; group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child’s living situation (home, school, and community) that affect the child’s adjustment in school; mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

“**Speech Language Pathology Services**” includes identifying children with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, children, and teachers regarding speech and language impairments.

“**Transportation**” includes travel to and from school and between schools, travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26); 14 Del.C. §3110)

“**Scientifically Based Research**” has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi); 14 Del.C. §3110)

“**Secondary School**” means a nonprofit institutional day or residential school, (including a public secondary charter school) that provides secondary education, as determined under Delaware law, except that it does not include any education beyond grade twelve (12).

(Authority: 20 U.S.C. 1401(27); 14 Del.C. §3110)

“**Services Plan**” means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 14 DE Admin. Code 923.32.0, and is developed and implemented in accordance with 14 DE Admin. Code ~~923.32.0~~ 923.37.0 through 923.39.0.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 Del.C. §3110)

“**Secretary**” means the Secretary of Education of the Delaware Department of Education unless otherwise indicated in the text of these regulations.

(Authority: 14 Del.C. §3110)

“**Special Education**” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education.

Special education includes each of the following, if the services otherwise meet the requirements of the preceding paragraph: Speech-language pathology services, travel training and vocational education.

Definitions of Special Education Terms: The specific terms used in the definition of special education are defined as follows:

“At No Cost” means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

“Physical Education” means the development of physical and motor fitness, fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports) and includes special physical education, adapted physical education, movement education, and motor development.

“Specially Designed Instruction” means adapting, as appropriate to the needs of an eligible child under these regulations, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

“Travel Training” means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

“Vocational Education” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29); 14 Del.C. §3110)

“State” means the State of Delaware

(Authority: 20 U.S.C. 1401(31); 14 Del.C. §3110)

“State Educational Agency” or **“SEA”** means the Delaware Department of Education.

(Authority: 20 U.S.C. 1401(32); 14 Del.C. §3110)

“Supplementary Aids and Services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 14 DE Admin. Code 923.14 through 923.16.0.

(Authority: 20 U.S.C. 1401(33); 14 Del.C. §3110)

“These Regulations” means 14 DE Admin. Code 922 through 929, *Children with Disabilities, Sub Parts A through I* (14 DE Admin. Code 922 to 929) unless the context clearly indicates otherwise.

(Authority: 14 Del.C. §3110)

“Transition Services” means a coordinated set of activities for a child with a disability that is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; and is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.

Transition services include instruction, related services, community experiences, the development of employment and other post school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34); 14 Del.C. §3110)

“Universal Design” has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35); 14 Del.C. §3110)

“**Ward of the State**” means a child who, as determined by the state where the child resides, is a foster child, a ward of the state; or in the custody of a public child welfare agency, including, but not limited to, the Delaware Department of Services for Children, Youth, and Their Families.

(Authority: 20 U.S.C. 1401(36); 14 **Del.C.** §3110)

10 DE Reg. 1816 (06/01/07)

14 DE Reg. 1053 (04/01/11)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 923

REGULATORY IMPLEMENTING ORDER

923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 923, Children With Disabilities, Subpart B, General Duties and Eligibility of Agencies.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* (“IDEA”).

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 923 as part of a comprehensive review of Delaware’s special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 923 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2011, in the form hereto attached as *Exhibit “A”*. The Department received comments from the Governor’s Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities endorsing the amendments.

A public hearing was held on July 27, 2011 and there were no participants.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 923 as part of a comprehensive review of Delaware’s special education regulations, undertaken in response to changes in federal special education regulations.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923, attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 923 shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 923 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 18, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August, 2011.

Department of Education

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

Approved this 18th day of August, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

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

*Please note that no changes were made to the regulation as originally proposed and published in the June 2011 issue of the *Register* at page 1292 (14 DE Reg. 1292). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 925

REGULATORY IMPLEMENTING ORDER**925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs****I. Summary of the Evidence and Information Submitted**

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 925, Children With Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 925 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 925 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the

education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2011 the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities related to preferred language when referring to children with disabilities in state regulations, as well as suggested revisions related to the age of eligibility for special education and related services. The Department agrees and has made the recommended changes.

A public hearing was held on July 27, 2011 and there were no participants.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 925 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

The Secretary also makes the following specific findings:

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 925 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 925 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 18, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August, 2011.

Department of Education

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

Approved this 18th day of August, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

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

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

[925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 926

REGULATORY IMPLEMENTING ORDER

926 Children With Disabilities Subpart E, Procedural Safeguards for Parents and Children**I. Summary of the Evidence and Information Submitted**

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 DE Admin. Code 926, Children With Disabilities, Subpart E, Procedural Safeguards for Parents and Children.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 Del.C. Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 926 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 DE Admin. Code 926 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities related to the time period for parental notice of a disciplinary removal. The Councils support the change as an improvement over the current standard.

A public hearing was held on July 27, 2011 and there were no participants.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 926 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 926. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 926, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 926 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 926 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 926 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on August 18, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August, 2011.

Department of Education

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

Approved this 18th day of August, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

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

*Please note that no changes were made to the regulation as originally proposed and published in the June 2011 issue of the *Register* at page 1295 (14 DE Reg. 1295). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 927

REGULATORY IMPLEMENTING ORDER**927 Children With Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information****I. Summary of the Evidence and Information Submitted**

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 DE Admin. Code 927, Children With Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 Del.C. Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 927 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 DE Admin. Code 927 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the amendments.

A public hearing was held on July 27, 2011 and there were no participants.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 927 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 927. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 927, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 927 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 927 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 927 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 18, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August, 2011.

Department of Education

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

Approved this 18th day of August, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

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

*Please note that no changes were made to the regulation as originally proposed and published in the June 2011 issue of the *Register* at page 1297 (14 DE Reg. 1297). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 928

REGULATORY IMPLEMENTING ORDER

928 Children With Disabilities Subpart G, Use and Administration of Funds

I. Summary of the Evidence and Information Submitted

The Secretary of Education, with the consent of the State Board of Education, proposed to amend regulation 14 **DE Admin. Code** 928, Children With Disabilities, Subpart G, Use and Administration of Funds.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del. C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA").

The Secretary, with the consent of the State Board of Education, proposed to amend Regulation 928 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the IDEA.

The revisions to 14 **DE Admin. Code** 928 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2011, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities related to funding and the September 30th unit count date; use of the term "paraprofessionals" in 3.2.2; suggested revision to the list of professional staff in 3.2.5; omission of "preschool" under 3.2.5.1; review by the IEP team of the needs based funding unit and assurances; and a request to have the unit funding level designated on the IEP. The Department has agreed to some of the recommended revisions; however, will not be accepting all recommendations. A letter to the Councils will be provided to the Councils related to the recommendations.

The Department has agreed to the following recommendations and the changes have been made to the regulation:

- The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons With Disabilities observed that while Section 3.2.5.1 requires districts to submit documentation to DOE to certify that basic, intensive, and complex units earned are used to provide services to the children counted in those units, Section 3.2.5.1 does not reference preschool units. DOE inadvertently omitted a reference to preschool units in Section 3.2.5.1. The Department has revised Section 3.2.5.1 to identify preschool units in alignment with the Delaware Code and 14 **Del.C.** §1703.
- In addition, the Councils requested the DOE adopt an explicit reference to 14 **Del.C.** §1703(d)(8) to requiring teams to discuss and review the needs based funding unit and assure in writing that adequate resources are available to implement the IEP. The Department has revised Section 4.0 to explicitly reference this statutory requirement.

A public hearing was held on July 27, 2011 and there were no participants.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 928 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 928. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 928, attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 928 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 928 shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 928 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 18, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August, 2011.

Department of Education

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

Approved this 18th day of August, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

928 Children with Disabilities Subpart G Use and Administration of Funds

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

1.0 Administration of Funds: DOE Audit

- 1.1 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the **Delaware Code**, these regulations and 14 **DE Admin. Code** 701.
- 1.2 Child Count procedures: Each public agency shall participate in the annual count of children served under the Act in accordance with procedures and forms developed by the DOE. Such procedures and forms shall conform to applicable state and federal requirements, regulations and written instructions.
- 1.3 Unit count audit and recovery of funds for ~~misclassified~~ children counted in needs based funding levels incongruent with IEP needs identified: DOE shall conduct a random file audit in each LEA as soon as possible after September 30.
 - 1.3.1 The purpose of the audit is to ensure that students reported as part of a special education unit as of September 30 are eligible for special education services as part of that unit on or prior to September 30 and that such services are being provided. The audit may be joined with other monitoring activities in the discretion of the DOE.
 - 1.3.2 The ~~DOE shall implement~~ specific procedures used to authenticate the count of children with disabilities shall be provided through written guidance by the DOE.
 - 1.3.3 Nothing in this regulation limits DOE's monitoring and general supervisory authority or its ability to ~~identify children who have been misclassified~~ identify any federal or state regulatory non-compliance at times other than the audit of State units as of September 30, including as part of other routine monitoring activities.

(Authority: 14 **Del.C.** §§122 and 3110)

14 DE Reg. 1069 (04/01/11)

2.0 Reserved

3.0 State Funding for Children with Disabilities

- 3.1 State funding under the unit system is contingent upon: the proper identification of children with disabilities in accordance with Title 14 of the *Delaware Code* and these regulations; and a satisfactory DOE audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count.
- 3.2 Paraprofessional Positions for Services to Children with Disabilities authorized under 14 *Del.C.* §1324.
 - 3.2.1 As used in 3.2, the term “**Paraprofessional**” means “**Paraeducator**” “**Instructional Paraeducator**” and “**Service Para educator**” all as defined in 14 *DE Admin. Code* 1584.2-0 1517.
 - 3.2.2 All paraprofessionals shall work under the supervision of teachers.
 - 3.2.3 ~~The following positions are authorized:~~
 - 3.2.3.1 ~~Trainable Mental Disability Unit: One classroom teacher (or in lieu of a teacher, two paraprofessionals) may be employed, as long as the number of paraprofessionals does not exceed the number of teachers in any approved special school or program. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days.~~
 - 3.2.3.2 ~~Severe Mental Disability Unit: One classroom teacher and one classroom paraprofessional may be employed per unit in any approved special school or program. In lieu of the teacher, two additional paraprofessionals may be employed, as long as the number of paraprofessionals does not exceed the number of teachers in any given school or program by a 2 to 1 ratio. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days.~~
 - 3.2.3.3 ~~Autism Unit: One teacher and one paraprofessional may be employed per unit. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days, or in the event of additional student attendance as authorized in 14 *Del.C.* §1703(e), such additional time not exceeding 230 teacher days.~~
 - 3.2.3.4 ~~Orthopedic Impairment Unit: One classroom teacher and one paraprofessional may be employed per unit in any approved special school or program.~~
 - 3.2.3.5 ~~Hearing Impairment Unit: One classroom teacher and one paraprofessional per unit in grades K to 3, one classroom teacher and one paraprofessional per unit in grades 4 to 12, and one clerk aide for the parent child program may be employed in any approved special school or program.~~
 - 3.2.3.6 ~~Deaf-Blindness Unit: One classroom teacher and one classroom paraprofessional may be employed per unit. In lieu of the teacher, two additional paraprofessionals may be employed as long as the number of paraprofessionals does not exceed the number of teachers in any approved special school by a 2 to 1 ratio. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred and twenty two (222) days.~~
 - 3.2.3.7 ~~Intensive Learning Center Unit: One classroom teacher (or in lieu of a teacher, two paraprofessionals) may be employed as long as the number of paraprofessionals does not exceed the number of teachers in any center, and that all paraprofessionals work under the direct supervision of teachers.~~
 - 3.2.43 ~~The use and ratio of paraprofessionals to teachers shall be dependent upon the rationale developed by the public agency.~~
 - 3.2.4 The DOE will authorize the needs based funding rubric which reflects the primary services and costs associated with the needs based funding units.
 - 3.2.4.1 The rubric authorized by DOE will be consistent with the conditions for needs based units described in Title 14 Chapter 17 1703(d) and must be used by all districts and charter schools.
 - 3.2.4.2 The rubric will be published electronically annually through DOE’s unit count web based portal.

- 3.2.4.3 Districts and charter schools shall assign each student with a disability as a preschool, basic, intensive or complex unit based on the educational needs of the student identified in the Individualized Education Program (IEP).
- 3.2.5 All units generated by special education students are to be used for professional staff to support students with disabilities to include special education teachers, school psychologists, speech language pathologists, reading specialists, educational diagnosticians, counselors, class aides and social workers. All other conditions as described in Title 14, Chapter 17 regarding needs based unit funding apply.
- 3.2.5.1 All districts and charter schools will submit annual documentation to the DOE certifying that [preschool,] basic, intensive and complex units earned are used to provide services to children counted in those units.
- 3.2.5.2 Forms for annual certifying documentation for needs based units will be published electronically through DOE's web based unit count portal.
- 3.3 School Nurses (as authorized by 14 Del.C. §1310)
- 3.3.1 A nurse shall be employed for a combination of eight (8) or more complex or intensive units of children or a combination with autism, orthopedic impairment, trainable mental disability, severe mental disability, thereof when those units are counted through a special school or program, and for hearing impairment as per statutory formula, i.e., 40:1. Such units shall be subtracted from the LEA's total units so that they are not counted twice.
- 3.4 Other Positions for Services to Children with Disabilities
- 3.4.1 Any special school or program with an enrollment of 10 or more units may employ a secretary (for 12 months per year) and proportional secretarial services for less than 10 units. Such units must be subtracted from the LEA's total units so that they are not counted twice.
- 3.4.2 Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care.
- 3.4.3 An instructional media specialist shall be assigned to the school for the ~~hearing-impaired deaf~~ when there is a minimum of ~~40 units~~ 60 children.
- 3.4.4 Whenever the DOE with the approval of the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, ~~a principal for 8 or more such units of deaf blind children. If a principal is assigned responsibility for such a program for fewer than 8 units, the support for the assignment shall be in the same ratio as the number of authorized units is to 8 units.~~
- (Authority: 14 Del.C. §§122 and 3110)
- 4.0 **[Reserved Team Assurance**
- At the completion of an IEP meeting for a child with a disability, the team will discuss and review the needs based funding unit and assure in writing that adequate resources are available to implement the IEP.]*
- 5.0 **Federal Sub Grants to LEAs**
- 5.1 DOE shall distribute any funds the State receives as part of its federal allocation under Part B of the Act, and does not reserve for permissible state activities, to LEAs (including public charter schools that operate as LEAs) in Delaware that have established their eligibility under section 613 of the Act (20 U.S.C. 1413) and these regulations for use in accordance with Part B of the Act.
- 5.2 Allocations to LEAs: The amount of the allocation DOE makes to eligible LEAs for each fiscal year Delaware receives a federal allocation under Part B of the Act shall be determined in accordance with 34 C.F.R. §300.705(b) and corresponding federal guidance and instructions.
- 5.3 Reallocation of funds: If DOE determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the DOE may reallocate any portion of the federal funds under these regulations that are not needed by that LEA to

provide FAPE, to other LEAs in Delaware that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs.

- 5.4 *Application required: Each LEA seeking a sub grant shall complete and submit an application to DOE. The application shall: be submitted during the time frames established by DOE; be completed on or in such written or electronic form as DOE requires; include any certifications and assurances required by DOE; and be consolidated with the LEA's application for other federal programs to the extent permitted by DOE procedures.*
- 5.5 Review of application: appeal of adverse determination
- 5.5.1 *DOE shall review each time ly sub grant application, notify the LEA whether its application is approved or not approved, and advise the LEA of any conditions which must be met in order for the application to be approved.*
- 5.5.2 Any amendment or revision to an LEA application shall be submitted in such written or electronic form as DOE requires and reviewed using the same requirements and procedures used for an initial application.
- 5.5.3 In the event that DOE and the LEA cannot negotiate and effect an approved sub grant application, DOE shall notify the LEA in writing of its intent to disapprove all or part of the application. This notice shall also inform the LEA that it is entitled to a hearing before the DOE's final decision to disapprove all or part of the application, and shall advise the LEA of the procedure for requesting a hearing.
- 5.5.4 An LEA shall have thirty (30) days to request a hearing, beginning on the date of the DOE's notice to the LEA of its right to a hearing. The request for a hearing must be filed in writing with the Secretary and shall explain why the LEA believes its application should be approved.
- 5.5.5 The LEA shall have access, at a reasonable time and location, to all of the Department's records pertaining to the application and to the applications of other LEAs.
- 5.5.6 The DOE shall schedule and conduct a hearing on the record within 30 days of the Secretary's receipt of a hearing request from the LEA. *Except as otherwise specifically provided in this section, the hearing shall be conducted in accordance with Delaware Department of Education's "Hearing Procedures and Rules" as from time to time amended.*
- 5.5.7 No later than 10 days after the hearing, the DOE shall issue its written ruling, which shall include findings of fact and the reasons for its decision.
- 5.5.7.1 If the DOE determines that its intention to disapprove all or part of the application was contrary to applicable state or federal law, the Department shall rescind its intent to disapprove the application and shall issue an approval consistent with the requirements of such laws.
- 5.5.7.2 If the DOE issues a final disapproval of all or part of the application, the LEA may appeal that decision to the Secretary of the United States Department of Education. The LEA must file a notice of appeal with the Secretary of the United States Department of Education within 20 days of the final disapproval of the Delaware Department of Education. *A copy of the LEA's federal notice of appeal must be filed with the Delaware Department of Education when it is filed with the United States Secretary of Education.*

(Authority: 20 U.S.C. 1411(f); 14 Del.C. §3110; see also 34 CFR 76.401(d))

6.0 to 17.0 Reserved

18.0 Facilities, Equipment and Materials

- 18.1 *All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.*
- 18.2 Compliance with certain regulations. *All facilities which house programs for children with disabilities shall meet State and federal standards with regard to space, health, fire, safety, and barrier free regulations, including as applicable:*

- 18.2.1 Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Standards for Buildings and Facilities”); or
- 18.2.2 Appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).
- (Authority: 20 U.S.C. 1404; 14 **Del.C.** §3110)

Subpart H Reserved

1.0 through 18.0 Reserved

Note to Readers: Subpart H of the federal regulations addresses the way the United States Department of Education’s allocates Preschool Grants for Children with Disabilities to the State, i.e., no further state level regulation is necessary to implement Subpart H. The subpart is reserved, however, to preserve the integrity of the federal numbering system to the extent feasible under the State regulatory numbering system.

10 DE Reg. 1816 (06/01/07)

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

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

ORDER

State Residency

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Division of Social Services Manual regarding *State Residency*. 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 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2011 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 and effect of this proposal is to amend the Division of Social Services Manual (DSSM) regarding *State Residency*.

Statutory Authority

- 42 CFR §435.403, *State residence*;
- State Medicaid Manual, Eligibility Requirements, Section 33230, *State Residence*

Background

Federal regulation at 42 CFR §435.403 says that a State agency must provide Medicaid services to eligible residence of that State. Specifically, a resident is someone who lives in Delaware with the intention to remain

permanently or for an indefinite period of time, or someone living in Delaware, having entered with a job commitment or for the purpose of seeking employment, whether or not the individual is currently employed. The individual must live in Delaware and meet all other eligibility requirements in order to receive Medicaid benefits.

Summary of Proposal

Each State Medicaid agency has specific guidelines for determining whether an individual satisfies the Federal criteria defining eligibility and State residency.

As such, the Division of Medicaid and Medical Assistance (DMMA) is revising the appropriate sections of the Division of Social Services Manual (DSSM) to clarify that an individual must be a Delaware resident in order to receive Delaware Medicaid. A primary residence may be excluded from eligibility if the individual intends to return to the primary residence. An individual will not be considered a Delaware resident if they intend to return to a primary residence located in another state.

The proposed changes affect the following policy sections:

DSSM 14110.8.2, *Exceptions*

DSSM 20310.1, *Intent to Return*; and,

DSSM 20320.4.1, *Intent to Return*.

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 CHANGE(S)

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

First, in the general residency section, DMMA proposes to consider a person institutionalized in Delaware a non-resident under the following circumstances:

e. Exception when an institutionalized individual intends to return home to their principal place of residence located in another state, the individual will not be considered a Delaware resident since their intent is not to remain in Delaware.

There are multiple problems with this approach.

A. If the institutionalized individual has a guardian or has an I.Q. of 49 or less, federal regulations render the individual's "intent" immaterial. See 42 C.F.R. §435.403(c).

Agency Response: That is correct. This exception does not apply to institutionalized individuals with a guardian or an IQ of 49 or less. The individual would/could be a considered a Delaware resident. Property owned in another state would be a counted resource unless it is used by a spouse and/or dependent relative during the individual's absence. To enhance clarification, DMMA adds the phrase "is capable of indicating their intent" to item "e" of DSSM 14110.8.2 above.

B. Likewise, the "next of kin" arguably determines place of abode/residency for individuals residing in licensed long-term care facilities who are determined incompetent by the attending physician. See Title 16 **Del.C.** §§1121(34) and 1122.

Agency Response: The individual would/could be a considered a Delaware resident. Property owned in another state would be a counted resource unless it is used by a spouse and/or dependent relative during the individual's absence.

C. If the individual intends to return to a former residence on a temporary basis, Delaware residency should be unaffected. See 42 C.F.R. §435.403(j)(3) which recites as follows:

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

For example, if an individual's elderly parent developed a terminal illness and the individual returns to the out-of-state family home to provide temporary care, the proposed DMMA standard would compel a finding of non-Delaware residency contrary to federal law.

Agency Response: This exception does not preclude an individual's right to a temporary absence out of the state of Delaware.

Second, in the context of long-term care, DMMA is narrowing the resource exclusion for a principal place of residence if the individual intends to return home. See proposed §§20310.1.1 and 20320.4.1. The current regulations would exclude the residence even if out-of-state. The proposed regulations would only permit a resource exclusion if the residence is in Delaware. We could not locate any federal law or regulation which requires Delaware to only exclude a Delaware principal place of residence. The analogous SSI resource regulation [20 C.F.R. §416.1212] excludes the value of the principal place of residence regardless of location. Moreover, it is anomalous to exclude an out-of-state principal residence if used by a spouse or dependent relative. See §20310.1.2. Finally, the following illustrations would appear to undermine the validity of the proposed regulation:

A 20 year old with a principal place of residence in Elkton, Maryland suffers a traumatic brain injury in a motorcycle accident. He undergoes rehabilitation in Delaware with expectation of recovery and returning home in 1 year and is appointed a Delaware guardian prior to placement in an institution. The 20 year-old's state of residence is that of the guardian by operation of law pursuant to 42 C.F.R. §435.403(h)(4)(i). The 20 year old is a Delaware resident for Medicaid purposes but his Maryland principal place of residence should be an exempt resource.

An 80 year old living alone in Pennsylvania experiences a stroke, is no longer able to live independently, and is "taken in" by her adult daughter living in Delaware to provide care. After 3 months, the daughter realizes her mother requires more care than the family can provide. The mother applies and is admitted to a Delaware nursing home located near the daughter's residence to facilitate regular visits. The mother has the capacity to declare, and does declare, that she likes the nursing home and intends to remain there indefinitely (e.g. as long as she needs that level of care). This satisfies requirements of Delaware residency for Medicaid purposes [20 C.F.R. §435.403(i)]. The mother also declares that, if she sufficiently recovers from the effects of the stroke, she intends to return to her principal residence in Pennsylvania (with or without part-time caregivers). This satisfies the federal requirements to exclude the Pennsylvania residence.

Agency Response: DMMA is narrowing the resource exclusion for a principal place of residence if it is located out of the state of Delaware. The individual would be able to pursue Medicaid through the state where their primary residence is located.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding *State Residency* is adopted and shall be final effective September 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #11-37

REVISIONS:

14110.8.2 Exceptions

When one of the following exists, it supersedes the general residency policy.

a. Exception for individuals receiving a State Supplementary Payment, the State of residence is the State making the payment.

b. Exception for individuals of any age who are receiving Federal payments for foster care under title IV-E of the Social Security Act, and individuals for whom there is an adoption assistance agreement in effect under title IV-E, the State of residence is the State where the individual is living.

c. Exception where a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

d. Exception when residency is disputed - When two or more States cannot resolve which State is the State of residence, the State in which the individual is physically located is the State of residence.

e. Exception when an institutionalized individual ~~intends~~ is capable of indicating their intent] to return home to their principal place of residence located in another state, the individual will not be considered a Delaware resident since their intent is not to remain in Delaware.

(Break in Continuity of Sections)

20310.1.1 Intent to Return

The principal place of residence, if located in Delaware, may be excluded if the individual intends to return home after any length of time.

Temporary Institutionalization - If the attending physician has certified that a recipient is likely to return to his own home within a definite period (not to exceed 2 months) up to \$75.00 per month may be protected for maintenance of the home.

(Break in Continuity of Sections)

20320.4.1 Intent to Return

~~The individual intends to return home.~~ The applicant must be able to express the desire to return home to their principal place of residence located in Delaware. The record must include a written statement of intent to return to the home. ~~If applicant gives intent verbally to DSS social worker this should be noted as part of the case record. The case record must indicate if the applicant gives intent verbally to DMMA social worker.~~

~~If the statement is written by someone other than applicant~~ writes the statement, there must be an indication that this is in fact the intent of the applicant (i.e. signature or mark of applicant). If an institutionalized applicant/recipient is mentally capable of indicating that he intends to return to his principal place of residence in Delaware (even if medical evidence indicates that he will never recover sufficiently to return home), then the home may be excluded as a resource. In no case can the family **declare** this **intent** for the applicant/recipient.

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

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

ORDER

1341 Workers' Compensation Regulations

Effective August 17, 2011, Governor Markell signed SB108 into law. Section 2 is the part of the Bill pertinent to this regulation change and provides for the medical provider's (physician) report to serve as the triggering event for the completion of the employer's report of modified-duty availability ("Employer's Form"). This change allows

employers to better evaluate whether or not they have modified duty positions available based on the injured workers' physician identified limitations. The statutory change impacts wording in the "Employer's Form" located in subsection 6.3 of 19 **DE Admin. Code** 1341 and requires a change to these regulations.

Pursuant to 29 **Del.C.** § 10113(b)(5),

(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

...(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and ..."

This regulatory change to the employer form puts the regulation in compliance with the recently signed statute and therefore, is exempt from the procedural requirements of Chapter 101, pursuant to 29 **Del.C.** §10113(b)(5).

DEPARTMENT OF LABOR

John McMahon, Secretary of Labor

1341 Workers' Compensation Regulations

(Break in Continuity of Sections)

PROVIDER FORM

Revised 03/2011

6.3 The Employer's Modified Duty Availability Report and Instructions (Employers' Form) follow.

EMPLOYER'S FORM INSTRUCTIONS/DEFINITIONS

The use of this form is required by the Delaware Workers' Compensation Statute, 19 Del.C. §2322E, to report all information specific to this workers' compensation injury.

Complete all applicable fields.

1. Case Information:

- **Employer Name:** The name of the employer associated with the claim.
- **Employee Name:** Name of the injured worker.
- **Modification Duty Information:** Complete all applicable fields
- **Employer Fax:** The telephone and fax numbers of the employer.
- **Job Title:** Provide job title for position available.
- **Job Description:** Provide description of physical requirements of job duties for position available.
- **Environment/Working Conditions:** Identify any environmental factors relevant to position available.

2. **Hours Per Day Job Available:** Circle the number of hours applicable.

3. **Additional Information:** Circle the applicable work status categories for the position available, and comment as appropriate in the space provided regarding the work postures/positional requirements for the modified duty job available.

4. **Employer:** Provide job availability date.

5. **Comments:** To be used to explain/clarify any information required by this form.

6. Employer Information: The person responsible for completing this form on behalf of the employer must sign and date this form.

WITHIN FOURTEEN (14) DAYS OF RECEIVING ~~A NOTICE OF INJURY~~ THE INITIAL "PHYSICIAN'S REPORT OF WORKERS' COMPENSATION INJURY", THE EMPLOYEE SHALL PROVIDE THIS FORM TO THE ~~INJURED WORKER'S HEALTH CARE PROVIDER/PHYSICIAN~~ HEALTH CARE PROVIDER/PHYSICIAN WHO ISSUED THE AFOREMENTIONED REPORT AND THE EMPLOYER'S INSURANCE CARRIER AS REQUIRED BY 19 DEL.C. §2322E(d).

IF THE "PHYSICIAN'S REPORT OF WORKERS' COMPENSATION INJURY" RELEASES THE EMPLOYEE TO FULL DUTY, DO NOT COMPLETE THIS FORM.

THE HEALTH CARE PROVIDER/PHYSICIAN MUST COMPLETE HIS/HER PORTION OF THIS FORM AND SIGN AND RETURN IT TO THE EMPLOYER WITHIN FOURTEEN (14) DAYS OF THE NEXT DATE OF SERVICE AFTER THE PHYSICIAN'S RECEIPT OF THE FORM FROM THE EMPLOYER, BUT NOT LATER THAN TWENTY-ONE (21) DAYS FROM THE PHYSICIAN'S RECEIPT OF SUCH FORM.

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

[1341 Workers' Compensation Regulations](#)

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board**

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)
10 DE Admin. Code 101

ORDER

101 Regulations Governing Bingo

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on Thursday, August 4, 2011, at a scheduled meeting of the Delaware Board of Charitable Gaming, to receive comments and to review written comments submitted by the public, if any, regarding proposed amendments to the Board's Rules.

The proposed amendments to 10 DE Admin. Code 101, Rule 1.0 and would require that fees collected for cookie jar bingo games be added to the jar before the first number is drawn. If the added money makes the jar reach its maximum allowable amount, the jar must be awarded at that night's event. In addition, the organization conducting the event must announce the value of the cookie jar, up to a maximum of \$1,000.00, before play commences.

The proposed amendments were published in the *Register of Regulations*, Volume 15, Issue 1, on July 1, 2011.

Summary of the Evidence and Information Submitted

No written comments were received by the Board. No member of the public appeared to testify at the hearing.

FINAL REGULATIONS

Findings of Fact and Conclusions of Law

1. The public was given notice and an opportunity to provide written comments and testimony on the proposed amendments.
2. The Board finds that the proposed amendments are necessary and in the public interest.
3. Pursuant to 28 **Del.C.** §1122, the Board has statutory authority to promulgate regulations governing charitable gaming, including bingo and raffles.

Decision and Effective Date

The Board hereby adopts the proposed amendments to this rule in the manner to be published in the *Register of Regulations* in September, 2011, to be effective ten days after publication of the Order in the *Register of Regulations*.

Text and Citation

The text of the revised rule shall be as published in the *Register of Regulations* in September, 2011, as attached hereto as Exhibit A.

SO ORDERED this 10th day of August, 2011.

DELAWARE BOARD OF CHARITABLE GAMING

James Greene, Chair

Scott Angelucci, Member

Janet Williams-Coger, Member

Deborah Messina, Member

Sharon McDowell, Member

101 Regulations Governing Bingo

*Please note that no changes were made to the regulation as originally proposed and published in the July 2011 issue of the *Register* at page 48 (15 DE Reg. 48). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[101 Regulations Governing Bingo](#)

DIVISION OF PROFESSIONAL REGULATION

Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 **Del.C.** §1122)
10 **DE Admin. Code** 102

ORDER

102 Regulations Governing Raffles

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on Thursday, August 4, 2011, at a scheduled meeting of the Delaware Board of Charitable Gaming, to receive

comments and to review written comments submitted by the public, if any, regarding proposed amendments to the Board's Rules.

The proposed amendments to 10 **DE Admin. Code** 102 state that the Board's regulations apply if the value of prizes to be awarded in a raffle exceed \$5,000 and the cost of a ticket for a single drawing is more than \$5.00, or the cost of a ticket for a series of drawings exceeds \$15.00.

The proposed amendments were published in the *Register of Regulations*, Volume 15, Issue 1, on July 1, 2011.

Summary of the Evidence and Information Submitted

No written comments were received by the Board. No member of the public appeared to testify at the hearing.

Findings of Fact and Conclusions of Law

1. The public was given notice and an opportunity to provide written comments and testimony on the proposed amendments.
2. The Board finds that the proposed amendments are necessary and in the public interest.
3. Pursuant to 28 **Del.C.** §1122, the Board has statutory authority to promulgate regulations governing charitable gaming, including bingo and raffles.

Decision and Effective Date

The Board hereby adopts the proposed amendments to this rule in the manner to be published in the *Register of Regulations* in September, 2011, to be effective ten days after publication of the Order in the *Register of Regulations*.

Text and Citation

The text of the revised rule shall be as published in the *Register of Regulations* in September, 2011, as attached hereto as Exhibit A.

SO ORDERED this 10th day of August, 2011.

DELAWARE BOARD OF CHARITABLE GAMING

James Greene, Chair

Scott Angelucci, Member

Janet Williams-Coger, Member

Deborah Messina, Member

Sharon McDowell, Member

102 Regulations Governing Raffles

*Please note that no changes were made to the regulation as originally proposed and published in the July 2011 issue of the *Register* at page 50 (15 DE Reg. 50). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[102 Regulations Governing Raffles](#)

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 Del.C. §1713(a)(12))
24 DE Admin. Code 1400

ORDER

1400 Board of Electrical Examiners

Pursuant to 29 Del.C. §10118 and 24 Del.C. §1406(a)(1), the Delaware Board of Electrical Examiners issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on June 1, 2011, the Board makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the May 1, 2011 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. The Board proposed to add the crime of unlicensed practice of an Electrician to the list of crimes substantially related to the work of an Electrician in its regulations in an attempt to better restrict persons convicted of unlicensed practice from becoming licensed before the Board of Electrical Examiners in the State of Delaware.
2. The Board received no written comments during May 2011. The Board held a public hearing on June 1, 2011 and received no public comments.
3. The Board proposed to add the crime of unlicensed practice as an Electrician to its list of crimes substantially related to the work of an Electrician to its existing regulations.

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 May 1, 2011.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on September 1, 2011.

IT IS SO ORDERED this _____ day of _____, 2011.

Frank Beebe	Richard Millar
Robert Craig	W. Donald Poore
Daniel Creedon	Robert Sharp
John King	Nathan Schreppler
Robert MacLennan	

***Please note that no changes were made to the regulation as originally proposed and published in the May 2011 issue of the *Register* at page 1208 (14 DE Reg. 1 208). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1400 Board of Electrical Examiners

DIVISION OF PROFESSIONAL REGULATION 3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** § 3506(a)(1))
24 **DE Admin. Code** 3500

ORDER

3500 Board of Examiners of Psychologists

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §3506(a)(1), the Delaware Board of Examiners of Psychologists issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 **Del.C.** §10113(b)(5), regulation 6.2 of the Board of Psychological Examiners must be changed without prior publication as it is inconsistent with the Board's enabling statute at 24 **Del.C.** §3508(a)(2).

SUMMARY OF THE EVIDENCE

1. Rule 6.2 now states "6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and" that language is inconsistent with the statute, which reads at 24 **Del.C.** §3508(a)(2) "Had, after receiving the doctoral degree, at least 1 year of supervised professional experience in psychological work of a type satisfactory to the Board; and"

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

"6.2 Have had, after receiving the doctoral degree, at least ~~2 years~~ 1 year of supervised experience in psychological work satisfactory to the Board; and"

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on September 1, 2011.

IT IS SO ORDERED this 8th day of August, 2011.

Dr. Marcia S. Halperin, President

3500 Board of Examiners of Psychologists (Break in Continuity of Sections)

6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 **Del.C.** §3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

- 6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.
- 6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.
- 6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.
- 6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
- 6.1.1.2.5 The program must be an integrated, organized sequence of study.
- 6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.
- 6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.
- 6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.
- 6.1.1.2.9 The program specifies education and training objectives in terms of competencies expected of its graduates. Those competencies must be consistent with:
 - 6.1.1.2.9.1 The program's philosophy and training models.
 - 6.1.1.2.9.2 The substantive area(s) of professional psychology for which the program prepares students at the entry level of practice.
 - 6.1.1.2.9.3 An understanding of professional issues, including ethical, legal, and quality assurance principles.
- 6.1.1.2.10 In achieving its objectives, the program has implemented a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence in the following areas:
 - 6.1.1.2.10.1 The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas: biological aspects of behavior; cognitive and affective aspects of behavior; social aspects of behavior; history and systems of psychology; psychological measurement; research methodology; and techniques of data analysis:
 - 6.1.1.2.10.2 The scientific, methodological, and theoretical foundations of practice in the substantive area(s) of professional psychology in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas: individual differences in behavior; human development; dysfunctional behavior or psychopathology; and professional standards and ethics:
 - 6.1.1.2.10.3 Diagnosing or defining problems through psychological assessment and measurement and formulating and implementing intervention strategies (including training in empirically supported procedures). To achieve this end, students shall be exposed to the current body of knowledge in at least the following areas: theories and methods of assessment and diagnosis; effective intervention; consultation and supervision; and evaluating the efficacy of interventions; and
 - 6.1.1.2.10.4 Issues of cultural and individual diversity that are relevant to all of the above.
- 6.2 Have had, after receiving the doctoral degree, at least ~~2 years~~ 1 year of supervised experience in psychological work satisfactory to the Board; and
- 6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

- 6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

2 DE Reg. 776 (11/1/98)

4 DE Reg. 980 (12/1/00)

9 DE Reg. 1107 (01/01/06)

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

3500 Board of Examiners of Psychologists

DIVISION OF PROFESSIONAL REGULATION

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))

24 DE Admin. Code 3700

ORDER

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

The Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("the Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §3706(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has proposed revisions to its rules and regulations.

Specifically, the Board proposes amendments to Rule 11.0, which sets forth the list of crimes substantially related to the practice of speech/language pathology, audiology and hearing aid dispensing. Where an applicant has been convicted of a crime on the list, that conviction may impact whether the application is approved by the Board. Further, where a licensee has been convicted of a crime on the list, that conviction may lead to disciplinary proceedings. The proposed amendments expand the list of substantially related crimes to provide greater protection to the public.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 15, Issue 1 on July 1, 2011.

Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on August 16, 2011. No written or verbal comments were submitted.

Findings of Fact

The Board carefully reviewed and considered the proposed rule revisions.

The proposed amendments expand the list of substantially related crimes and provide additional grounds for denial of a license and grounds for discipline. The Board determined that the additional crimes are relevant to the practice of the regulated professions.

Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the Register of Regulations.

Text and Citation

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 15, Issue 1 on July 1, 2011.

IT IS SO ORDERED this 16th day of July 2011 by the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.

Dr. Mary Ann Connolly-Gaskin, President

Lisa Marencin, Secretary

Illene Courtright

Dr. Jennifer Xenakes

Tonya Coats

Roberta Burtch

Valerie Cloutier

Anne Pikolas

Wilbert Miller

***Please note that no changes were made to the regulation as originally proposed and published in the July 2011 issue of the *Register* at page 53 (15 DE Re g. 53). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers](#)

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))
24 **DE Admin. Code** 4400

ORDER

4400 Delaware Manufactured Home Installation Board

The Delaware Manufactured Home Installation Board (“the Board”) was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §4416(b)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §4416(b)(1), the Board has proposed revisions to Rule 9.0. The Board’s licensing law, Chapter 44 of Title 24 of the Delaware Code, provides that all manufactured home installations must be performed in compliance with the requirements of the United States Department of Housing and Urban Development (“HUD”).

See 24 Del.C. §4416(b). The revisions to Rule 9.0 expressly incorporate HUD's installation requirements. In particular, the rules reference specific sections of the Code of Federal Regulations. These amendments will make explicit what is already included in the Board's licensing law and will, therefore, provide greater clarity and greater protection for the public.

The Board originally published proposed revisions to the Rules in the Delaware *Register of Regulations* on November 1, 2010, Volume 14, Issue 5. A public hearing was held on November 22, 2010. As the result of Board deliberations, the Board decided to make further revisions to the proposed amendments.

Pursuant to 29 Del.C. §10115, notice of the second public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 14, Issue 8 on February 1, 2011.

Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on March 14, 2011. No written comment was submitted. Further, there was no public comment.

Findings of Fact

The Board carefully reviewed and considered the proposed rule revisions.

As noted herein, the revisions to Rule 9.0 expressly incorporate HUD's installation requirements and reference specific sections of the Code of Federal Regulations. These changes will state expressly what is already set forth in the Board's licensing law and will, therefore, provide greater clarity and greater protection for the public.

The Board concluded that the proposed amendments will serve to protect the public from unsafe practices and enhance practitioner competence.

Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interests of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 14, Issue 8 on February 1, 2011.

IT IS SO ORDERED this 14th day of March 2011 by the Delaware Manufactured Home Installation Board.

Jill Fuchs, President

Leslie Persans, Education Officer

Keith Rudy, Vice President

James Brockton

Richard Snyder, Secretary

Victor Kennedy

Charlie Eggleston, Complaint Officer

Kevin Reinike

***Please note that no changes were made to the regulation as originally proposed and published in the November 2010 issue of the *Register* at page 434 (14 DE Reg. 434). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[4400 Delaware Manufactured Home Installation Board](#)

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	APPOINTMENT/ REAPPOINT. DATE
Adult Correction Healthcare Review Committee	Mr. William J. Harrison	6/15/2011
Advisory Council to the Division of Developmental Disabilities Services	Timothy F. Brooks, Ed.D.	6/17/2011
Authority on Radiation Protection	Ms. Jan M. Dill Ms. Karen L. Neelans David W. Smith, Ph.D.	7/1/2011 7/1/2011 7/1/2011
Board of Architects	Mr. Joseph J. Schorah, Jr.	6/17/2011
Board of Cosmetology & Barbering	Ms. Leila Lord-Dufaj	6/17/2011
Board of Geologists	Ms. Patricia C. Ennis	7/17/2011
Board of Landscape Architecture	Mr. William H. Bullock	6/17/2011
Board of Professional Counselors of Mental Health & Chemical Dependency Professionals	Ms. Lisa D. Ritchie	6/17/2011
Cabinet Members	The Honorable Shailen P. Bhatt	7/5/2011
Cash Management Policy Board	John V. Flynn, Jr., Ph.D.	6/22/2011
Clean Water Advisory Council	Mr. Lee J. Beetschen Mr. Brian D. Marvin	6/30/2011 6/30/2011
Child Placement Review Board Executive Committee	Mr. Joseph M. Dell'Olio	6/17/2011
Commission on Adult Entertainment Establishments	Mr. James D. Nutter Ms. Tiffany B. Trawick	6/17/2011 6/17/2011
Council on Game and Fish	Mr. Alden Townsend	6/17/2011
Council on Real Estate Appraisers	Mr. Bradford T. Levering	6/17/2011
Council on Recreational Fishing Funding	Mr. Ralph W. Baker Mr. Eric B. Burnley, Sr. Mr. Ronald L. Horton Captain Bernard L. Pankowski Mr. David A. Russell	6/17/2011 6/17/2011 6/17/2011 6/17/2011 6/17/2011

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	APPOINTMENT/ REAPPOINT. DATE
Council on Services for Aging and Adults with Physical Disabilities	Ms. C. Regina Byers	6/17/2011
	Ms. Evelyn R. Hayes	6/17/2011
	Ms. Karen R. Lloyd	6/17/2011
	Ms. Lelia D. Perkins	6/17/2011
Court of Chancery	The Honorable Sam Glasscock, III	6/29/2011
	The Honorable Leo E. Strine	6/22/2011
Delaware Board of Examiners of Nursing Home Administrators	Ms. Victorine Parker	6/17/2011
Delaware Board of Nursing	Ms. Karen L. Murphy	7/11/2011
Delaware Gaming Control Board	Ms. Janet A. Williams-Coger	6/22/2011
Delaware Health Resources Board	Mr. Bedford Bruno	7/5/2011
	Ms. Carolyn S. Casey	7/1/2011
	The Honorable Harold Stafford	7/1/2011
Delaware Interscholastic Athletic Association	Mr. Ronald B. Eby	6/30/2011
	Kevin R. Fitzgerald, Ed.D.	6/30/2011
	Rene T. Knight-Peguero, D.M.	6/30/2011
	Ms. Teresa A. Taylor	6/30/2011
	Mr. David E. Thomas	6/30/2011
	Joseph A. Thomson	6/8/2011
Delaware Nutrient Management Commission	Ms. Lisa A. McCormick	6/8/2011
Delaware Solid Waste Authority	Mr. Gerard L. Esposito	6/30/2011
Developmental Disabilities Council	Mr. Steven E. Yeatman	6/27/2011
Environmental Appeals Board	Mr. Dean E. Holden	6/8/2011
	Mr. Michael A. Horsey	6/30/2011
Governor's Advisory Council for Exceptional Citizens	Annalisa M. Ekbladh	6/17/2011
	Ms. Carrie Melchisky	6/17/2011
Governor's Supplier Diversity Council	Sakthi A. Vel, Ph.D.	6/17/2011
Greater Wilmington Convention and Visitors Bureau	The Honorable Joseph G. DiPinto	7/11/2011
Health Care Advisory Panel	Barry L. Bakst, D.O.	6/8/2011
	Mr. James E. Downing, M.D.	6/8/2011

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	APPOINTMENT/ REAPPOINT. DATE
Health Care Advisory Panel	Mr. A. Richard Heffron	6/8/2011
	Ms. Theresa A. Smith	6/8/2011
Justice of the Peace	Ms. Nina Bawa	Pleasure of the Governor
	The Honorable William J. Sweet	6/8/2011
Kent County Board of Elections	Mr. David E. Burke	6/30/2011
	Ms. Mable K. Glanden	6/30/2011
	Ms. Kay H. O'Day	6/30/2011
	Ms. Sally J. Verma	6/20/2011
Lottery Commission	Mr. Andrew M. Lubin	6/15/2011
New Castle County Board of Elections	Mr. Edmund S. Krzyzanowski	6/30/2011
	Mr. James A. Sterling, III	6/30/2011
	Mr. Lawrence A. Thurrell	6/30/2011
	Ms. Marilyn P. Whittington	6/30/2011
Northeast Corridor Infrastructure & Operations Advisory Commission	The Honorable Shailen P. Bhatt	7/26/2011
Northeast High Level Radioactive Waste Transportation Task Force	Ms. Janet E. Chomiszak	7/11/2011
	Mr. Daniel A. Rose	7/11/2011
Organ and Tissue Donor Awareness Board	Mr. Michael J. Harrell	7/25/2011
Professional Standards Board	Ms. Whitney L. Price	6/22/2011
State Board of Accountancy	James A. Cohee	6/17/2011
State Coastal Zone Industrial Control Board	Pallatheri M. Subramanian, Ph.D.	6/30/2011
	Stanley Tocker, Ph.D.	6/15/2011
State Human Relations Commission	Mr. Mashhoor Awad	6/17/2011
	Mr. Jamaal K. Bivens	6/17/2011
	Mr. Diaz J. Bonville	6/17/2011
	Mr. Calvin H. Christopher	6/17/2011
	Ms. Chok-Fun C. Chui	6/17/2011
	Mr. Wallace R. Dixon	6/17/2011
	Ms. Olga Ramirez	6/17/2011
	Ms. Rosemarie H. Williams	6/17/2011
Statewide Labor Management Committee	Ms. Janet L. Durkee	7/11/2011

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	APPOINTMENT/ REAPPOINT. DATE
State Public Integrity Commission	Mr. Andrew W. Gonser	6/15/2011
Sussex County Board of Elections	Mr. Vaughn L. Callaway	6/30/2011
	Ms. Elizabeth D. Elliott	6/30/2011
	Mr. Robert W. Masten	6/30/2011
	Mr. Gerald W. Pepper	6/30/2011
Tax Appeals Board	Mr. Steven R. Director	6/30/2011
	Ms. Cynthia L. Hughes	6/30/2011
	Mr. Todd C. Schiltz	6/30/2011
Victims' Compensation Assistance Program Appeals Board	Ms. Kathryn A. Keating	6/8/2011
	Mr. Thaddeus A. Koston	6/30/2011
Welfare Employment Committee	Mr. John J. Friedman	6/17/2011

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER****EXECUTIVE ORDER
NUMBER TWENTY-SEVEN****RE: DELAWARE STRATEGIES FOR STATE POLICIES AND SPENDING, CREATING THE DELAWARE JUSTICE REINVESTMENT TASK FORCE TO CONDUCT A COMPREHENSIVE EXAMINATION OF DELAWARE'S CRIMINAL JUSTICE SYSTEM**

WHEREAS, it has been many years since there has been a systematic study of the State of Delaware's correctional system and criminal justice structure; and

WHEREAS, the State spends more than \$250 million annually on corrections expenses, and those expenses grew more than 80% in the decade from fiscal year 1999 to 2009; and

WHEREAS, notwithstanding these increasing expenditures, the amount of crime in Delaware remains concerning, for while Delaware's overall crime rate is trending downward, there have been increases in homicide, robbery and assault crimes, and the occurrence of violent crime remains above the national average, according to the Statistical Analysis Center's review of Crime in Delaware 2003-2008 and FBI statistics;

WHEREAS, a study of Delaware's criminal justice and correctional system would help identify steps to enhance public safety, hold offenders more accountable, improve probation and parole supervision, lower recidivism rates, and recognize the factors driving growth in prison expenses, while ensuring that taxpayer money is spent wisely; and

WHEREAS, a study of the State's criminal justice system and recommendations for reforms can best be carried out through a bipartisan and multi-disciplinary task force that brings together all stakeholders in the criminal justice system; and

WHEREAS, a Justice Reinvestment Task Force can provide a deliberative and rigorous process to evaluate recommendations for legislative and policy changes that might benefit our State;

NOW THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby ORDER that:

1. The Delaware Justice Reinvestment Task Force (hereinafter "Task Force") is hereby established. The Task Force will consist of:
 - a. The Lieutenant Governor, who shall act as the non-voting Chairperson of the Task Force;
 - b. Two members of the Senate, one appointed by the President Pro Tempore of the Senate and one appointed by the Minority Leader;
 - c. Two members of the House of Representatives, one appointed by the Speaker of the House and one appointed by the Minority Leader;
 - d. The Chief Justice of the Supreme Court of Delaware or his designee;
 - e. The President Judge of the Superior Court or his designee;
 - f. The Chief Judge of the Court of Common Pleas or his designee;
 - g. The Chief Magistrate of the Justice of the Peace Court or his designee;
 - h. The Attorney General or his designee;
 - i. The Public Defender or his designee;
 - j. The Commissioner of the Department of Correction or his designee;
 - k. The Secretary of the Department of Safety and Homeland Security or his designee;
 - l. The Colonel of the Delaware State Police or his designee;
 - m. Two representatives of county or municipal law enforcement, as designated by the Chairman of the Delaware Police Chiefs' Council;
 - n. The Executive Director of the Victims' Compensation Assistance Program, or her designee; and
 - o. One representative appointed by the cabinet-level team that provides oversight of the Individual Assessment, Discharge and Planning Teams (I-ADAPT) under Executive Order No. 7.

2. A quorum of the Task Force shall consist of a majority of members. If a quorum is met at any meeting, it is a sufficient number of members for any official action to be taken by the Task Force.
3. Each voting member shall be entitled to appoint a single individual to serve as proxy for the duration of his or her term if the member is unable to attend a meeting of the Task Force. The designation of a proxy by a member shall be in a writing transmitted to the Chairperson of the Task Force.
4. Members of the Task Force shall receive no compensation for their services, except that any member may be reimbursed for actual expenses incurred in the performance of their duties by the agency or department in which they serve as an official or employee.
5. All executive branch departments and agencies shall, upon request of the Task Force or the Governor, provide requested services, information, and technical assistance to support the goals of the Task Force.
6. The Task Force shall:
 - a. and prison population growth;
 - b. develop and make recommendations regarding policy options to generate savings and increase public safety, focusing on evidence-based practices for reducing recidivism;
 - c. engage in strategic planning for implementation of policy recommendations; and
 - d. develop a plan for measuring the impact of policy changes and reallocation of resources to enhance the accountability of criminal justice system actors and policies.
7. The Task Force shall report its findings and recommendations for policy change and legislative action to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate and the Speaker of the House no later than January 31, 2012.
8. Until it delivers its findings and recommendations, the Task Force shall hold monthly meetings except as otherwise provided by vote of the Task Force or by order of the Chair. Following the reporting of its findings and recommendations, the Task Force shall meet as needed to address adoption and implementation of its findings and recommendations.
9. The Delaware Criminal Justice Council (CJC) may apply for, expend, and manage federal funds, grants, and gifts it receives from other sources to assist the Task Force in carrying out its duties and responsibilities. The CJC will support the work of the Task Force, providing administrative support and any other assistance as needed, including facilitating the use of the Delaware Statistical Analysis Center.
10. The Task Force shall be terminated on January 1, 2013, if not reconstituted by further executive order.

APPROVED this 25th day of July, 2011

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

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

GENERAL NOTICE

State Implementation Plan Revision to address the Clean Air Act Section 110 Infrastructure Elements For the 2008 Lead NAAQS

1. TITLE OF THE REGULATIONS:

State Implementation Plan (SIP) Revision to address the Clean Air Act Section 110 Infrastructure Elements for the 2008 Lead National Ambient Air Quality Standard (NAAQS)

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 address the implementation, maintenance, and enforcement of the 2008 revised Lead (Pb) NAAQS.

On October 15, 2008, the Environmental Protection Agency (EPA) revised the primary and secondary lead National Ambient Air Quality Standard (NAAQS) from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$. Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each State is required to submit a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. This SIP fulfills this requirement relative to the 2008 lead NAAQS.

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, September 22, 2011 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 August 11, 2011

**Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards (NAAQS)
State Implementation Plan Revision to address the Clean Air Act Section 110 Infrastructure Elements For
the 2008 Lead NAAQS**

August 11, 2011

1.0 Preamble, Introduction and Background

On October 15, 2008, the Environmental Protection Agency (EPA) revised the primary and secondary lead National Ambient Air Quality Standard (NAAQS) from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$. Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each State is required to submit a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. This SIP fulfills this requirement relative to the 2008 lead NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled in the Code of Federal Regulations at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the CAA, specifically, CAA §110(a)(2), relative to the 2008 lead NAAQS. Under the heading "Delaware's Plan" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how Delaware demonstrates how the 2008 lead NAAQS is being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law, which gives the Delaware Department of Natural Resources and Environmental Control (DNREC) the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 2008 lead NAAQS are already contained in Delaware's SIP. The following Table identifies those SIP provisions. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table - 110(a)(2)(A)-(M) Requirements Already Addressed in the Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.	For the 2008 lead NAAQS, the following emission limitations and schedules are contained in Delaware's approved SIP. 7 DE Admin. Code 1101, Definitions And Administrative Principles 7 DE Admin. Code 1104, Particulate Emissions From Fuel Burning Equipment 7 DE Admin. Code 1105, Particulate Emissions From Industrial Process Operations 7 DE Admin. Code 1107, Emissions From Incineration Of Noninfectious Waste 7 DE Admin. Code 1114, Visible Emissions 7 DE Admin. Code 1127, Stack Heights	40 CFR 52.420(c)

GENERAL NOTICES

§110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.	7 DE Admin. Code 1103, Ambient Air Quality Standards, provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.	40 CFR 52.420(c)
§110(a)(2)(C)	Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;	<p>Delaware implements its Construction and Operation Permit Program requirements under 7 DE Admin. Code 1102 and 1125. These existing permitting programs ensure that the construction and modification of both major and minor stationary sources do not cause or contribute to a violation of the lead NAAQS.</p> <p>7 DE Admin Code 1125 fulfills parts C and D of Title I of the CAA; governing preconstruction review and permitting of any new or modified major stationary sources of air pollutants. 1125 is approved in the DE SIP. Under 1125 any major source or modification that results in a net significant increase of lead (0.6 TPY or greater) must apply Best Available Control Technology (BACT) to reduce lead emissions, and must demonstrate that its emissions will not cause the violation of any NAAQS.</p> <p>7 DE Admin. Code 1102 provides for the evaluation and necessary regulation of any stationary source that emit equal to or greater than 0.2 lb of any air contaminate, including lead, in any one day.</p> <p>In addition, the measures described in CAA 110(a)(2)(A) are enforced, in part, through permits issued pursuant to 1102 and 1125.</p>	40 CFR 52.420(c)
§110(a)(2)(E)(ii)	(ii) requirements that the state comply with the requirements respecting state boards under section 128, and	The requirements of §110(a)(2)(E)(ii) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders.	
§110(a)(2)(E)(iii)	(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;	The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.	

§110(a)(2)(F)	<p>Require, as may be prescribed by the Administrator—</p> <p>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p> <p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</p>	<p>§110(a)(2)(F)(i): Specific monitoring requirements are found in 7 DE Admin Codes 1103 and 1117. These requirements are included in Delaware's SIP.</p> <p>§110(a)(2)(F)(ii): Specific reporting requirements are found in 7 DE Admin Codes 1103 and 1117. These requirements are included in Delaware's SIP.</p> <p>These regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the 2008 lead NAAQS.</p>	40 CFR 52.420(c)
§110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;	7 DE Admin. Code 1115, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in Delaware's SIP.	40 CFR 52.420(c)
§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. This does not apply because no part of Delaware is designated nonattainment for the 2008 lead NAAQS.	
§110(a)(2)(J)	Meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in 7 DE Admin. Code 1125, Preconstruction Review.	40 CFR 52.420(c)

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions for the 2008 lead NAAQS. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A–M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

(A) §110(a)(2)(A) Requirement: Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA, to include the requirements associated with the 2008 lead NAAQS. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 **Del.C.**, Chapter 60. This authority is applicable to the 2008 lead NAAQS.

(B) §110(a)(2)(B) Requirement: Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

GENERAL NOTICES

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for the 2008 lead NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Delaware currently measures and reports lead concentrations from our monitoring site located in Wilmington near MLK Boulevard.
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network Delaware provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. Delaware submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

- (C) **§110(a)(2)(C) Requirement:** Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware as part of its Division of Air Quality function exercises its programmatic authority to utilize the enforcement powers set out in 7 Del.C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del.C. §6013 entitled "Criminal penalties"; and 7 Del.C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

- (D) **§110(a)(2)(D) Requirement:** Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126¹ and 115² (relating to interstate and international pollution abatement).

Delaware's Plan: Delaware's SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with

maintenance with any NAAQS and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- Delaware Code Title 7, Chapter 60 § 6010(c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to regulate sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.
- 110(a)(2)(D)(i)(I): The physical properties of lead prevent lead emissions from experiencing a significant degree of travel in the ambient air. No complex chemistry is needed to form lead or lead compounds in the ambient air; therefore, concentrations of lead are typically highest near lead sources. More specifically, there is a sharp decrease in lead concentrations as the distance from a lead source increases. According to EPA's last published *Latest Findings on National Air Quality* report, lead concentrations for sites that are not near a source of lead are approximately 10 times less than the typical concentrations near the source (http://www.epa.gov/airtrends/2007/report/trends_report_full.pdf). An example of the degree to which lead concentration decreases with distance in ambient air is characterized in the EPA memo *Selection of Airports for the Airport Monitoring Study*: "The Santa Monica airport monitoring study... reported a three- to four-fold decrease in ambient lead concentrations over a distance of 80 meters between two monitors sited to evaluate the lead gradient downwind from the runway" (<http://www.epa.gov/otaq/regs/nonroad/aviation/memo-selc-airport-mon-stdy.pdf>).

Accordingly, in order for a source to emit lead that may contribute significantly to nonattainment in, or interfere with maintenance by, any other state, the source would need to be a very large source that is located in close proximity to state boundaries. Delaware does not have any existing sources of lead that are very large (i.e., none with emission greater than 0.5 TPY). In fact, the emission of lead from Delaware's entire point source inventory (2008), in the aggregate, is less than one (1) ton per year of lead, and only two sources (Evraz Claymont Steel and Indian River Generating Station) have emissions greater than 0.3 ton of lead per year (0.34 and 0.31, respectively). Further, even though Delaware's largest two lead emitting sources are relatively small, lead reductions are anticipated due to unit shut downs, and as a co-benefit to required mercury and sulfur dioxide reduction measures.

All major stationary sources are subject to Prevention of Significant Deterioration (PSD) permitting programs under the PSD of 7 **DE Admin. Code** 1125, Preconstruction Review. The requirements of

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1. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

1125 ensure no new or modified lead emitting source will cause or contribute to non-attainment in any area.

- 110(a)(2)(D)(i)(II): The requirements of CAA 110(a)(2)(D)(i)(II) are met by new major sources and major modifications in Delaware being subject to the PSD requirements which are contained in Section 3.0 of 7 **DE Admin. Code** 1125, Preconstruction Review.
- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

(E) §110(a)(2)(E) Requirement: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,³ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §110(a)(2)(E)(ii) and (iii) are not applicable to Delaware as discussed in Section 1.0 of this document.

Delaware's Plan: With respect to the remaining obligations under this section, Delaware has adequate authority under state law pursuant to 7 **Del.C.** Chapter 60 to carry out its SIP obligations with respect to the 2008 lead NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees,

2. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under §109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

3. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders 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, 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 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 (1) and (2).

permit fees, renewal fees, and civil or administrative penalties or fines. The Division of Air Quality is responsible for developing, implementing, and enforcing the SIP. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

- (F) **§110(a)(2)(F) Requirement:** Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of lead emissions and emissions related-date emissions from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100.

- (G) **§110(a)(2)(G) Requirement:** Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;⁴

Delaware's Plan: Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

7 **Del.C.** §6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 **Del.C.** §6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 **Del.C.** §6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 **Del.C.** §6018). Thus, it necessarily follows that any discharge of an air contaminant, including lead, that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.

- (H) **§110(a)(2)(H) Requirement:** Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality

4. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

- (I) **§110(a)(2)(I) Requirement:** In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

Delaware's Plan: This does not apply because no part of Delaware is designated nonattainment for the 2008 lead NAAQS.

- (J) § **110(a)(2)(J) Requirement:** Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).⁵

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- **7 DE Admin. Code** 1132, Transportation Conformity, provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide a forum for consultation with local governments. Delaware's MPOs are: WILMAPCO, Kent County MPO, and the Salisbury-Wicomico MPO. Regional planning organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are on-going in accordance with EPA Rules. All SIP revisions and new/amended regulations undergo public notice and hearing, pursuant to **7 DE Code** Chapters 29 and 60, which include publication in the newspapers and in the Delaware Register, and which have allowed for comment by the both the public and local political subdivisions. Delaware believes the public notice and hearing processes also fulfill the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.
- DNREC makes real-time and historical air quality information available on its Web site.

5. §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

- PSD requirements relative to the 2008 lead NAAQS are SIP approved and implemented through the requirements of 7 **DE Admin. Code** 1125, Preconstruction Review.
- With regard to visibility protection, there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2008 lead NAAQS. Delaware is complying with, and will continue to comply with the visibility protection and regional haze program requirements under Part C of the CAA.

(K) §110(a)(2)(K) Requirement: Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Delaware's Plan: Delaware has the authority and technical capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions, and will continue to perform modeling as necessary, but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit to the EPA the Air Quality modeling data as part of Delaware's relevant SIP submissions, permit actions, and through federal grant commitments or in other ways that EPA may request.

(L) §110(a)(2)(L) Requirement: Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 **Del.C.** §§6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(M) §110(a)(2)(M) Requirement: Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 **Del.C.** §§6006 and 6010 and 29 **Del.C.** Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. We believe the public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M).

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, September 21, 2011 beginning at 1:30 p.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****Delaware Standardbred Breeders' Fund****502 Delaware Standardbred Breeders' Fund Regulations****PUBLIC NOTICE**

The Delaware Standardbred Breeders' Fund Board ("the Board") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed amended regulations clarify the definition of "Breeder" and add a definition for "Owner." The proposed amendment of regulation 4.2 establishes a racing program for four year old horses with bonuses to breeders and owners, which is an effort by the Board to keep Delaware's harness racing industry competitive with those of neighboring states. The Board proposes to delete language from its regulation 6.0 that currently and improperly calls for the program Administrator to request and certify the social security and tax identification numbers of owners and their agents when registering for the program. The Board proposes to adopt a regulation expanding the recording duty of the Administrator pertaining to the program and bonuses for four year olds. The proposed amended regulations delete two words from the heading of regulation 10. The proposed amendment to regulation 13.1 makes clear its applicability to the two and three year old racing programs only. The proposed amendment to regulation 14 adds the nomination payment requirements for eligibility in the new program for four year olds.

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

Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by October 1, 2011.

THOROUGHBRED RACING COMMISSION**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposal amends the rules and regulations to test for steroids in blood.

A public hearing will be held on September 20, 2011 at 10:00 a.m. in the second floor conference room of the Horseman's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, September 15, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants****PUBLIC NOTICE**

A statutory change to 29 **Del.C.** §7903 which added a paragraph (10) directs the DHSS Secretary to adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia.

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 John Thomas Murray, Deputy Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291 by Monday, October 3, 2011.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Concurrent Hospice Care for Children Under Age 21 Years****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 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *concurrent hospice care for children under age 21 years*.

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 September 30, 2011.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Freestanding Birth Center Services****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan to reflect the addition of *freestanding birth center services* as a mandatory Medicaid benefit, in compliance with the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148.

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 September 30, 2011.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Medicaid Nonpayment and Reporting Requirements For Provider Preventable Conditions
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 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *Medicaid nonpayment and reporting requirements for provider preventable conditions*.

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 September 30, 2011.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Tobacco Cessation Counseling Services
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 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *comprehensive Medicaid coverage of tobacco cessation services for pregnant women and all Medicaid beneficiaries*.

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 September 30, 2011.

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

DIVISION OF PUBLIC HEALTH

4451 Body Art Establishments
PUBLIC NOTICE

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed amendments to the Delaware Regulations Governing Body Art Establishments. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On September 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

The public hearing will be held on September 22, 2011 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the September 1, 2011 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health

Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Friday, September 30, 2011 at:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700
Fax: (302) 739-6659

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH
Mental Health Patients' Grievance Procedure
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 22, Delaware Health and Social Services (DHSS)/ Division of Substance Abuse and Mental Health (DSAMH) is proposing to establish by regulation a revised Mental Health Patients' Grievance Process.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Susan Robinson, Deputy Director, Delaware Psychiatric Center, Division of Substance Abuse and Mental Health, Springer Building, 1901 North DuPont Highway, New Castle, Delaware 19720-0906 or by fax to (302) 255-4418 by September 31, 2011.

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

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Industrial Accident Board
1331 Industrial Accident Board Regulations
PUBLIC NOTICE

The Industrial Accident Board proposes to amend the Industrial Accident Board (IAB) Regulations, in accordance with 19 **Del.C.** §2301A(j). These proposals comprehensively revise all sections of the IAB rules, which have not been updated since 1998.

A public meeting will be held before the Industrial Accident Board at 9:00 a.m. on October 18, 2011, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from John Kirk, Deputy Director, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward these to the IAB at the above address. The final date to receive written comments will be at the public meeting.

The Industrial Accident Board will consider adopting the revised IAB Rules at the meeting following the public meeting.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT****1144 Control of Stationary Generator Emissions****PUBLIC NOTICE**

The Division of Air Quality (DAQ) is proposing to amend 7 **DE Admin. Code** 1144 to update the language based upon recent EPA promulgations for similar engines, and to make minor corrections to the regulatory requirements. When finalizing 7 **DE Admin. Code** 1144 in 2005, DAQ stated that the EPA's "Tier 4" standards would not be required for new, emergency generators if Tier 4 standards ultimately required aftermarket controls to meet the limits. Because Tier 4 standards do require aftermarket controls, DAQ plans to amend the regulation to be consistent with EPA's New Source Performance Standards for internal combustion engines by requiring new, emergency generators to simply meet the Tier 2 or 3 standards, as the regulation already requires.

DAQ is also proposing new recordkeeping and reporting requirements for certain non-emergency generators which are operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator. These new recordkeeping and reporting requirements will allow the DAQ to better understand how many non-emergency generators are participating in such programs, and will help the DAQ to gauge their compliance.

Additionally, the regulation will be amended to lower the diesel sulfur requirement of the regulation from 500ppm to 15ppm to be consistent with EPA requirements. Other planned amendments include removing the sulfur content provisions for natural gas, since the generator owner has no control of the sulfur content in the pipeline natural gas which is received. Also, various definitions and regulatory requirements will be clarified and minor errors in the regulatory text shall be corrected.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, September 22, 2011 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: Mark A. Prettyman, DNREC Division of Air Quality, 655 S. Bay RD, Suite 5N, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE**3531 Tautog; Size Limits, Creel Limits and Seasons****PUBLIC NOTICE****SAN # 2011-09**

The purpose of this action is to amend Delaware's tidal finfish regulation 3531 to reduce tautog (*Tautoga onitis*) landings by 53% in compliance with Addendum VI to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Tautog. A 2011 stock assessment update indicated that the tautog stock continues to be overfished and that overfishing is occurring. Tautog biomass has not responded to previous management measures and fishing pressure and fishing mortality rates have increased. Spawning stock biomass has remained at low levels for the past decade and a significant reduction in the target fishing mortality rate is necessary.

Four options to achieve the required 53% reduction in tautog landings were developed and have been approved by the ASMFC Tautog Management Board. These options will serve as the basis for the proposed regulatory change.

The hearing record on the proposed changes to the tautog regulation will be open September 1, 2011. 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 5, 2011 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**OFFICE OF THE SECRETARY****Regulations Governing Community Firearm Recovery Programs
PUBLIC NOTICE**

The Delaware Department of Safety and Homeland Security hereby gives notice of its intent to adopt these proposed regulations pursuant to the General Assembly's delegation of authority found at 16 **Del.C.** §10404 in order to implement the pilot program for the Community Firearm Recovery Program.

The Department solicits and will consider timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such written comments will be thirty days after the proposed regulations are promulgated in the Delaware *Register of Regulations*, or by October 1, 2011. Any such submissions should be mailed or hand delivered to Terry Pepper whose address is; Department of Safety and Homeland Security, Public Safety Building, Suite 220, 303 Transportation Circle, Dover, DE 19901, on or before the deadline.

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

The Delaware Board of Pharmacy, pursuant to 24 **Del.C.** §2506(a)(1), proposes to revise its rules and regulations. The proposed addition to the rules require pharmacies to post signage advising patrons that they may request the lot number and expiration date of their dispensed medication at the time a prescription is dropped off at the pharmacy.

The Board will hold a public hearing on the proposed rule change on November 16, 2011 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Catherine Simon, Administrator of the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION**2600 EXAMINING BOARD OF PHYSICAL THERAPISTS
PUBLIC NOTICE**

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

The public hearing has been rescheduled to October 25, 2011 at 5:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes the re-organization of the rules and regulations for greater clarity for both licensees and members of the public. Rules 1.2.3 and 1.2.8 are modified with respect to the requirements for supervision. Rule 12.1.23 is added to state that a licensee is required to report to the Division of Professional Regulation any licensee who is in violation of the Board's laws or rules. Rule 13.0, pertaining to continuing education, is amended to add requirements for ethics hours and completion of a CPR course. In addition, Rule 13.2.2 specifies that course approval is good for three years, unless the course is modified. Rule 13.4.4 is added to make explicit that the Board has the authority to conduct continuing education audits and sanction licensees not in compliance with continuing education requirements. Finally, the revisions correct typos and grammatical errors.

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

DIVISION OF PROFESSIONAL REGULATION**2700 Board of Professional Land Surveyors****PUBLIC NOTICE****Regulation Suspension for Additional Comment and Public Hearing****Introduction**

The Delaware Board of Professional Land Surveyors ("Board"), pursuant to 24 **Del.C.** §2706(a), proposed revisions to its rules and regulations describing minimum technical standards for licensees.

Following extensive public comment and testimony, the Board adopted revisions to these regulations in October 2010, with the publication of the order adopting the new regulations appearing in the *Delaware Register* on January 1, 2011, at 14 **DE Reg.** 675 (01/01/11). A full copy of these new regulations appeared in the Register immediately after the Order adopting them.

Shortly thereafter, a group of professional land surveyors filed suit to overturn these new regulations in part, in an action captioned *Elrod, et al. v. Delaware Board of Professional Land Surveyors*, C.A. No. N11C-01-073 JAP. The lawsuit challenged the portions of the new regulations regarding Mortgage Inspection Plans, now to be called Mortgage Survey Plans.

In an effort to resolve this litigation, at a regularly scheduled Board meeting on June 16, 2011, the Board agreed to suspend the implementation and enforcement of the new regulations, pending another opportunity for written comment and another public hearing. After the hearing and the receipt of any further written public comment, the Board will decide what next steps will occur regarding these new regulations.

Therefore, the new regulations, as published in the *Delaware Register* January 1, 2011, are hereby suspended, pending the receipt of any additional written public comments up to and including the day of a public hearing to be held regarding these regulations.

The Board will hold the public hearing on these regulations on October 20, 2011 at 09:00 a.m., during its regularly scheduled meeting, at the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sandra Wagner, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION**3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals****PUBLIC NOTICE**

The Delaware Board of Professional Counselors of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to better define the certification requirements of Professional Counselors of Mental Health.

The Board will hold a public hearing on the proposed rule change on September 28, 2011 at 12:00 pm., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DEPARTMENT OF TRANSPORTATION**DIVISION OF MOTOR VEHICLES****PUBLIC NOTICE****2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents**

The Delaware Division of Motor Vehicles gives notice of intent to amend Division of Motor Vehicles Administrative Code 2217 relating to Delaware driver license and identification card application procedures.

Any person who wishes to make written suggestions, briefs or other written materials concerning this

amendment must submit the same to Scott M. Vien, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware, 19903, or by fax to (302) 739-2602 by September 30, 2011.

DIVISION OF PLANNING AND POLICY
PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Background

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to the current provisions concerning the scope of work for Traffic Impact Studies and Traffic Operational Analyses. As detailed in the current Manual, the Department has broad statutory authority to regulate the process of determining whether and under what conditions property developers may gain access to the state highway system.

The Department previously entered into agreements with county governments regarding traffic impact studies and traffic operational analyses. The draft regulations are intended to provide sufficient guidance to the state, local governments, the development community, and those interested in development matters in this regard. The Department wishes to assure that the study areas selected match well with what intersections the Department reasonably expects to be significantly affected by the traffic from the subject property, given its proposed uses.

Additional Public Workshop and Comment Period Extended

The draft regulations were initially published, seeking written comments, in the June 1, 2011, edition of the Delaware Register (14 **Del.Reg.** 1323). The Department then announced and held a workshop concerning the draft regulations on August 1, 2011 at the DeIDOT Administration Building, 800 Bay Road, Dover, Delaware.

The Department announces that there will be an additional workshop on these draft regulations, along with an extension of the written comment period.

The workshop will be held on Wednesday, September 14, 2011 from 6 p.m. to 8 p.m., at the auditorium of the Carvel State Office Building, 820 North French Street in Wilmington, Delaware.

The extended comment period for these regulations ends September 30, 2011.

The intent of the workshop is to inform the public about the changes and to solicit input prior to finalizing the regulations. The workshop will consist of a presentation on the regulatory changes and a question and answer session with a panel of DeIDOT staff. Interested citizens are encouraged to contribute written questions in advance of the meeting by sending them via email to Brett Taylor at dotpr@state.de.us. Audience members at the time of the meeting may provide written questions to be asked during the panel discussion. The number of questions addressed will be subject to the time available at the meeting.

Copies of the proposed regulations are available at http://regulations.delaware.gov/register/june2011/proposed/14%20DE%20Reg%201323%2006-01-11.htm#P8_224. You may also review the regulations on www.deldot.gov. If you are unable to make the workshop, you can also provide public comment to the Register of Regulations on their website.