
Delaware Register of Regulations

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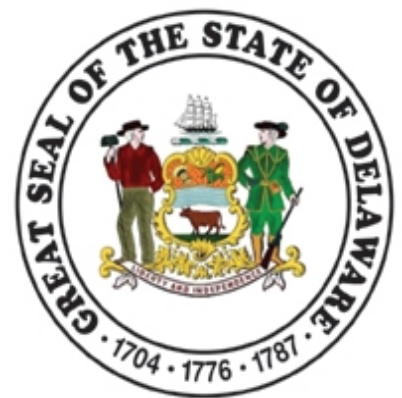
Volume 13 - Issue 11, Pages 1364- 1479



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Calendar of Events &
Hearing Notices



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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

INFORMATION ABOUT THE DELAWARE REGISTER OF 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.

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
June 1	May 14	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 16	4:30 p.m.
October 1	September 15	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 4815(b)(3)(c)(3) (3 **Del.C.** §4815(b)(3)(c)(3))
3 **DE Admin. Code** 1002

PUBLIC NOTICE

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. This rule change is proposed to increase the number of Jockeys that are eligible to enroll in the Funded plan.

A public hearing will be held on May 25, 2010, beginning at 9:30 AM and ending at 10:00 AM, in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804, where members of the public may 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 attention of John F. Wayne, Executive Director, at the above address. The final date to receive comments will be May 25, 2010, during the public hearing. Copies are also published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml.

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

1.0 Introduction

- 1.1 These regulations are authorized pursuant to 3 **Del.C.** §10171 and 29 **Del.C.** §4815(b)(3)c which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").
- 1.2 The Delaware Jockeys' Health and Welfare Benefit Board shall consist of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 1010 of **Title 3** or Chapter 4 of **Title 28**, 1 member of the Delaware Horsemen's Association, 1 representative from the

organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Thoroughbred Racing Commission shall serve as an *ex officio* member, and vote on matters in the event of a tie vote on any issue. All members shall be appointed by the Thoroughbred Racing Commission, and shall serve a two year term.

- 1.3 The Board shall elect a Chairperson from among the appointed members of the Board. The Chairperson shall serve a two year term and may serve consecutive terms. The Chairperson shall be the presiding officer at all meetings of the Board.
- 1.4 The Board shall administer the Fund pursuant to these regulations and other reasonable criteria for benefit eligibility.
- 1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 **Del.C.** §4815(b)(3)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.
- 1.6 The Fund will be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned by the Fund will be reinvested in the Delaware Jockeys' Health and Welfare Benefit Fund.
- 1.7 The Board shall use the Fund to provide for jockeys who regularly ride in Delaware, health benefits for active, disabled and retired jockeys. The Board may also expend usual and customary expenses for administrative purposes from the Fund.
- 1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.
- 1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

2.0 Eligibility Criteria for Health Coverage

- 2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
 - 2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had twenty-five (25) mounts in a Delaware Park season at Delaware Park; and
 - 2.1.1.1 If the jockey's Delaware Park mounts are less than ~~50~~ 100 in a Delaware Park season, then ~~80%~~ 50% or more of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.
 - 2.1.1.2 ~~If the jockey's Delaware Park mounts are less than 100 but more than 50 in a Delaware Park season, then 50% of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.~~
 - 2.1.1.32 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.
 - 2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:
 - 2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or
 - 2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years and had at least 5,000 career mounts at any track.
 - 2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:
 - 2.1.3.1 Qualification as an active Delaware jockey as defined by 2.1.1 for at least three years preceding determination of permanent disability; and

- 2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.
- 2.2 A jockey and/or the jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage beginning on the first of the month after it can be determined the eligibility requirement has been met, and continuing until December 31st of the next calendar year.
- 2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
- 2.3.1 Eligibility for coverage for dependants will be determined by the company providing the insurance coverage.

9 DE Reg. 1749 (05/01/06)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 251

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

251 Family Educational Rights and Privacy Act (FERPA)

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 251 Family Educational Rights and Privacy Act (FERPA). This regulation was reviewed subject to the five year review requirement. This regulation contemplates the state, local school districts and charter schools develop, adopt, and maintain policies for educational records that are consistent with the federal Family Educational Rights and Privacy Act (FERPA).

The regulation was proposed for re-adoption in the December 2009 *Register of Regulations*. Based on comments received from the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities the Department is republishing with amendments. The amendments address students served in the Department of Correction system.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to educational records and not student achievement specifically.
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to educational records and has been amended to ensure all students receive an equitable education as it relates to the FERPA.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to educational records. The regulation contemplates the students' health and safety is adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to educational records and has been amended to reflect all students legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local

board and school level? The regulation is related to educational records. The regulation continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to educational records. The regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing educational records as the state, local school districts and charter school must be in compliance with the federal law.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional costs contemplated by the amendments.

251 Family Educational Rights and Privacy Act (FERPA)

1.0 Authority and Incorporation of Federal Regulations

The Department of Education is authorized by 14 De I.C. §4111, to adopt rules and regulations regarding the educational records of students in public and private schools in Delaware. This regulation is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations.

2.0 Use and Adoption of FERPA by School Districts, Charter Schools, and Private Schools

- 2.1 Each school district, charter school and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students. This policy shall address access to such records, the confidentiality of such records, and the method by which the records may be amended. The policy shall comply with FERPA and its implementing regulations.
- 2.2 Each school district, charter school and private school shall periodically review and revise its policy on educational records to ensure continued compliance with FERPA.
- 2.3 Nothing in this regulation shall preclude a school district, charter school, or private school from adopting additional policies regarding educational records so long as those regulations are consistent with FERPA. Nothing in this regulation shall alter a school district or a charter school's duties regarding educational records of children with disabilities pursuant to the Individuals with Disabilities Education Act.

3.0 State Adoption of FERPA

- 3.1 Except as otherwise provided, the Department of Education adopts the federal regulation implementing FERPA (34 CFR part 99), including any subsequent amendment or revision to that regulation, to the extent the Department maintains educational records on students in attendance in Delaware schools.
- 3.2 Notwithstanding section 3.1, and except as noted herein, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation. School districts, charter schools, and private schools shall continue to be responsible for such notification. The Department may also disclose directory information from the educational records it maintains without prior public notification.

PROPOSED REGULATIONS

3.2.1 The Department shall annually notify parents or eligible students of their rights under FERPA or this regulation where said student is in the Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.

3.3 Notwithstanding section 3.1, and except as noted herein, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation.

3.3.1 The Department shall provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation where said student is in the Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.

4.0 Federal Complaints and Investigations

4.1 The Family Policy Compliance Office ("FPCO") of the U.S. Department of Education is responsible for monitoring compliance with FERPA by agencies to which federal education funds have been made available. That office will investigate, process and review violations and complaints that may be filed with it concerning the privacy rights of parents and students of covered agencies. The following is the address of the office: The Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. Families of students attending schools to which federal education funding has not been made available may also find FPCO's interpretations and policy letters useful in understanding their rights under the policies required by this regulation.

Nonregulatory note: 14 DE Admin. Code 92.7 C Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information addresses this subject for students with disabilities further.

8 DE Reg. 1112 (2/1/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 545

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

545 K to 12 School Counseling Programs

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education 14 DE Admin. Code 545 K to 12 School Counseling Programs. The amendments include the following: 1) requirement that each school have a written counseling plan rather than a district plan; 2) specificity of the American School Counselors Association's (ASCA) National Standards for School Counseling Programs; 3) the specific elements of the ASCA's national model; 4) the plans are to be updated annually rather than every 3 years; 4) requirement that the written plan be on file at the Department; and 5) clarification that the Department may periodically review the written school plans. In addition, a charter school is not required to follow this regulation for purposes of how the school is addressing the accepted models of student development (14 DE Admin. Code 275 Charter Schools).

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to K to 12 School Counseling programs. The national model provides best practice guidelines for academic development, career development, and personal and social development that should lead to improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to K to 12 School Counseling programs. The national model provides best practice guidelines for academic development, career development, and personal and social development that should help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to K to 12 School Counseling programs. The national model provides best practice guidelines for academic development, career development, and personal and social development that should help ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to K to 12 School Counseling programs. The national model provides best practice guidelines for academic development, career development, and personal and social development that should help ensure all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation is related to K to 12 School Counseling programs. The amended regulation is intended to preserve the necessary authority and flexibility of decision making at the local board and school levels.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation requires schools to be more involved in the decision making and 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 amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The State recognizes there may be some resource costs related to the implementation of the school counseling program by a State certified school counselor.

545 K to 12 School Counseling Programs**1.0 ~~Each Local School District Shall Have a Written K to 12 Plan for the District's School Counseling Program~~ Local School District Written Plan**

1.1 Every school in each district shall have a written school counseling plan. The plan shall consist of the following components:

1.1.1 The plan shall include the American School Counselors Association's (ASCA) National Standards for School Counseling Programs in the areas of Academic Development, Career Development and Personal and Social Development and shall:

1.1.2 Include vertical K-12 articulation of the American School Counselors Association's National Standards for School Counseling Programs;

1.1.3 Contain all elements of the ASCA National Model, as those are described by the American School Counselors Association, including:

PROPOSED REGULATIONS

- 1.1.3.1 Foundation, which provides what the program entails, such as describing what every student will know and be able to do. This element contains the mission statement, domains, and national standards as those terms are used in the ASCA National Model.
- 1.1.3.2 Delivery Systems, which address how the program will be implemented. This element contains the guidance curriculum, individual student planning, responsive services, and systems support as those terms are used in the ASCA National Model.
- 1.1.3.3 Management Systems, which addresses when certain elements of the counseling plan are implemented, why certain data are used, and the authority making entity at the local level.
- 1.1.3.4 Accountability, which address the outcomes of students based on the counseling plan.
- 1.21.4 Be on file in the district office and in each school.
- 1.31.5 Be reviewed and updated by the school and by the local school district every three (3) years annually using available data and school and district goals.
- 1.41.6 Be incorporated in the individual school improvement plans that are reviewed as part of the Quality Review process School Success Plan and be implemented by a State certified school counselor. The School Success Plan is defined in 14 DE Admin. Code 220.
- 3 DE Reg. 1546 (5/1/00)**
8 DE Reg. 1606 (5/1/05)

2.0 Reporting Requirements and Timelines

- 2.1 Each school shall have an electronic copy of its written school counseling plan on file with the Department of Education.
- 2.2 Each school shall provide an electronic copy of the annual update by August 15 based on the previous year's data.
- 2.3 For monitoring purposes, the Department may periodically review the written school counseling plan for alignment to the requirements in 1.0.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
 14 DE Admin. Code 940

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

940 Early Admission to Kindergarten for Gifted Students

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education 14 DE Admin. Code 940 Early Admission to Kindergarten for Gifted Students. The amendments reflect a change to the assessment tools for evaluation the readiness of children for entry into kindergarten. This regulation was reviewed under the five year cycle. The Department received comments and input from the Statewide Advisory Council for Gifted Education.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement

standards? This regulation is related to early admission to kindergarten and as such the amendments should help to ensure students are ready to begin school.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to early admission to kindergarten and as such the amendments should help to ensure students who may be gifted allowed entry school even though they do not meet the age cut-off date.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments should continue to ensure the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to early admission to kindergarten and as such the amendments should help to ensure students who may be gifted allowed for entry into school even though they do not meet the age cut-off date.

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The Department does not contemplate additional costs to the state or local school boards for compliance.

940 Early Admission to Kindergarten for Gifted Students

1.0 Requirements for Early Admission to Kindergarten

1.1 When providing early enrollment into kindergarten of children who are gifted pursuant to the provisions of 14 **Del.C.** §3101(3)(a) or (b), local school districts and charter schools shall comply with the following requirements:

1.1.1 At the request of any parent, legal guardian or person acting as a caregiver pursuant to 14 **Del.C.** §202(f), the district or charter school shall conduct an evaluation of any such potentially gifted child by a school psychologist or other professionally qualified person, in conjunction with other appropriate personnel, to determine if the child possesses outstanding mental and cognitive abilities and to determine if the child can demonstrate the social, emotional, and physical maturity, normally expected for successful participation in kindergarten. A discussion shall be held to determine the parent, guardian or Relative Caregiver's reason for requesting the child's early admission to kindergarten prior to the legal age. The evaluation shall be conducted at no cost to the parent, guardian or Relative Caregiver.

1.1.2 For the 2010-11 school year, in order to qualify for early enrollment, the child must achieve a measured score at least 1.5 standard deviations above the mean score for the assessment instrument(s) used to determine the child's mental and cognitive abilities. In addition, the evaluation instrument(s) must indicate that the child possesses the social, emotional and physical maturity to successfully participate in kindergarten.

1.1.3 Beginning for the 2011-2012 school year, the school district or charter school shall use multiple means for assessing the school readiness of the child. Assessment instruments used shall be valid and reliable for school readiness in early childhood populations.

1.1.3.1 In order to qualify for early enrollment, the child must achieve a measured score at least 1.5 standard deviations above the mean score for the assessment instrument used to determine the child's mental and cognitive abilities.

1.1.3.2 In addition, the evaluation instrument(s) must indicate that the child possesses the social, emotional and physical maturity to successfully participate in kindergarten.

1.31.4 Following the completion of the evaluation, a representative of the school district or charter school who is knowledgeable of the evaluation process and any assessments used during the evaluation shall talk with the parent, guardian or Relative Caregiver to discuss the evaluation results.

8 DE Reg. 1479 (4/1/05)

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

Statutory Authority: 16 Delaware Code, Section 3003A; 29 Delaware Code, Section 7971 (14)
(16 Del.C., §3003A; 29 Del.C., §7971(14))
16 DE Admin. Code 3220

PUBLIC NOTICE

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

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 30A, Section 3006A, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing the training and qualifications for nursing assistants and certified nursing assistants.

This regulatory proposal was initially published in the February 2010 issue of the Register on page 1014. Due to the significant number of comments and amendments, it is being repropoed.

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 Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, May 31, 2010.

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

SUMMARY OF PROPOSAL

The proposal amends existing Regulation 3220 - Training and Certification of Certified Nursing Assistants. The proposed change will amend the regulation to relative the assessment of fees for reciprocal certification, add a requirement for continuing education, modify training program requirements and delete the Senior CNA Training Program Instructor component.

Statutory Authority

Delaware Code, Title 16, Ch. 30A§ 3006A.

Background

DLTCRP identified the need to update various components of the existing regulation governing the training and certification of Certified Nursing Assistants.

Summary of Proposal

This regulatory proposal amends the existing regulations as outlined below:

- Assesses a \$30 fee for the reciprocal certification of a nursing assistant from another state.
- Requires 24 hours of continuing education per year to maintain certification.
- Enhances training program requirements.

- Deletes Section 6.0, Senior CNA Training Program Instructor.

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

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

11000 Child Care Subsidy Program

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2010.

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

SUMMARY OF PROPOSED CHANGE

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

Statutory Authority

45 CFR §98.40, *Compliance with applicable State and local regulatory requirements*

Summary of Proposed Change

DSSM 11006.3, ~~Service Authorization~~ Authorizing Child Care Services: This change is proposed: 1) to rename this section to better describe its content; and, 2) to add information and to reformat the original text to further clarify the requirements for authorizing child care services. The intent of the proposed amendment is to simplify language and improve readability.

DSS PROPOSED REGULATION #10-21

REVISION:

11006.3 ~~Service Authorization~~ Authorizing Child Care Services

~~Each eligible child's care must be authorized on the DSS Purchase of Child Day Care Authorization Form (Form 618d) which the provider will receive from the Division upon initial enrollment and each subsequent change and/or redetermination. The provider should request to see the DSS Client Payment Agreement Form (Form 601b) from the parent/caretaker on the first day of attendance if they have not received Form 618d by mail.~~

~~The provider should notify the child's caretaker in writing the month before the form expires to be redetermined eligible for services. Payment cannot be made after the expiration date unless a new form has been issued.~~

~~Need for service codes are listed on Form 618d.~~

~~This policy applies to all Licensed, Licensed Exempt, Relative/Non-Relative Providers.~~

PROPOSED REGULATIONS

1. Eligible Children Must Be DSS-Approved for Provider to Receive Payment

2. Child Care Providers Will Receive Authorization Notice

Providers will receive authorization notice for each child at first enrollment and for each change or redetermination. The providers will receive a computer-generated copy of the parent's authorization letter for each child in their care. In the case of a computer problem or last-minute authorization, the provider may instead receive a handwritten authorization form (Subsidized Child Care Client Agreement- Form 626) from the DSS worker to validate the provider services. Providers will also receive a computer-generated authorization letter from DSS when data entry for the handwritten form has been completed.

Authorizations for service will show:

- The child's name and ID number.
- The service start and end date.
- The number of service days per week.
- The length of the service day (part day, full day, etc.)
- Any co-pay the parent must pay.

3. Providers Verify Authorization Information

The child care provider must verify information on the authorization form. DSS will only pay for those services stated on the form. If a provider feels the service information is not accurate, the client must contact their DSS worker to have the information adjusted.

4. Provider must have the Authorization Letter or Form 626 at the start of Service

DSS cannot guarantee payments for services provided without a valid authorization in place. All providers must have Purchase of Care (POC) paperwork to support the start date of a child with your services.

5. Only DSS Authorized Children Will Be Accepted for Continued Services

Payment cannot be made after the expiration date unless a new DSS authorization has been issued. Providers cannot assume that clients whose authorizations have expired will continue to be eligible for services.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 & 2501 (18 Del.C. §§311, 2501)
18 DE Admin. Code 704

PUBLIC NOTICE

704 Homeowners Premium Consumer Comparison

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 704 relating to Homeowners Premium Consumer Comparison. The docket number for this proposed amendment is 1342.

The purpose of the proposed amendment to regulation 704 is to reflect the date the Department receives date from the National Association of Insurance Commissioners (NAIC). The text of the proposed amendment is reproduced in the May edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

704 Homeowners Premium Consumer Comparison

1.0 Authority

- 1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311 and 2501 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101.

2.0 Definitions

“**Homeowners market share**” shall be determined by data from the National Association of Insurance Commissioners for the prior calendar year for line number 04 (“Homeowners Multiple Peril”) for the State of Delaware.

“**Insurer**” shall mean every insurer licensed to offer and sell non-commercial residential homeowners insurance coverage in the State of Delaware.

“**Rate estimates**” shall mean the estimated annual insurance premiums produced for the Department’s rate survey.

“**Rate survey**” shall mean a request by the Department that insurers calculate estimated annual insurance premiums based on hypothetical consumer profiles. The rate survey shall include estimated premiums for zip codes or other geographic area identified by the Department.

3.0 Scope

- 3.1 Insurers with .01 percent or more of the Delaware homeowners insurance market share shall be required to complete the full rate survey required by this regulation.
- 3.2 Insurers with less than .01 percent of homeowners insurance market share shall not be required to complete a rate survey pursuant to this regulation.
- 3.3 The provisions of this regulation shall only apply to policies of insurance covering those properties described in 18 **Del.C.** §4120.

4.0 Insurer Information

- 4.1 Each insurer will be provided with an account on the Department’s website to provide basic company information and to administer the submission of rate survey data.

5.0 Survey Completion Deadline

- 5.1 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, and other information necessary for calculating rate estimates on the Department’s website no later than ~~March~~ April 1st of each year.
- 5.2 In 2007, all required rate survey data from insurers must be submitted to the Department on or before April 15, 2007. In all subsequent years, all required rate survey data from insurers must be submitted to the Department on or before ~~April~~ May 1 of each year.
- 5.3 Rate survey data that is incomplete or not reported according to the Department’s instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

6.0 Survey Format

- 6.1 Insurers shall provide rate estimates based on rates in effect as of March 1 of the year when the rate survey is being completed.
- 6.2 All rate estimates shall be rounded to the nearest dollar.
- 6.3 Insurers shall submit rate data utilizing an electronic spreadsheet provided by the Department or by other means specified by the Department. Insurers shall be required to upload the data to the Department via the internet.

7.0 Responsibility for Information and Data

- 7.1 Insurers shall be responsible for the accuracy of company information and rate data submitted to the Department for publication. As part of the submission process, insurers will be subject to examination to verify the accuracy of the data being submitted.

8.0 Consumer Quote Requests

- 8.1 Insurers shall provide a single electronic mail address to the Department for the purpose of allowing consumers to request a personalized homeowners insurance premium quote as part of the rate comparison process.
- 8.2 The insurer shall be required to provide a direct email response to the consumer, confirming receipt of the quote request.
- 8.3 The insurer shall be required to maintain an electronic log of all email responses to consumer requests for rate quotes for a period of one year after the request. The electronic log shall be capable of being transferred to the Department upon request.

9.0 Penalties

- 9.1 Insurers that do not comply with this regulation are subject to the provisions of 18 Del.C. §329.

10.0 Severability

- 10.1 If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

11.0 Effective Date

- 11.1 This Regulation ~~shall become~~ was originally effective February 15, 2007.
- 11.2 The amended Regulation shall become effective ten days after execution of a n Order by the Commissioner and publication.

10 DE Reg. 1304 (02/01/07)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§314, 1111)
18 DE Admin. Code 901

PUBLIC NOTICE**901 Arbitration of Automobile and Homeowners' Insurance Claims**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 901 relating to Arbitration. The docket number for this proposed amendment is 1278.

The purpose of the proposed amendment to regulation 901 is to update the existing regulation to conform to statutory changes relative to health insurance arbitration and to provide for the payment of legal services to prevailing consumers in certain homeowners' arbitration cases. The text of the proposed amendment is reproduced in the May 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

901 Arbitration of Automobile and Homeowners' Insurance Claims

1.0 Purpose and Statutory Authority

- 1.1 The purpose of this Regulation is to implement 18 **Del.C.** §331, ~~Ch. 23~~, and 21 **Del.C.** §§2118 and 2118B by establishing the procedures for the arbitration of certain claims for benefits available under automobile or homeowners' policies or agreements, and/or those statutes. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 2312, and 29 **Del.C.**, Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

5 DE Reg. 1746 (3/1/02)

2.0 Insurer's Duty to Arbitrate

- 2.1 Every insurer providing coverage or benefits in this State for automobile or homeowners' insurance policies shall submit to arbitration of covered claims (as defined by 18 **Del.C.** §331, and 21 **Del.C.** §§2118 and 2118B) by their insureds unless it is exempt from arbitration by the Insurance Commissioner.

5 DE Reg. 1746 (3/1/02)

3.0 Exemption from Arbitration

- 3.1 Insurers requesting exemption from the duty to arbitrate under a homeowners' insurance policy shall submit to the Insurance Commissioner the following:
- 3.1.1 A request for exemption from arbitration;
 - 3.1.2 Copies or description of policies or plans for which exemption is requested;
 - 3.1.3 A detailed description of its internal review or appraisal procedures;
 - 3.1.4 Copies of documents to be provided to the insured describing its internal procedures including a statement that the insurer will be bound by a decision favorable to the insured;
 - 3.1.5 A certification by an officer of the insurer with binding authority that the procedures described will be followed in all cases, that the insurer will be bound by a decision favorable to the insured and that all documents submitted are true and accurate; and
 - 3.1.6 Payment of a non-refundable fee of \$75.00.
- 3.2 The Commissioner shall exempt a homeowner insurer from arbitration under this Regulation and continue such exemption as long as the internal appraisal or review procedures submitted under section 3.1 contain the following minimum requirements:
- 3.2.1 The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer's assigned adjuster nor his or her supervisor may participate on the panel nor anyone under that supervisor's control;
 - 3.2.2 The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;
 - 3.2.3 The insured is permitted to be represented by counsel;
 - 3.2.4 The insured is informed as to the right to appeal, if any, an adverse decision;

- 3.2.5 The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision; and
- 3.2.6 The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department.
- 3.3 The Commissioner may suspend, revoke or refuse to continue any exemption after notice and a hearing establishing violation of the above. The exemption provided above is not effective until the application has been filed, reviewed and approved by the Commissioner. The Commissioner may request reports from insurers from time to time on the above reviews.

5 DE Reg. 1746 (3/1/02)**4.0 Exclusion from Arbitration**

- 4.1 The following claims shall not be subject to arbitration under this Regulation:
- 4.1.1 Claims for which there is no jurisdiction under 18 **Del.C.** §§331, 332 and 6416(f) and 21 **Del.C.** §§2118 and 2118B;
- 4.1.2 Claims for which there is no policy coverage in force;
- 4.1.3 Claims that are already pending before any court;
- 4.1.4 Claims that arise under an insurance policy from a jurisdiction other than Delaware; or
- 4.1.5 Claims which arise under a homeowners' policy or plan which has been exempted by the Commissioner under section 3.0.
- 4.2 The Arbitration Secretary or Panel is authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under section 4.1.1 and after notice and an opportunity to respond is provided the petitioner.

5 DE Reg. 1746 (3/1/02)**5.0 General**

- 5.1 These Arbitration Rules shall be considered applicable to accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party property and PIP claims and to first party claims in other states or territories of the United States or to foreign countries as set forth in the insurance policy.
- 5.2 In arbitration proceedings and practice, the claimant who initiates the proceeding by filing a request for arbitration of a controverted claim or issue with the Insurance Commissioner shall be known as the "claimant," and the company or companies against which claim or claims is asserted shall be known as "respondent(s)."
- 5.3 Requests for arbitration with respect to homeowners' insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date an offer of settlement or denial of coverage or liability has been made by an insurer.

5 DE Reg. 1746 (3/1/02)**6.0 Notice and Manner of Service**

- 6.1 Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.
- 6.2 Service of an original Petition shall be by Certified U.S. Postage and return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.
- 6.3 The parties must provide a brief statement verifying the service of all filed papers with the manner, date and address of service.

5 DE Reg. 1746 (3/1/02)

7.0 When Arbitration May Be Commenced

- 7.1 Arbitration may be commenced after the parties have attempted to resolve the matter informally and the Petitioner has provided the opposing party with all reasonably requested information in Petitioner's possession or provided the opposing party with an opportunity to obtain such information.
- 7.2 The Panel may dismiss without prejudice the matter if it finds that the Petitioner has not attempted to resolve the matter informally or has failed to provide the opposing party with reasonably requested information.

5 DE Reg. 1746 (3/1/02)

8.0 Commencement of Arbitration

- 8.1 An arbitration will commence upon the filing of a Petition and three copies, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the proper fee. The petitioner shall at the same time send a copy of the same Petition and supporting documents to the insurer or insurer's representative and a statement verifying service under section 5.0. The Arbitration Secretary may return any non-conforming Petition.
- 8.2 Within 20 business days of receipt of the Petition, the responding insurer ("Respondent") shall file a Response with three copies, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached and payment of the proper fee. The Respondent shall at the same time send a copy of the same Response and supporting documents to the Petitioner or Petitioner's representative and a statement verifying service under section 5.0. The Arbitration Secretary may return any non-conforming Response.
- 8.3 If the Respondent fails to file a Response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitration Panel for summary disposition. The Panel may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on Respondent. The Arbitration Secretary or Panel may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.
- 8.4 Upon the filing of a proper Response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitration Panel.
- 8.5 The Insurance Department will provide the approved form of Petition or Response as they may be amended from time to time. The Parties are free to produce and use their own copies of those forms.

5 DE Reg. 1746 (3/1/02)

9.0 Arbitration Panels

- 9.1 The Commissioner shall establish ~~two~~ types of Arbitration Panels. There shall be Panels established for automobile insurance claims and homeowners' insurance claims.
- 9.2 Each Panel shall consist of three members of suitable backgrounds or experience or as may be specified by statute, to be selected by the Commissioner. No member may serve on a Panel in which his employer or client is a party. Each Panel shall have a presiding member who shall be appointed by the Commissioner.
- 9.2.1 In the case of automobile claims, each Panel shall consist of at least one licensed Delaware attorney as a member and the balance of the members shall be Delaware licensed insurance adjusters and/or appraiser as defined in 18 Del.C. §1702(c)
- 9.2.2 In the case of homeowners' claim, the Panel shall consist of individuals of suitable expertise in evaluating such claims and may include Delaware licensed property appraisers or adjusters. One member of the panel shall be a Delaware licensed attorney.
- 9.2.3 ~~In the case of health insurance claims involving the certification of treatment or procedure, one member of the panel must be a licensed health care professional in the relevant area of dispute.~~
- 9.2.43 A decision by ~~the~~ a Panel requires concurrence by at least two of the Panel members. The written decision shall be signed by the panel chair and shall reflect the votes of the members.

5 DE Reg. 1746 (3/1/02)

10.0 Arbitration Hearings

- 10.1 The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business days prior to the hearing. Neither party is required to appear and may rely on the filed papers.
- 10.2 The purpose of Arbitration is an attempt to ~~effect~~ affect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter informally. Arbitration hearings shall be conducted in keeping with that goal. The arbitration hearing is not a substitute for a civil trial. In accord, the Delaware Rules of Evidence do not apply and hearings are to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Panel. If the Panel allows any brief testimony, the Panel shall allow brief cross examination or other response by the opposing party.
- 10.3 The Arbitration Panel may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside the parties' presence for information to resolve the matter.
- 10.4 The Panel is to consider the matter based on the submissions of the parties and information otherwise obtained by the Panel. The Panel shall not consider any matter not contained in the original or supplemental submissions of the parties which has not been provided the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.
- 10.5 Claims for reasonable attorney fees under ~~21 Del.C. §2118B~~ 18 Del.C. §331 Homeowners' Insurance, shall only be granted by the arbitrators upon the petitioner proving that the insurer acted in "bad faith." ~~Bad faith is a n intentional, reckless or malicious in difference to the duties owed an insured, not negligence, carelessness or inadvertence of any degree prevailing without an arbitrator's dissent in all cases in which the panel determines the insurer's position was not supported by the evidence and constituted and unreasonable delay in paying the claim of the insured.~~
- 10.6 Claims for reasonable attorney fees under 21 Del. C. §2118B shall be granted by the arbitrators in all cases where they have determined that the insurer acted in "bad faith".

5 DE Reg. 1746 (3/1/02)

11.0 Subrogation Arbitration

- 11.1 Subrogation arbitration between or among insurers pursuant to 21 **Del.C.** §2118 is not subject to this Regulation and shall continue to be conducted through Arbitration Forums, Inc., or its successor.

5 DE Reg. 1746 (3/1/02)

12.0 Arbitration Fees

- 12.1 Each party to an arbitration shall tender and pay the following filing fees for arbitration.
- 12.1.1 \$30.00 for Automobile Insurance Claims; ~~and~~
- 12.1.2 \$30.00 for Homeowners' Insurance Claims; ~~and~~
- 12.2 The filing fees are non-refundable and shall only be returned when a claim is determined to be excluded from arbitration. The prevailing party at arbitration ~~is normally entitled to recover~~ shall recover their paid filing fees as costs. ~~However, the Panel may, for cause, award the filing fee as costs as may be equitable.~~

5 DE Reg. 1746 (3/1/02)

13.0 Appeals

- 13.1 Appeals from an adverse decision of the Arbitration panel shall be taken to the Superior Court of the State of Delaware by filing a Notice of Appeal with the Arbitration Secretary.
- 13.2 The Notice of Appeal must be filed within 90 days in the case of claims for homeowners' insurance claims and within 30 days in the case of automobile insurance claims.

13.3 All further filings and proceedings shall be in accordance with the Superior Court Rules of Civil Procedure.

5 DE Reg. 1746 (3/1/02)

14.0 Effective Date

~~This regulation, as amended, shall replace existing Regulations 10 and 10A in their entirety. This amended regulation shall become effective on March June 11, 2002 2010. Any health claims commenced under this regulation prior to the effective date of Regulation 1301 shall be resolved in accordance with the provisions of 73 Del. Laws Ch. 96.~~

5 DE Reg. 1746 (3/1/02)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§314, 1111)
18 DE Admin. Code 1208

PUBLIC NOTICE

1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 1208 relating to Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities.

The purpose of the proposed amendment to regulation 1208 is to update the existing regulation to utilize newer mortality tables that have been recognized by the National Association of Insurance Commissioners. The text of the proposed amendment is reproduced in the May 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

1.0 Authority

This rule is promulgated by the Commissioner of Insurance pursuant to 18 Del.C. §1113 and 29 Del.C. Ch. 101 (Administrative Procedures Act).

2.0 Purpose

The purpose of this regulation is to recognize ~~new~~ the following mortality tables, 1983 Table "a" and 1983 GAM Table, the Annuity 2000 Mortality Table, and the Annuity 2000 Mortality Table and the 1994 Group Annuity Reserving (1994 GAR) Table for use in determining the minimum standard of valuation for annuity and pure endowment contracts.

3.0 Definitions

3.1 As used in this regulation:

"1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

"1983 Table 'A' " means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

"1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and adopted as a recognized mortality table in December 1996 by the National Association of Insurance Commissioners.

"Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

4.0 Individual Annuity or Pure Endowment Contracts

- 4.1 The 1983 Table "A" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard for valuation for any individual annuity or pure endowment contract issued on or after July 8, 1980 and prior to January 1, 2001.
- 4.2 The 1983 Table "A" is to be used for determining the minimum standard valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987 and prior to January 1, 2001.
- 4.3 Except as provided in section 4.4, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2001.
- 4.4 The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2001, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:
- 4.4.1 Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
- 4.4.2 Settlements involving similar actions such as worker's compensation claims; or
- 4.4.3 Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

5.0 Group Annuity or Pure Endowment Contracts

- 5.1 The 1983 GAM Table and the 1983 Table "a" are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, either table may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 8, 1980 and prior to January 1, 2001 under a group annuity or pure endowment contract.
- 5.2 The 1983 GAM Table is to be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987 and prior to January 1, 2001 under a group annuity or pure endowment contract.
- 5.3 The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2001 under a group annuity or pure endowment contract.

6.0 Application of the 1994 GAR Table

In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$$

where the q_x^{1994} and AA_x s are as specified in the 1994 GAR Table.

67.0 Separability

If any provision of this Regulation or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

78.0 Effective Date

The effective date of this Regulation is ~~December 31, 1985~~ July 11, 2010.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 **Del.C.** §§314, 1111)

PUBLIC NOTICE**1218 Determining Reserve Liabilities For Credit Life Insurance**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 1218 relating to reserve liabilities for credit life insurance.

The purpose of the proposed regulation 1218 is to recognize the 2001 CSO Male Composite Ultimate Mortality Table for use in determining the minimum standards of valuation and to specify the interest rate method to be used in determining the minimum standards of valuation. The docket number of the proposed regulation is 1346. The proposed regulation is reproduced in the May 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's web site at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

1218 Determining Reserve Liabilities For Credit Life Insurance**1.0 Authority**

This regulation is promulgated by the Commissioner of Insurance pursuant to 18 **Del.C.** §§1111, 1113, 1213, 1701 and 29 **Del.C.** Ch. 101 (Administrative Procedures Act).

2.0 Scope

This regulation applies to credit life insurance policies and certificates, and those similar policies and certificates where there is no identifiable charge made to the debtor.

3.0 Purpose

The purpose of this regulation is to:

- 3.1 Recognize the 2001 CSO Male Composite Ultimate Mortality Table for use in determining the minimum standard of valuation.
- 3.2 Specify the interest rate and method to be used in determining the minimum standard of valuation.

4.0 Definitions

- 4.1 "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.
- 4.2 "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.
- 4.3 "Credit life insurance" means life insurance as defined in 18 Del.C. §3702.

5.0 2001 CSO Male Composite Ultimate Mortality Table

- 5.1 The minimum standard for both male and female insureds shall be 2001 CSO Male Composite Ultimate Mortality Table.
- 5.2 Where the credit life insurance policy or certificate insures two lives, the minimum standard shall be twice the mortality in the 2001 CSO Male Composite Ultimate Mortality Table based on the age of the older insured.

6.0 Minimum Standards

- 6.1 18 Del.C. §1212 shall not apply to credit life insurance.
- 6.2 The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in 18 Del.C. §1113.
- 6.3 The method used in determining the minimum standard for valuation shall be the Commissioners Reserve Valuation Method as defined in 18 Del.C. §1113.

7.0 Effective Date

This regulation is applicable to credit life policies and certificates issued on or after January 1, 2010 and effective 10 days after publication of the final Order signed by the Commissioner.

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS**

Statutory Authority: 19 Delaware Code, Section 202(a) (19 Del.C. §202(a))
19 DE Admin. Code 1101

PUBLIC NOTICE**1101 Apprenticeship and Training Regulations**

The Governor's Council on Apprenticeship & Training will hold a public hearing beginning at 10:00 a.m., Tuesday, June 8, 2010 at the Delaware Department of Labor, 225 Corporate Blvd., Suite 202, Newark, Delaware 19702, where members of the public can offer comments.

The Council on Apprenticeship & Training proposes to recommend to the Secretary of Labor changes to Rule 6.4.2 of the *Rules and Regulations Relating to Delaware Apprenticeship and Training Law*. The proposal modifies the ratio for two trades. First, the Structural Metal Worker trade will be changed from its current one apprentice up to five mechanics (1 up to 5) to one apprentice up to four mechanics (1 up to 4). In addition, the ratio for the trade of Painters, Construction and Maintenance will be changed from its current one apprentice up to five mechanics (1 up to 5) to one apprentice up to three mechanics (1 up to 3).

The proposed rule is published in the *Delaware Register of Regulations* and two newspapers. Copies are available at the Department of Labor, Division of Industrial Affairs, 225 Corporate Blvd., Suite 104, Newark, DE 19702. A copy can be obtained by contacting Kevin Calio, Director of Apprenticeship & Training, at (302) 451-3419. Interested persons can submit written comment to the Council on Apprenticeship & Training c/o Kevin Calio at the above address until the time set for the public hearing.

(Break in Continuity of Sections)

6.0 Standards of Apprenticeship

- 6.1 The following standards are prescribed for a Program.
 - 6.1.1 The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in a non-apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.
- 6.2 The standards must contain provisions concerning the following:
 - 6.2.1 The employment and training of the Apprentice in a skilled occupation;
 - 6.2.2 an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;
 - 6.2.3 the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry practice;
 - 6.2.4 an outline of the work processes in which the Apprentice will receive supervised work experience and on-the-job training, and the allocation of the approximate time to be spent in each major process;
 - 6.2.5 provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor, Office of Apprenticeship and Training;
 - 6.2.6 a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journeyman's hourly wage;
 - 6.2.7 Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:
 - 6.2.7.1 1 to 7 year programs
 - 6.2.7.2 starting pay must be at least minimum wage
 - 6.2.7.3 final period must be at least 85%

1 YEAR [OR] 2,000 HOUR APPRENTICESHIP PROGRAM:

1st	1000 hours:	40%
2nd	1000 hours:	85%

2 YEAR [OR] 4,000 HOUR APPRENTICESHIP PROGRAM:

1st	1000 hours:	40%
2nd	1000 hours:	51%
3rd	1000 hours:	63%
4th	1000 hours:	85%

3 YEAR [OR] 6,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours:	40%
2nd	1,000 hours:	48%

PROPOSED REGULATIONS

3rd	1,000 hours:	57%
4th	1,000 hours:	65%
5th	1,000 hours:	74%
6th	1,000 hours:	85%

4 YEAR [OR] 8,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours:	40%
2nd	1,000 hours:	46%
3rd	1,000 hours:	53%
4th	1,000 hours:	59%
5th	1,000 hours:	65%
6th	1,000 hours:	71%
7th	1,000 hours:	78%
8th	1,000 hours:	85%

5 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours:	40%
2nd	1,000 hours:	45%
3rd	1,000 hours:	50%
4th	1,000 hours:	55%
5th	1,000 hours:	60%
6th	1,000 hours:	65%
7th	1,000 hours:	70%
8th	1,000 hours:	74%
9th	1,000 hours:	79%
10th	1,000 hours:	85%

6 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours:	40%
2nd	1,000 hours:	44%
3rd	1,000 hours:	48%
4th	1,000 hours:	52%
5th	1,000 hours:	56%
6th	1,000 hours:	60%
7th	1,000 hours:	64%
8th	1,000 hours:	68%
9th	1,000 hours:	72%
10th	1,000 hours:	76%
11th	1,000 hours:	81%
12th	1,000 hours:	85%

7 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours:	40%
2nd	1,000 hours:	43%
3rd	1,000 hours:	47%
4th	1,000 hours:	50%
5th	1,000 hours:	54%
6th	1,000 hours:	57%
7th	1,000 hours:	61%
8th	1,000 hours:	64%

9th	1,000 hours:	68%
10th	1,000 hours:	71%
11th	1,000 hours:	74%
12th	1,000 hours:	78%
13th	1,000 hours:	81%
14th	1,000 hours:	85%

- 6.2.8 that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;
- 6.2.9 That the established Journeyman's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyman's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice and Registration Agency.
- 6.2.9.1 In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage increment without the written consent of the Administrator;
- 6.2.10 That the established Journeyman's rate provided for by the Standards be reviewed and/or adjusted annually. Sponsors of Programs shall be required to give proof that all employees used in determining ratios of Apprentices to Journeymen shall be receiving wages at least in the amount set for Journeymen in their individual program standards, or are qualified to perform as Journeymen and must be paid at least the minimum journeyman rate;
- 6.2.11 That the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journeyman wage rate. Wages covered by a collective bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.
- 6.3 The Program must include a periodic review and evaluation of the Apprentice's progress in job performance and related instruction, and the maintenance of appropriate progress records.
- 6.4 The ratio of Apprentices to Journeymen should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.
- 6.4.1 The ratio of Apprentices to Journeymen shall be one Apprentice up to each five (5) Journeymen employed by the prospective Sponsor unless a different ratio based on an industry standard is contained in the signed Standards of Apprenticeship Agreement.
- 6.4.2 The following have been recognized to be the industry standard for the listed trades:
Ratio of Apprentice Journeymen*

1 up to 4	Sheet Metal Worker
1 up to 3	Insulation Worker
<u>1 up to 4</u>	<u>Structural Metal Worker</u>
<u>1 up to 3</u>	<u>Painters, Construction and Maintenance</u>
1 up to 3	Asbestos Worker
1 up to 3	Industrial Maintenance Mechanic
1 up to 3	Plumbers/Pipefitters
1 up to 3	Electrician
1 up to 3	Precision Instrument Repairers
1 up to 3	Glaziers
1 up to 3	Construction Laborer
1 up to 3	Dry Wall Finisher

1 up to 3	Hard Tile Setter
1 up to 2	Roofers
1 up to 1	Sprinkler Fitters
1 up to 1	Child Care Worker
1 up to 1	Elevator Constructor

* The ratio has no effect until the second apprentice is registered. Only one Journeyperson is necessary in any trade for the first Apprentice.

6.4.3 Exceptions.

6.4.3.1 If a collective bargaining agreement stipulates a ratio of Apprentices to Journeyperson, it shall prevail provided the Bargaining Ratio is not lower than the State standard.

6.4.3.2 A deviation from the established standard may be granted by the Administrator upon written request after considering the needs of the plant and/or trade with consideration for growth, the availability of relevant training, and the opportunity for employment of skilled workers following the completion of their training. Such exception shall last no more than one year but may be renewed upon written request.

5 DE Reg. 204 (7/1/2001)

8 DE Reg. 468 (9/1/04)

- 6.5 A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.
- 6.6 Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.
- 6.7 The required minimum qualifications for persons entering an Apprentice Program must be met.
- 6.8 Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.
- 6.9 Advance standing or credit up to 25% OJT hours of the particular trade term in question for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step may be granted. The granting of a greater amount of credit shall be set at the discretion of the Administrator based on supportive documentation submitted by the Sponsor. In no case shall more than one half of the particular trade term in question be granted unless the time in question has been spent in any state or federally registered program.
- 6.10 When a registered apprentice is no longer employed by a Sponsor, the Sponsor shall determine the time and training earned during his or her employment and send notice of such progress to the Apprenticeship and Training Section of the Delaware Department of Labor and to the apprentice in writing.
- 6.11 Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and approval of, the Registration Agency.
- 6.12 These Standards shall contain a statement of assurance of qualified training personnel.
- 6.13 There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.
- 6.14 These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of Industrial Affairs, Office of Apprenticeship and Training.
- 6.15 There will be a provision for the Registration, Cancellation and Deregistration of the Program, and a requirement for the prompt submission of any modification or amendment thereto.
- 6.16 There will be provisions for Registration of Agreements, modifications and amendments, notice to the Division of persons who have successfully completed Programs, and notice of Cancellations, suspensions and terminations of Agreements and causes therefore.

- 6.17 There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.
- 6.18 There will be provisions for not less than five (5) days notice to Apprentices of any proposed adverse action and cause therefore with stated opportunity to Apprentices during such period for corrective action.
- 6.19 There will be provisions for a grievance procedure, and the name and address of the appropriate authority under the program to receive, process and make disposition of complaints.
- 6.20 There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.
- 6.21 There will be provisions for a participating Employer's Agreement.
- 6.22 There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.
- 6.23 All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations and rules pertaining to apprenticeship.
- 6.24 Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a "memo randum of understanding" has been signed by an individual state and the state of Delaware.

3 DE Reg. 641 (11/1/99)

9 DE Reg. 806 (11/1/05)

10 DE Reg. 1021 (12/01/06)

13 DE Reg. 1341 (04/01/10)

(Break in Continuity of Sections)

***Please Note: As the rest of the regulation is not being amended, it is not being published here. A copy of the regulation is available at:**

1101 Apprenticeship and Training Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)

7 DE Admin. Code 1124

PUBLIC NOTICE

1124 Control of Volatile Organic Compound Emissions

1. Title of the Regulations:

Revisions of 7 DE Admin. Code 1124 Sections 8.0, 13.0, 16.0, 23.0, 37.0, 45.0 and 47.0, and submittal of the revisions to the US Environmental Protection Agency (EPA) as revisions to Delaware State Implementation Plan (SIP).

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

The Clean Air Act (CAA) Section 182(b)(2) requires that all ozone non-attainment areas, including Delaware, must develop or update relevant regulations to implement Reasonably Available Control Technology (RACT) controls on emission sources covered in EPA's Control Techniques Guidelines (CTG) or Alternate Control Techniques (ACT), and submit the regulations to EPA as State Implementation Plan (SIP) revisions. Recently, the EPA has updated several CTGs and the afore-mentioned revisions to 7 **DE Admin. Code** 1124 reflect DE's efforts accordingly. Specifically,

- Section 8.0, Handling, Storage, and Disposal of Volatile Organic Compounds (VOC). This revision updates the existing work practice standards, and adds a new generally applicable cleaning solvent VOC content limit.
- Section 13.0 Automobile and Light-Duty Truck Coating Operations. This revision sets more stringent emissions limits.
- Section 16.0 Paper Coating. The revision adds "film and foil coating" to the regulated category.
- Section 23.0 Coating of Flat Wood Paneling. The revision sets up more stringent emission limits.
- Section 37.0 Graphic Art Systems. The revision adds "flexible packaging printing" to the regulated category.
- Section 45.0 Industrial Cleaning Solvents. The revision clarifies that the requirements of 45.0 are triggered based on "VOC emissions" rather than "solvent used."
- Section 47.0 Offset Lithographic Printing. The revision adds "letterpress printing" to the regulated category.

3. Possible Terms Of The Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

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

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

None

6. Notice of Public Comment:

A public hearing will be held on June 2, 2010, beginning at 6:00 pm, in DNREC's Auditorium, R & R Building, 89 Kings Hwy, Dover, Delaware 19901.

7. Prepared By:

Frank F. Gao Phone: (302) 323-4542 Date: March 31, 2010 E-Mail: Frank.Gao@state.de.us

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

1124 Control of Volatile Organic Compound Emissions

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1124

PUBLIC NOTICE

1124 Control of Volatile Organic Compound Emissions, Section 11

1. Title of the Regulation:

Amendments to Regulation **1124 Control of Volatile Organic Compounds**, Section 11.0 Mobile Equipment

Repair and Refinishing”.

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

The Department proposes to revise Section 1138 of 7 DE Admin. Code to require lower volatile organic compound (VOC) content of the coatings and cleaning solvents used in the refinishing of mobile equipment, primarily automobiles, in order to lower VOC emissions, a precursor to the formation of ground-level ozone. The Ozone Transport Commissions (OTC), as an aid to member states in this effort, developed a model rule for mobile equipment refinishing based upon a California rule. Almost all OTC states plan to adopt some form of this model rule. We anticipate a VOC emission reduction of about 300 tons per year.

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:

There will be a hearing on these proposed amendments on Thursday, June 10, 2010 beginning at 6pm in the Richardson & Robbins Auditorium. Interested parties may submit comments in writing to Ronald Amirikian, Air Quality Management Section, 156 South State Street, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. Prepared By:

Ronald Amirikian 302-739-9409, April 6, 2010

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

1124 Control of Volatile Organic Compound Emissions, Section 11

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1138

PUBLIC NOTICE

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

1. Title of the Regulations:

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

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

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

In January 2008, the EPA promulgated another of these area source category standards that will affect existing

and future Delaware sources; they are a source standard for paint stripping and miscellaneous surface coating operations under 40 CFR Part 63 Subpart HHHHHH.

Delaware is proposing to amend Regulation 1138 by adding a new Section 13 that covers area source paint stripping operations that use chemical strippers containing methylene chloride. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to methylene chloride. In addition, methylene chloride is classified as a probable human carcinogen by the EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for these paint stripping operations and the recently promulgated federal standard (40 CFR Part 63 Subpart HHHHHH) on which this proposed amendment is heavily based.

Delaware is also proposing to amend Regulation 1138 by adding a new Section 15 that covers area source motor vehicle or mobile equipment surface coating operations. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to cadmium, chromium, lead, manganese, or nickel compounds. In addition, some of these compounds, except the manganese compounds, are classified as known or probable human carcinogens by the EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for these types of operations and the recently promulgated federal standard (40 CFR Part 63 Subpart HHHHHH) on which this proposed amendment is heavily based. In addition, this amendment proposes to include more health protective requirements that currently exist in similar area source air toxics standards found in Regulation 1138 and other Delaware air regulations.

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, June 10, 2010 beginning at 6:00 PM in the DNREC's Richardson & Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

7. Prepared By:

James R. Snead (302) 323-4542 james.snead@state.de.us March 12, 2010

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

Section	Title	Related federal rule at 40 CFR Part 63
	Table of Contents	
1.0	Overview	
2.0	Reserved	
3.0	General Provisions	Subpart A
4.0	Requirements for Case- By-Case Control Technology Determinations for Major Sources	Subpart B
5.0	Perchloroethylene Air Emission Standards for Dry Cleaning Facilities	Subpart M
6.0	Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	Subpart N

7.0	Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers	Subpart Q
8.0	Emission Standards for Halogenated Solvent Cleaning	Subpart T
9.0	Emission Standards for Hospital Ethylene Oxide Sterilizers	Subpart WWWW
10.0	Emission Standards for Hazardous Air Pollutants for Area Source Plating and Polishing Operations	Subpart WWWW
11.0	Emission Standards for Hazardous Air Pollutants for Area Source Lead Acid Battery Manufacturing Plants	Subpart P
12.0	Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production	Subpart RRR
13.0	Reserved Emission Standards for Hazardous Air Pollutants for Area Source Paint Stripping Operations	Subpart HHHHHH
14.0	Emission Standards for Hazardous Air Pollutants for Area Source Miscellaneous Parts or Products Surface Coating Operations	Subpart HHHHHH
15.0	Emission Standards for Hazardous Air Pollutants for Area Source Motor Vehicle or Mobile Equipment Surface Coating Operations	Subpart HHHHHH

(Break in Continuity of Sections)

9/11/10 (Tentative effective date)

13.0 Emission Standards for Hazardous Air Pollutants for Area Source Paint Stripping Operations

13.1 Applicability.

13.1.1 Except as provided in 13.1.2 of this regulation, the provisions of 13.0 of this regulation apply to each area source paint stripping facility that performs paint stripping using chemical strippers that contain methylene chloride for the removal of dried paint (including, but not limited to, paint, enamel, varnish, shellac, and lacquer) from wood, metal, plastic, and other substrates.

13.1.2 Activities described in 13.1.2.1 through 13.1.2.6 of this regulation are exempt from the provisions of 13.0 of this regulation.

13.1.2.1 Paint stripping performed on site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the Delaware National Guards), the National Aeronautics and Space Administration, or the National Nuclear Security Administration.

13.1.2.2 Paint stripping of military munitions manufactured by or for the Armed Forces of the United States (including the Coast Guard and the Delaware National Guards) or equipment directly and exclusively used for the purposes of transporting military munitions.

13.1.2.3 Paint stripping performed by individuals on their personal vehicles, possessions, or property, either as a hobby or for maintenance of their personal vehicles, possessions, or property. Paint stripping performed by individuals for others without compensation is also exempt from 13.0 of this regulation.

13.1.2.4 Paint stripping conducted with research and laboratory activities.

13.1.2.5 Paint stripping associated with quality control activities.

13.1.2.6 Paint stripping activities that are covered under another area source standard in 40 CFR Part 63, other than 40 CFR Part 63 Subpart HHHHHH, or under another section of this regulation.

13.1.3 An area source is a source of hazardous air pollutants (HAPs) that is not a major source of HAPs, is not located at a major source of HAPs, and is not part of a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs.

PROPOSED REGULATIONS

- 13.1.4 The affected source is the collection of all equipment used for paint stripping at a paint stripping facility using paint strippers containing methylene chloride.
- 13.1.5 The provisions of 13.0 of this regulation apply to each new, reconstructed, and existing area source paint stripping operation that performs paint stripping using chemical strippers that contain methylene chloride, with the exception of those activities exempted in 13.1.2 of this regulation.
- 13.1.6 An affected source is a new source if it meets the criteria in 13.1.6.1 and 13.1.6.2 of this regulation.
- 13.1.6.1 The owner or operator commenced the construction of the affected source after September 17, 2007 by installing new paint stripping equipment. If the owner or operator of an existing source purchases and installs paint stripping equipment to reduce methylene chloride emissions, this action would not make the existing affected source a new source.
- 13.1.6.2 The new paint stripping equipment is used at an area source of HAPs that was not actively engaged in paint stripping operations prior to September 17, 2007.
- 13.1.7 An affected source is reconstructed if it meets the definition of reconstruction in 3.2 of this regulation.
- 13.1.8 An affected source is an existing source if it is not a new source or a reconstructed source.
- 13.1.9 The owner or operator of an area source, subject to 13.0 of this regulation, is exempt from the obligation to obtain a Title V operating permit under 7 **DE Admin. Code** 1130 of State of Delaware "Regulations Governing the Control of Air Pollution", if the owner or operator is not required to obtain a Title V operating permit under 3.1 of 7 **DE Admin. Code** 1130 for a reason other than owner or operator's status as an area source under 13.0. Notwithstanding the previous sentence, the owner or operator shall continue to comply with the provisions of 13.0.
- 13.2 Definitions.
- Unless defined below, all terms in 13.0 of this regulation have the meaning given them in the Act or in 3.2 of this regulation.
- "**Compliance date**" means the date by which the owner or operator shall be in compliance with the applicable requirements of 13.0 of this regulation.
- "**Deviation**" means any instance in which an affected source, subject to 13.0 of this regulation, or an owner or operator of such a source fails to meet any applicable requirement or obligation established in 13.0.
- "**Initial startup**" means the first time equipment is brought online in a paint stripping operation and paint stripping is first performed.
- "**Military munitions**" means all ammunition products and components produced or used by or for the U.S. Department of Defense (DoD) or for the U.S. Armed Services for national defense and security, including military munitions under the control of the DoD, the U.S. Coast Guard, the National Nuclear Security Administration, U.S. Department of Energy, and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DoD components, including bulk explosives and chemical warfare agents, chemical munitions, biological weapons, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, nonnuclear components of nuclear weapons, wholly inert ammunition products, and all devices and components of any items listed in this definition.
- "**Paint stripping**" means the removal of dried coatings from wood, metal, plastic, and other substrates. A single affected source may have multiple paint stripping operations.
- "**Paint stripping facility**" means any shop, business, location, or parcel of land where paint stripping operations are conducted.
- "**Quality control activities**" means paint stripping activities that meet all of the following criteria.

- The activities associated with a paint stripping operation are intended to detect and correct defects in the final product by selecting a limited number of samples from the operation and comparing the samples against specific performance criteria.
- The activities do not include the production of an intermediate or final product for sale or exchange for commercial profit; for example, parts or products that are stripped are not sold and do not leave the facility.
- The activities are not a normal part of the paint stripping operation.
- The activities do not involve stripping of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected source and that are necessary for the facility to function in its intended capacity; that is, the activities are not facility maintenance.

"Research and laboratory activities" means paint stripping activities that meet one of the following criteria.

- Activities conducted at a laboratory to analyze air, soil, water, waste, or product samples for contaminants or environmental impact.
- Activities conducted to test more efficient production processes, including alternative paint stripping materials or application methods or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit.
- Activities conducted at a research or laboratory facility that is operated under the close supervision of technically trained personnel, the primary purpose of which is to conduct research and development into new processes and products and that is not engaged in the manufacture of products for sale or exchange for commercial profit.

13.3 Compliance dates.

- 13.3.1 The owner or operator of a new or reconstructed affected source that has an initial startup on or before January 9, 2008 shall be in compliance with the applicable provisions of 13.0 of this regulation no later than September 11, 2010.
- 13.3.2 The owner or operator of a new or reconstructed affected source that has an initial startup after January 9, 2008 shall be in compliance with the applicable provisions of 13.0 of this regulation immediately upon startup or September 11, 2010, whichever is later.
- 13.3.3 The owner or operator of an existing affected source shall be in compliance with the applicable provisions of 13.0 of this regulation no later than January 10, 2011.

13.4 Standards.

- 13.4.1 The owner or operator of a paint stripping operation shall implement management practices to minimize the evaporative emissions of methyl chloride. The management practices shall address, at a minimum, the practices in 13.4.1.1 through 13.4.1.5 of this regulation, as applicable to the paint stripping operations.
- 13.4.1.1 The owner or operator shall evaluate each application to ensure there is a need for paint stripping (e.g., evaluate whether it is possible to re-coat the piece without removing the existing coating).
- 13.4.1.2 The owner or operator shall evaluate each application where a paint stripper containing methylene chloride is used to ensure that there is no alternative paint stripping technology that can be used.
- 13.4.1.3 The owner or operator shall reduce exposure of all paint strippers containing methylene chloride to the air.
- 13.4.1.4 The owner or operator shall optimize application conditions when using paint strippers containing methylene chloride to reduce methylene chloride evaporation (e.g., if the stripper must be heated, make sure that the temperature is kept as low as possible to reduce evaporation).
- 13.4.1.5 The owner or operator shall practice proper storage and disposal of paint strippers containing methylene chloride (e.g., store paint strippers in closed, air-tight containers).

- 13.4.2 The owner or operator of a paint stripping operation that has annual usage of more than one ton of methylene chloride shall develop and implement a written methylene chloride minimization plan to minimize the use and emissions of methylene chloride. The methylene chloride minimization plan shall address, at a minimum, the management practices specified in 13.4.1.1 through 13.4.1.5 of this regulation, as applicable to the paint stripping operations. The owner or operator of a paint stripping operation shall post a placard or sign outlining the methylene chloride minimization plan in each area where paint stripping operations, subject to 13.0 of this regulation, occurs. The owner or operator of a paint stripping operation with annual usage of less than one ton of methylene chloride shall be in compliance with the requirements in 13.4.1.1 through 13.4.1.5, as applicable, but is not required to develop and implement a written methylene chloride minimization plan.
- 13.4.3 The owner or operator of a paint stripping operation shall maintain copies of annual usage of paint strippers containing methylene chloride on site at all times.
- 13.4.4 The owner or operator of a paint stripping operation with annual usage of more than one ton of methylene chloride shall maintain a copy of their current methylene chloride minimization plan on site at all times.
- 13.5 Notification requirements.
- 13.5.1 Initial notification. The owner or operator of a paint stripping operation, subject to 13.0 of this regulation, shall submit the initial notification required by 3.9.2 of this regulation. For a new or reconstructed affected source, the owner or operator shall submit the initial notification no later than 180 days after initial startup or September 11, 2010, whichever is later. For an existing affected source, the owner or operator shall submit the initial notification no later than September 11, 2010. The initial notification shall provide the information specified in 13.5.1.1 through 13.5.1.9 of this regulation.
- 13.5.1.1 The company's name.
- 13.5.1.2 The address (i.e., physical location) of the affected source and the address where compliance records are maintained, if different.
- 13.5.1.3 The name and mailing address of the owner or operator of the affected paint stripping operation.
- 13.5.1.4 An identification of the relevant standard (i.e., 13.0 of 7 **DE Admin. Code** 1138).
- 13.5.1.5 A brief description of the paint stripping operation. The owner or operator shall indicate the method or methods of paint stripping employed (e.g., chemical, mechanical, or both) and the substrates stripped (e.g., wood, plastic, metal, etc.).
- 13.5.1.6 The owner or operator shall indicate whether the affected source plans to use more than one ton of methylene chloride annually after the compliance date.
- 13.5.1.7 A statement of whether the source is already in compliance with all the applicable requirements of 13.0 of this regulation or whether the source will be brought into compliance by the compliance date.
- 13.5.1.8 If the affected source is a new or reconstructed source, the owner or operator shall certify in the initial notification whether the source is in compliance with all the applicable requirements in 13.0 of this regulation. The owner or operator shall include a statement by a responsible official that the source is in compliance with all the applicable requirements in 13.0 and that this initial notification also serves as the notification of compliance status. The owner or operator shall also provide that official's name, title, phone number, e-mail address (if available) and signature, certifying the truth, accuracy, and completeness of the notification.
- 13.5.1.9 If the affected source is an existing source, the owner or operator may certify in the initial notification that the source is already in compliance with all the applicable requirements in 13.0 of this regulation. If the owner or operator of an existing source is certifying in the initial notification that the source is in compliance with all the applicable requirements in 13.0, then the owner or operator shall include a statement by a responsible official that the source is in compliance with all the applicable requirements in 13.0 and that this initial notification also serves as the notification of compliance status. The owner or operator

shall also provide that official's name, title, phone number, e-mail address (if available) and signature, certifying the truth, accuracy, and completeness of the notification.

13.5.2 Notification of compliance status.

13.5.2.1 The owner or operator of a new or reconstructed affected source is not required to submit a separate notification of compliance status in addition to the initial notification specified in 13.5.1 of this regulation provided the owner or operator was able to certify compliance on the date of the initial notification, as part of the initial notification, and the affected source's compliance status has not since changed.

13.5.2.2 If the owner or operator of an existing affected source did not certify in the initial notification that the affected source is already in compliance as specified in 13.5.1 of this regulation, then the owner or operator of an existing affected source shall submit a notification of compliance status.

13.5.2.3 The owner or operator of an existing affected source, required to submit a notification of compliance status in accordance with 13.5.2.2 of this regulation shall submit the notification of compliance status on or before March 11, 2011. The owner or operator shall submit the applicable information specified in 13.5.2.3.1 through 13.5.2.3.6 of this regulation with the notification of compliance status.

13.5.2.3.1 The company's name.

13.5.2.3.2 The address (i.e., physical location) of the affected source and the address where compliance records are maintained, if different.

13.5.2.3.3 The name of the owner or operator of the affected paint stripping operation.

13.5.2.3.4 The date of the notification of compliance status.

13.5.2.3.5 The owner or operator of a paint stripping operation, which is an existing source, that annually uses more than one ton of methylene chloride shall submit a statement certifying that the owner or operator has developed and is implementing a written methylene chloride minimization plan in accordance with the requirements in 13.4.2 of this regulation.

13.5.2.3.6 A statement of whether the source is in compliance with all the applicable requirements in 13.0 of this regulation or an explanation of any noncompliance and a description of corrective actions being taken to achieve compliance. The owner or operator shall include a statement by a responsible official certifying the truth, accuracy, and completeness of the notification of compliance status. The owner or operator shall also provide that official's name, title, phone number, e-mail address (if available) and signature.

13.6 Reporting requirements.

13.6.1 Annual notification of changes report. The owner or operator of a paint stripping operation, subject to 13.0 of this regulation, shall submit a report for each calendar year in which information previously submitted in either the initial notification required in 13.5.1 of this regulation, the notification of compliance status required in 13.5.2 of this regulation, or the previous annual notification of changes report submitted under 13.6.1 of this regulation has changed. Deviations from the applicable requirements in 13.0 on the date of the report shall be deemed to be a change. A deviation includes notification when an affected paint stripping source that had not developed and implemented a written methylene chloride minimization plan in accordance with 13.4.2 of this regulation used more than one ton of methylene chloride in the previous calendar year.

13.6.2 The annual notification of changes report shall be submitted prior to March 1 of each calendar year when reportable changes have occurred and shall include the information specified in 13.6.2.1 through 13.6.2.5 of this regulation.

13.6.2.1 The company's name.

13.6.2.2 The address (i.e., physical location) of the affected source and the address where compliance records are maintained, if different.

13.6.2.3 The name of the owner or operator of the affected paint stripping operation.

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- 13.6.2.4 A brief description of the deviations that occurred during the reporting period. The owner or operator shall describe the deviation and provide the date of the deviation, the affected source where the deviation occurred, and the corrective actions taken to achieve compliance.
- 13.6.2.5 A statement of whether the source is in compliance with all the applicable requirements in 13.0 of this regulation or an explanation of any noncompliance and a description of corrective actions being taken to achieve compliance. The owner or operator shall also include a statement by a responsible official with that official's name, title, phone number, e-mail address (if available) and signature, certifying the truth, accuracy, and completeness of the annual notification of changes report.
- 13.6.3 The owner or operator of a paint stripping operation that has not developed and implemented a written methylene chloride minimization plan in accordance with 13.4.2 of this regulation shall submit a report for any calendar year in which the affected source uses more than one ton of methylene chloride. This report shall be submitted no later than March 1 of the following calendar year. The owner or operator shall also develop and implement a written methylene chloride minimization plan in accordance with 13.4.2 no later than December 31 of the following calendar year. The owner or operator shall then submit a notification of compliance status that contains the information specified in 13.5.2 of this regulation by March 1 of the following year and comply with the requirements for paint stripping operations that use more than one ton of methylene chloride in 13.4.4 and 13.7.1.2 of this regulation.
- 13.7 Recordkeeping requirements.
- 13.7.1 The owner or operator of a paint stripping operation shall keep the records specified in 13.7.1.1 through 13.7.1.4 and 13.7.2 of this regulation, as applicable.
- 13.7.1.1 Records of paint strippers containing methylene chloride used for paint stripping operations, including the methylene chloride content of the paint stripper used. Documentation needs to be sufficient to verify annual usage of paint strippers containing methylene chloride (e.g., material safety data sheets or other documentation provided by the manufacturer or supplier of the paint stripper, purchase receipts, records of paint stripper usage, engineering calculations, etc.).
- 13.7.1.2 If the owner or operator uses more than one ton of methylene chloride annually, the owner or operator shall maintain a record of the current methylene chloride minimization plan on site for the duration of the paint stripping operations. The owner or operator shall also keep records of the annual review of, and updates to, the methylene chloride minimization plan.
- 13.7.1.3 Records of any deviation from the applicable requirements in 13.0 of this regulation, including any deviations from the applicable requirements in 3.0 of this regulation. These records shall include the date and time period of the deviation, a description of the nature of the deviation, and the actions taken to correct the deviation.
- 13.7.1.4 Copies of any notification submitted as required by 13.5 of this regulation and copies of any report submitted as required by 13.6 of this regulation.
- 13.7.2 The owner or operator of an affected source shall maintain records of any assessments of source compliance performed in support of the initial notification, the notification of compliance status, or the annual notification of changes report.
- 13.7.3 The owner or operator of an affected source shall maintain copies of the records specified in 13.7.1 and 13.7.2 of this regulation for a period of at least five years after the date of each record. Copies of records shall be kept on site and in a printed or electronic form that is readily accessible for inspection for at least the first two years after their date, and may be kept off-site after that two year period.
- 13.8 Applicability of general provisions.
- The owner or operator of an affected sources, subject to the provisions of 13.0 of this regulation, shall also be in compliance with the provisions in 3.0 of this regulation, that are applicable to 13.0 as specified in Table 13-1 of this regulation.

13.9 [Reserved].

Table 13-1- Applicability of 3.0 to 13.0 of this Regulation

General Provision Reference	Applies to 13.0	Comment
3.1.1.1	Yes	Additional terms defined in 13.2 of this regulation; when overlap between 3.0 and 13.0 of this regulation occurs, 13.0 takes precedence.
3.1.1.2 - 3.1.1.3	Yes	
3.1.1.4	Yes	13.0 of this regulation clarifies the applicability of each provision in 3.0 of this regulation to sources subject to 13.0.
3.1.1.5	No	Reserved.
3.1.1.6	Yes	
3.1.1.7 - 3.1.1.9	No	Reserved.
3.1.1.10 - 3.1.1.12	Yes	
3.1.1.13 - 3.1.1.14	No	Reserved.
3.1.2.1 - 3.1.2.3	Yes	Applicability of 13.0 of this regulation is also specified in 13.1 of this regulation.
3.1.3.1	Yes	13.0 of this regulation clarifies the applicability of each paragraph in 3.0 of this regulation to sources subject to 13.0.
3.1.3.2	Yes	13.1.9 of this regulation exempts area sources from the obligation to obtain Title V operating permits.
3.1.3.3 - 3.1.3.4	No	Reserved.
3.1.3.5	Yes	
3.1.4	No	Reserved.
3.1.5	Yes	13.1.9 of this regulation exempts area sources from the obligation to obtain Title V operating permits.
3.2	Yes	Additional terms defined in 13.2 of this regulation; when overlap between 3.0 and 13.0 of this regulation occurs, 13.0 takes precedence.
3.3	Yes	
3.4.1.1 - 3.4.1.2	Yes	
3.4.1.3 - 3.4.1.5	No	Reserved.
3.4.2 - 3.4.2.2	Yes	
3.4.2.3	No	Reserved.
3.4.3	Yes	
3.5.1 - 3.5.2.1	Yes	
3.5.2.2	No	Reserved.
3.5.2.3 - 3.5.2.4	Yes	
3.5.2.5	No	Reserved.
3.5.2.6	Yes	
3.5.3	No	Reserved.
3.5.4.1.1 - 3.5.4.1.2.8	Yes	
3.5.4.1.2.9	No	Reserved.
3.5.4.1.2.10 - 3.5.4.4	Yes	
3.5.5	Yes	
3.5.6 - 3.5.6.1.1	Yes	

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<u>3.5.6.1.2 - 3.5.6.1.4</u>	No	Reserved.
<u>3.5.6.2</u>	Yes	
<u>3.6.1</u>	Yes	
<u>3.6.2 - 3.6.2.5</u>	Yes	13.3 of this regulation specifies the compliance dates.
<u>3.6.2.6</u>	No	Reserved.
<u>3.6.2.7</u>	Yes	
<u>3.6.3.1 - 3.6.3.2</u>	Yes	13.3 of this regulation specifies the compliance dates.
<u>3.6.3.3 - 3.6.3.4</u>	No	Reserved.
<u>3.6.3.5</u>	Yes	
<u>3.6.4</u>	No	Reserved.
<u>3.6.5 - 3.6.5.1</u>	Yes	
<u>3.4.3</u>	Yes	
<u>3.5.1 - 3.5.2.1</u>	Yes	
<u>3.5.2.2</u>	No	Reserved.
<u>3.5.2.3 - 3.5.2.4</u>	Yes	
<u>3.5.2.5</u>	No	Reserved.
<u>3.5.2.6</u>	Yes	
<u>3.5.3</u>	No	Reserved.
<u>3.5.4.1.1 - 3.5.4.1.2.8</u>	Yes	
<u>3.5.4.1.2.9</u>	No	Reserved.
<u>3.5.4.1.2.10 - 3.5.4.4</u>	Yes	
<u>3.5.5</u>	Yes	
<u>3.5.6 - 3.5.6.1.1</u>	Yes	
<u>3.5.6.1.2 - 3.5.6.1.4</u>	No	Reserved.
<u>3.5.6.2</u>	Yes	
<u>3.6.1</u>	Yes	
<u>3.6.2 - 3.6.2.5</u>	Yes	13.3 of this regulation specifies the compliance dates.
<u>3.6.2.6</u>	No	Reserved.
<u>3.6.2.7</u>	Yes	
<u>3.6.3.1 - 3.6.3.2</u>	Yes	13.3 of this regulation specifies the compliance dates.
<u>3.6.3.3 - 3.6.3.4</u>	No	Reserved.
<u>3.6.3.5</u>	Yes	
<u>3.6.4</u>	No	Reserved.
<u>3.6.5 - 3.6.5.1</u>	Yes	
<u>3.4.3</u>	Yes	
<u>3.5.1 - 3.5.2.1</u>	Yes	
<u>3.5.2.2</u>	No	Reserved.
<u>3.5.2.3 - 3.5.2.4</u>	Yes	
<u>3.5.2.5</u>	No	Reserved.
<u>3.5.2.6</u>	Yes	
<u>3.5.3</u>	No	Reserved.
<u>3.5.4.1.1 - 3.5.4.1.2.8</u>	Yes	
<u>3.5.4.1.2.9</u>	No	Reserved.
<u>3.5.4.1.2.10 - 3.5.4.4</u>	Yes	
<u>3.5.5</u>	Yes	
<u>3.5.6 - 3.5.6.1.1</u>	Yes	

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<u>3.5.6.1.2 - 3.5.6.1.4</u>	No	Reserved.
<u>3.5.6.2</u>	Yes	
<u>3.6.1</u>	Yes	
<u>3.6.2 - 3.6.2.5</u>	Yes	13.3 of this regulation specifies the compliance dates.
<u>3.6.2.6</u>	No	Reserved.
<u>3.6.2.7</u>	Yes	
<u>3.6.3.1 - 3.6.3.2</u>	Yes	13.3 of this regulation specifies the compliance dates.
<u>3.6.3.3 - 3.6.3.4</u>	No	Reserved.
<u>3.6.3.5</u>	Yes	
<u>3.6.4</u>	No	Reserved.
<u>3.6.5 - 3.6.5.1</u>	Yes	
<u>3.6.5.2</u>	No	Reserved.
<u>3.6.5.3</u>	No	No startup, shutdown, and malfunction plan is required by 13.0 of this regulation.
<u>3.6.6.1</u>	Yes	
<u>3.6.6.2 - 3.6.6.2.2</u>	Yes	
<u>3.6.6.2.3</u>	No	13.0 of this regulation does not require performance testing.
<u>3.6.6.2.4 - 3.6.6.3</u>	Yes	
<u>3.6.7</u>	Yes	
<u>3.6.8</u>	No	13.0 of this regulation does not establish opacity or visible emission standards.
<u>3.6.9 - 3.6.9.6.1.2.1</u>	Yes	
<u>3.6.9.6.1.2.2</u>	No	Reserved.
<u>3.6.9.6.1.2.3 - 3.6.9.6.1.2.4</u>	Yes	
<u>3.6.9.6.1.3 - 3.6.9.6.1.4</u>	No	Reserved.
<u>3.6.9.6.2 - 3.6.9.14</u>	Yes	
<u>3.6.9.15</u>	No	Reserved.
<u>3.6.9.16</u>	Yes	
<u>3.6.10</u>	Yes	
<u>3.7</u>	No	No performance testing is required by 13.0 of this regulation.
<u>3.8</u>	No	13.0 of this regulation does not require the use of continuous monitoring systems.
<u>3.9.1 - 3.9.1.4</u>	Yes	13.5 of this regulation specifies notification requirements.
<u>3.9.1.4.1</u>	No	Reserved.
<u>3.9.1.4.2 - 3.9.2.2.5</u>	Yes	Except that 13.5.1 of this regulation specifies the initial notification requirements.
<u>3.9.2.3</u>	No	Reserved.
<u>3.9.2.4 - 3.9.2.4.1</u>	Yes	
<u>3.9.2.4.2 - 3.9.2.4.4</u>	No	Reserved.
<u>3.9.2.4.5 - 3.9.4</u>	Yes	
<u>3.9.5</u>	No	13.0 of this regulation does not require performance tests.
<u>3.9.6</u>	No	13.0 of this regulation does not have opacity or visible emission standards.

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<u>3.9.7</u>	<u>No</u>	<u>13.0 of this regulation does not require the use of continuous monitoring systems.</u>
<u>3.9.8 - 3.9.8.3</u>	<u>Yes</u>	<u>Except that 13.5.2 of this regulation specifies the notification of compliance status requirements.</u>
<u>3.9.8.4</u>	<u>No</u>	<u>Reserved.</u>
<u>3.9.8.5 - 3.9.8.6</u>	<u>Yes</u>	
<u>3.9.9</u>	<u>Yes</u>	
<u>3.9.10</u>	<u>Yes</u>	<u>13.6.2 of this regulation specifies the dates for submitting the notification of changes report.</u>
<u>3.10.1 - 3.10.1.4</u>	<u>Yes</u>	
<u>3.10.1.4.1</u>	<u>No</u>	<u>Reserved.</u>
<u>3.10.1.4.2 - 3.10.1.7</u>	<u>Yes</u>	
<u>3.10.2.1</u>	<u>Yes</u>	<u>Additional requirements are specified in 13.7 of this regulation.</u>
<u>3.10.2.2.1 - 3.10.2.2.11</u>	<u>No</u>	<u>13.0 of this regulation does not require startup, shutdown, and malfunction plans, performance testing, or CMS.</u>
<u>3.10.2.2.12</u>	<u>Yes</u>	
<u>3.10.2.2.13</u>	<u>No</u>	<u>13.0 of this regulation does not require the use of CEMS.</u>
<u>3.10.2.2.14</u>	<u>Yes</u>	
<u>3.10.2.3</u>	<u>Yes</u>	
<u>3.10.3</u>	<u>No</u>	<u>13.0 of this regulation does not require the use of CMS.</u>
<u>3.10.4.1</u>	<u>Yes</u>	<u>Additional requirements are specified in 13.6 of this regulation.</u>
<u>3.10.4.2 - 3.10.4.3</u>	<u>No</u>	<u>13.0 of this regulation does not require performance tests, or opacity or visible emissions observations.</u>
<u>3.10.4.4</u>	<u>Yes</u>	
<u>3.10.4.5</u>	<u>No</u>	<u>13.0 of this regulation does not require startup, shutdown, and malfunction reports.</u>
<u>3.10.5</u>	<u>No</u>	<u>13.0 of this regulation does not require the use of CMS.</u>
<u>3.10.6</u>	<u>Yes</u>	
<u>3.11</u>	<u>No</u>	<u>13.0 of this regulation does not require the use of flares.</u>
<u>3.12</u>	<u>Yes</u>	
<u>3.13</u>	<u>Yes</u>	
<u>3.14</u>	<u>Yes</u>	
<u>3.15</u>	<u>Yes</u>	

(Break in Continuity of Sections)

9/11/10 (Tentative effective date)

15.0 Emission Standards for Hazardous Air Pollutants for Area Source Motor Vehicle or Mobile Equipment Surface Coating Operations

15.1 Applicability.

15.1.1 Except as provided in 15.1.2 of this regulation, the provisions of 15.0 of this regulation apply to each area source motor vehicle or mobile equipment surface coating facility that performs spray application of coatings that contain target hazardous air pollutants (target HAPs) to motor vehicles or mobile equipment including operations that are located at a motor vehicle or mobile equipment surface coating facility and mobile repair and refinishing operations that travel to the customer's

- location, except spray coating applications that meet the definition of facility maintenance in 15.2 of this regulation.
- 15.1.2 Activities described in 15.1.2.1 through 15.1.2.9 of this regulation are exempt from the provisions of 15.0 of this regulation.
- 15.1.2.1 Surface coating performed on site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the Delaware National Guards), the National Aeronautics and Space Administration, or the National Nuclear Security Administration.
- 15.1.2.2 Surface coating of military munitions manufactured by or for the Armed Forces of the United States (including the Coast Guard and the Delaware National Guards) or equipment directly and exclusively used for the purposes of transporting military munitions.
- 15.1.2.3 Surface coating performed by individuals on their personal motor vehicles or mobile equipment, either as a hobby or for maintenance of their personal motor vehicles or mobile equipment. Section 15 of this regulation also does not apply when these operations are performed by individuals for others without compensation. An individual who spray applies surface coating to more than two motor vehicles or pieces of mobile equipment per year is subject to the requirements of 15.0 of this regulation regardless of whether compensation is received.
- 15.1.2.4 Surface coating of space vehicles.
- 15.1.2.5 Surface coating associated with facility maintenance activities.
- 15.1.2.6 Surface coating associated with research and laboratory activities.
- 15.1.2.7 Surface coating associated with quality control activities.
- 15.1.2.8 Surface coating activities that are covered under another area source standard in 40 CFR Part 63, other than 40 CFR Part 63 Subpart HHHHHH, or under another section of this regulation.
- 15.1.2.9 Surface coating performed by a motor vehicle or mobile equipment surface coating facility that has received an approved exemption from requirements of 15.0 of this regulation, in accordance with 15.10 of this regulation.
- 15.1.3 An area source is a source of hazardous air pollutants (HAPs) that is not a major source of HAPs, is not located at a major source of HAPs, and is not part of a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs.
- 15.1.4 The affected source is the collection of items listed in 15.1.4.1 through 15.1.4.5 of this regulation. Not all affected sources will have all of the items listed in 15.1.4.1 through 15.1.4.5.
- 15.1.4.1 Mixing rooms and equipment.
- 15.1.4.2 Spray booths, ventilated preparation stations, curing ovens, and associated equipment.
- 15.1.4.3 Spray guns and associated equipment.
- 15.1.4.4 Spray gun cleaning equipment.
- 15.1.4.5 Equipment used for storage, handling, recovery, or recycling of cleaning solvents or waste coatings.
- 15.1.5 The provisions of 15.0 of this regulation apply to each new, reconstructed, and existing area source motor vehicle or mobile equipment surface coating operation that performs spray application of coatings that contain target HAPs to motor vehicles or mobile equipment, with the exception of those activities exempted in 15.1.2 of this regulation.
- 15.1.6 An affected source is a new source if it meets the criteria in 15.1.6.1 and 15.1.6.2 of this regulation.

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15.1.6.1 The owner or operator commenced the construction of the affected source after September 17, 2007 by installing new motor vehicle or mobile equipment surface coating equipment. If the owner or operator of an existing source purchases and installs spray booths, enclosed spray gun cleaners, or purchases new spray guns to comply with 15.0 of this regulation, these actions would not make the existing affected source a new source.

15.1.6.2 The new motor vehicle or mobile equipment surface coating equipment is used at an area source of HAPs that was not actively engaged in motor vehicle or mobile equipment surface coating operations prior to September 17, 2007.

15.1.7 An affected source is reconstructed if it meets the definition of reconstruction in 3.2 of this regulation.

15.1.8 An affected source is an existing source if it is not a new source or a reconstructed source.

15.1.9 The owner or operator of an area source, subject to 15.0 of this regulation, is exempt from the obligation to obtain a Title V operating permit under 7 **DE Admin. Code** 1130 of State of Delaware "Regulations Governing the Control of Air Pollution", if the owner or operator is not required to obtain a Title V operating permit under 3.1 of 7 **DE Admin. Code** 1130 for a reason other than the owner or operator's status as an area source under 15.0. Notwithstanding the previous sentence, the owner or operator shall continue to comply with the provisions of 15.0.

15.2 Definitions.

Unless defined below, all terms in 15.0 of this regulation have the meaning given them in the Act or in 3.2 of this regulation.

"Administrator" means the Administrator of the U.S. Environmental Protection Agency.

"Aerospace vehicle" means any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.

"Airless spray" or "Air-assisted airless spray" means any coating spray technology that relies solely on the fluid pressure of the coating to create an atomized coating spray pattern and does not apply any atomizing compressed air to the coating before it leaves the coating nozzle. Air-assisted airless spray uses compressed air to shape and distribute the fan of atomized coating, but still uses fluid pressure to create the atomized coating.

"Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lamp posts; partitions; pipes and piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks, and fire escapes; and window screens.

"Cleaning material" means a solvent used to remove contaminants and other materials, such as dirt, grease, or oil, from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

"Coating" means, for the purposes of 15.0 of this regulation, a material spray-applied to a substrate for decorative, protective, or functional purposes. For the purposes of 15.0, coating does not include the following materials.

- Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances.
- Paper film or plastic film that may be pre-coated with an adhesive by the film manufacturer.
- Adhesives, sealants, maskants, or caulking materials.
- Temporary protective coatings, lubricants, or surface preparation materials.
- In-mold coatings that are spray-applied in the manufacture of reinforced plastic composite parts.

"Coatings that contain target HAPs" means coatings that contains any individual target HAP that is an Occupational Safety and Health Administration (OSHA) -defined carcinogen as specified in 29 CFR 1988.1200(d)(4) at a concentration greater than 0.1% by mass, or greater than 1.0% by mass for any

other individual target HAP. For the purpose of determining whether materials the owner or operator uses contain the target HAPs, the owner or operator may rely on formulation data provided by the manufacturer or supplier, such as the material safety data sheet, as long as it represents each target HAP in the material that is present at 0.1% by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1988.1200(d)(4) and at 1.0% by mass or more for other target HAPs.

"**Compliance date**" means the date by which the owner or operator shall be in compliance with the applicable requirements of 15.0 of this regulation.

"**Deviation**" means any instance in which an affected source, subject to 15.0 of this regulation, or an owner or operator of such a source fails to meet any applicable requirement or obligation established in 15.0.

"**Electrostatic application**" means any method of coating application where an electrostatic attraction is created between the item to be coated and the atomized coating particles.

"**Equipment cleaning**" means the use of an organic solvent or cleaning material to remove coating residue from the surfaces of coating spray guns and other coating related equipment, including, but not limited to stir sticks, paint cups, brushes, and spray booths.

"**Facility maintenance**" means, for the purposes of 15.0 of this regulation, surface coating performed as part of the routine repair or renovation of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected source and that are necessary for the facility to function in its intended capacity. Facility maintenance also includes surface coating associated with the installation of new equipment or structures, and the application of any surface coating as part of janitorial activities. Facility maintenance includes the application of coatings to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Facility maintenance also includes the refinishing of mobile equipment in the field or at the site where they are used in service and at which they are intended to remain indefinitely after refinishing. Such mobile equipment includes, but is not limited to, farm equipment and mining equipment for which it is not practical or feasible to move to a dedicated mobile equipment refinishing facility. Such mobile equipment also includes items, such as fork trucks, that are used in a manufacturing facility and which are refinished in that same facility. Facility maintenance does not include surface coating of motor vehicles, mobile equipment, or items that routinely leave and return to the facility, such as delivery trucks, rental equipment, or containers used to transport, deliver, distribute, or dispense commercial products to customers, such as compressed gas canisters.

"**High volume, low pressure (HVLP)**" means spray equipment that is permanently labeled as such and used to apply any coating by means of a spray gun which is designed and operated between 0.1 and 10 pounds per square inch gauge air atomizing pressure measured dynamically at the center of the air cap and at the air horns.

"**Initial startup**" means the first time equipment is brought online in a motor vehicle or mobile equipment surface coating operation, and motor vehicle or mobile equipment surface coating is first performed.

"**Military munitions**" means all ammunition products and components produced or used by or for the U.S. Department of Defense (DoD) or for the U.S. Armed Services for national defense and security, including military munitions under the control of the DoD, the U.S. Coast Guard, the National Nuclear Security Administration, U.S. Department of Energy, and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DoD components, including bulk explosives and chemical warfare agents, chemical munitions, biological weapons, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, nonnuclear components of nuclear weapons, wholly inert ammunition products, and all devices and components of any items listed in this definition.

"**Mobile equipment**" means any device that may be drawn or driven on a roadway including, but not limited to, heavy-duty trucks, truck trailers, fleet delivery trucks, buses, mobile cranes, bulldozers, street cleaners, agriculture equipment, motor homes, and other recreational vehicles (including

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camping trailers and fifth wheels). For the purposes of Section 15.0 of this regulation, mobile equipment includes, but is not limited to, assembled mobile equipment, mobile equipment parts or subassemblies, and accessories for mobile equipment.

"Motor vehicle" means any self-propelled vehicle, including, but not limited to, automobiles, light duty trucks, golf carts, vans, and motorcycles. For the purposes of Section 15.0 of this regulation, motor vehicles include, but are not limited to, assembled motor vehicles, motor vehicle parts or subassemblies, and accessories for motor vehicles.

"Motor vehicle or mobile equipment surface coating facility" means any shop, business, location, or parcel of land where motor vehicle or mobile equipment surface coating operations are conducted.

"Motor vehicle or mobile equipment surface coating operation" means the collection of equipment used to spray apply surface coatings to motor vehicles or mobile equipment, including applying cleaning solvents to prepare the surface before coating application, mixing coatings before application, applying coating to a surface, drying or curing the coating after application, and cleaning coating application equipment, but not plating. A single surface coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating material is applied to a motor vehicle or mobile equipment. A motor vehicle or mobile equipment surface coating operation includes all other steps (such as surface preparation with solvent and equipment cleaning) in the affected source where target HAPs are emitted. The use of solvent to clean a motor vehicle or mobile equipment (for example, to remove grease during a mechanical repair) does not constitute a motor vehicle or mobile equipment surface coating operation if no coatings are applied. A single affected source may have multiple motor vehicle or mobile equipment surface coating operations. Surface coatings applied to wood, leather, rubber, ceramics, stone, masonry, or substrates other than metal and plastic are not considered motor vehicle or mobile equipment surface coating operations for the purposes of 15.0 of this regulation.

"Painter" means any person who spray applies coatings.

"Plastic" refers to substrates containing one or more resins and may be solid, porous, flexible, or rigid. Plastics include fiber reinforced plastic composites.

"Protective oil" means organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

"Quality control activities" means surface coating activities that meet all of the following criteria.

- The activities associated with a surface coating operation are intended to detect and correct defects in the final product by selecting a limited number of samples from the operation and comparing the samples against specific performance criteria.
- The activities do not include the production of an intermediate or final product for sale or exchange for commercial profit; for example, items that are surface coated are not sold and do not leave the facility.
- The activities are not a normal part of the surface coating operation; for example, they do not include color matching activities performed during a motor vehicle collision repair.
- The activities do not involve surface coating of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected source and that are necessary for the facility to function in its intended capacity; that is, the activities are not facility maintenance.

"Research and laboratory activities" means surface coating activities that meet one of the following criteria.

- Activities conducted at a laboratory to analyze air, soil, water, waste, or product samples for contaminants or environmental impact.
- Activities conducted to test more efficient production processes, including alternative surface coating materials or application methods or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit.

- Activities conducted at a research or laboratory facility that is operated under the close supervision of technically trained personnel, the primary purpose of which is to conduct research and development into new processes and products and that is not engaged in the manufacture of products for sale or exchange for commercial profit.

"Solvent" means a fluid containing organic compounds used to perform surface preparation or cleaning of surface coating equipment.

"Space vehicles" means vehicles designed to travel beyond the limit of the earth's atmosphere, including but not limited to satellites, space stations, and the Space Shuttle System (including orbiter, external tanks, and solid rocket boosters).

"Spray-applied coating" means coatings that are applied using a hand-held device that creates an atomized mist of coating and deposits the coating on a substrate. For the purposes of 15.0 of this regulation, spray-applied coatings do not include the following materials or activities.

- Coatings applied from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters).
- Surface coating application using powder coatings, hand-held non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, or marking pens.
- Thermal spray operations (also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names) in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact.

"Surface preparation" means use of a cleaning material on a portion of or all of a substrate prior to the application of a coating.

"Target HAPs" are compounds of cadmium, chromium, lead, manganese, or nickel.

"Transfer efficiency" means the amount of coating solids adhering to the object being coated divided by the total amount of coating solids sprayed, expressed as a percentage. Coating solids means the nonvolatile portion of the coating that makes up the dry film.

15.3 Compliance dates.

- 15.3.1 The owner or operator of a new or reconstructed affected source that has an initial startup on or before January 9, 2008 shall be in compliance with the applicable provisions of 15.0 of this regulation no later than September 11, 2010.
- 15.3.2 The owner or operator of a new or reconstructed affected source that has an initial startup after January 9, 2008 shall be in compliance with the applicable provisions of 15.0 of this regulation immediately upon startup or September 11, 2010, whichever is later.
- 15.3.3 The owner or operator of an existing affected source shall be in compliance with the applicable provisions of 15.0 of this regulation no later than January 10, 2011.

15.4 Standards.

- 15.4.1 The owner or operator of a motor vehicle or mobile equipment surface coating operation shall be in compliance with the applicable requirements in 15.4.1.1 through 15.4.1.6 of this regulation.
 - 15.4.1.1 The spray application of coatings that contain target HAPs is prohibited by persons who are not certified as having completed the training described in 15.4.2 of this regulation. All painters shall be certified that they have completed training in the proper spray application of surface coatings and the proper setup and maintenance of spray equipment. The minimum requirements for training and certification are described in 15.4.2. The requirements of 15.4.1.1 of this regulation do not apply to the students of an accredited surface coating training program who are under the direct supervision of an instructor who meets the requirements of 15.4.1.1.
 - 15.4.1.2 All spray-applied coatings that contain target HAPs shall be applied in a spray booth, preparation station, or mobile enclosure that meets the requirements of 15.4.1.2.1 and 15.4.1.2.2 of this regulation.

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- 15.4.1.2.1 All spray booths, preparation stations, and mobile enclosures shall be fitted with a type of filter technology that is demonstrated to achieve at least 98% capture of coating overspray. The filter efficiency shall be demonstrated according to the test method in 15.6.1 of this regulation. The requirements of 15.4.1.2.1 of this regulation do not apply to waterwash spray booths that are operated and maintained according to the manufacturer's specifications.
- 15.4.1.2.2 Spray-applied coatings that contain target HAPs shall only be applied when the differential pressure drop across the filter required in 15.4.1.2.1 of this regulation is within the operating range specified by the filter manufacturer.
- 15.4.1.3 All spray-applied coatings that contain target HAPs shall be applied in a spray booth, preparation station, or mobile enclosure that meets the applicable requirements of 15.4.1.3.1 through 15.4.1.3.3 of this regulation.
- 15.4.1.3.1 Spray booths and preparation stations used to refinish complete motor vehicles or mobile equipment shall be fully enclosed with a full roof, and four complete walls or complete side curtains, and shall be ventilated at negative pressure so that air is drawn into any openings in the booth walls or preparation station curtains. However, if a spray booth is fully enclosed and has seals on all doors and other openings and has an automatic pressure balancing system, it may be operated at up to, but not more than, 0.05 inches water gauge positive pressure.
- 15.4.1.3.2 Spray booths and preparation stations that are used to coat parts, subassemblies, or accessories for motor vehicles or mobile equipment shall have a full roof, at least three complete walls or complete side curtains, and shall be ventilated so that air is drawn into the enclosure. The walls and roof of an enclosure may have openings, if needed, to allow for conveyors and parts, subassemblies, or accessories to pass through the enclosure during the coating process.
- 15.4.1.3.3 Mobile ventilated enclosures that are used to perform spot repairs shall enclose and, if necessary, seal against the surface around the area being coated such that coating overspray is retained within the enclosure and directed to a filter to capture coating overspray.
- 15.4.1.4 All spray-applied coatings that contain target HAPs shall be applied with a high volume, low pressure (HVLP) spray gun, electrostatic application, airless spray gun, air-assisted airless spray gun, or an equivalent technology that is demonstrated by the spray gun manufacturer to achieve transfer efficiency comparable to one of the spray gun technologies listed above for a comparable operation, and for which written approval has been obtained from the Administrator. The transfer efficiency of an equivalent technology shall be demonstrated according to the test methods in 15.6.2 of this regulation. The requirements of 15.4.1.4 of this regulation do not apply to coating performed by students and instructors at paint training centers. The requirements of 15.4.1.4 do not apply to the surface coating of aerospace vehicles that involves the coating of components that normally require the use of an airbrush or an extension on the spray gun to properly reach limited access spaces; to the application of coatings on aerospace vehicles that contain fillers that adversely affect atomization with HVLP spray guns; or to the application of coatings on aerospace vehicles that normally have a dried film thickness of less than 0.0013 centimeters (0.0005 inches).
- 15.4.1.5 All coating spray gun cleaning shall be done so that an atomized mist or spray of gun cleaning solvent and coating residue is not created outside of a container that collects used gun cleaning solvent. Spray gun cleaning may be done with, for example, hand cleaning of parts of the disassembled gun in a container of solvent, by flushing solvent through the gun without atomizing the solvent and coating residue, or by using a fully enclosed spray gun washer. A combination of non-atomizing methods may also be used.
- 15.4.1.6 As provided in 15.11 of this regulation, the Department may choose to grant an owner or operator permission to use an alternative in lieu of the emission standards in 15.4 of this

regulation after an owner or operator has requested approval to do so according to the provisions of 15.11.1 and 15.11.2 of this regulation.

- 15.4.2 The owner or operator of a motor vehicle or mobile equipment surface coating operation shall ensure and certify that all new and existing painters, including contract painters, who spray apply coatings that contain target HAPs, are trained in the proper application of surface coatings as required in 15.4.1.1 of this regulation. The training program shall include, at a minimum, the items listed in 15.4.2.1 through 15.4.2.3 of this regulation.
- 15.4.2.1 A list of all current painters by name and job description who are required to be trained.
- 15.4.2.2 Hands-on and classroom instruction that addresses, at a minimum, the initial and refresher training in the topics listed in 15.4.2.2.1 through 15.4.2.2.4 of this regulation.
- 15.4.2.2.1 Spray gun equipment selection, set up, and operation, including measuring coating viscosity, selecting the proper fluid tip or nozzle, and achieving the proper spray pattern, air pressure and volume, and fluid delivery rate.
- 15.4.2.2.2 Spray technique for different types of coatings to improve transfer efficiency and minimize coating usage and overspray, including maintaining the correct spray gun distance and angle to the item to be coated, using proper banding and overlap, and reducing lead and lag spraying at the beginning and end of each stroke.
- 15.4.2.2.3 Routine spray booth and filter maintenance, including filter selection and installation.
- 15.4.2.2.4 Environmental compliance with the requirements of 15.0 of this regulation.
- 15.4.2.3 A description of the methods to be used at the completion of initial or refresher training to demonstrate, document, and provide certification of successful completion of the required training. An owner or operator who can show by documentation or certification that a painter's work experience or training has resulted in training equivalent to the training required in 15.4.2.2 of this regulation is not required to provide the initial training required in 15.4.2.2 to these painters.
- 15.4.3 As required in 15.4.1.1 of this regulation, all new and existing painters at a motor vehicle or mobile equipment surface coating operation, including contract painters, who spray apply coatings that contain target HAPs shall be trained by the dates specified in 15.4.3.1 and 15.4.3.2 of this regulation. Employees who transfer within a company to a position as a painter are subject to the same requirements as a new hire.
- 15.4.3.1 All painters located at a new or reconstructed affected source shall be trained and certified no later than 180 days after hiring or no later than September 11, 2010, whichever is later. Painter training that was completed within five years prior to the date training is required, and that meets the requirements specified in 15.4.2.2 of this regulation satisfies this requirement and is valid for a period not to exceed five years after the date the training was completed.
- 15.4.3.2 All painters located at an existing affected source shall be trained and certified no later than 180 days after hiring or no later than January 10, 2011, whichever is later. Painter training that was completed within five years prior to the date training is required, and that meets the requirements specified in 15.4.2.2 of this regulation satisfies this requirement and is valid for a period not to exceed five years after the date the training was completed.
- 15.4.4 Training and certification shall be valid for a period not to exceed five years after the date the training was completed, and all painters shall receive refresher training that meets the requirements of 15.4 of this regulation and be re-certified every five years.
- 15.5 Monitoring requirements. The owner or operator of a motor vehicle or mobile equipment surface coating operation shall be in compliance with the applicable requirements in 15.5.1 through 15.5.5 of this regulation.
- 15.5.1 The owner or operator shall install and maintain a pressure drop monitoring device to measure the differential pressure drop across each filter required in 15.4.1.2.1 of this regulation.

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- 15.5.2 The owner or operator shall operate the pressure drop monitoring device required in 15.5.1. of this regulation during all times that the spray booth, preparation station, or mobile enclosure is operated.
- 15.5.3 The owner or operator shall observe and record the differential pressure drop at least once per day that the spray booth, preparation station, or mobile enclosure is operated.
- 15.5.4 The owner or operator shall take immediate corrective action; if the differential pressure drop is observed outside of the operating range specified by the filter manufacturer and shall also record the incident and the corrective actions taken.
- 15.5.5 The owner or operator of a spray booth equipped with an automatic pressure balancing system subject to 15.4.1.3.1 of this regulation shall comply with requirements in 15.5.5.1 through 15.5.5.4 of this regulation.
- 15.5.5.1 The owner or operator shall install and maintain a pressure monitoring device to measure the pressure inside the sealed spray booth.
- 15.5.5.2 The owner or operator shall operate the pressure monitoring device required in 15.5.5.1. of this regulation during all times that the spray booth is operated.
- 15.5.5.3 The owner or operator shall observe and record the pressure at least once per day that the spray booth is operated.
- 15.5.5.4 The owner or operator shall take immediate corrective action; if the pressure in the spray booth is observed to be greater than 0.05 inches water gauge positive pressure and shall also record the incident and the corrective actions taken.
- 15.6 Test methods.
- 15.6.1 Filter efficiency. The test method used to demonstrate the filter efficiency shall be consistent with the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Method 52.1, "Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992". The test coating for measuring filter efficiency shall be a high solids bake enamel delivered at a rate of at least 135 grams per minute from a conventional (non-HVLP) air-atomized spray gun operating at 40 pounds per square inch gauge air pressure; the air flow rate across the filter shall be 150 feet per minute. The owner or operator may use published filter efficiency data provided by filter manufacturers to demonstrate compliance with the requirement of 15.4.1.2.1 of this regulation and is not required to perform this demonstration.
- 15.6.2 Spray gun transfer efficiency. The test methods used to demonstrate that an alternative spray gun transfer efficiency is equivalent to that of an HVLP spray gun in 15.4.1.4 of this regulation shall be equivalent to the California South Coast Air Quality Management District's "Spray Equipment Transfer Efficiency Test Procedure for Equipment Use, May 24, 1989" and "Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002".
- 15.7 Notification requirements.
- 15.7.1 Initial notification. The owner or operator of a motor vehicle or mobile equipment surface coating operation, subject to 15.0 of this regulation, shall submit the initial notification required by 3.9.2 of this regulation. For a new or reconstructed affected source, the owner or operator shall submit the initial notification no later than 180 days after initial startup or September 11, 2010, whichever is later. For an existing affected source, the owner or operator shall submit the initial notification no later than September 11, 2010. The initial notification shall provide the applicable information specified in 15.7.1.1 through 15.7.1.8 of this regulation.
- 15.7.1.1 The company's name.
- 15.7.1.2 The address (i.e., physical location) of the affected source and the address where compliance records are maintained, if different. If the source is a motor vehicle or mobile equipment surface coating operation that repairs vehicles at the customer's location, rather than at a fixed location, such as a collision repair shop, the notification should state this and indicate the physical location where records are kept to demonstrate compliance.

- 15.7.1.3 The name and mailing address of the owner or operator of the affected motor vehicle or mobile equipment surfacing coating operation. (New Delaware requirement)
- 15.7.1.4 An identification of the relevant standard (i.e., 15.0 of 7 DE Admin. Code 1138).
- 15.7.1.5 A brief description of the motor vehicle or mobile equipment surface coating operation. The owner or operator shall indicate the number of spray booths and preparation stations and the number of painters usually employed at the operation.
- 15.7.1.6 A statement of whether the source is already in compliance with all the applicable requirements of 15.0 of this regulation or whether the source will be brought into compliance by the compliance date.
- 15.7.1.7 If the affected source is a new or reconstructed source, the owner or operator shall certify in the initial notification whether the source is in compliance with all the applicable requirements in 15.0 of this regulation. The owner or operator shall include a statement by a responsible official that the source is in compliance with all the applicable requirements in 15.0 and that this initial notification also serves as the notification of compliance status. The owner or operator shall also provide the official's name, title, phone number, e-mail address (if available) and signature, certifying the truth, accuracy, and completeness of the notification.
- 15.7.1.8 If the affected source is an existing source, the owner or operator may certify in the initial notification that the source is already in compliance with all the applicable requirements in 15.0 of this regulation. If the owner or operator of an existing source is certifying in the initial notification that the source is in compliance with all the applicable requirements in 15.0, then the owner or operator shall include a statement by a responsible official that the source is in compliance with all the applicable requirements in 15.0 and that this initial notification also serves as the notification of compliance status. The owner or operator shall also provide that official's name, title, phone number, e-mail address (if available) and signature, certifying the truth, accuracy, and completeness of the notification.
- 15.7.2 Notification of compliance status.
- 15.7.2.1 The owner or operator of a new or reconstructed affected source is not required to submit a separate notification of compliance status in addition to the initial notification specified in 15.7.1 of this regulation provided the owner or operator was able to certify compliance on the date of the initial notification, as part of the initial notification, and the affected source's compliance status has not since changed.
- 15.7.2.2 If the owner or operator of an existing affected source did not certify in the initial notification that the affected source is already in compliance as specified in 15.7.1 of this regulation, then the owner or operator of an existing affected source shall submit a notification of compliance status.
- 15.7.2.3 The owner or operator of an existing affected source, required to submit a notification of compliance status in accordance with 15.7.2.2 of this regulation shall submit the notification of compliance status on or before March 11, 2011. The owner or operator shall submit the applicable information specified in 15.7.2.3.1 through 15.7.2.3.5 of this regulation with the notification of compliance status.
- 15.7.2.3.1 The company's name.
- 15.7.2.3.2 The address (i.e., physical location) of the affected source and the address where compliance records are maintained, if different.
- 15.7.2.3.3 The name of the owner or operator of the affected motor vehicle or mobile equipment surface coating operation.
- 15.7.2.3.4 The date of the notification of compliance status.
- 15.7.2.3.5 A statement of whether the source is in compliance with all the applicable requirements in 15.0 of this regulation or an explanation of any noncompliance and a description of corrective actions being taken to achieve compliance. The owner or operator shall include a statement by a responsible official certifying the truth,

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accuracy, and completeness of the notification of compliance status. The owner or operator shall also provide that official's name, title, phone number, e-mail address (if available) and signature.

15.8 Reporting requirements.

15.8.1 Annual notification of changes report. The owner or operator of a motor vehicle or mobile equipment surface coating operation, subject to 15.0 of this regulation, shall submit a report for each calendar year in which information previously submitted in either the initial notification required in 15.7.1 of this regulation, the notification of compliance status required in 15.7.2 of this regulation, or the previous annual notification of changes report submitted under 15.8.1 of this regulation has changed. Deviations from the applicable requirements in 15.0 on the date of the report shall be deemed to be a change.

15.8.2 The annual notification of changes report shall be submitted prior to March 1 of each calendar year when reportable changes have occurred and shall include the information specified in 15.8.2.1 through 15.8.2.5 of this regulation.

15.8.2.1 The company's name.

15.8.2.2 The address (i.e., physical location) of the affected source and the address where compliance records are maintained, if different.

15.8.2.3 The name of the owner or operator of the affected motor vehicle or mobile equipment surface coating operation.

15.8.2.4 A brief description of the deviations that occurred during the reporting period. The owner or operator shall describe the deviation and provide the date of the deviation, the affected source where the deviation occurred, and the corrective actions taken to achieve compliance.

15.8.2.5 A statement of whether the source is in compliance with all the applicable requirements in 15.0 of this regulation or an explanation of any noncompliance and a description of corrective actions being taken to achieve compliance. The owner or operator shall also include a statement by a responsible official with that official's name, title, phone number, e-mail address (if available) and signature, certifying the truth, accuracy, and completeness of the annual notification of changes report.

15.9 Recordkeeping requirements.

15.9.1 The owner or operator of a motor vehicle or mobile equipment surface coating operation shall keep the records specified in 15.9.1.1 through 15.9.1.7 and 15.9.2 of this regulation, as applicable.

15.9.1.1 Certification that each painter has completed the training specified in 15.4.2 of this regulation with the date the initial training was completed and when the most recent refresher training was completed.

15.9.1.2 Documentation of the filter efficiency of the filter material for each spray booth, preparation station, and mobile enclosure, according to the test procedure in 15.6.1 of this regulation.

15.9.1.3 Records of the daily differential pressure drop observations required in 15.5.3 of this regulation. These records shall include the corrective actions taken, as required in 15.5.4 of this regulation, whenever the differential pressure drops observed outside the operating range specified by the filter manufacturer.

15.9.1.4 Records of the daily pressure observations required in 15.5.5.3 of this regulation. These records shall include the corrective actions taken, as required in 15.5.5.4 of this regulation, whenever a pressure was observed greater than 0.05 inches water gauge positive pressure.

15.9.1.5 Documentation from the spray gun manufacturer for each spray gun with a cup capacity equal to or greater than 3.0 fluid ounces that does not meet the definition of an HVLP spray gun, electrostatic application, airless spray gun, or air-assisted airless spray gun, which has been determined by the Administrator to achieve a transfer efficiency equivalent to that of an HVLP spray gun, according to the test procedures in 15.6.2 of this regulation.

- 15.9.1.6 Copies of any notification submitted as required in 15.7 of this regulation and copies of any report submitted as required in 15.8 of this regulation.
- 15.9.1.7 Records of any deviation from the applicable requirements in 15.0 of this regulation, including any deviation from the applicable requirements in 3.0 of this regulation. These records shall include the date and time period of the deviation, a description of the nature of the deviation, and the actions taken to correct the deviation.
- 15.9.2 The owner or operator of an affected source shall maintain records of any assessments of source compliance performed in support of the initial notification, the notification of compliance status, or the annual notification of changes report.
- 15.9.3 The owner or operator of an affected source shall maintain copies of the records specified in 15.9.1 and 15.9.2 of this regulation for a period of at least five years after the date of each record. Copies of records shall be kept on site and in a printed or electronic form that is readily accessible for inspection for at least the first two years after their date and may be kept off-site after that two year period.
- 15.10 Provisions for exemptions.
- 15.10.1 The owner or operator of a motor vehicle or mobile equipment surface coating operation may petition the Department for an exemption from 15.0 of this regulation. The Department may approve the exemption from 15.0, if the owner or operator can satisfactorily demonstrate that the motor vehicle or mobile equipment surface coating facility spray applies no coatings that contain a target HAP. To petition the Department for an exemption from 15.0, the owner or operator shall comply with the requirements in 15.10.1.1 and 15.10.1.2 of this regulation.
- 15.10.1.1 Before submitting a petition to the Department for an exemption from 15.0 of this regulation, the owner or operator shall petition the Administrator and receive an approved exemption from requirements of 40 CFR Part 63 Subpart HHHHHH. Petitioning of the Administrator for this exemption is described in paragraph 63.11170(a)(2) of 40 CFR Part 63 Subpart HHHHHH.
- 15.10.1.2 The owner or operator shall provide the Department with the information specified in 15.10.1.2.1 through 15.10.1.2.5 of this regulation.
- 15.10.1.2.1 The company's name.
- 15.10.1.2.2 The address (i.e., physical location) of the affected source.
- 15.10.1.2.3 A copy of the Administrator's approved exemption from the requirements of 40 CFR Part 63 Subpart HHHHHH.
- 15.10.1.2.4 A description of all spray applied coatings used by the facility. The description of the coatings shall be in sufficient detail to permit verification that each spray applied coating does not contain a target HAP.
- 15.10.1.2.5 A certification that the surface coating operation does not spray apply any coating containing a target HAP and a statement by a responsible official certifying the truth, accuracy, and completeness of the petition for exemption from 15.0 of this regulation. The owner or operator shall also provide that official's name, title, phone number, e-mail address (if available) and signature.
- 15.10.2 If circumstances change such that the owner or operator with an approved exemption from the Department intends to spray apply coatings containing a target HAP, the owner or operator shall submit the initial notification required by 15.7.1 of this regulation and comply with the requirements of 15.0 of this regulation.
- 15.11 Provisions for alternative emission standards. The owner or operator of a motor vehicle or mobile equipment surface coating operation may request the Department's approval to use an alternative in lieu of the emission standards in 15.4 of this regulation. The Department may approve the request to use the alternative, if the owner or operator can satisfactorily demonstrate that the Administrator had granted the owner or operator permission to use the alternative in lieu of the emission standards in Section 63.11173 of 40 CFR Part 63 Subpart HHHHHH. To request the Department's approval to use

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an alternative in lieu of the emission standards in 15.4, the owner or operator shall comply with the requirements in 15.11.1 and 15.11.2 of this regulation.

15.11.1 Before submitting a request to the Department for permission to use the alternative to the emission standards in 15.4 of this regulation, the owner or operator shall request and receive the Administrator's approval to use the alternative in lieu of the emission standards in Section 63.11173 of 40 CFR Part 63 Subpart HHHHHH. Requesting the Administrator's permission to use an alternative is described in paragraph 63.6(g)(2) of 40 CFR Part 63 Subpart A.

15.11.2 The owner or operator shall provide the Department with the information specified in 15.11.2.1 through 15.11.2.4 of this regulation.

15.11.2.1 The company's name.

15.11.2.2 The address (i.e., physical location) of the affected source.

15.11.2.3 A copy of the Administrator's approval to use the alternative in lieu of the emission standards in Section 63.11173 of 40 CFR Part 63 Subpart HHHHHH.

15.11.2.4 A statement by a responsible official certifying the truth, accuracy, and completeness of the request to use the alternative in lieu of the emission standards in 15.4 of this regulation. The owner or operator shall also provide that official's name, title, phone number, e-mail address (if available) and signature.

15.12 Applicability of general provisions. The owner or operator of an affected source, subject to the provisions of 15.0 of this regulation, shall also be in compliance with the provisions in 3.0 of this regulation, that are applicable to 15.0 as specified in Table 15-1 of this regulation.

15.13 [Reserved].

Table 15-1 - Applicability of 3.0 to 15.0 of this Regulation

<u>General Provision Reference</u>	<u>Applies to 15.0</u>	<u>Comment</u>
<u>3.1.1.1</u>	<u>Yes</u>	<u>Additional terms defined in 15.2 of this regulation; when overlap between 3.0 and 15.0 of this regulation occurs, 15.0 takes precedence.</u>
<u>3.1.1.2 - 3.1.1.3</u>	<u>Yes</u>	
<u>3.1.1.4</u>	<u>Yes</u>	<u>15.0 of this regulation clarifies the applicability of each provision in 3.0 of this regulation to sources subject to 15.0.</u>
<u>3.1.1.5</u>	<u>No</u>	<u>Reserved.</u>
<u>3.1.1.6</u>	<u>Yes</u>	
<u>3.1.1.7 - 3.1.1.9</u>	<u>No</u>	<u>Reserved.</u>
<u>3.1.1.10 - 3.1.1.12</u>	<u>Yes</u>	
<u>3.1.1.13 - 3.1.1.14</u>	<u>No</u>	<u>Reserved.</u>
<u>3.1.2.1 - 3.1.2.3</u>	<u>Yes</u>	<u>Applicability of 15.0 of this regulation is also specified in 15.1 of this regulation.</u>
<u>3.1.3.1</u>	<u>Yes</u>	<u>15.0 of this regulation clarifies the applicability of each paragraph in 3.0 of this regulation to sources subject to 15.0.</u>
<u>3.1.3.2</u>	<u>Yes</u>	<u>15.1.9 of this regulation exempts area sources from the obligation to obtain Title V operating permits.</u>
<u>3.1.3.3 - 3.1.3.4</u>	<u>No</u>	<u>Reserved.</u>
<u>3.1.3.5</u>	<u>Yes</u>	
<u>3.1.4</u>	<u>No</u>	<u>Reserved.</u>

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<u>3.1.5</u>	<u>Yes</u>	<u>15.1.9 of this regulation exempts area sources from the obligation to obtain Title V operating permits.</u>
<u>3.2</u>	<u>Yes</u>	<u>Additional terms defined in 15.2 of this regulation; when overlap between 3.0 and 15.0 of this regulation occurs, 15.0 takes precedence.</u>
<u>3.3</u>	<u>Yes</u>	
<u>3.4.1.1 - 3.4.1.2</u>	<u>Yes</u>	
<u>3.4.1.3 - 3.4.1.5</u>	<u>No</u>	<u>Reserved.</u>
<u>3.4.2 - 3.4.2.2</u>	<u>Yes</u>	
<u>3.4.2.3</u>	<u>No</u>	<u>Reserved.</u>
<u>3.4.3</u>	<u>Yes</u>	
<u>3.5.1 - 3.5.2.1</u>	<u>Yes</u>	
<u>3.5.2.2</u>	<u>No</u>	<u>Reserved.</u>
<u>3.5.2.3 - 3.5.2.4</u>	<u>Yes</u>	
<u>3.5.2.5</u>	<u>No</u>	<u>Reserved.</u>
<u>3.5.2.6</u>	<u>Yes</u>	
<u>3.5.3</u>	<u>No</u>	<u>Reserved.</u>
<u>3.5.4.1.1 - 3.5.4.1.2.8</u>	<u>Yes</u>	
<u>3.5.4.1.2.9</u>	<u>No</u>	<u>Reserved.</u>
<u>3.5.4.1.2.10 - 3.5.4.4</u>	<u>Yes</u>	
<u>3.5.5</u>	<u>Yes</u>	
<u>3.5.6 - 3.5.6.1.1</u>	<u>Yes</u>	
<u>3.5.6.1.2 - 3.5.6.1.4</u>	<u>No</u>	<u>Reserved.</u>
<u>3.5.6.2</u>	<u>Yes</u>	
<u>3.6.1</u>	<u>Yes</u>	
<u>3.6.2 - 3.6.2.5</u>	<u>Yes</u>	<u>15.3 of this regulation specifies the compliance dates.</u>
<u>3.6.2.6</u>	<u>No</u>	<u>Reserved.</u>
<u>3.6.2.7</u>	<u>Yes</u>	
<u>3.6.3.1 - 3.6.3.2</u>	<u>Yes</u>	<u>15.3 of this regulation specifies the compliance dates.</u>
<u>3.6.3.3 - 3.6.3.4</u>	<u>No</u>	<u>Reserved.</u>
<u>3.6.3.5</u>	<u>Yes</u>	
<u>3.6.4</u>	<u>No</u>	<u>Reserved.</u>
<u>3.6.5 - 3.6.5.1</u>	<u>Yes</u>	
<u>3.6.5.2</u>	<u>No</u>	<u>Reserved.</u>
<u>3.6.5.3</u>	<u>No</u>	<u>No startup, shutdown, and malfunction plan is required by 15.0 of this regulation.</u>
<u>3.6.6.1</u>	<u>Yes</u>	
<u>3.6.6.2 - 3.6.6.2.2</u>	<u>Yes</u>	
<u>3.6.6.2.3</u>	<u>No</u>	<u>15.0 of this regulation does not require performance testing.</u>
<u>3.6.6.2.4 - 3.6.6.3</u>	<u>Yes</u>	
<u>3.6.7</u>	<u>Yes</u>	
<u>3.6.8</u>	<u>No</u>	<u>15.0 of this regulation does not establish opacity or visible emission standards.</u>
<u>3.6.9 - 3.6.9.6.1.2.1</u>	<u>Yes</u>	

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<u>3.6.9.6.1.2.2</u>	No	Reserved.
<u>3.6.9.6.1.2.3 - 3.6.9.6.1.2.4</u>	Yes	
<u>3.6.9.6.1.3 - 3.6.9.6.1.4</u>	No	Reserved.
<u>3.6.9.6.2 - 3.6.9.14</u>	Yes	
<u>3.6.9.15</u>	No	Reserved.
<u>3.6.9.16</u>	Yes	
<u>3.6.10</u>	Yes	
<u>3.7</u>	No	No performance testing is required by 15.0 of this regulation.
<u>3.8</u>	No	15.0 of this r egulation do es not r equire the use of continu ous monitoring systems.
<u>3.9.1 - 3.9.1.4</u>	Yes	15.7 of this regulation specifies notification requirements.
<u>3.9.1.4.1</u>	No	Reserved.
<u>3.9.1.4.2 - 3.9.2.2.5</u>	Yes	Except that 15.7 .1 of th is re gulation specifies the initial notific ation requirements.
<u>3.9.2.3</u>	No	Reserved.
<u>3.9.2.4 - 3.9.2.4.1</u>	Yes	
<u>3.9.2.4.2 - 3.9.2.4.4</u>	No	Reserved.
<u>3.9.2.4.5 - 3.9.4</u>	Yes	
<u>3.9.5</u>	No	15.0 of this regulation does not require performance tests.
<u>3.9.6</u>	No	15.0 of this r egulation does n ot have o pacity o r vis ible emission standards.
<u>3.9.7</u>	No	15.0 of this r egulation do es not r equire the use of continu ous monitoring systems.
<u>3.9.8 - 3.9.8.3</u>	Yes	Except that 15 .7.2 o f t his regulation sp ecifies the notification o f compliance status requirements.
<u>3.9.8.4</u>	No	Reserved.
<u>3.9.8.5 - 3.9.8.6</u>	Yes	
<u>3.9.9</u>	Yes	
<u>3.9.10</u>	Yes	15.7.2 of th is regulation specifies the date s fo r su bmitting th e notification of changes report.
<u>3.10.1 - 3.10.1.4</u>	Yes	
<u>3.10.1.4.1</u>	No	Reserved.
<u>3.10.1.4.2 - 3.10.1.7</u>	Yes	
<u>3.10.2.1</u>	Yes	Additional requirements are specified in 15.9 of this regulation.
<u>3.10.2.2.1 - 3.10.2.2.11</u>	No	15.0 of this re gulation does not r equire st artup, shut down, an d malfunction plans, performance testing, or CMS.
<u>3.10.2.2.12</u>	Yes	
<u>3.10.2.2.13</u>	No	15.0 of this regulation does not require the use of CEMS.
<u>3.10.2.2.14</u>	Yes	
<u>3.10.2.3</u>	Yes	
<u>3.10.3</u>	No	15.0 of this regulation does not require the use of CMS.
<u>3.10.4.1</u>	Yes	Additional requirements are specified in 15.8 of this regulation.
<u>3.10.4.2 - 3.10.4.3</u>	No	15.0 of this regulation does not require performance tests, or opacity or visible emissions observations.
<u>3.10.4.4</u>	Yes	
<u>3.10.4.5</u>	No	15.0 of this re gulation does not r equire st artup, shut down, an d malfunction reports.

<u>3.10.5</u>	<u>No</u>	<u>15.0 of this regulation does not require the use of CMS.</u>
<u>3.10.6</u>	<u>Yes</u>	
<u>3.11</u>	<u>No</u>	<u>15.0 of this regulation does not require the use of flares.</u>
<u>3.12</u>	<u>Yes</u>	
<u>3.13</u>	<u>Yes</u>	
<u>3.14</u>	<u>Yes</u>	
<u>3.15</u>	<u>Yes</u>	

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b); 903(3)(2)a3
(7 Del.C. §§901(b); 903(3)(2)a3)
7 DE Admin. Code 3507

PUBLIC NOTICE**3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas****1. Title of the Regulations:**

Tidal Finfish Regulations 3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

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

The Fishery Management Plan (FMP) for black sea bass was implemented by the National Marine Fisheries Service (NMFS) and the Atlantic States Marine Fisheries Commission (ASMFC) in 1996 to manage the coastwide black sea bass stock. The recreational fishery is allocated 51% of the Total Allowable Landings (TAL) each year as a harvest limit. The coastwide recreational quota for 2009 was just over 1.1 million pounds but it is estimated that at least 2.9 million pounds of black sea bass were harvested. The harvest limit for the 2010 recreational fishery has been increased to 1,830,390 pounds but additional regulatory measures are necessary in 2010 to prevent the harvest cap from being exceeded.

The ASMFC Black Sea Bass Management Board adopted a motion at the February Commission meeting to require states to implement a seasonal closure in 2010 in order to restrain the recreational harvest within the target harvest limit. The open fishing season adopted by the Board would extend from May 22 to September 12, 2010 and is required as part of the compliance program of the FMP. In addition, the Board's motion specified the current 12.5" minimum size and 25-fish creel limit remain in place.

Delaware will be required to implement the seasonal recommendation since current regulations have no provisions regarding specific dates for a harvesting season for black sea bass. The size limit and creel limit will not require any regulatory adjustments for 2010.

3. Possible Terms of the Agency Action:

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware. Should the NMFS relax the recommended seasonal closure as a result of further landings analysis, the Department could modify the season through emergency action.

4. Statutory Basis or Legal Authority to Act:

7 Del.C. § 903, (e)(2)(a)3, § 901(b), Title 7 Delaware Code

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

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section,

Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendments will be held on May 21, 2010 at 6:00 P.M. in the DNR EC Auditorium, 89 Kings Highway, Dover, DE 19901.

7. Prepared By:

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

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

12 DE Reg. 1430 (05/01/09)

- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal database must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

1 DE Reg. 1767 (5/1/98)

2 DE Reg. 1900 (4/1/99)

3 DE Reg. 1088 (2/1/00)

4 DE Reg. 1665 (4/1/01)

4 DE Reg. 1859 (5/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)

6 DE Reg. 1230 (3/1/03)

- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each day's landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 AM January 1, 2010 and ending midnight May 21, 2010 and beginning at midnight on September 12, 2010 and ending at midnight on December 31, 2010.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

11 DE Reg. 1662 (06/01/08)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

100 Board of Accountancy

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 Del.C. §105(a)(1))
24 DE Admin. Code 100

PUBLIC NOTICE

Pursuant to 24 Del.C. §105(a)(1), the Board of Accountancy has proposed revisions to its rules and regulations.

A public hearing on proposed revisions published on March 1, 2010 in the *Register of Regulations*, Volume 13,

Issue 9 was held on April 21, 2010. The Board of Accountancy decided to make further revisions to the rules and regulations.

A public hearing to address these proposed revisions will be held on June 16, 2010 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 1 of Title 24 of the **Delaware Code**, including the addition of the practice privilege set forth at 24 **Del.C.** §108. In addition, the amendments set forth the licensure requirements that will go into effect on August 1, 2012.

Further, specific course requirements for licensure are revised. There are various amendments to the Rules pertaining to continuing professional education. Specifically, the proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing professional education requirements.

The Board also proposes various grammatical and typographical revisions.

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

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

100 Board of Accountancy

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING

Statutory Authority: 17 Delaware Code, Sections 1021 (17 **Del.C.** §1021
2 **DE Admin. Code** 2402

PUBLIC NOTICE

2307 Delaware Safe Routes to School Regulations

Background

Under Title 17 of the Delaware Code, Section 1021 and 1022, and Public Law 109-59, the Delaware Department of Transportation (DelDOT), through its Division of Planning, is seeking to revise the Safe Routes to School Program Guidelines, which do not provide specific information on private school participation leading to confusion, by specifying the conditions of and extent to which private schools are eligible to participate.

Public Comment Period

The Department will take written comments on the proposed changes to the Safe Routes to School Program Guidelines from May 1, 2010 through May 31, 2010.

Any requests for copies of the proposed revised Program Guidelines, or any questions or comments regarding this document should be directed to:

Sarah Coakley, AICP, Project Planner
Division of Planning
Delaware Department of Transportation
PO Box 778
Dover, DE 19903

(302) 760-2236 (telephone)
(302) 739-2251 (fax)
Sarah.coakley@state.de.us

2307 Delaware Safe Routes to School

1.0 Introduction

Delaware's Safe Routes to School (SRTS) Program was established September 10, 2002 when Governor Ruth Ann Minner signed Senate Bill 353 of the 141st General Assembly of Delaware (73 Del. Laws, c. 435). As directed, the Department of Transportation (DelDOT) began developing a program that would enable DelDOT to work with schools to encourage children to walk and bicycle to school safely. Three years later similar federal legislation was passed (Pub. L. No. 109-59). Delaware's legislation authorizes DelDOT to make SRTS grants available for bicycle and pedestrian safety and traffic calming measures in the vicinity of schools (17 Del.C. §1022). The federal SRTS program was established August 10, 2005 under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This law describes the purpose of the program as follows: (1) to enable and encourage children, including those with disabilities, to walk and bicycle to school; (2) to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and, (3) to facilitate the planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools (Pub. L. No. 109-59, §1404 (b)). The federal program employs a multi-faceted approach that addresses infrastructure needs as well as implements non-infrastructure activities to achieve the program goals.

These Program Regulations establish the Delaware Department of Transportation SRTS program and outline how DelDOT will administer the program. This document provides information regarding eligible recipients of funding, the availability of funds, and the project selection process.

2.0 Eligibility

2.1 Eligible Participants

Any private school, public school or public charter school recognized by the Department of Education may participate in the SRTS program, provided that the request is accompanied by a letter of support by the school principal or a district-level administrator; however, participation is restricted to projects and activities that benefit elementary and middle school children in grades kindergarten through eighth grade. The program seeks to encourage students who live within one mile of their school to walk and those who live within two miles to bicycle both to and from school. When applicable, students with ambulatory impairments are encouraged to travel to and from school using an assistive technology device, such as a wheelchair or scooter. Private schools are eligible to participate in all non-infrastructure components and to receive funding for infrastructure improvements that are located within public right-of-way.

2.2 Eligible Funding Recipients

Funding is available to the organization or agency that is administering the SRTS program; this may be the participating school or an organization acting on behalf of the participating school. Eligible funding recipients include state, regional, or local agencies, including nonprofit organizations, and schools or school districts. An organization may receive funding to implement part or all aspects of a SRTS program at a school or multiple schools, as long as the organization is able to demonstrate that the funding request is based on a comprehensive SRTS plan that addresses a set of core components.

3.0 Program Components

3.1 SRTS Plan

A comprehensive program is established by developing a SRTS plan. The SRTS plan must identify safety hazards, current and potential walking and bicycling routes to school, and activities that will

incorporate each of the 5 E's (Engineering, Education, Enforcement, Encouragement, and Evaluation) to create a comprehensive program. A plan must be created with a group representing different aspects of the school community. This group or committee must include students, parents, teachers, school officials, local transportation agencies, and law enforcement agencies. Partnering with a local health agency or recognized health organization, local civic associations, neighboring residents, and local governments are also encouraged. The committee works through a process to identify areas of concern or need, and then prioritizes activities and projects. SRTS program participants are encouraged to utilize the "Delaware Safe Routes to School Program Sourcebook" when developing a SRTS plan. The "Delaware Safe Routes to School Program Sourcebook" provides guidance on how to develop a SRTS plan and references other resources. It is available on the DeIDOT website (URL address to be determined).

3.2 The "5 E's"

The program is divided into five elements, that include both infrastructure and non-infrastructure components. The "5 E's" are Engineering, Education, Enforcement, Encouragement, and Evaluation. A general description of the components that make up the "5 E's" is provided below.

- 3.2.1 Engineering – Creating operational and physical improvements to the infrastructure surrounding schools that reduce speeds and potential conflicts with motor vehicle traffic, and establish safer and fully accessible crossings, walkways, trails, and bikeways.
- 3.2.2 Education – Teaching children about the broad range of transportation choices, instructing them in important lifelong bicycling and walking safety skills, educating students and their parents on Delaware's pedestrian and bicycle laws, and launching driver safety campaigns within one-mile of schools.
- 3.2.3 Enforcement – Partnering with local law enforcement to ensure traffic laws are obeyed within two-miles of schools (this includes enforcement of speeds, yielding to pedestrians in crossings, and proper walking and bicycling behaviors), and initiating community enforcement such as crossing guard programs.
- 3.2.4 Encouragement – Using events and activities to promote walking and bicycling.
- 3.2.5 Evaluation – Monitoring and documenting outcomes and trends through the collection of data, including the collection of data before and after the intervention(s).

4.0 Project Funding

- 4.1 DeIDOT is expected to receive \$1 million dollars in federal monies each year for five federal fiscal years (FY 2005 – FY 2009) to administer the SRTS Program. While the majority of these funds will be expended towards infrastructure (capital) projects, ten to thirty percent must be dedicated to non-infrastructure projects. No matching funds from the participant are required.
- 4.2 DeIDOT will set aside some of the SRTS funds for Department use towards staff training on SRTS, training materials, public awareness campaigns and outreach about the Delaware SRTS Program, creation and reproduction of promotional and educational materials, technical assistance, and other uses as deemed necessary for successful administration of the SRTS program.

5.0 Funding Limitations

- 5.1 There is no limit on the number of projects for which a sponsor can submit proposals. However, no project or activity will be eligible for funding unless it has been identified through a SRTS planning process and identified in a SRTS plan.
- 5.2 Individual SRTS projects may be funded up to \$125,000. If a project has been identified in the SRTS plan that exceeds this limit, the project shall not be administered or funded through the SRTS Program. Instead, DeIDOT will seek to combine the project with other ongoing work in the area, or submit the project to compete for funding with other Delaware capital improvement projects.

6.0 Eligible Costs

- 6.1 Infrastructure Costs

Infrastructure projects should directly support increased safety and convenience for elementary and middle school children, in kindergarten through eighth grades, to bicycle and/or walk to and from school. Infrastructure funds are only available to schools that have students who reside within two-miles of the school, measured along existing transportation infrastructure. Project limits must be within two miles of the participating school. Planning, design, engineering expenses, including consultant services associated with developing the project, and construction costs are eligible infrastructure expenses. All infrastructure projects must be approved for use in the state of Delaware and located within public right-of-way. This may include projects on private land that have public access easements or right-of-way dedication, if the improvements are located immediately adjacent to and run parallel with the existing public roadway. Public property includes land that are owned by a public entity, including those lands owned by public school districts. Infrastructure projects should be constructed as soon as possible after the project has been awarded. Infrastructure projects that are not completed within 18-months from the date on executed agreement will be cancelled, and the sponsor will be required to return any funds expended on the project. A letter requesting an extension may be submitted prior to the end of the 18-month completion period. Each request will be reviewed and responded to accordingly. The project sponsor will be responsible for long-term main tenance of infrastructure projects. Eligible projects include:

- sidewalk and walking path improvements;
- traffic calming and speed reduction improvements;
- installation of pedestrian signals and accessible pedestrian signals;
- accessible route improvements (including ramps and curb cuts);
- pedestrian and bicycle crossing improvements;
- on-street bicycle facilities;
- off-street bicycle and pedestrian facilities;
- secure bicycle parking facilities; and,
- traffic diversion improvements in the vicinity of schools.

6.2 Non-infrastructure Costs

The federal legislation requires that all non-infrastructure activities that are eligible for funding must be “activities to encourage walking and biking to school.” Eligible activities include:

- costs for assistance in developing SRTS plans (funding for assistance shall not exceed \$10,000 per school);
- traffic education and enforcement within the school zone of a participating school;
- student sessions and materials on bicycle and pedestrian safety, health, and environment;
- modest incentives, promotional activities, and prizes for SRTS contests (no single prize shall exceed \$50 the cost for a single prize shall not exceed \$50);
- parent education materials;
- materials to assist in enforcement of safety behaviors;
- costs for data gathering, analysis, and evaluation reporting;
- photocopying, printing, mailing, and survey costs;
- costs to employ a program manager to run a citywide, countywide, or district wide program that includes numerous schools; and,
- other costs as approved by DeIDOT.

7.0 Ineligible Costs

SRTS program funds shall not be used for recreation, beautification, bus safety, or similar safe routes programs to bus stops or transit. Funds may not be used to supplement or provide for additional crossing guards; however, funds may be used for crossing guard training. SRTS funds may not be used to build closed paths. Infrastructure improvements on the school campus must connect the transportation system to the school entrance.

8.0 Project Selection and Prioritization

- 8.1 Limits on funding have been set to enable more participants to develop a SRTS program. DeIDOT shall implement an evaluation process for project selection based on a statewide competition as set out in the Delaware legislation 17 **Del.C.** §1022. The following factors will be used to rate submitted proposals: (1) demonstrated needs of the applicant; (2) potential for reducing child injuries and fatalities; (3) potential of the proposal for encouraging increased walking and bicycling among students; and, (4) completion of a "Safe Routes to School" plan that identifies safety hazards, and current and potential walking and bicycling routes to school, and involves students, parents, teachers, local transportation agencies, law enforcement agencies and school officials in the plan development process.
- 8.2 Prioritization of proposals will be based on a rating system and scale that will be defined in the "Delaware Safe Routes to School Program Sourcebook". The Sourcebook will also establish the closing date for proposals and the issue date of awards. The SRTS coordinator will make the project selection. DeIDOT reserves the right to judge the capability of the applicant. If the sum of all proposals received is less than the sum of funds to be awarded, no prioritization will be made.
- 8.3 All inquiries are welcome. The state coordinator is available to provide information, answer questions, participate in meetings, and assist potential SRTS participants in initiating a SRTS program. Please direct any questions or comments to:

Safe Routes to School Program, Division of Planning
 Delaware Department of Transportation
 P.O. Box 778
 Dover, DE 19903
 (302) 760-2121 (telephone), (302) 739-2251 (fax)

9 DE Reg. 1776 (5/1/06)

OFFICE OF MANAGEMENT AND BUDGET

Statutory Authority: 29 Delaware Code, Section 6303A(16) (29 **Del.C.** §6303(A))

PUBLIC NOTICE

Freedom of Information Act Regulation

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth policy and procedures in dealing with requests from the public for information as set forth in 29 **Del.C.** Ch. 100, the *Freedom of Information Act*.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on June 1, 2010 at 9:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before May 31, 2010. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.

Freedom Of Information Act Regulation

1.0 Definitions

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

"Director" means the Director of the Delaware Office of Management and Budget.

"FOIA" means The Freedom of Information Act as established pursuant to Chapter 100 of Title 29 of the Delaware Code Annotated.

"FOIA Request" means a request to inspect public records pursuant to Section 10003, Chapter 100 of Title 29 of the Delaware Code Annotated.

"Office" means the Delaware Office of Management and Budget.

2.0 Enabling Legislation

Pursuant to 29 Del.C. §6301A, the Office was established. The Office has authority to make regulations pursuant to 29 Del.C. §6303A(16). The Regulation is established in compliance with 29 Del.C. §10003(b).

3.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for responding to requests from the public for Information as set forth in 29 Del.C., Ch.100.

4.0 Records Request, Response Procedures and Access

- 4.1 All FOIA Requests shall be made in writing to the Office, addressed to: Director of Policy and External Affairs, Office of Management and Budget, Haslet Building, 122 William Penn St., Dover, DE 19901. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Office to locate the records with reasonable effort. The Office shall provide reasonable assistance to the public in identifying and locating public records to which they are entitled access.
- 4.2 The Office shall respond, in writing, within ten working days of the receipt of a FOIA Request. Such response shall specify the name and telephone number of a contact person with respect to the FOIA Request and shall state whether:
- 4.2.1 the Office will permit inspection of the public records;
 - 4.2.2 the Office requires additional time beyond the 10 business days for circumstances to include but not be limited to, the request is for voluminous records, requires legal advice, or the public record is in storage or archived. In the event the Office is unable to make the requested public records available for inspection within the 10 business day period, the Office shall provide an expected time at which they will be made available; or
 - 4.2.3 If it does not permit such inspection, the reason or reasons for such refusal.
- 4.3 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public pursuant to 29 Del.C. §10002(g) are removed. In reviewing the records, all documents shall be considered public records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g).
- 4.4 After receiving the response of the Office to a FOIA Request, the requesting party shall contact the person specified in the written response thereto to schedule a mutually convenient date, time and place for the inspection of the public records.
- 4.5 All FOIA Requests shall be coordinated by the Policy and External Affairs section of the Office.
- 4.6 The Office will provide reasonable access for reviewing public records during regular business hours. The Office will make the requested public records available unless the records or portions of the records are determined to be excluded from the definition of a "public record" pursuant to 29 Del.C. §10002(g).

5.0 Fees**5.1 Administrative Fees:****5.1.1 Charges for administrative fees include:**

5.1.1.1 Staff time associated with processing FOIA Requests will include:

5.1.1.2 Locating and reviewing files;

5.1.1.3 Monitoring file reviews;

5.1.1.4 Generating computer records (electronic or print-outs);

5.1.1.5 Other work items as necessary per request.

5.1.2 Calculation of Administrative Charges:

5.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.

5.1.2.2 Appointment Rescheduling/Cancellation - Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Office in preparing the requested records. The Office will prepare an itemized invoice of these charges and mail to the requestor for payment.

5.2 Photocopying Fees - The following are charges for photocopies of public records made by Office personnel:**5.2.1 Standard Sized, Black and White Copies.**

5.2.1.1 The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:

8.5" x 11"

8.5" x 14" and

11" x 17"

5.2.2 Oversized Copies/Printouts.

5.2.2.1 The charge for copying oversized public records shall be as follows:

18" x 22" \$2.00 each

24" x 36" \$3.00 each

5.2.3 Color Copies/Printouts

5.2.3.1 The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:

8.5" x 11"

8.5" x 14" and

11" x 17"

5.2.4 Microfilm and/or Microfiche Printouts.

5.2.4.1 Microfilm and/or microfiche printouts, made by Office personnel on standard sized paper, will be calculated at \$0.50 per printed page.

5.3 Electronically Generated Records.

5.3.1 Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

5.3.2 In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.

5.4 Payment.

-
- 5.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.
- 5.4.2 The Office may require pre-payment of copying and administrative charges prior to mailing copies of requested records.

6.0 **Effective Date of this Regulation.**

This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.

Symbol Key

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

Final Regulations

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

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

DELAWARE SOLID WASTE AUTHORITY

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

502 Statewide Solid Waste Management Plan

ORDER

1. This is the Final Order and Decision of the Directors of the Delaware Solid Waste Authority (the "Authority") on proposed amendments to the Statewide Solid Waste Management Plan (the "SSWMP").
2. On March 1, 2010, the Delaware Solid Waste Authority caused to be published, in the Delaware Register of Regulations, notice of proposed amendments to the SSWMP. The proposed amendments to the SSWMP were also the subject of publication in the Delaware News Journal and the Delaware State News on February 17, 2010.
3. In accordance with 7 Del.C. §6403(i) and 29 Del.C. §10117, on Wednesday October 7, 2009 a hearing was held before Michael W. Arrington, Esquire, the Authority's designated hearing officer. At the hearing, documents and sworn testimony and one written comment was received into evidence. The record was held open until April 8, 2010 to allow for any further comment from the public.
4. The Authority issues this Final Order and Decision in accordance with 29 Del.C. §10118 after a review of the documents and evidence admitted into the record at the hearing, as well as a careful review of the hearing officer's Proposed Order and Recommendations dated April 8, 2010.

Summary of Evidence

5. The proposed amendments to the SSWMP were made a part of the record, as were proof of publication in two newspapers of general circulation and publication in the Delaware Register of Regulations.
6. Rick Watson, Chief Operating Officer for the Authority, testified that the SSWMP was last adopted in 1994 and the Authority staff has determined that the passage of time and changes in circumstances require wholesale revisions to all facets of the existing SSWMP. The Authority staff therefore is proposing to replace the 1994 SSWMP in its entirety with the proposed amendment. If adopted, the amendments to the SSWMP will establish policies and goals for statewide solid waste disposal and will identify the programs necessary to implement these

policies and goals. As amended, the SS'WMP is intended to address the roles and responsibilities of the Authority and other stakeholders in solid waste disposal and recycling, diversion activities as they relate to both public bodies (State, counties, municipalities) and private enterprise. The amended SSWMP is based on "zero waste" principles, which involve the design and management of products and processes to systematically reduce and eliminate the volume of waste and to maximize the conservation and recovery of resources.

7. One member of the public submitted a comment through the Online Regulation Public Comment System. This comment, from Ruth Ashby, stated, "Great report and even better plan! I think you are on the right path and hope you are able to reach your goals with this plan. At least it's a good beginning. Thank you for all of your efforts." No other written comments have been received into the record.

8. No public comment was offered at the hearing.

Findings of Fact and Conclusions of Law

9. Pursuant to 7 **Del.C.** 6403(j), the Authority is required to adopt the SSWMP and to amend such SSWMP as necessary.

10. The SSWMP has not been amended since 1994.

11. The Authority finds that the passage of time and significant changes in circumstances in Delaware since the adoption of the 1994 SSWMP compels the Authority to revise the SSWMP in its entirety.

12. The Authority finds that goals set forth in the proposed amendments to the SSWMP and the programs identified therein to attain these goals are appropriate and necessary. The Authority further finds that the use of zero waste principles as a basic premise underlying the proposed amendments to the SSWMP is also appropriate.

Decision

13. For the reasons set forth above, the Statewide solid Waste Management Plan is amended in the form set forth in Exhibit A hereto.

SO ORDERED, this 22nd Day of April, 2010.

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

502 Statewide Solid Waste Management Plan

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 107

REGULATORY IMPLEMENTING ORDER

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 701 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, March 3, 2010, in the form hereto attached as Exhibit "A". The Department did not receive comments on this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 701 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) in order to include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 701 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 701 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 701 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) 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** 701 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 701 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) 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 April 15, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of April 2010.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 15th day of April 2010

STATE BOARD OF EDUCATION

Teri Quinn Gray, President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

*Please note that no changes were made to the regulation as originally proposed and published in the March 2010 issue of the *Register* at page 1151 (13 DE Reg. 1151). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation will become effective July 1, 2011 and will replace 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The changes from the current specialist appraisal process include re-defining the Student Improvement component of DPAS II to require a showing of Student Growth. Changes were also made to the Summative Evaluation ratings, adding a new "Highly Effective" rating and amending the means of determining the Summative rating. The amendments also change some of the appraisal cycles.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, March 3, 2010, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments from the public. A change was made to add a definition of "specialist".

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised to change from the current specialist appraisal process include re-defining the Student Improvement component of DPAS II to require a showing of Student Growth. Changes were also made to the Summative Evaluation ratings, adding a new "Highly Effective" rating and amending the means of determining the Summative rating. The amendments also change some of the appraisal cycles.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 April 15, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of April 2010.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed.D., Secretary of Education
Approved this 15th day of April 2010

STATE BOARD OF EDUCATION

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107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2011, and shall, at such time, replace the current 14 DE Admin. Code 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II).

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

“Announced Observation” shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Board” shall mean a local board of education or a charter school board of directors.

“Credentialed Evaluator” shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as Evaluator.

“DASA” shall mean the Delaware Association of School Administrators.

“DPAS II Revised Guide for Specialists” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

“DSEA” shall mean the Delaware State Education Association.

“Experienced Specialist” shall mean a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the Delaware Code; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

“Improvement Plan” shall be the plan that a specialist and evaluator mutually develop in accordance with 8.0.

“Interim assessment” shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students’ knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.

“Novice Specialist” shall mean a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the Delaware Code or holds a valid and current license from his or her respective licensure body.

“Satisfactory Component Rating” shall mean the specialist’s performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the *Delaware Code*.

“Satisfactory Evaluation” shall be equivalent to the overall Highly Effective, Effective or Needs Improvement rating on the Summative Evaluation and shall be used to qualify for a continuing license.

“Specialist” shall mean an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses.]

“State Assessment” shall mean the Delaware Student Testing Program (DSTP) or its successor.

“Student Achievement” shall mean

(a) For tested grades and subjects:

- (1) A student’s score on the DSTP or successor statewide assessment; and, as appropriate,
- (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).

“Student Growth” shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

“Summative Evaluation” shall be the final evaluation at the conclusion of the appraisal cycle.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated for formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Unsatisfactory Component Rating” shall mean the specialist’s performance does not demonstrate an understanding of the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall Ineffective rating on the Summative Evaluation.

“Working Day” shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

- 3.1 Experienced specialists who have earned a rating of Highly Effective on their most recent Summative Evaluation shall receive a minimum of (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced specialists who have earned a rating of Effective and have earned Satisfactory ratings on at least four (4) of the Appraisal Components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years.
- 3.3 Experienced specialists who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative evaluation at the end of the one (1) year period. These specialists shall have an Improvement Plan which may

require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Specialists.

- 3.4 Novice specialists shall receive a minimum of two (2) Ann ounced Observation a nd one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have e arned a r ating o f Needs Improvement or Inef fective on th eir most re cent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Specialists.

4.0 DPAS II Guide for Specialists

- 4.1 All districts and charter schools shall use the manual entitled DPAS II Revised Guide for Specialists as developed and as may be amended by the Department of Education in co llaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) Appraisal Components listed in 5.1.
- 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
- 4.2.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including th e four (4) Appraisal Criteria specified for each, sha ll be th e basis u pon which th e p erformance of a specialist sha ll be e va luated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
- 5.1.1.1 Designing Coherent Pr ograms o r Se rvices: Specialist design s activities and plan s for services that support the needs of the students or clients served.
- 5.1.1.2 Demonstrating Kno wledge of Best Pr actice and Mod els of De livery: S pecialist uses practices and models of delivery that are aligned with local and national standards.
- 5.1.1.3 Demonstrating Knowle dge of Students or Clie nts: Specialist shows kno wledge of th e needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.
- 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
- 5.1.2 Professional Practice and Delivery of Services
- 5.1.2.1 Creating an Environment to Support S tudent or Client Ne eds: S pecialist creates an environment in which student o r client ne eds are identified and valu ed. Specialist and student or client interactions show rapport that is grounded in mutual respect.
- 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or pr ofessional str ategies a nd makes modifications to ser vices based on ne eds of th e students or clients.
- 5.1.2.3 Communicating Clearly and Accurately: Verbal and written comm unication is clea r and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.
- 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match th e ne eds of th e stud ents o r clients. Th e delivery of service is coherent.
- 5.1.3 Professional Collaboration and Consultation
- 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.
- 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to a ssist them in th eir work o r to re spond to school wide issues, pr oblems, or concerns.

- 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.
- 5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.
- 5.1.4 Professional Responsibilities
 - 5.1.4.1 Communicating with Families : Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.
 - 5.1.4.2 Developing a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.
 - 5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students.
 - 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.
- 5.1.5 Student Improvement
 - 5.1.5.1 Measuring Student Improvement: Specialist's students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.

6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
 - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.
 - 6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings : Highly Effective, Effective, Needs Improvement or Ineffective.
 - 6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0 and that the specialist's students on average achieve high rates of student growth, that is, more than one grade level improvement in an academic year.
 - 6.2.2 Effective shall mean that:
 - 6.2.2.1 The specialist has received a Satisfactory Component Rating in at least three (3) Appraisal Components including the Student Improvement Component, and
 - 6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.
 - 6.2.3 Needs Improvement shall mean that:
 - 6.2.3.1 The specialist has received one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
 - 6.2.3.2 The specialist has received three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has received an Unsatisfactory rating in the Student Improvement Component.
 - 6.2.4 Ineffective shall mean that:

- 6.2.4.1 The specialist has received zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The specialist has received an Unsatisfactory Component Rating in the School Improvement Component.
- 6.2.4.3 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Practice Defined

A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<u>Ineffective</u>	<u>Ineffective</u>	
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Ineffective</u>

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan shall also be developed if a specialist's overall performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
- 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
- 8.2.3 Specific professional development or activities to accomplish the goals;
- 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
- 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
- 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
- 8.2.7 Procedures for determining satisfactory improvement.
- 8.2.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, or lead specialist, or an instructional coach.
- 8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.

- 8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

- 9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement PERFORMANCE IS UNSATISFACTORY has been included on the Formative Feedback form. To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, and issue a written decision.
- 9.1.2 If the challenge is denied, the decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall be final.

10.0 Evaluator Credentials

- 10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 701

REGULATORY IMPLEMENTING ORDER**701 Unit Count****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 701 Unit Count. The amendments include, but are not limited to, changes because of the revisions to the special education funding structure (Needs Based Funding), clarification related to choice and charter school students, and rules related to the Distance Learning/Twilight Programs.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Wednesday, March 3, 2010, 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. Changes have been made to reflect several of the Councils comments, including the Delaware Code reference to "good cause" for clarification; changing wording and formatting for ease of understanding. Several of the comments were a result of a difference between what was sent for publication versus what was published. A more detailed letter will be forthcoming to the Councils.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count which include, but are not limited to, changes because of the revisions to the special education funding structure (Needs Based Funding), clarification related to choice and charter school students, and rules related to the Distance Learning/Twilight Programs.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count. Therefore, pursuant to 14 **Del.C.** § 122, 14 **DE Admin. Code** 701 Unit Count attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 701 Unit Count 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** 701 Unit Count amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 701 Unit Count 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 April 15, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED the 15th day of April 2010.
Department of Education
Lillian M. Lowery, Ed.D., Secretary of Education
Approved this 15th day of April 2010

701 Unit Count

1.0 Forms and Record Keeping

- 1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.
- 1.3 Records to substantiate ~~special education~~ students with disabilities included in the enrollment count shall contain: ~~student name, cohort age group, grade level, eligibility category, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file~~ a student Individual Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as special education students as per 14 DE Admin. Code 925.

8 DE Reg. 1473 (4/1/05)

2.0 Special Situations Regarding Enrollment

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.
- 2.2 Students with multiple disabilities shall be reported in the category that corresponds to their **[major primary]** eligibility category.
- 2.3 Students with disabilities included in the special education unit count under the placement provisions of ~~Transfer Students or Emergency Temporary Placement or Change of Placement~~ shall meet the evaluation and placement requirements found in 14 DE Admin. Code 925.
- 2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

8 DE Reg. 1473 (4/1/05)

3.0 Accounting for Students Not in Attendance the Last Ten Days in September

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:
 - 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.
 - 3.1.2 Reason to believe that student will be returning to school ~~before~~ prior to November 1st.
 - 3.1.3 Districts and Charter Schools enrolling ~~a~~ an intra-state transfer student during the last ~~ten~~ 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first year charter agreement before enrolling the student. If said obligation exists, "good cause" [pursuant to 14 Del.C. §402 and §506(d) respectively] must be [agreed upon by the sending and receiving district/charter school determined] before the receiving district/charter school can enroll the student. Districts and charter schools enrolling an in state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow up letter to the previous district/charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of

withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the fax transmittals and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

8 DE Reg. 1473 (4/1/05)

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:
- 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
- 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
- 4.1.1.2 Students shall ~~be reported for~~ receive the level of special education service as defined by the current IEP.
- 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In school Credit Program (14 **DE Admin. Code** 915.2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
- 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1st.
- 4.1.4 Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.
- 4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a ~~full-time~~ special education student if, in the child's placement immediately preceding the homebound placement, the child ~~was receiving instruction from a certified special education teacher for at least 12.5 hours per week~~ had an IEP in effect during the last week of school in September.
- 4.1.4.2 ~~A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a part-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for less than 12.5 hours per week.~~
- 4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.
- 4.1.6 Consortium Discipline Alternative Program:
- 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.
- 4.1.6.2 Students shall **[receive]** ~~be reported for~~ the level of special education service as defined by the current IEP.
- 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 Students enrolled in kindergarten pursuant to 14 **DE Admin. Code** 940 shall be counted in the grade level enrollment group to which they are assigned.
- 4.1.8 Except as provided in section 5.0 and 7.2, all pre kindergarten children with disabilities shall be counted as full time in the appropriate eligibility category.

- 4.1.9 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.
- 4.1.10 Regular Programs, Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.
- 4.1.11 ~~Full-time Special Education Services~~, **[special education services include]** students who have been properly identified, and ~~receive instruction from a certified special education teacher for at least 12.5 hours per week.~~ **Children and have an IEP in effect during the last week of school in September. Students** with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.
- 4.1.12 ~~Part Time Special Education Services, Students who have been properly identified and receive instruction from a certified special education teacher for less than 12.5 hours per week. These children with disabilities must meet all other criteria for full time special education services. For unit count computation, they will have their time apportioned between a regular student in a specified grade and a special student in a specified category.~~
 - 4.1.12.1 ~~The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade student eligible for special education services in the Learning Disabled category receives 11.5 hours of special education service per week, the student is counted as a .77 LD student (11.5/15 = .77) and a .23 second grade regular student. This accounts for one Full Time Equivalent Student (.77 + .23 = 1.0).~~
- 4.1.13 Career Technical Programs, A maximum of 900 minutes of vocational career and technical education time per week per student shall be credited toward the vocational career and technical education unit determination. However, units shall be counted on the basis of 1 unit for each 30 students or major fraction thereof for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

8 DE Reg. 1473 (4/1/05)

5.0 Programs and Situations that Do Not Qualify for the Unit Count

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
 - 5.1.1 Students who have not attended school during the last 10 days of September
 - 5.1.2 Students who are enrolled in General Education Development (GED) programs
 - 5.1.3 Students who are enrolled in other than Department of Education approved programs
 - 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District/Charter School unless that District/Charter School operates the facility's instructional program; otherwise the student must be treated as a withdrawal
 - 5.1.5 ~~Children eligible for special education under Developmentally Delayed Three Year Old Children and Preschool Speech Delayed 3 and 4 Year Old Children. Services will be provided for these students through an annual appropriation to the Department of Education specifically for that purpose (14 **Del.C.** §1703).~~
 - 5.1.6 Students enrolled in a Homeschool as defined in 14 **Del.C.** §2703A.

8 DE Reg. 1473 (4/1/05)

6.0 Nontraditional High School Schedules

- 6.1 For unit count purposes if ~~a student receiving special education services or a career technical student~~ in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week ~~and a full-time special education student receives a minimum of 7.5 hours of instruction per week.~~

6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical or special education student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.

Fall and Spring Career Technical= 300 minutes per week
 Spring and Fall Career Technical= 1500 minutes per week
 $1800 / 2 = 900$ minutes
 per week

Fall and Spring Special Education= ~~7.5 hours per week~~
 Spring and Fall Special Education= 17.5 hours per week
 $=25.0 / 2 = 12.5$ hours per week

6.2 For unit count purposes a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30th unit count. For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:

6.2.1 Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program;

or

6.2.2 Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site;

or

6.2.3 The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in 6.2.4 through 6.2.11; ~~and, in addition to either 6.2.1 through 6.2.3, all of the following~~;

6.2.4 Students and their parent(s)/guardian(s) must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.

6.2.5 Students must be enrolled for a minimum of three courses.

6.2.6 Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three hours per week.

6.2.7 Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.

6.2.8 The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.

6.2.9 The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their parents/guardians.

6.2.10 The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.

6.2.11 An audit file containing information listed in 6.2 and its sub sections must be maintained on all students participating in the program and must be presented upon request to the Department of Education and/or the State Auditor's Office.

8 DE Reg. 1473 (4/1/05)

7.0 Charter Schools

- 7.1 Charter schools shall be allowed the following options in calculating their unit count:
- 7.1.1 Using the standard public school procedure: major fraction unit rounding rule in each category; or
 - 7.1.2 Adding the fractional units in each category, fractional units will be funded
- 7.2 Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any Pre K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll Pre K students.

8 DE Reg. 1473 (4/1/05)

8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

2 DE Reg. 382 (9/1/98)

5 DE Reg. 627 (9/1/01)

6 DE Reg. 74 (7/1/02)

8 DE Reg. 1473 (4/1/05)

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4805 (29 **Del.C.** §4805)

ORDER**203 Video Lottery and Table Game Regulations**

After due notice in the *Register of Regulations*, a meeting was held at the Delaware State Lottery Office to review comments, if any, regarding proposed amendments to the Rules of said office.

The proposed amendments are designed to eliminate the former regulations relating to video lotteries and substitute new regulations to govern video lotteries and table games. The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 13, Issue 9, on March 1, 2010.

Summary of the Evidence and Information Submitted

No written comments were received.

Findings of Fact and Conclusions Of Law

1. The public was given notice and an opportunity to provide comments in writing on the proposed amendments.

2. The Delaware State Lottery Office finds that the proposed amendments to the rules and regulations are necessary and in the public interest.

3. Pursuant to 29 **Del.C.** §4805, the Delaware State Lottery Office has statutory authority to promulgate

regulations governing video lotteries and table games. The proposed amendments clarify provisions of Title 29 regarding video lotteries and table games.

Decision and Effective Date

The Delaware State Lottery Office hereby adopts the proposed rules in the manner to be published in the *Register of Regulations* in May, 2010, to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rules shall be as published in the *Register of Regulations* in May, 2010 as attached hereto as Exhibit A.

SO ORDERED this 5th day of April, 2010.
DELAWARE STATE LOTTERY OFFICE
Wayne Lemons, Director

*Please note that no changes were made to the regulation as originally proposed and published in the March 2010 issue of the *Register* at page 1163 (13 DE Reg. 1163). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

203 Video Lottery and Table Game Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 29 Delaware Code, Section 7909(A) (29 Del.C. §7909(A))

ORDER

2101 Agency Appeal Process

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department")/ Division of Developmental Disabilities Services (DDDS) regarding the agency internal appeal processes. The Department's proceedings to propose new regulations were initiated pursuant to 29 **Delaware Code**, Section 7909 (A).

The Department published its notice of proposed new regulations pursuant to 29 **Delaware Code** Section 10115 in the March 2010 *Register of Regulations*, requiring comments and written materials from the public concerning the proposed new regulations.

SUMMARY OF PROPOSED CHANGES

Statutory Authority

- 29 **Delaware Code**, Section 7909(A)

Summary of Proposed Changes

DDDS 2101: Agency Appeal Process: The purpose of the proposed regulations was to publish a description of the Division of Developmental Disabilities Services' appeal process. The published regulations include a definition of appeal, issues that can be appealed, the time requirements for requesting and appeal, how the process works and how to request an appeal.

COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the comments and recommendations delineated below. The Division of Developmental Disabilities Services has carefully considered each and responds as follows:

First, DDDS is to be applauded for publishing a proposed regulation in this context as juxtaposed to a "policy". Although its enabling legislation [Title 29 7909A] contemplates DDDS issuance of regulations, it has only adopted a single regulation since its inception, i.e, its eligibility standards which have been amended a few times. See 16 DE Admin. Code 2100.

DDDS Response: Thank-you.

Second, DDDS should consider overlapping appeal processes apart from Medicaid. For example, if DDDS proposes action covered by the long-term care bill of rights (16 Del.C. §1121) (e.g. changing a roommate in group home or Stockley), the client could initiate a "grievance" with Delaware Health and Social Services (DHSS) pursuant to 16 Del.C. §1121(28) and 1125. Moreover, if an applicant desired institutional versus Home and Community Based Services (HCBS) care (covered by §2.1 of the DDDS policy), and the decision was Preadmission Screening and Annual Resident Review (PASARR)-related, a DSS hearing is available to even non-Medicaid beneficiaries. See 16 DE Admin. Code Part 5000, Section 5304.1. Therefore, it would be prudent to include a non-supplanting provision in the DDDS regulation. Consider the following amendment to §11.0:

11.0 A DDDS Appeal shall not be a pre-requisite for requesting a DSS Medicaid Fair Hearing nor shall the availability of a DDDS appeal supplant or preclude access to appeal and review processes otherwise available under law or Departmental policy.

DDDS Response: Recommendation from the councils accepted but re-worded in non-legal terms to be more understandable by lay people. As the first part of the suggested recommendation to 11.0 currently exists in proposed 11.0, the DDDS shall amend proposed 11.0 with only "nor shall the availability of a DDDS appeal take the place of or prevent access to other review processes otherwise available under law or Departmental policy", just before the existing period.

Third, §3.0 could be interpreted as categorically requiring exhaustion of informal resolution methods prior to appealing DDDS. This could be problematic since it could result in dismissal of an appeal based on perceived "insufficient efforts" to resolve dispute informally. Moreover, literally, it would require a client dissatisfied with the outcome of a rights complaint to try to negotiate a different disposition with Chris Long prior to appeal. It would be preferable to "encourage" but not categorically "require" resolution efforts prior to filing for appellate review.

DDDS Response: Acknowledged and accepted. DDDS re-worded the proposed reg. 3.0 as: "The Division encourages the appellant to attempt to resolve the situation being contested, prior to requesting an appeal, although all informal resolution avenues do not need to be exhausted, as a pre-requisite."

Fourth, in §3.0, the reference to "an appeal DDDS" makes no sense. Consider substituting "an appeal under this regulation."

DDDS Response: Acknowledged and recommendation accepted. Thank-you.

Fifth, in §9.0, the comma after the word "appealed" should be deleted.

DDDS Response: Acknowledged and recommendation accepted. DDDS removed the comma, in proposed reg. 9.0, after the word "appealed" and replaced the word "with" (following the removed comma) with the word "within".

Sixth, in §10.0, the comma after the word "disposition" should be deleted.

DDDS Response: Acknowledged and corrected. DDDS removed the comma following the word "disposition", in proposed reg. 10.0.

Seventh, in §4.0, consider adding the following amendment: "The implementation..., unless it has already been implemented or by agreement of the appellant and DDDS." There may be situations in which

the parties agree to "roll back" action pending the processing of the appeal. It would be preferable to authorize DDDS discretion in this context.

DDDS Response: Acknowledged and accepted. DDDS added "or by agreement of the appellant and the Division.", just before the existing period, in proposed reg. 4.0.

Eighth, under §5.0, the 90 day time period to request a Medicaid hearing is not tolled during the pendency of the DDDS appeal. It would be preferable to reach an accord with DSS that would allow tolling. A January 27, 2000 policy letter from Medicaid Director, Phil Soule, authorizes tolling of the 90 day Medicaid fair hearing request period during the pendency of internal MCO review.

DDDS Response: Thank-you for the recommendation. It is currently under advisement with the applicable agencies.

Ninth, in §2.4, it would be preferable to insert "limitations" after "reduction,". Compare 18 DE Admin code Part 1403, §2.0, definition of "adverse determination" and 18 DE Admin. Code Part 1301, §2.0, definition of "adverse determination".

DDDS Response: Acknowledged and no changes were made to the proposed reg. 2.4 as it currently states "denial, reduction, suspension or termination of services" and the reference to the Insurance Administrative Code refers to "deny, reduce, limit, or terminate". There is no significant difference.

Tenth, in §2.0., it would be preferable to include the following: "2.6 Decisions involving the content or implementation of an ELP".

DDDS Response: Acknowledged. No changes were made as the ELP is a person driven document and should be addressed with the person, family/guardian/advocate and the team. DDDS does not want to get into the practice of the Division Director, via the Appeals Committee (who don't ordinarily even know the person receiving services), overturning an ELP. If a right is being violated and cannot be addressed at the team level, the appellant should address it via the DDDS Client Rights Complaint Process (reference second comment).

Eleventh, in §2.0, it would be preferable to include a "catch-all" such as "2.7. Other adverse DDDS action or refusal to act with significant impact on appellant."

Acknowledged. Not recommended.

FINDINGS OF FACT:

The Department finds that the proposed new regulations as set forth in the March 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed new regulations of the Division of Developmental Disabilities Services (DDDS) regarding agency appeal process be adopted and shall be final effective May 10, 2010.

Rita M. Landgraf, Secretary, DHSS

2101 Agency Appeal Process

1.0 Definitions

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

"Appeal" means a DDDS internal evidentiary review of a decision by an objective committee assigned by the Division Director or designee.

"Applicant" means any person who is applying for services from the DDDS.

"Individual Rights Complaint" means the DDDS formal process for asserting that the rights of an individual served have been violated, an internal review concerning the reported rights violation and the identification of a plan to improve the situation.

“Risk Management Committee” means the internal Division committee responsible for reviewing identified focus areas situations that present actual or potential danger to individuals served and staff; subsequently developing risk reduction strategies.

2.0 Situations/issues that are eligible to be reviewed via the DDDS appeals process include the following:

- 2.1 Decisions that involve the omission of choice between institutional care and home and community based services.
- 2.2 Denial of eligibility for DDDS services.
- 2.3 Denial of service provider of choice.
- 2.4 Denial, reduction, suspension or termination of services.
- 2.5 Dissatisfaction with the outcome of an Individual Rights Complaint.

3.0 ~~Efforts shall be made to resolve the situation being contested prior to requesting an appeal DDDS.~~
The Division encourages the appellant to attempt to resolve the situation being contested, prior to requesting an appeal, although all informal resolution avenues do not need to be exhausted, as a pre-requisite.]

4.0 The implementation of a DDDS decision shall be postponed pending the decision of a DDDS appeal or Medicaid Fair Hearing, unless it has already been implemented [or by agreement of the appellant and the Division].

5.0 A Medicaid recipient may request a Division of Social Services (DSS) Medicaid Fair hearing at any point in the appeals process, up to ninety (90) days following receipt of a written notice of the DDDS decision that the recipient decides to appeal.

6.0 The DDDS Appeals Committee chairperson shall make efforts to contact the appellant within five (5) working days of receiving the appeals request, unless that appeal is for a disputed eligibility decision. In that case, the DDDS Appeals Committee chairperson shall request a copy of the appellant's intake record within five (5) days of receiving the appeal request and make efforts to contact the appellant within five (5) working days of receiving a copy of the intake record.

7.0 The DDDS Appeals Committee chairperson shall review the appeals request with the appellant, provide clarification as necessary, explain the appeals process and schedule an appeal review at the following month's appeal hearing contingent on providing a 14 calendar days notice.

8.0 The DDDS Appeals Committee shall meet with the appellant in person, unless otherwise requested, and listen to the reason(s) that a decision is disputed. The appellant has the right to invite guests to the appeal hearing and present additional information for consideration. The appellant shall have the opportunity to ask questions, request clarification and receive answers. The person or designee who initially made the decision being disputed shall also appear at the appeal hearing and explain the rationale for his/her decision.

9.0 The Division Director shall be notified of the Appeals Committee's recommendations relative to the issue(s) being appealed, with five (5) working days of the appeal hearing.

10.0 The Division Director shall send written notification to the appellant of the final appeal disposition, within fifteen (15) working days of the appeal hearing. The notification shall include a notice regarding the right to request a Division of Social Services (DSS) Medicaid Fair Hearing, if the aggrieved person is a Medicaid recipient or applying for a Medicaid service.

11.0 A DDSS Appeal shall not be a pre-requisite for requesting a DSS Medicaid Fair Hearing [nor shall the availability of a DDSS Appeal take the place of or prevent access to other review processes otherwise available under law or Departmental policy].

12.0 The DDSS Risk Management Committee shall review appeal statistics and trends, on an annual basis or as requested by the committee chair or Division Director.

DIVISION OF SOCIAL SERVICES

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

DSSM 7000, Cash Assistance Overpayments and DSSM 9095, Establishing Claims Against FSP Households

ORDER

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance and Food Supplement Programs. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance and Food Supplement programs. The Division of Social Services (DSS) proposes placement of the food benefit overpayment and claims rules in its own dedicated section. The proposal primarily renumbers existing rules and makes corresponding adjustments to the rule text, as appropriate.

Statutory Authority

7 CFR §273.18, *Claims against households*

Summary of Proposed Changes

DSSM 7000, Cash Assistance Overpayments and DSSM 9095, Establishing Claims Against FSP Households: The purpose and effect of the proposed changes is to remove the Food Supplement Program (FSP) language from the current 7000 section. The intent of the proposal is to separate Cash Assistance and Food Benefit overpayment and claims policies, and place FSP claim policy in its own dedicated section 9095 (new section number). Additional changes are proposed to reformat and reorganize original text; remove/update obsolete text, and, to simplify language, correct spelling, grammar and typographical errors to improve readability.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Division of Social Services (DSS) proposal to adopt separate regulatory

standards in the cash assistance program in the "7000" section and the Food Supplement Program (FSP) in a new "9095" section. We would like to share the following observations.

First, in Section 7003.1, the word "claim" should be deleted.

Second, in other contexts, it is common to waive recovery of overpayments if relatively small in amount or collection is not cost effective. For example, the Social Security Administration will waive an overpayment up to \$1,000. The FSP authorizes non-collection if the overpayment is \$125 or less [§9095.5] or a claim balance is less than \$25 [§9095.11C]. This concept is absent from Part 7000. Therefore, DSS staff would have no discretion but to process small overpayments of even \$1.00. DSS should consider incorporating an authorization to disregard overpayments if the amount is small and/or collection would not be cost effective.

Third, §7003.1 is confusing. It may be interpreted in two ways based on the use of bullets and co-equal references to "and" and "or":

A. One interpretation is that there are three independent bases for referral to the Department of Justice (DOJ):

1. intentional violation and net overpayment exceeds \$1000; or
2. interstate fraud; or
3. repeat offender of \$500 or more.

B. Another interpretation is that there is one basis for referral with three subparts. Referral would occur only if there is intentional violation characterized by one of the following:

1. net overpayment exceeds \$1,000;
2. interstate fraud; or
3. repeat offender.

A repeat non-intentional offender over \$500 would be referred to the DOJ under the first interpretation but not the second interpretation.

Fourth, the FSP regulation (§ 9095.10) includes an authorization to "compromise a claim" to facilitate DSS collection within a reasonable period of time. This concept is absent from the Part 7000 regulation for cash assistance overpayments. DSS should consider incorporating an authorization in Section 7004.1 (which covers restitution and reimbursement) to consider "compromise of claim".

Fifth, the Councils believe the reference to "7004.2 Case Changes" should be deleted. Moreover, there are duplicate references to "7004.1 Methods of Collecting Cash Assistance Overpayments".

Agency Response: Thank you for your observations and recommendations on the proposed regulation. The purpose for the household claims proposal was to separate the food benefit claim policy from the cash assistance overpayment policy. Food and Nutrition Service (FNS) recommended separating the two policies during an audit of the Food Supplement Program (FSP) claims policy. DSS decided to re-write the food benefit portion while making the policy separation. The cash assistance portion will be re-written at a later time. Your five comments regarding Section 7000 will be considered when that section is re-written. No change to regulation was made as a result of these comments.

Sixth, §9095.1C) recites that each adult member of a household is responsible for paying an "overpayment" claim. This is based on 7 C.F.R. 273.18(a)(4). See also §9095.6D.2. Section 9095.6C recites that notice of the claim is effected by providing "the household with a one-time notice of adverse action...". This is based on 7 C.F.R. 273(e). Our concern is that a single notice to a "household" may not reach an 18 year old adult living with parents or relatives. The 18 year old would not be notified of the time period to request a hearing which then lapses. The 18 year old would then be subject to wage attachment, state tax intercept, etc. based on §9095.13G without effective notice and opportunity to challenge the underlying "claim". Recognizing that DSS is adopting the federal regulation verbatim, it still may be the better practice to send separate notices to each adult member of a household. Otherwise, there may be a lack of due process.

Agency Response: Your sixth comment regarding §9095.1C does have merit. DSS discussed your suggestions with the Audit and Recovery Management Services (ARMS) unit whose system sends client notices. The noticing process is automated and would be a workload requiring major system changes. Also, during the recent audit, FNS was fine with ARMS noticing just the case head and all liable parties are listed on the client notice that goes with the demand letter packet. As such, no change to regulation was made as a result of these comments. However, DHSS will look for opportunities to make the necessary changes to the ARMS noticing process and when feasible, will separately notice all adult members of the household.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, Cash Assistance Overpayments and Establishing Claims Against FSP Households to separate Cash Assistance and Food Benefit overpayment and claims policies, and place FSP claim policy in its own section 9095 (new section number) is adopted and shall be final effective May 10, 2010.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the March 2010 issue of the *Register* at page 1174 (13 DE Reg. 1174). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

DSSM 7000, Cash Assistance Overpayments and DSSM 9095, Establishing Claims Against FSP Households

DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM 9060: Determining Income Deductions

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income Deductions*.

Statutory Authority

- Food and Nutrition Act of 2008, Section 5(d)(6)
- 7 CFR §273.9(d), Income deductions

Summary of Proposed Changes

DSSM 9060: *Determining Income Deductions*: The purpose and effect of the proposed changes is: 1) to treat child support payments as an income deduction; and, 2) to add new homeless shelter deduction policy. The Division of Social Services (DSS) has elected to treat child support payments as an income exclusion off the gross income, instead of a deduction off the net income, which will allow more households to participate in the Food Supplement Program (FSP). DSS has also elected to allow a homeless shelter deduction of \$143.00 for homeless households with limited shelter expenses, which will give some homeless households more benefits. Additional

changes are proposed to reformat and reorganize original text to simplify language and improve readability.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) reviewed the Division of Social Services (DSS) proposal to amend the income deduction standards of the Food Supplement Program (FSP). As the "Summary of Proposed Changes" indicates, there are two major changes which are highlighted below. Since the changes benefit recipients, we **endorse** the amendments. However, we would like to clarify that references to income in the initial section refer to "gross" income, not "net" income. The superseded regulation (e.g. §9060B) explicitly referred to "gross" income.

DSS is opting to treat child support payments as a net income exclusion from gross income rather than a deduction from net income. This favors the obligor and expands eligibility. The relevant federal regulations, 7 C.F.R. 273.9(b)(17) and 273.9(d)(5), provide states with this option.

Second, DSS is opting to allow a shelter deduction of \$143 for homeless households with limited shelter expenses. This should result in an increase in benefits to affected households.

Agency Response: You are correct that the references in the proposed sections do refer to gross income and not net income. DSS agrees that treating child support as income exclusion and having a homeless shelter deduction will allow more households to be eligible for food benefits and may give some an increase in benefits. Thank you for your endorsement. No change to regulation was made as a result of these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, *Income Deductions*, is adopted and shall be final effective May 10, 2010.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the March 2010 issue of the Register at page 1174 (13 DE Reg. 1174). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

DSSM 9060: Determining Income Deductions

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§314, 1111)
18 DE Admin. Code 1408

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance

ORDER

Proposed Regulation 1408 relating to Standards for Prompt Pay and Equitable Settlement of Claims for Long-term Care Insurance was published in the *Delaware Register of Regulations* on March 1, 2010. The comment period remained open until April 5, 2010. There was no public hearing on proposed Regulation 1408. Public notice of the proposed Regulation 1408 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Comment was received from the Governor's Advisory Council for Exceptional Citizens and from the State Council for Persons with Disabilities. The comments were the same. The councils pointed out that the proposed regulation was weaker than a similar regulation covering health insurance and does not contain a "rebuttable presumption of an unfair practice based on three instances of a carrier's failure to comply...".

Findings of Fact

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

While the comments of the two councils are valid, the proposed regulation, based on the NAIC Model, is more than adequate to, for the first time, establish reasonable requirements for the payment of claims for long-term care insurance.

The requirements of the proposed Regulation 1408 best serve the interests of the public and of insurers and comply with Delaware law.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§314, 1111 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 1408 as may more fully and at large appear in the version attached hereto to be effective on July 1, 2010.

Text and Citation

The text of the proposed Regulation 1408 last appeared in the *Register of Regulations* Vol. 13, Issue 9, pages 1181-1182.

IT IS SO ORDERED this 6th day of April 2010.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance**1.0 Authority**

This regulation is adopted by the Commissioner pursuant to 18 **Del.C.** §§311, 2304(16), and 2312 and 7107. It is promulgated in accordance with 29 **Del.C.** Ch. 101.

2.0 Scope

This regulation shall apply to all carriers as defined herein.

3.0 Definitions

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

"Carrier" means any entity that provides long-term care insurance in this State. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with long-term care plans.

"Days" means calendar days.

"Institutional Provider" means a hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care or other coverage which may be provided in a long-term care policy. An entity must be a Provider under this Regulation in order to be an Institutional Provider.

“Policyholder,” “Insured,” or “Subscriber” means a person covered under a long-term care insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on his behalf.

“Provider” means any entity or individual licensed, certified, or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide long-term care services, irrespective of whether the entity or the individual is a participating provider pursuant to a written agreement with the carrier. When used alone, the term “provider” shall include individual providers and institutional providers.

4.0 Prompt Payment of Clean Claims

- 4.1 “Claim” means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.
- 4.2 “Clean Claim” means a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses incurred, or particular circumstances requiring special treatment that prevents timely payment from being made on the claim.
- 4.3 Within thirty (30) days after receipt of a claim for benefits under a long-term care insurance policy or certificate, an insurer shall pay such claim if it is a clean claim, or send written notice acknowledging the date of receipt of the claim and one of the following:
- 4.3.1 The insurer is declining to pay all or part of the claim and the specific reason(s) for denial; or
- 4.3.2 That additional information is necessary to determine if all or any part of the claim is payable and the specific additional information that is necessary.
- 4.4 Within thirty (30) days after the receipt of all the requested additional information, an insurer shall pay a claim for benefits under a long-term care insurance policy or certificate if it is a clean claim, or send a written notice that the insurer is declining to pay all or part of the claim, and the specific reason or reasons for denial.
- 4.5 If an insurer fails to comply with 4.3 or 4.4, such an insurer shall pay interest at the rate of 1% per month on the amount of the claim that should have been paid but that remains unpaid after forty-five (45) days after the receipt of the claim with respect to 4.3 or all requested additional information under 4.4. The interest payable pursuant to this sub-section shall be included in an late reimbursement without requiring the person who filed the original claim to make any additional claim for such interest.
- 4.6 These provisions shall not apply where the insurer has a reasonable basis supported by specific information that such claim was fraudulently submitted.
- 4.7 Any violation of this regulation by an insurer if committed flagrantly and in conscious disregard of the provisions of this regulation or with such frequency as to constitute a general business practice shall be considered a violation of 18 Del.C. §2304.

5.0 Waiver

The provisions of this regulation may not be waived, voided, or nullified by contract.

6.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a carrier or its representative based upon a violation of 18 Del.C. §2304.

7.0 Separability

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

8.0 Effective Date

This regulation becomes effective for all claims submitted for payment on or after July 1, 2010.

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

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3511

Secretary's Order No.: 2010-F-0013

3511 Summer Flounder Size Limits; Possession Limit; Seasons

Date of Issuance: April 15, 2010

Effective Date of the Amendment: May 11, 2010

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

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 regarding Summer Flounder. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2010-01. The Department published the proposed amendments in the March 1, 2010 *Delaware Register of Regulations* and held a public hearing on March 23, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 6, 2010 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 as final, Delaware will be able to remain in compliance with the federal guidelines for the management of summer flounder, as set forth jointly by both the ASMFC and NOAA, to wit: (1) establish the size limit at 18.5 inches; (2) establish the creel limit at four (i.e., four fish per day); and (3) establish an eighty-day closure of the 2010 season from October 13th through December 31st. This management plan sets the minimum size limit at 18.5 inches, which is the more preferable size limit for this species (given the higher hook-related discard mortality associated with larger size limits for summer flounder). Additionally, the incorporation of a relatively short closed season within this management plan may help to instill and strengthen fishing ethics here in Delaware by encouraging/teaching the next generation of anglers to practice "catch and release" and promote the practice of "letting the big ones go every once and awhile", thereby helping to fortify and rebuild the State's summer flounder stock.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided a adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments,

including at a public hearing;

3.) The Department held a public hearing on the proposed amendments to this regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended amendments to this regulation (as revised to reflect the 18.5" minimum size limit, 4 fish per day, and 80-day closure from October 13th through December 31st) satisfy the aforementioned federal mandates with regard to Delaware's management of summer flounder, and do not result in any substantive change from the proposed amendments as originally published in the March 1, 2010, *Delaware Register of Regulations*;

6.) The recommended amendments should be adopted as final because Delaware will be enabled to remain in compliance with the federal guidelines for the management of summer flounder, as set forth jointly by both the ASMFC and NOAA, to wit: (1) establish the size limit at 18.5 inches; (2) establish the creel limit at four (i.e., four fish per day); and establish an eighty-day closure of the 2010 season from October 13th through December 31st. This management option will not deprive fishermen of the enjoyment of summer flounder during the typical peak of the season, nor will it cause Delaware to suffer a marked decrease in tourism, as a result of the 80-day closure occurring from October 13th through December 31st. Moreover, this management option will help to fortify and rebuild the summer flounder stock while simultaneously helping to encourage and teach sound fishing ethics to the next generation of anglers in Delaware.

7.) The Department shall submit this Order approving the final amendments to this regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

3500 Tidal Finfish

3511 Summer Flounder Size Limits; Possession Limits

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ **four (4)** summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. ~~[(Note: creel limit to be determined in combination with size limit and season.)]~~
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measures less than ~~eighteen and one half (18.5)~~ **eighteen and one half (18 1/2)** inches between the tip of the snout and the furthest tip of the tail. ~~[(Note: creel limit to be determined in combination with size limit and season.)]~~

7 DE Reg. 1575 (5/1/04)

12 DE Reg. 1430 (05/01/09)

- 3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~eighteen and one half (18.5)~~ **eighteen and one half (18 1/2)** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed. ~~[(Note: creel limit to be determined in combination with size limit and season.)]~~
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the

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furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

- 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
 - 4.3 A bill of lading while transporting fresh or frozen summer flounder.
 - 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1 % of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ **four (4)** summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging. **[(Note: creel limit to be determined in combination with size limit and season.)]**
- 8.0 **Notwithstanding section 4.0 of this regulation, it shall be unlawful for any recreational or commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the closed season beginning 12:01 a.m. October 13 and ending 12:00 p.m. December 31 next ensuing.**

Note: Proposed options for creel limits and minimum size limits and seasons to restrict the recreational summer flounder harvest in Delaware during 2010.

Option	Season Closure	Number of Open Days	Bag Limit	Minimum Size inches
1	Oct 13—Dec 31	285	4	18.5
2	Oct 26—Dec 31	298	3	18.5
3		365	2	18.5
4		365	4	19.0

- 1 DE Reg. 1767 (05/01/98)
- 2 DE Reg. 1900 (04/01/99)
- 3 DE Reg. 1088 (02/01/00)
- 4 DE Reg. 1552 (03/01/01)
- 5 DE Reg. 462 (08/01/01)
- 5 DE Reg. 2142 (05/01/02)
- 6 DE Reg. 1358 (04/01/03)

7 DE Reg. 1575 (05/01/04)
8 DE Reg. 1488 (04/01/05)
9 DE Reg. 1759 (05/01/06)
10 DE Reg. 1722 (05/01/07)
11 DE Reg. 1493 (05/01/08)
12 DE Reg. 1430 (05/01/09)

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41
(17 Del.C. §§134, 141 and 21 Del.C. Ch. 41)
2 DE Admin. Code 2402

ORDER

2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT) adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department then drafted changes to Parts 2, 3, and 6 of the Federal MUTCD, and published a Notice seeking public comment on these changes in the March 1, 2009 edition of the Delaware Register. Other portions of the MUTCD have already been drafted and adopted.

Summary of the Evidence and Information Submitted

No comments were received regarding these proposed changes to the MUTCD. Since the initial publication for comment, however, the Department made a small change in its draft of the amendments to Part 3. This is related to Figure 3B-16A. The change will be to note 2 in the figure. The revised note 2 should read "Double Yellow Pavement Markings should be placed in the median if W ≥ 30m (50 ft)." This change makes the recommendation for double yellow centerline markings less restrictive. The Department considers this change to be non-substantive in nature, and thus no new comment period is required.

Findings of Fact

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

1. The proposed amendments to Parts 2, 3, and 6 of the Delaware version of the MUTCD are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.
2. The adoption of these proposed changes to the MUTCD for Delaware is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Parts 2, 3, and 6 of the MUTCD, as set forth in the version attached hereto, to be effective on May 21, 2010.

IT IS SO ORDERED this 22d day of April, 2009.

Carolann Wicks, Secretary
Delaware Department of Transportation

A summary of the final changes is described below:

DeIDOT MUTCD Parts 2, 3, and 6	
Final Revisions	
May 1, 2010	
Final Revision	Chapter Number/ Section Number/ Figure Number
Part 2	
Insert Chapter 2G - Tourist-Oriented Directional Signs and referenced Delaware's "Standards for Agricultural Tourism Attraction Guide Signs."	Chapter 2G
Revise Chapter 2H to reference Delaware's Standards for Brown Guide Signs for Attractions and guidance regarding other recreational and cultural interest areas including gaming facilities.	Chapter 2H
Part 3	
Delete Figures 3A-1A and 3A-1B and all references to the DeIDOT-specific guidance for black contrast pavement markings.	Section 3A.05 and Figures 3A-1A and 3A-1B
Revise the length of no passing zones on the approaches to and departures from intersections.	Section 3B.02 and Figure 3B-1
Revise the last standard in this section to indicated that a single yellow line shall be installed adjacent to medians with colored or patterned pavement.	Section 3B.03
Delete references to DeIDOT's Recessed Pavement Marker Guidelines.	Section 3B.11
Revise this statement from an "Option" to a "Standard": When patterned pavement or other similar treatments are used to depict crosswalks, 300 mm (12 in) solid white lines shall be used to define the crosswalk.	Section 3B.17
Part 6	
Revise the NCHRP Report 350 Compliance Requirements to include AASHTO's Manual for Assessing Safety Hardware (MASH) requirements.	Section 6A.01
Revise the standard to state that either Type B lights or reflectorized panels meeting the sheeting requirements shall be required when the lead end of barrier is protected by an attenuating device.	Section 6F.81
Revise Case 15 to reflect DeIDOT's current "best practices" for detour plans.	Case 15
Add note to Case 20-B: "Use of Truck-Mounted Attenuators (TMAs) shall be required if the posted speed is greater than or equal to 45 MPH. Use of TMAs is optional if the posted speed is less than 45 MPH, unless otherwise directed by the Chief Traffic Engineer or designee." Revise the legend in the figure for Case 20-B to require the use of TMAs for posted speeds greater than or equal to 45 MPH. Remove the reference to multi-lane highways in the title of the notes and figure for Case 20-B.	Case 20-B

*Please note that no changes were made to the regulation as originally proposed and published in the March 2010 issue of the *Register* at page 1199 (13 DE Reg. 1199). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, May 5, 2010 beginning at 10:30 a.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**THOROUGHBRED RACING COMMISSION****Delaware Jockeys' Health and Welfare Benefit Board Regulations****PUBLIC NOTICE**

The Delaware Jockeys' Health and Welfare Benefit Board, in accordance with 3 Del.C. §10103(c) has proposed changes to its rules and regulations. This rule change is proposed to increase the number of Jockeys that are eligible to enroll in the Funded plan.

A public hearing will be held on May 25, 2010, beginning at 9:30 AM and ending at 10:00 AM, in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804, where members of the public may 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 attention of John F. Wayne, Executive Director, at the above address. The final date to receive comments will be May 25, 2010, during the public hearing. Copies are also published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, May 20, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****PUBLIC NOTICE****3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

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 30A, Section 3006A, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing the training and qualifications for nursing assistants and certified nursing assistants.

This regulatory proposal was initially published in the February 2010 issue of the Register on page 1014. Due to the significant number of comments and amendments, it is being repropoed.

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 Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, May 31, 2010.

CALENDAR OF EVENTS/HEARING NOTICES

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
11000 Child Care Subsidy Program

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2010.

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

DEPARTMENT OF INSURANCE
704 Homeowners Premium Consumer Comparison
PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 704 relating to Homeowners Premium Consumer Comparison. The docket number for this proposed amendment is 1342.

The purpose of the proposed amendment to regulation 704 is to reflect the date the Department receives data from the National Association of Insurance Commissioners (NAIC). The text of the proposed amendment is reproduced in the May edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE
901 Arbitration of Automobile and Homeowners' Insurance Claims
PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 901 relating to Arbitration. The docket number for this proposed amendment is 1278.

The purpose of the proposed amendment to regulation 901 is to update the existing regulation to conform to statutory changes relative to health insurance arbitration and to provide for the payment of legal services to

prevailing consumers in certain homeowners' arbitration cases. The text of the proposed amendment is reproduced in the May 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE

1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELD IN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 1208 relating to Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities.

The purpose of the proposed amendment to regulation 1208 is to update the existing regulation to utilize newer mortality tables that have been recognized by the National Association of Insurance Commissioners. The text of the proposed amendment is reproduced in the May 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE

1218 Determining Reserve Liabilities For Credit Life Insurance

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELD IN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 1218 relating to reserve liabilities for credit life insurance.

The purpose of the proposed regulation 1218 is to recognize the 2001 CSO Male Composite Ultimate Mortality Table for use in determining the minimum standards of valuation and to specify the interest rate method to be used in determining the minimum standards of valuation. The docket number of the proposed regulation is 1346. The proposed regulation is reproduced in the May 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday June 7, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS**
**1101 Apprenticeship and Training Regulations
PUBLIC NOTICE**

The Governor's Council on Apprenticeship & Training will hold a public hearing beginning at 10:00 a.m., Tuesday, June 8, 2010 at the Delaware Department of Labor, 225 Corporate Blvd., Suite 202, Newark, Delaware 19702, where members of the public can offer comments.

The Council on Apprenticeship & Training proposes to recommend to the Secretary of Labor changes to Rule 6.4.2 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The proposal modifies the ratio for two trades. First, the Structural Metal Worker trade will be changed from its current one apprentice up to five mechanics (1 up to 5) to one apprentice up to four mechanics (1 up to 4). In addition, the ratio for the trade of Painters, Construction and Maintenance will be changed from its current one apprentice up to five mechanics (1 up to 5) to one apprentice up to three mechanics (1 up to 3).

The proposed rule is published in the Delaware Register of Regulations and two newspapers. Copies are available at the Department of Labor, Division of Industrial Affairs, 225 Corporate Blvd., Suite 104, Newark, DE 19702. A copy can be obtained by contacting Kevin Calio, Director of Apprenticeship & Training, at (302) 451-3419. Interested persons can submit written comment to the Council on Apprenticeship & Training c/o Kevin Calio at the above address until the time set for the public hearing.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**
DIVISION OF AIR AND WASTE MANAGEMENT
**1124 Control of Volatile Organic Compound Emissions
PUBLIC NOTICE**

The Clean Air Act (CAA) Section 182(b)(2) requires that all ozone non-attainment areas, including Delaware, must develop or update relevant regulations to implement Reasonably Available Control Technology (RACT) controls on emission sources covered in EPA's Control Techniques Guidelines (CTG) or Alternate Control Techniques (ACT), and submit the regulations to EPA as State Implementation Plan (SIP) revisions. Recently, the EPA has updated several CTGs and the afore-mentioned revisions to 7 **DE Admin. Code** 1124 reflect DE's efforts accordingly. Specifically,

- Section 8.0, Handling, Storage, and Disposal of Volatile Organic Compounds (VOC). This revision updates the existing work practice standards, and adds a new generally applicable cleaning solvent VOC content limit.
- Section 13.0 Automobile and Light-Duty Truck Coating Operations. This revision sets more stringent emissions limits.
- Section 16.0 Paper Coating. The revision adds "film and foil coating" to the regulated category.
- Section 23.0 Coating of Flat Wood Paneling. The revision sets up more stringent emission limits.
- Section 37.0 Graphic Art Systems. The revision adds "flexible packaging printing" to the regulated category.
- Section 45.0 Industrial Cleaning Solvents. The revision clarifies that the requirements of 45.0 are triggered based on "VOC emissions" rather than "solvent used."
- Section 47.0 Offset Lithographic Printing. The revision adds "letterpress printing" to the regulated category.

A public hearing will be held on June 2, 2010, beginning at 6:00 pm, in DNREC's Auditorium, R & R Building, 89 Kings Hwy, Dover, Delaware 19901.

DIVISION OF AIR AND WASTE MANAGEMENT**PUBLIC NOTICE****1124 Control of Volatile Organic Compound Emissions, Section 11**

The Department proposes to revise Section 11.0 of 7 DE Admin. Code to require lower volatile organic compound (VOC) content of the coatings and cleaning solvents used in the refinishing of mobile equipment, primarily automobiles, in order to lower VOC emissions, a precursor to the formation of ground-level ozone. The Ozone Transport Commissions (OTC), as an aid to member states in this effort, developed a model rule for mobile equipment refinishing based upon a California rule. Almost all OTC states plan to adopt some form of this model rule. We anticipate a VOC emission reduction of about 300 tons per year.

There will be a hearing on these proposed amendments on Thursday, June 10, 2010 beginning at 6pm in the Richardson & Robbins Auditorium. Interested parties may submit comments in writing to Ronald Amirikian, Air Quality Management Section, 156 South State Street, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing

DIVISION OF AIR AND WASTE MANAGEMENT**PUBLIC NOTICE****1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

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

In January 2008, the EPA promulgated another of these area source category standards that will affect existing and future Delaware sources; the area source standard for paint stripping and miscellaneous surface coating operations under 40 CFR Part 63 Subpart HHHHHH.

Delaware is proposing to amend Regulation 1138 by adding a new Section 13 that covers area source paint stripping operations that use chemical strippers containing methylene chloride. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to methylene chloride. In addition, methylene chloride is classified as a probable human carcinogen by the EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for these paint stripping operations and the recently promulgated federal standard (40 CFR Part 63 Subpart HHHHHH) on which this proposed amendment is heavily based.

Delaware is also proposing to amend Regulation 1138 by adding a new Section 15 that covers area source motor vehicle or mobile equipment surface coating operations. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to cadmium, chromium, lead, manganese, or nickel compounds. In addition, some of these compounds, except the manganese compounds, are classified as known or probable human carcinogens by the EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for these types of operations and the recently promulgated federal standard (40 CFR Part 63 Subpart HHHHHH) on which this proposed amendment is heavily based. In addition, this amendment proposes to include more health protective requirements that currently exist in similar area source air toxics standards found in Regulation 1138 and other Delaware air regulations.

DIVISION OF FISH AND WILDLIFE**3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas****PUBLIC NOTICE**

The Fishery Management Plan (FMP) for black sea bass was implemented by the National Marine Fisheries Service (NMFS) and the Atlantic States Marine Fisheries Commission (ASMFC) in 1996 to manage the coastwide

black sea bass stock. The recreational fishery is allocated 51% of the Total Allowable Landings (TAL) each year as a harvest limit. The coastwide recreational quota for 2009 was just over 1.1 million pounds but it is estimated that at least 2.9 million pounds of black sea bass were harvested. The harvest limit for the 2010 recreational fishery has been increased to 1,830,390 pounds but additional regulatory measures are necessary in 2010 to prevent the harvest cap from being exceeded.

The ASMFC Black Sea Bass Management Board adopted a motion at the February Commission meeting to require states to implement a seasonal closure in 2010 in order to restrain the recreational harvest within the target harvest limit. The open fishing season adopted by the Board would extend from May 22 to September 12, 2010 and is required as part of the compliance program of the FMP. In addition, the Board's motion specified the current 12.5" minimum size and 25-fish creel limit remain in place.

Delaware will be required to implement the seasonal recommendation since current regulations have no provisions regarding specific dates for a harvesting season for black sea bass. The size limit and creel limit will not require any regulatory adjustments for 2010.

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware. Should the NMFS relax the recommended seasonal closure as a result of further landings analysis, the Department could modify the season through emergency action.

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on May 21, 2010 at 6:00 P.M. in the DNR EC Auditorium, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 Board of Accountancy
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §105(a)(1), the Board of Accountancy has proposed revisions to its rules and regulations.

A public hearing on proposed revisions published on March 1, 2010 in the *Register of Regulations*, Volume 13, Issue 9 was held on April 21, 2010. The Board of Accountancy decided to make further revisions to the rules and regulations.

A public hearing to address these proposed revisions will be held on June 16, 2010 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 1 of Title 24 of the **Delaware Code**, including the addition of the practice privilege set forth at 24 **Del.C.** §108. In addition, the amendments set forth the licensure requirements that will go into effect on August 1, 2012.

Further, specific course requirements for licensure are revised. There are various amendments to the Rules pertaining to continuing professional education. Specifically, the proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing professional education requirements.

The Board also proposes various grammatical and typographical revisions.

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

DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING
2307 Delaware Safe Routes to School Regulations
PUBLIC NOTICE

Under Title 17 of the **Delaware Code**, Section 1021 and 1022, and Public Law 109-59, the Delaware Department of Transportation (DelDOT), through its Division of Planning, is seeking to revise the Safe Routes to School Program Guidelines, which do not provide specific information on private school participation leading to confusion, by specifying the conditions of and extent to which private schools are eligible to participate.

The Department will take written comments on the proposed changes to the Safe Routes to School Program Guidelines from May 1, 2010 through May 31, 2010.

Any requests for copies of the proposed revised Program Guidelines, or any questions or comments regarding this document should be directed to:

Sarah Coakley, AICP, Project Planner
Division of Planning
Delaware Department of Transportation
PO Box 778
Dover, DE 19903
(302) 760-2236 (telephone)
(302) 739-2251 (fax)
Sarah.coakley@state.de.us

OFFICE OF MANAGEMENT AND BUDGET

Freedom of Information Act
PUBLIC NOTICE

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth policy and procedures in dealing with requests from the public for information as set forth in 29 **Del.C.** Ch. 100, the *Freedom of Information Act*.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on June 1, 2010 at 9:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before May 31, 2010. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.