
Delaware Register of Regulations

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Volume 16 - Issue 2, Pages 148 - 229



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Proposed
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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 July 16, 2012.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

CITATION TO THE DELAWARE REGISTER

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

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

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

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

DIVISION OF RESEARCH STAFF

Deborah A. Porter, Interim Supervisor; **Judi Abbott**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Administrative Specialist I; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Sarah Wootten**, Joint Sunset Analyst; **Rochelle Yerkes**, Administrative Specialist II. Legislative Librarian; **Sara Zimmerman**.

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Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY

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

PUBLIC NOTICE**204 Sports Lottery Rules and Regulations****AUTHORITY**

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4805 (29 **Del.C.** §4805) is adopting amendments to 10 **DE Admin. Code** 204 without prior notice or public hearing in response to the signing of House Bill 333, the Delaware Gaming Competitiveness Act of 2012, on June 28, 2012.

REASON FOR THE EMERGENCY ORDER

Existing Sports Lottery Rules and Regulations were originally created to assist with the administration and oversight of the Delaware Sports Lottery conducted at the State's three Video Lottery Agents. The Delaware Gaming Competitiveness Act of 2012, signed into law June 28, 2012, expanded the offering of Sports Lottery products to include retail locations. In order to ensure the integrity of the current gaming season, it is imperative that newly authorized Sports Lottery Agents be held to a standardized set of operational regulations consistent with their business and trade style. As with any large technical installation, it is in the best interests of the program administrator, in this case the State, to ensure proper time for system testing and personnel training prior to "going live". Experience in the production environment is also best gained during a low volume period (such as pre-season) to ensure that staff and equipment are functioning as expected.

These amendments effectively rewrite the section on licensing of agents to allow sports betting to take place at retail establishments other than casinos. The amendments will substantially rewrite section 6 regarding the duties of agents and will substantially rewrite the licensing procedure of section 12. The amendments will eliminate

section 13 regarding self-excluded persons, as that section will not be applicable.

Due to the condensed time frame between program expansion and the commencement of the gaming season, it is necessary to implement amended, emergency regulations. In conjunction with this Emergency Order, the Department of Finance, Office of the State Lottery has also issued Proposed Regulations to allow for sufficient public notice and comment.

EFFECTIVE DATE OF THE ORDER

This Emergency Order shall take effect at 12:01 a.m. August 1, 2012 and shall remain in effect until such time as the Proposed Regulations are finalized.

ORDER

It is hereby ordered the 31st day of July that the above referenced amendment to 10 **DE Admin. Code** 204 are adopted pursuant to 29 Delaware Code, Section 4805.

Tom Cook, Secretary
Department of Finance

204 Sports Lottery Rules and Regulations

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

204 Sports Lottery Rules and Regulations

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 EDUCATION**OFFICE OF THE SECRETARY**

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

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**804 Immunizations****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** 804 Immunizations to update the regulation to take into consideration the Interstate Compact on Education for Children of Military Families. The regulation was reviewed as part of the five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2012** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to immunizations and does not specifically address student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to ensure all students receive an equitable education.

PROPOSED REGULATIONS

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to 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 continues to help ensure that 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 preserves the necessary authority and flexibility of decision making at the local board and school level.

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

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

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

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

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

804 Immunizations

1.0 Definition

"**School Enterer**" means any child between birth and twenty (20) years inclusive entering or being admitted to a Delaware public school district or public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

2.0 Minimum Immunizations Required for All School Enterers

2.1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:

2.1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or a combination of these vaccines. A booster dose of Td or Tdap (adult) is recommended by the Division of Public Health for all students at age 11 or five years after the last DTaP, DTP or DT dose was administered whichever is later. Notwithstanding this requirement:

2.1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;

2.1.1.2 A child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td or Tdap (adult).

2.1.2 Three or more doses of inactivated polio virus (IPV), oral polio vaccine (OPV), or a combination of these vaccines ~~with the following exception.~~ Notwithstanding this requirement:

2.1.2.1 ~~a~~ A child who received a third dose prior to ~~the~~ his or her fourth birthday shall have a fourth dose.

2.1.3 Two doses of measles, mumps and rubella (MMR) vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. Individual combination vaccines of measles, mumps, rubella (MMR) may be used to meet this requirement.

2.1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.

2.1.4 Three doses of Hepatitis B vaccine.

- 2.1.4.1 For children 11 to 15 years old age, two doses of a vaccine approved by the Center for Disease Control (CDC) may be used.
- 2.1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.
- 2.1.5 Varicella vaccine is required beginning in the 2003-2004 school year with kindergarten. One grade shall be added each year thereafter so that by the 2015-2016 school year all children in grades kindergarten through 12 shall have received the vaccination. Beginning in the 2008-2009 school year new enterers into the affected grades shall be required to have two doses of the Varicella vaccine. The first dose shall be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school. A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), will be accepted in lieu of the Varicella vaccination. Beginning in the 2008-2009 school year, a disease history for the Varicella vaccination must be verified by a health care provider to be exempted from the vaccination.
- 2.2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

3.0 Certification of Immunization

- 3.1 The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall present a certificate specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.
- 3.2 According to 14 **Del.C.** §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.
- 3.3 A school enterer may be conditionally admitted to a Delaware school district by presenting a statement from a licensed health care practitioner who specifies that the School Enterer has received at least:
 - 3.3.1 One dose of DTaP, or DTP, or DT; and
 - 3.3.2 One dose of IPV or OPV; and
 - 3.3.3 One dose of measles, mumps and rubella (MMR) vaccine; and
 - 3.3.4 The first dose of the Hepatitis B series; and
 - 3.3.5 One dose of Varicella vaccine as per 2.5.
- 3.4 14 **DE Admin. Code** 901 Education of Homeless Children and Youth 6.0 states that "School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth". To that end, school districts shall as stated in 14 **DE Admin. Code** "assist homeless children and youth in meeting the immunization requirements".
- 3.5 Title 14, Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, provides that a school enterer subject to MIC3 shall be allowed thirty (30) calendar days from the date of enrollment to initiate the basic series of immunizations.
- 3.56 If the school enterer fails to complete the series of required immunizations the parent, legal guardian, Relative Caregiver or a school enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall be notified that the School Enterer will be excluded according to 14 **Del.C.** §131.

4.0 Lost or Destroyed Immunization Record

When a student's immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver or a school enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall sign a written statement to this

effect and must obtain at least one dose of each of the immunizations as identified in 3.3. Evidence that the vaccines were administered shall be presented to the superintendent or his or her designee.

5.0 Exemption from Immunization

- 5.1 Exemption from this requirement may be granted in accordance with 14 **Del.C.** §131 which permits approved medical and notarized religious exemptions.
- 5.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

6.0 Verification of School Records

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

7.0 Documentation

- 7.1 School nurses shall record and maintain documentation of each student's immunization status.
 - 7.2 Each student's immunization record shall be included in the Delaware Immunization Registry.
-

OFFICE OF THE SECRETARY

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

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**930 Supportive Instruction (Homebound)****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** 930 Supportive Instruction (Homebound) in response to legislative action as well as other changes that have been brought forward through this review of the regulation. Legislation from the 146th General Assembly codified a requirement that Department of Education regulation define eligibility for supportive instruction for school district and charter school students; identify the licensed professional authorized to certify eligibility. Additionally, an amendment was made to address identification of those areas for supportive instruction that are not a result of sudden illness, injury, accident, episodic flare up of a chronic condition.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2012** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to supportive instruction and should continue to assist those affected students improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to supportive instruction and should continue to ensure all students receive and equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to supportive instruction and should continue to ensure the adequate protection of health and safety for all students'.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to supportive instruction and should continue to 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 preserves the necessary authority and flexibility at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability does not change because of these amendments.

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

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

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

930 Supportive Instruction (Homebound)

1.0 Definition

“Supportive Instruction” is an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature. This may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student's local school district or charter school policy.

1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.

1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 et.seq), and its regulations (34 CFR parts 300 and 301), 14 **Del.C.**, Ch. 31, and the Department of Education's regulations on Children with Disabilities (14 **DE Admin. Code** 922 through 929) shall be provided in accordance with these laws and shall be processed under the district's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 **Del.C.**, Chapter 31, and the Department of Education's regulations on Children with Disabilities.

1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

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

2.1 A student enrolled in a school district is eligible for supportive instruction when the district or charter school receives the required certification that an accident, injury, sudden illness or episodic flare up of a chronic condition will prevent the student from attending school for at least ten (10) school days.

2.1.1 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, must certify absences due to a medical condition.

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- 2.1.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.
- 2.1.3 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, must certify absences due to pregnancy complicated by illness or other abnormal conditions.
- 2.1.3.1 A student does not qualify for supportive instruction for normal pregnancies unless there are complications.
- 2.1.3.2 A student who remains enrolled in school is eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.
- 2.4 Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

3.0 Implementation

- 3.1 Supportive instruction for a student shall begin as soon as the documentation required by 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with 2.4.
- 3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.
- 3.1.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a 6 to 12th grade student. There is no minimum for in school transition.
- 3.1.1.2 Nothing in this regulation shall prevent a school district from providing additional hours of supportive instruction to an eligible student from other available funding sources.
- 3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

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

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy regarding eligibility and implementation.

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2012 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to school transportation and is a re-adoption of the current regulation.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to school transportation and is a re-adoption of the current regulation.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to school transportation and reflects the national standards.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to school transportation and is a re-adoption of the current regulation.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is related to school transportation and is a re-adoption of the current regulation.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is related to school transportation and is a re-adoption of the current regulation.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is related to school transportation and is a re-adoption of the current regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is related to school transportation and is a re-adoption of the current regulation.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is related to school transportation and is a re-adoption of the current regulation. This regulation reflects national standards.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State and to the local school boards for compliance as this is a re-adoption of the current regulation.

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

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

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OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to re-adopt 14 DE Admin. Code 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000. The regulation is subject to the five year review cycle. Bus specifications are reviewed every five years to include changes that come from the National Congress on School Transportation (NCST). The NCST met in 2010, and there were no NCST changes affecting past regulations. The NCST will meet in 2015, and the Department will include any changes in a new regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2012 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to school transportation and is a re-adoption of the current regulation.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to school transportation and is a re-adoption of the current regulation.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to school transportation and reflects the national standards.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to school transportation and is a re-adoption of the current regulation.
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7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is related to school transportation and is a re-adoption of the current regulation.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is related to school transportation and is a re-adoption of the current regulation.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is related to school transportation and is a re-adoption of the current regulation. This regulation reflects national standards.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State and to the local school boards for compliance as this is a re-adoption of the current regulation.

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

1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004

OFFICE OF THE SECRETARY

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

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

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

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

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2012 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to school transportation and is a re-adoption of the current regulation.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to school transportation and is a re-adoption of the current regulation.

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3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to school transportation and reflects the national standards.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to school transportation and is a re-adoption of the current regulation.
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10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State and to the local school boards for compliance as this is a re-adoption of the current regulation.

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

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

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

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

PUBLIC NOTICE

DSSM: 20500 Estate Recovery and Civil Unions and Medicare Cost Sharing

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to update current regulations in the Division of Social Services Manual (DSSM) regarding Medicaid Estate Recovery, *specifically 1) asset protections recognized for civil union partners; and, 2) eliminating Medicare cost-sharing expenses from estate recovery.*

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

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

Senate Bill #30

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

State Medicaid Director Letter (SMDL) #11-006

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

Specifically, CMS notified states that they may elect to:

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

Summary of Proposal

This regulatory action is based upon State Medicaid Director Letter guidance document provided by the Centers for Medicare and Medicaid Services (CMS), entitled, "*Same Sex Partners and Medicaid Liens, Transfers of Assets, and Estate Recovery.*" The proposed regulation changes take advantage of existing choices and flexibilities regarding spousal and domestic partner protections related to liens and estate recovery by adding a new definition, *Civil Union Partner* and adds *civil union partner* as an exception to the Lien policy. Estate Recovery

may be waived if there is a civil union partner that has resided in the home for at least two years immediately prior to institutionalization. Also, definitions are placed in alphabetical order.

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

Also, DSSM 20500.6 is revised to incorporate "People First Language".

The proposed changes affect the following policy sections:

DSSM 20500.1, *Application*

DSSM 20500.2, *Notification*

DSSM 20500.3, *Definitions*

DSSM 20500.5.3.2, *Individuals Eligible for Recovery Waiver*

DSSM 20500.6, *Liens*

DSSM 20500.6.1, *Exceptions to the Lien Policy*.

Fiscal Impact Statement

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

DMMA PROPOSED REGULATION #12-34

REVISION:

20500 Estate Recovery and Liens

BACKGROUND

The Delaware Department of Health and Social Services (DHSS), in order to comply with Chapter 50, Title 25 of the Delaware Code and Section 1917 of the Social Security Act as amended by Section 13612 of the Omnibus Budget Reconciliation Act of 1993, and Delaware House Bill No. 437 as amended by House Amendment Nos. 1, 2, and 4, has established policies and procedures for filing liens against the real property, and recovering from estates of, individuals applying for or receiving DHSS long-term care services.

20500.1 Application

These policies and procedures shall apply to individuals age 55 and over who are applying for DHSS Long Term Care Services. This includes ~~the Medicaid nursing facility program services, all Home and Community-Based waiver services, Waivers (1915) and state-owned nursing facilities and community-based long-term care services and supports.~~

Medicaid benefits paid for Medicare cost-sharing expenses, with a date of service on or after January 1, 2010, are exempted from estate recovery. These benefits include Part A and B premiums, deductibles, coinsurance, and co-payments. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid agency. The date of service for premiums is the date the State Medicaid Agency pays the premium.

20500.2 Notification

All applicants will be informed of the Estate Recovery and Lien Policy and procedures at the time of application. Recipients ~~whose~~ who turn 55 after their cases are active will be informed of the policy and

procedures at their first financial redetermination after ~~the initial date of enforcement (May 1, 1996)~~ of this policy their 55th birthday.

Notification of the policy will be via recovery forms and/or a letter, that will be provided to the applicant or the applicant's representative.

20500.3 Definitions

The following definitions apply to this section:

Child means offspring or legally adopted child of the recipient or the applicant.

Civil Union Partner means an individual who enters into a legal union with another individual of the same sex.

Estate means all real property, as well as all personal property that constitutes assets of the individual's estate as described in Chapter 19 of Title 12 of the Delaware Code.

Family means legal spouse, dependent parents (claimed for income tax purposes), and children.

Lawfully residing in the home means residing in the home with the permission of the owner or, if under guardianship, the owner's legal guardian.

Legal representative means power of attorney over property or guardian of property.

Long-term care means a service provided in a long-term care facility or in the home as an alternative to institutionalization (known as Long-Term Care Community Services or home and community-based services (1915(c) waivers).

Real Property means land, including houses or immovable structures or objects attached permanently to the land. The terms "real estate," "realty," and "real property" are used synonymously with one another and designate real property in which an individual has ownership rights and interests.

Residing in the home on a continuous basis means using the home as the principal place of residence.

Sibling means brother, sister, legally adopted brother or sister, half brother or half sister.

(Break in Continuity of Sections)

20500.5.3.2 Individuals Eligible for Recovery Waiver

These individuals are limited to a civil union partner, children, grandchildren, parents, or siblings of the DHSS long-term care recipient who meet 1 of the following conditions:

Receive any Federal or State funded assistance for living expenses (examples: SSI, AFDC, VA Aid and Attendance) and have no other home to which they can return.

Or

Have total family income less than or equal to 200% of the current monthly Federal Poverty limit, and have total family resources that can be converted to cash less than or equal to \$3,000, including any real property that they own.

Or

DHSS will also not recover if the real property that is held in ownership with a civil union partner, children, grandchildren, siblings or parents constitutes a business that contributes to the livelihood of that other individual or his/her dependents or heirs.

NOTE. The waiver for recovery will exist as long as one of the above conditions continues to be met and as long as the above described individuals reside in the DHSS long-term care recipient's home on a continuous basis.

The maximum amount to be recovered will be the total of funds disbursed or incurred by DHSS with any Federal matching dollars during the time an individual receives long-term care services from DHSS.

20500.6 Liens

DHSS will place a lien against the real property of recipients who are inpatients in a nursing facility, intermediate care facility for ~~the mentally retarded~~ individuals with developmental disabilities or other medical institution whose property does not meet the exemption or undue hardship conditions.

NOTE: The lien policy does not apply to recipients of ~~home and community based waiver services~~ Long Term Care Community Services or Division of Developmental Disabilities Services Waiver unless they become institutionalized.

20500.6.1 Exceptions to the Lien Policy

1. Clients intending to return home within sixty (60) days of their admission date to a facility.
 - a) If the stay in the facility is sixty (60) days or more, DHSS will place a lien on the property.
 - b) The lien on the property will be released if the patient is discharged after sixty (60) days and returns to live in the home.
2. DHSS will not file a lien as long as the following individuals lawfully resided in the home before the date of application for long term care services and continue to reside in the home while the applicant receives long term care services:
 - a) Husband or wife of the applicant or recipient (NOTE: Common law marriages are not recognized by the Courts of Delaware).
 - b) A Civil Union Partner;
 - c) Son or daughter who is blind or disabled as defined in accordance with the disability rule of the federally administered Supplemental Security Income (Title XVI of the Social Security Act).
 - d) Child under age 21 who is lawfully residing in the home.
 - e) Sibling lawfully residing in the home for 1 year (12 months) immediately prior to admission to a long term care facility and who has equity in the property.
3. DHSS will also not file a lien if the real property that is held in ownership with a civil union partner, children, grandchildren, siblings or parents constitutes a business which contributes to the livelihood of that other individual or his/her dependents or heirs.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

DSSM 20775: Program of All Inclusive Care for the Elderly (PACE)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to establish PACE Program enrollee eligibility requirements.

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

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

SUMMARY OF PROPOSAL

The proposed amends the Division of Social Services Manual (DSSM) to set out new rules governing the Medicaid eligibility requirements for Program of All-Inclusive Care for the Elderly (PACE) enrollees.

Statutory Authority

42 CFR Part 460, *Program of All Inclusive Care for the Elderly*

Background

Program of All-Inclusive Care for the Elderly (PACE) is a federal program administered by the Centers for Medicare and Medicaid Services (CMS). PACE, a managed care program, enables elderly individuals who are certified to need nursing facility care to live as independently as possible.

PACE participants receive a comprehensive service package which permits them to live at home while receiving services. This prevents institutionalization. The PACE organization must provide all Medicaid covered services, in addition to other services determined necessary by PACE for the individual beneficiary. The PACE program becomes the sole source of services for Medicaid and/or Medicaid/Medicare eligible enrollees.

The PACE program is a fully capitated managed care benefit. The PACE organization assumes full financial risk for participants' care without limits on amount, duration, or scope of services. CMS establishes and pays the Medicare capitation and each State establishes and pays the Medicaid capitation. When the enrollee receives Medicaid and Medicare, the PACE organization receives a Medicaid capitation payment and a Medicare capitation payment.

The State of Delaware has received approval from the CMS to amend the Medicaid State Plan to include PACE as an optional State plan service.

Summary of Proposal

This rule sets forth methods used to determine participant eligibility for the Program for All-Inclusive Care for the Elderly (PACE). Effective October 1, 2012, new policy is added to the Division of Social Services Manual (DSSM) at DSSM 20775 to provide PACE Program enrollment requirements.

Fiscal Impact Statement

Program of All-Inclusive Care for the Elderly (PACE) is a capitated benefit authorized by the Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. Capitated financing allows providers to deliver all services participants need rather than be limited to those reimbursable under the Medicare and Medicaid fee-for-service systems.

PACE providers receive prospective monthly Medicare and Medicaid capitation payments for each eligible enrollee. In order to comply with the upper payment limit requirement at 42 CFR §460.182(b), the PACE capitation rates are established as a fixed percentage, of less than 100 percent, of the respective PACE UPL (Upper Payment Limit) per member per month amounts. PACE providers assume full financial risk for participants' care without limits on amount, duration, or scope of services. Therefore, PACE expenditures will be no more than what they would have been under the former fee for service payment structure.

The proposed regulation imposes no increase in cost on the General Fund as the PACE program will be budget-neutral.

DMMA PROPOSED REGULATION #12-33

NEW:

LTC POL-20775 PROGRAM OF ALL- INCLUSIVE CARE FOR THE ELDERLY (PACE)

Program of All-Inclusive Care for the Elderly (PACE) is a benefit that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. The PACE model was developed to address the needs of long-term care clients, providers, and payers. For most participants, the comprehensive service package permits

PROPOSED REGULATIONS

them to continue living at home, while receiving services rather than be institutionalized. Through PACE, organizations are able to deliver all services covered by PACE which participants need rather than only those services reimbursable under the Medicare and Medicaid fee-for-service systems.

This policy applies to all individuals that elect to receive their long-term care services through the PACE and request Medicaid payment for these services.

1. Participation in PACE is voluntary.

2. A PACE participant's eligibility will be determined under rules applying to institutional groups.

See DSSM 20000

3. Spousal Impoverishment rules apply if individual is married and spouse continues to reside in the community and does not receive long-term care Medicaid.

See DSSM 20900

4. Post eligibility treatment of income does not apply to PACE participants.

Participants will not be required to contribute to the cost of their care received from the PACE Organization.

5. To be eligible for enrollment in PACE the individual must:

- Be at least 55 years old;
- Meet the State's eligibility criteria for nursing home level of care;
- Reside in the PACE approved service area;
- Be living in the community;
- Be able to be maintained safely in the community based setting at the time of enrollment with the assistance of the PACE;
- Not be enrolled in a Medicaid/Medicare managed care program; and
- Voluntarily agree to enroll in PACE and receive services exclusively through the PACE organization and their subcontractors.

6. The Pre-Admission Screening process will be followed when determining medical eligibility.

See DSSM 20102

7. An individual's enrollment effective date is the first day of the month following the month the PACE Organization receives the signed enrollment form.

8. There is no retroactive coverage for PACE.

9. Nursing facility services are part of the PACE benefit package.

The PACE Organization must notify the Division of Medicaid and Medical Assistance (DMMA) eligibility worker of the individual's placement in the nursing facility.

The PACE individual is not required to contribute to the cost of their care while in a nursing facility.

10. An individual's enrollment continues until the enrollee's death unless either of the following actions occurs:

- a. The enrollee voluntarily disenrolls for any reason.
- b. The enrollee is involuntarily disenrolled for any of the following reasons:
 - No longer meets the nursing facility level of care requirement and there is no indication that the participant is expected to need nursing facility level of care within the next 6 months;
 - Moves out of the PACE service delivery area;
 - Has decision making capacity and is consistently non-compliant with the individual plan of care and enrollment agreement, which may impact the participant's health and welfare in the community;
 - Engages in disruptive, threatening or non-compliant behavior which jeopardizes his or her safety or the safety of others;
 - Is out of the service area for more than 30 consecutive days (unless arrangements have been made in advance with the PACE Organization); or
 - Is enrolled in a PACE Organization that cannot provide the required services due to loss of licensure or contracts with outside providers, and/or the PACE program agreement is not renewed.

11. An individual may be administratively disenrolled if the participant is admitted to a hospital prior to the effective date of PACE enrollment.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

DSSM: 6001 - 6007 Emergency Assistance Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding *Emergency Assistance 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 August 31, 2012.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

Summary of Proposed Changes

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

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

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

The proposed changes affect the following sections of the DSSM:

DSSM 6001, *Legal Base*

DSSM 6002, *Eligibility Determining Eligibility for Emergency Assistance*

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

DSSM 6004, *Payment Limitation: Time Restriction RESERVED*

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

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

DSSM 6007, *Accountability Reports RESERVED*

DSS PROPOSED REGULATION #12-35 REVISION

6001 Legal Base

~~Provision is made by the Delaware General Assembly for payments for emergency needs. A limitation on payments of \$1,200 for emergency shelter certified by the Department of Health and Social Services (DHSS), \$450 for mortgage or rent assistance, and \$200 for other costs related to self sufficiency of the household. The federal government provides funds under Title IV A of the Social Security Act for emergency payments to families with children. Payments are allocated annually to simplify the program.~~

6002 Eligibility

~~Delaware residents may participate in the Emergency Assistance Program if:~~

~~Individual/Family is in receipt of or eligible for the following:~~

~~Cash Assistance receiving households (TANF, GA, SSI);~~

~~1931 Transitional, and Prospective Medicaid; and~~

~~Poverty related Pregnant Women, Infants and Children Medicaid;~~

~~OR~~

~~A) Family has children at risk of removal or removed from their home due to, or suspected at risk of, abuse or neglect; or~~

~~B) Family has children removed from, or at risk of removal from, the community.~~

~~In order to qualify for Emergency Assistance Services:~~

~~1) The Medicaid individual / family must be without resources immediately accessible to meet their needs;~~

~~2) The child is without resources immediately accessible for meeting his/her needs; or~~

~~3) The emergency assistance is necessary to avoid the destitution of a child or to provide living arrangements for him in a home; and~~

~~4) The emergency must have resulted from an unforeseen circumstance or combination of circumstances that are beyond the recipient's control. The cause of the emergency must be evaluated on a case-by-case basis. In making a decision, the limited resources of the recipient will be considered, except that no assistance will be authorized when the emergency was due to a recipient's failure to comply with a requirement of a Social Services program.~~

~~Sanctions/Disqualifications~~

~~For example, a recipient who is sanctioned or disqualified and whose cash grant is reduced is not eligible if the emergency is a direct result of the reduction of the grant amount. The inability to pay the rent or electric due to the reduction of the grant would make the recipient ineligible for EAS. If the emergency is a broken refrigerator or stove that needs replaced or repaired, this is not a direct result of the reduction of the grant, and the recipient would be eligible for EAS. Sometimes a sanction or disqualification may be permanent for an individual. A case by case determination must be made on whether or not the emergency was a direct result of the reduction in the grant amount.~~

~~An example of other circumstances not beyond the recipient's control is when the recipient carelessly spends his/her money on non necessities, such as cable TV paid channels and telephone features like call waiting and caller ID.~~

~~A recipient whose money is stolen can receive assistance if otherwise eligible, provided the recipient furnishes a police report of the incident.~~

6003 Vendor Payments

Payments under the Emergency Assistance Program are made by check payable to the vendor of the needed assistance with the exception of payments for food which may be made directly to the recipient.

6004 Payment Limitation: Time Restriction

The maximum payment a household can receive is \$1,200 for emergency shelter certified by the Department of Health and Social Services (DHSS), \$450 for mortgage or rent assistance, and \$200 for other costs related to self-sufficiency of the household during one period of 30 consecutive days in any twelve consecutive months. The payment can be used to meet needs which arose before such 30-day period or for such needs as rent or emergency shelter which extend beyond the 30-day period. Payments authorized within the 30-day period may be made for needs which will arise during the 60 consecutive days beginning on the day after the end of the 30-day period. Payments authorized within the 30-day period may be made for debts which became due and payable within the 60 consecutive days immediately prior to the day the recipient applies for assistance.

The payment limitation and time restrictions apply only to the original household. Former members of a household that received assistance can themselves receive assistance if otherwise eligible provided they had not requested funds while part of the original household. For example, a household (F1) contains two TANF cases (A1) and (A2).

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

6005 Scope of Coverage

Recipients in emergent need as defined in DSSM 6000 and meeting the eligibility requirements in DSSM 6002 are eligible to receive assistance to alleviate the emergency. The covered items and the conditions that must be present before payments can be authorized are listed below:

1) Home repairs—The repair must be needed to assure adequate heating, refrigeration, cooking facilities, and water supplies.

2) Shelter expense—The recipient(s) must be homeless or in jeopardy of losing their home, such as being no more than 60 days behind in making payments on rent or mortgage or property taxes.

A maximum amount of \$1,200 for up to 90 consecutive days is allowed to provide a homeless recipient with temporary emergency shelter in a DHSS-certified shelter. A maximum of \$650 is allowed to help a recipient:

- a) Secure permanent shelter,
- b) Maintain existing shelter, and
- c) Transition from temporary emergency shelter to secure permanent shelter.

Before DHSS will authorize temporary emergency shelter, DHSS must establish that free or permanent shelter is not available or, if available, has not been refused without good cause. Good cause includes the need for a family member to remain in a school district or near an employer when public or private transportation is not reasonably available. Good cause does not include preference for a motel or hotel over free shelter due to greater privacy or for similar reasons.

The recipient has the primary responsibility for seeking and securing permanent shelter. DHSS will authorize temporary emergency shelter in a DHSS-certified shelter commensurate with the recipient's need for shelter up to the maximum time and amount allowed without regard to funds received from the regular cash assistance grant or funds considered in computing the amount of that grant unless the recipient refuses to:

- a) Relocate to subsequently arranged temporary emergency shelter in a free shelter, or
- b) Actively seek permanent housing and cooperate with DHSS in monitoring progress.

To monitor housing search progress, DHSS will require that the recipient contact DHSS at least weekly at mutually agreed-upon times by telephone or arranged office appointment. The worker will discuss with the recipient the number of housing contacts, who was contacted, and where they were located. Recipients who refuse without good cause (e.g., illness of recipient or immediate family member, or no viable contacts remaining) to make housing contacts, keep appointments, or discuss progress with the worker will be considered to be non-

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cooperative. Failure to cooperate without good cause will result in termination of the recipient's authorization for temporary emergency shelter.

Before authorizing help toward permanent shelter, DHSS will ascertain that the recipient has the ability to maintain ongoing permanent shelter costs. Assistance can be used to pay up to two months' arrearage or the first month's rent and/or security deposit pursuant to Section 6004.

3) Moving expenses—The move must be necessitated by a crisis situation such as fire, eviction or condemnation of a house. Estimates must be provided before payments can be authorized.

4) Household appliances and home furnishings—The appliance or furnishing must be needed to assure adequate heating, refrigeration, and cooking facilities, and to provide appropriate sleeping arrangements. Funds may be used to purchase new items or replace existing items except that when an existing item is replaced, it must be worn out. Replacement of existing items is not permitted if the item is still serviceable.

5) Medical needs—A medical need is present that could result in serious impairment of health, prolonged hospitalization, or death.

6) Fuel and utility bills—The recipient must have an unpaid bill which became due and payable within 60 consecutive days immediately prior to the day the recipient applies for assistance and be in immediate jeopardy of having their service disconnected or be unable to purchase fuel to maintain adequate living conditions. Recipients who have applied for funds under the Energy Crisis Assistance Program (ECAP) are eligible for assistance only when a delay in receiving ECAP funds will cause a hardship.

For example, a recipient who needs fuel oil applies with ECAP and is given an appointment two weeks later. If the recipient applies with the Division and has an emergent need, emergency assistance would be authorized if otherwise eligible.

7) Food expenses—A food need is present that could result in hunger in spite of the expedited service requirements of the Food Stamp Program. Under these requirements, eligible households must receive their food stamp benefits within seven (7) calendar days following the date the application was filed.

Payments for food expense are limited as follows:

1 person	\$20.00
2-4 persons	\$27.00
5-7 persons	\$33.00
8-10 persons	\$40.00
11 or more persons	\$53.00

8) Clothing—Clothing is required for decency, but only if the need results from fire or theft and there is no other resource available.

9) Transportation—Costs are allowed only when the consequences arising out of the emergency demand that transportation be provided to the client in order to ameliorate the situation and when transportation without cost is not available, such as, transportation under Title XIX.

6006 Classification of Emergency Assistance Services—Content of Services

Service staff are assigned to provide emergency assistance services and offer at least the following services, as required:

1. Personal and Family Crisis Situations

- a) Providing casework or counseling service;
- b) Arranging for emergency monetary assistance, if necessary;
- c) Providing other services required because of the nature of the emergency situation.

2. Medical Crisis Situations

- a) Obtaining the services of a physician for a client;
- b) Arranging for the care of dependents;
- c) Assisting in obtaining other services and assistance, such as medical diagnosis treatment, care in appropriate settings.

3. Housing and Maintenance Crisis Situations

- a) Securing temporary shelter, utilities, food, clothing, and other maintenance items for the duration of the emergency;

- ~~b) Referring applicants to appropriate agencies for assistance in procuring permanent living arrangements appropriate to the client and his/her dependents after they leave a temporary shelter;~~
- ~~c) Providing necessary replacement of lost household furniture, equipment and supplies;~~
- ~~d) Providing temporary financial assistance to relieve distress.~~

6007 Accountability Reports

~~Each Regional Office will maintain a checking account for deposit and withdrawal of allocated funds. Payments may not exceed the amount allocated to each region in each calendar quarter except that funds that are surplus in a quarter may be transferred to a regional office having a deficit at the request of the Operations Administrator with the approval of the Director.~~

~~The Operations Administrator in each region will designate an individual to prepare on a monthly basis a "Monthly Report Emergency Assistance" report. The report will be submitted to the State Office of the Division and to DMS not later than the fifth working day of the month following the month covered in the report.~~

~~All approvals for payment must be made on Form 113 and must be filed in the applicant's case record. A Supervisor's co-signature is required if the employee is in a probationary period.~~

6001 RESERVED

6002 DETERMINING ELIGIBILITY FOR EMERGENCY ASSISTANCE

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

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

1. DHSS Staff Determine Eligibility

Individuals or families must meet technical and financial eligibility criteria.

Technical Eligibility

Only the following Delaware residents may participate:

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

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

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

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

C. Family has children at risk of removal from their home due to abuse or neglect, or the children are suspected at risk of abuse or neglect

D. Family has children at risk of removal from the community

E. Family has children removed from their home due to abuse or neglect, or the children were suspected at risk of abuse or neglect

F. Family has children removed from the community

Financial Eligibility

A. Household Income Is Limited

Income eligibility is met if the family meets the technical eligibility criteria above.

B. Household Resources Are Limited

1. Medicaid individuals and families cannot have resources immediately accessible to meet their needs.

2. The child cannot have resources immediately accessible to meet his or her needs;
or

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3. The emergency assistance is necessary to avoid the destitution of a child or to provide living arrangements for him in a home; and
4. The emergency is one that resulted from an unforeseen circumstance or combination of circumstances that are beyond the recipient's control.

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

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

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

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

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

Example:

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

6003 **MAKING PAYMENTS FOR EMERGENCY ASSISTANCE SERVICES**

31 Del.Code §521

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

1. **DHSS Makes Payments to Vendors**

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

Exception: Payments for food may be made directly to the recipient.

2. **DHSS Limits Amounts and Frequency of Payments to Vendors**

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

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

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

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

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

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

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

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

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

6004 RESERVED

6005 PROVIDING ASSISTANCE FOR QUALIFIED EMERGENCIES

31 Del. Code §521

This policy applies after applicants are determined eligible for Emergency Assistance services.

1. Emergency Assistance is Provided for Qualified Emergencies

Recipients with an emergency as defined in DSSM 6000 and who meet the eligibility criteria in DSSM 6002 are eligible to receive emergency assistance.

The covered items and the conditions that must be present before payments can be authorized are listed below.

A. Home repairs

The repair must be needed to assure adequate heating, refrigeration, cooking facilities, and water supplies.

B. Shelter expense

The recipients must be homeless or in jeopardy of losing their home. They cannot be more than 60 days behind in making payments on rent or mortgage or property taxes.

A maximum of \$1,200 is allowed to provide a homeless recipient with up to 90 consecutive days of temporary emergency shelter in a DHSS certified shelter.

A maximum of \$650 is allowed to help a recipient:

- a. Secure permanent shelter
- b. Maintain existing shelter
- c. Transition from temporary emergency shelter to secure permanent shelter

1. Temporary emergency shelter

i. DHSS will authorize temporary emergency shelter in a DHSS certified shelter that meets the recipient's needs. DHSS will not count cash assistance received or money counted to determine the amount of cash assistance when authorizing temporary shelter.

ii. DHSS will authorize the maximum time and amount allowed for temporary emergency shelter unless the recipient refuses to:

- a. Relocate to subsequently arranged temporary emergency shelter in a free shelter
- b. Actively seek permanent housing and cooperate with DHSS in monitoring progress of the housing search

Cooperation with the housing search requires the recipient to:

- i. Contact DHSS at least weekly at mutually agreed upon times by telephone or arranged office appointment
- ii. Make housing contacts
- iii. Keep appointments
- iv. Discuss progress with the worker

Failure to cooperate without good cause (e.g., illness of recipient or immediate family member, no viable contacts remaining) will result in termination of the recipient's authorization for temporary emergency shelter

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iii. DHSS will not authorize temporary emergency shelter if free or permanent shelter is available or was refused without good cause.

Good cause includes the need for a family member to remain in a school district or near an employer when public or private transportation is not reasonably available.

iv. The recipient has the primary responsibility for seeking and securing permanent shelter.

2. Permanent shelter

Recipients must be able to maintain ongoing permanent shelter costs in order to receive help toward permanent shelter. Assistance can be used to pay up to two months' arrearage or the first month's rent and/or security deposit. See DSSM 6003 for amounts and limitations.

C. Moving expenses

The move must be necessitated by a crisis situation such as fire, eviction or condemnation of a house. The applicant must provide estimates before payments can be authorized.

D. Household appliances and home furnishings

The appliance or furnishing must be needed to assure adequate heating, refrigeration, and cooking facilities, and to provide appropriate sleeping arrangements. Funds may be used to purchase new items or replace existing items.

Exception: When an existing item is replaced, it must be worn out.
Replacement of existing items is not permitted if the item is still serviceable.

E. Medical needs

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

F. Fuel and utility bills

The recipient must have an unpaid bill which became due and payable within 60 consecutive days immediately prior to the day the recipient applies for assistance. The recipient must be in immediate jeopardy of having his or her service disconnected or be unable to purchase fuel to maintain adequate living conditions. Recipients who have applied for funds under the Energy Crisis Assistance Program (ECAP) are eligible for assistance only when a delay in receiving ECAP funds will cause a hardship.

G. Food expenses

A food need is present that could result in hunger in spite of the expedited service requirements of the Food Supplement Program. Households eligible for expedited service must receive their food benefits within 7 calendar days following the date the application was filed.

Payments for food expense are limited as follows

<u>1 person</u>	<u>\$20.00</u>
<u>2 - 4 persons</u>	<u>\$27.00</u>
<u>5 - 7 persons</u>	<u>\$33.00</u>
<u>8 - 10 persons</u>	<u>\$40.00</u>
<u>11 or more persons</u>	<u>\$53.00</u>

H. Clothing

Assistance for clothing is authorized only if the need results from fire or theft and there is no other resource available.

I. Transportation

Costs are allowed only when:

- a. The consequences arising out of the emergency demand that transportation be provided to the client in order to improve the situation
- b. Free transportation is not available, such as, transportation under Title XIX

6006 OFFERING EMERGENCY ASSISTANCE SERVICES

This policy applies to any staff assigned to provide emergency assistance services.

Emergency Assistance Staff Offer Specific Services

Emergency assistance staff will offer at least the following services, as required.

A. In personal and family crisis situations:

1. Provide casework or counseling service
2. Arrange for emergency financial assistance, if necessary
3. Provide other services required because of the nature of the emergency situation

B. In medical crisis situations:

1. Obtain the services of a physician for a client
2. Arrange for the care of dependents
3. Assist in obtaining other services and assistance, such as medical diagnosis treatment, care in appropriate settings

C. In housing and maintenance crisis situations:

1. Secure temporary shelter, utilities, food, clothing, and other maintenance items for the duration of the emergency
2. Refer applicants to appropriate agencies for assistance in obtaining permanent living arrangements appropriate to the client and his/her dependents after they leave a temporary shelter
3. Provide necessary replacement of lost household furniture, equipment and supplies
4. Provide temporary financial assistance

6007 RESERVED

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1120

REGISTER NOTICE SAN #2012-10

1. TITLE OF THE REGULATIONS:

Amendment to Regulation 1120 New Source Performance Standards

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

Congress sought to reduce public health impacts due to the exposure to criteria pollutants in the 1990 Amendments to the Clean Air Act. Under Section 111(b), the EPA Administrator is required to establish Federal standards of performance for new sources in prescribed source categories. Under Section 111(d)(1), each State is required to submit a plan to the EPA Administrator which establishes standards of performance for existing sources in those prescribed source categories.

On September 15, 1997, the EPA adopted a New Source Performance Standard and an Emission Guideline, 40 CFR Part 60 Subparts Ec and Ce, respectively, which were applicable to new and existing hospital, medical and infectious waste incinerator (HMIWI) units. As required under the Clean Air Act, Delaware adopted Section 29, "New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators" into Regulation 1120 on September 1, 1998. At the time of the adoption of Section 29, there were 3 existing Delaware HMIWI units in

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operation. Since the 1998 adoption of Section 29, those 3 existing HMIWI units have been dismantled and no new HMIWI units have been built.

Delaware is proposing to repeal Section 29 as its inherent regulatory requirements are currently outdated and its continuance is no longer justified by present realities. Any new HMIWI units would be regulated under the amended 40 CFR Part 60, Subpart Ec that the EPA adopted on October 6, 2009.

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 Wednesday, August 22, 2012 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 Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

7. PREPARED BY:

James R. Snead (302) 323-4542 jsnead@state.de.us July 5, 2012

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

1120 New Source Performance Standards

DIVISION OF AIR QUALITY

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

REGISTER NOTICE

SAN #2011-11

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 not less than 30 hazardous air pollutants (HAPs) which pose the greatest threat to public health in urban areas, identify the area source categories emitting those HAPs, and develop regulations to address 90% of the emissions of

those same 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 would be developed.

On January 5, 2010, the EPA promulgated one of these area source category standards that would affect existing and future Delaware sources, the area source standard for prepared feed manufacturing facilities, under 40 CFR Part 63 Subpart DDDDDDD.

Delaware is proposing to amend Regulation 1138 by adding a new Section 17 that addresses the emissions of chromium and manganese compounds from prepared feed manufacturing facilities. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects. The major health effects from chronic inhalation exposure are diseases associated with the respiratory tract (chromium compounds) and the central nervous system (manganese compounds). The proposed amendment will provide greater consistency between Delaware's air toxics standards for these types of facilities and the recently promulgated federal standard (40 CFR Part 63 Subpart DDDDDDD) on which this proposed amendment is heavily based.

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 Wednesday, August 22, 2012 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 Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

7. PREPARED BY:

James R. Snead (302) 323-4542 jsnead@state.de.us June 19, 2012

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

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

PROPOSED REGULATIONS

DIVISION OF FISH AND WILDLIFE

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

REGISTER NOTICE

SAN #2012-08

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

1. TITLE OF THE REGULATION:

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

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

The Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass. Addendum XXII established a regional management approach and requires the southern region states (Delaware to North Carolina) to implement management measures consistent with those required for federal waters. The Department was notified on May 17, 2012 by the National Oceanic and Atmospheric Administration that a federal rule was approved that included among its provisions an open season for the recreational black sea bass fishery from May 19 through October 14. In response, the Department issued an Emergency Order (2012-F-0019) to remain consistent with Addendum XXII and to prevent Delaware anglers and dependent businesses from being disadvantaged by remaining closed to recreational sea bass fishing through May 21.

The purpose of this action is to formally adopt the full provisions of the federal rule for the recreational black sea bass fishery and remain compliant with Addendum XXII by amending Tidal Finfish Regulation 3507 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas through the normal regulatory process. The federal rule establishes a 12.5-inch minimum size limit; an open season from January 1 through February 28 with a corresponding 15-fish per person possession limit; and open seasons from May 19 through October 14 and from November 1 through December 31 with corresponding 25-fish per person possession limits.

Based on the stock projections completed in 2011, the black sea bass stock is not overfished and overfishing is not occurring. The projections indicate the stock is at about 111% of its biomass target.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., §901(b) & §903(e)(2)a

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to the black sea bass regulation will be open August 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on August 30, 2012 beginning at 7 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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

David E. Saveikis, Director

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

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned a 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.

PROPOSED REGULATIONS

- 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 days 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 12:01a.m. ~~January~~ March 1, and ending midnight May 24 18, and beginning at 12:01 a.m. ~~October 42~~ 15 and ending mid-night October 31.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 19 through October 14 and during the period November 1 through December 31.
- 12.2 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period January 1 through February 28.
-

DIVISION OF WATERSHED STEWARDSHIP
Surface Water Discharges Section

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

REGISTER NOTICE

7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed, Delaware

1. Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding a Proposed Total Maximum Daily Load (TMDL) Regulation for nutrients and oxygen consuming materials for the Lums Pond Sub-Watershed. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

2. Possible Terms of the Agency Action

The proposed TMDL Regulation calls for pollutant load reductions from point and nonpoint sources of the Lums Pond State Park, an area managed by the Division of Parks and Recreation, DNREC, and from nonpoint sources from the area surrounding the Lums Pond State Park. DNREC will work with local citizen groups and internally among the Division of Parks and Recreation, the Division of Water's Surface Water Discharges Section, and the Division of Watershed Stewardship to implement the point and nonpoint source load reduction requirements.

3. Statutory Basis or Legal Authority to Act

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

4. Other Legislation That May be Impacted

None

5. Notice of Public Hearings and Comment Period

The Public Hearing for the proposed TMDL Regulations for the Lums Pond Sub-Watershed will be held at 3:00 p.m., Tuesday, August 21, 2012, at the New Castle Conservation District, 2430 Old Country Road, Newark, DE 19702.

The hearing record for this proposed TMDL Regulation will remain open until 4:30 p.m., Friday, September 14, 2012. Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by 4:30 p.m., Friday, September 14, 2012. Electronic submission is preferred.

Copies of the Proposed TMDL Regulations and technical support document will be available as of Wednesday, August 1, 2012 on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us).

6. Prepared By:

John Schneider, Watershed Assessment and Management Section, (302) 739-9939.

7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed, Delaware**1.0 Introduction and Background**

- 1.1 Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that, within the Lums Pond Sub-Watershed, a small tributary southeast of Lums Pond that connects the Pond to a marina on the C&D Canal (Summit Marina) is impaired because of low dissolved oxygen. This small tributary receives pollutants from nonpoint sources, Lums Pond overflow, and the Lums Pond State Park Wastewater Treatment Plant discharge. A reduction of oxygen consuming pollutants and nutrients from point and nonpoint sources within the sub-watershed is necessary to improve water quality in this tributary and attain applicable water quality standards.
- 1.2 Section 303(d) of the Federal Clean Water Act requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. A TMDL has three components including a Waste Load Allocation (WLA) for point source discharges, a Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.
- 1.3 DNREC has listed the Lums Pond Sub-Watershed on Delaware's 303(d) Lists and proposes the following Total Maximum Daily Load Regulation for nitrogen, phosphorus, and 5-day Carbonaceous Biochemical Oxygen Demand (CBOD₅) material.

PROPOSED REGULATIONS

2.0 Total Maximum Daily Load (TMDL) Regulation for the Lums Pond Sub-Watershed, Delaware

- 2.1 The total nitrogen waste load allocation from the Lums Pond State Park Wastewater Treatment Plant shall be limited to 9 pounds per day.
- 2.2 The total phosphorus waste load allocation from the Lums Pond State Park Wastewater Treatment Plant shall be limited to 2 pounds per day.
- 2.3 The 5-day Carbonaceous Biochemical Oxygen Demand (CBOD₅) waste load allocation from the Lums Pond State Park Wastewater Treatment Plant shall be limited to 13 pounds per day.
- 2.4 The nonpoint source nitrogen load in the sub-watershed shall be reduced by 40 percent from the 2009-2011 baseline level. This shall result in an average of 30 pounds per day of nitrogen load.
- 2.5 The nonpoint source phosphorus load in the sub-watershed shall be reduced by 40 percent from the 2009-2011 baseline level. This shall result in an average of 1 pound per day of phosphorus load.
- 2.6 The nonpoint source CBOD₅ in the sub-watershed shall be reduced by 40 percent from the 2009-2011 baseline level. This shall result in an average of 88 pounds per day of CBOD₅ load.
- 2.7 Based upon water quality model runs and assuming implementation of reductions identified by subsections 2.1 1 through 2.6 above, DNREC has determined that water quality standards will be met in the Lums Pond Sub-Watershed with an adequate margin of safety.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 Del.C. §1406(a)(1))
24 DE Admin. Code 1400

PUBLIC NOTICE

1400 Board of Electrical Examiners

The Delaware Board of Electrical Examiners in accordance with to 24 Del.C. §1406 (a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to define electrical work more broadly to include any work covered by the National Electrical Code and specifically adding solar, generators and windmills to the list of work that is considered electrical services or electrical work. This rule change will also add the continuing education credits required for licensed Journeypersons and Apprentices and except Journeypersons and Apprentices from rules that do not apply to them.

A public hearing will be held on September 5, 2012 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jennifer Witte, Administrative Assistant for the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 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 15 (fifteen days) after the public hearing.

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

1400 Board of Electrical Examiners

1.0 License Required

- 1.1 To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, maintain, troubleshoot or supervise any electrical work covered by the National Electrical Code (NEC) as adopted by the Delaware State Fire Prevention Commission which may include but is not limited to the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery,

apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, solar electrical work, generators, windmills and overhead and underground primary distribution systems.

- 1.2 A licensee under this chapter shall perform all electrical services or electrical work in accordance with the standards established in the National Electric Code (NEC) as adopted by the Delaware Fire Prevention Commission and in any applicable local building code. The version of the NEC applicable to a particular project is determined by the Delaware Fire Prevention Commission.
- 1.3 Every individual who receives a license with the exception of Journeypersons and Apprentice Electricians shall prominently display the words "Licensed Electrician" and the license number on the exterior of all vehicles used for work in not less than three inch letters and numbers. This section is satisfied by any abbreviation readily understood to mean "Licensed Electrician" such as "Lic. Elec." along with the license number.
- 1.4 Solar Electrical Services means to install, erect, repair any electrical conductor, duct, conduit, or array which is used for grounding and bonding of the array or any part thereof, which generate, transmit, transform, disconnect, or utilize electrical energy in any form or for any purpose.
- 1.45 Licensees shall notify the Board of a change of address. Change of address notifications shall be sent by certified mail within 60 days of date the address change.

(Break in Continuity of Sections)

5.0 [Reserved]

6.0 License and Insurance

- 6.1 Licensees with the exception of Journeypersons and Apprentice Electricians shall maintain general liability insurance of at least \$300,000.00. Master Special Elevator Electricians do not need general liability insurance if the contractor has general liability insurance. Proof of insurance must be submitted with licensure applications and maintenance of the required insurance shall be attested to in the course of each licensure renewal.
- 6.2 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his employer must maintain separate insurance for that risk as provided under these regulations.

(Break in Continuity of Sections)

8.0 Continuing Education

- 8.1 Continuing education (CE) is required of all licensees and shall be completed by June 30 of any year in which a license is to be renewed. Extra continuing education hours do not carry over to the next licensing period. Licensees will only get CE credit for their first attendance of CE courses during each licensing period. Licensees may retake a CE course in the same licensing period but will not receive additional CE credit.
- 8.2 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation at www.dpr.delaware.gov. Licensees may also contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.
 - 8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

PROPOSED REGULATIONS

- 8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor.
- 8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.
- 8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.2.
- 8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.
- 8.4 Journeypersons and Apprentice Electricians shall complete 5 hours of approved CE during each renewal period with the following exceptions – a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 2 CE hours at the first renewal. Apprentice training will count towards CE hours during that licensure period.
- 8.45 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

9.0 Loss Of License Holder

- 9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 **Del.C.** §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.
- 9.2 The notification must include documentation of the business relationship with the former license holder.

10.0 Exceptions.

- 10.1 No license is required for performing electrical work by the following persons or entities:
 - ~~10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;~~
 - ~~10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;~~
 - 10.1.~~3~~1 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board and who is licensed and listed on the Delaware Association of Professional Engineers as the person responsible for the plant repairs, maintenance, and electrical additions;
 - 10.1.~~4~~2 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices
 - 10.1.~~5~~3 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;
 - 10.1.~~6~~4 persons performing the work of any light or power company, electric or steam railway company, telegraph, high voltage certified testing agency or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of service, termination box, or demarcation point;
 - 10.1.~~7~~5 a homeowner who has obtained a homeowner's permit provided by law.
 - 10.1.~~6~~6 A communication and low voltage contractor that installs, services and maintains all types of communication and low voltage systems which are energy limited. These systems include, but are not limited to telephone systems, sound systems, cable television systems, closed circuit video systems, satellite dish antennas, instrumentation and temperature controls, and low voltage

landscape lighting, directional boring, networking systems, communication systems, security and burglar systems. Low voltage fire alarm systems are specifically not included in this section.

- 10.1.7 Fire Alarm Signaling Licensees issued by the Office of the State Fire Marshal.
- 10.1.8 Persons working for the organization Habitat for Humanity or on USDA Rural Development Self Help Housing Projects. The work still needs to be inspected by a licensed electrician.
- 10.1.9 Factory trained and authorized Representatives.

11.0 Reciprocity

- 11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements.
- 11.2 If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice requires an employer's affidavit describing the nature of the applicant's experience. If an applicant cannot obtain an affidavit from the employer, tax W-2 forms showing full-time employment may be substituted at the discretion of the Board. A self-employed applicant may submit tax form Schedule C as proof of practice.

12.0 Required Inspection.

- 12.1 Every licensee, with the exception of Journeypersons and Apprentice Electricians, shall file an application for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall perform an inspection no later than five working days after the inspection has been requested. It shall be beyond the scope of a Journeyperson or Apprentice Electrician to file for an inspection for electrical work.
- 12.2 An application for an inspection shall be filed with the inspection agency on a form, signed by the licensee, or person authorized under Rules 12.7, 12.8, or 12.9, containing at least the following information:
 - 12.2.1 Full names of the licensee and any job foreman
 - 12.2.2 License number, type (T-1, T-2, or Specialty) and expiration date
 - 12.2.3 Date inspection requested
 - 12.2.3 Location of work to be inspected
 - 12.2.4 Permit numbers, if applicable
 - 12.2.5 Applicant's name and contact information, if other than the licensee
 - 12.2.6 A detailed description of the work to be inspected including any devices or equipment
 - 12.2.7 Signature of the licensee
- 12.3 A licensee who signs an application for inspection form is deemed to have authorized and shall be responsible for the work described in the form.
- 12.4 An inspection agency shall not conduct an inspection of work performed until it has received a request made in compliance with Rule 12.2.
- 12.5 An inspection agency is responsible to ensure that the standards for its inspection are those established in the National Electric Code as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the Code applicable to a particular project is determined by the Delaware Fire Commission.
- 12.6 An inspection report shall be recorded legibly on a form containing at least the following information:
 - 12.6.1 Full name of the licensee
 - 12.6.2 License number, type (T-1, T-2, or Specialty) and expiration date
 - 12.6.3 Location of work to be inspected

PROPOSED REGULATIONS

- 12.6.4 Permit numbers
 - 12.6.5 Inspector's full name
 - 12.6.6 A detailed description of the work inspected
 - 12.6.7 Deficiencies noted, any applicable NEC section, and inspection dates
 - 12.6.8 Signature of inspector
 - 12.6.9 Date inspection completed.
- 12.7 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.
- 12.8 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations.
- 12.9 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection as provided in Rule 12.0 by an inspection agency licensed by the Board.
- 12.10 Fire Alarm Signaling Licensees installing conductors covered under the licensing requirements of the Office of the State Fire Marshal shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations prior to filing for a final inspection from the Office of the State Fire Marshal. This rule will be effective 12/31/2012.

(Break in Continuity of Sections)

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404 (17 Del.C. §§132, 137 & 149; 29 Del.C. §8404)

PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Background

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to the current provisions concerning Traffic Impact Studies and Traffic Operational Analyses. Changes are proposed several areas of Chapter 2, Traffic Impact Studies and several sections from Chapter 3, Site Plan Design, are proposed for movement to Chapter 2.

In July, 2011, the Department published proposed revisions to its Standards and Regulations for Subdivision Streets and State Highway Access in the Delaware *Register of Regulations*, 15 DE Reg. 56 (07/01/11). A significant number of comments were received in response to that publication. After consideration of those comments, the Department decided to publish a re-draft of that document here, to reflect the comments received from the July, 2011 version, as well as other considerations.

As detailed in the current Manual, the Department has broad statutory authority to regulate the process of determining whether and under what conditions property developers may gain access to the state highway system. These authorities include Sections 131, 141, 146, 507, and 508 of Title 17, Delaware Code; Chapter 41 of Title 21, Delaware Code; Section 6103 of Title 29, Delaware Code; and certain provisions in Title 9 of the Delaware Code.

The Department previously entered into agreements with county governments regarding traffic impact studies and traffic operational analyses. For New Castle County, for example, the agreement calls for the Department, as part of its scoping of the study areas for TIS work, to assure that the study looks at a minimum number of

intersections from the proposed site entrance(s). However, what is considered an intersection for this purpose may be subject to differing interpretations, and may risk unduly limiting or unduly expanding the TIS study area.

The draft regulations are intended to provide sufficient guidance to the state, local governments, the development community, and those interested in development matters in this regard. The Department wishes to assure that the study areas selected match well with what intersections the Department reasonably expects to be significantly affected by the traffic from the subject property, given its proposed uses.

The proposed changes also include a new section on Transportation Improvement Districts, which were previously discussed in much less detail. The Department seeks to promote the creation of such districts as a superior approach to assessing the transportation impacts of development relative to Traffic Impact Studies for individual developments.

Other proposed changes include the addition of rules for the requirement of Traffic Operational Analyses, previously published as informal guidelines, and the changes to how contributions to the Traffic Signal Revolving Fund should be calculated.

Public Comment Period and Public Workshop Schedule

The Department will accept written comments on the proposed Amendment to its Standards and Regulations for Subdivision Streets and State Highway Access from August 1, 2012 through October 1, 2012. The proposed Regulations appear below.

The Department will hold public workshops on the proposed Amendment, as follows:

- New Castle County: Thursday, September 13, 2012, Troop 2 Conference/Training Room, Newark, Delaware.
- Kent County: Monday, September 17, 2012, Felton/Farmington Room, DeIDOT Administration Building, Dover, Delaware.
- Sussex County: Thursday, September 20, 2012, DeIDOT South District Conference Room, Georgetown, Delaware.

The workshops shall be held from 4 p.m. to 7 p.m. at each location.

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

Shailen P. Bhatt, Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)
(302) 739-2895 (fax)
shailen.bhatt@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:**

2309 Standards and Regulations for Subdivision Streets and State Highway Access

PROPOSED REGULATIONS

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 29 Delaware Code, Section 8404(8); (29 Del.C. §8404(8))

PUBLIC NOTICE

2404 Traffic Calming Manual

The Delaware Department of Transportation Division of Transportation Solutions hereby gives notice of its intention to adopt revisions to the existing Delaware Traffic Calming Manual pursuant to 29 Del.C. §8404(8) and in compliance with the Delaware Administrative Procedures Act, 29 Del.C. §10115. Traffic calming is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior, and improve conditions for non-motorized street users. The regulations contained in this manual are an attempt to control speeding and cut through traffic, primarily on neighborhood streets, through use of physical measures and education.

The Department solicits, and will consider timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such comments will be thirty (30) days after the proposed amendments are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed, emailed or hand-delivered to Michael Somers, whose address is Delaware Department of Transportation, 169 Brick Store Landing Road, Smyrna, DE, 19977, or Michael.Somers@state.de.us by August 31, 2012.

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

<http://regulations.delaware.gov/register/august2012/proposed/DETCM.pdf>

(Adobe Acrobat Reader required)

EXECUTIVE DEPARTMENT

DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: 29 Delaware Code, Section 5029(a), (29 Del.C. §5029(a))

PUBLIC NOTICE

402 Procedures Governing The Delaware Strategic Fund, 451 Matching Grants Program, 452 Direct Grants Program, 453 Co-Op Advertising Program, 454 Procedures Governing Delaware Tourism Grant Program

The State of Delaware, Delaware Economic Development Office (“DEDO”) and The Delaware Economic Development Authority (the “Authority”) hereby give notice of their intention to amend their regulations pursuant to the General Assembly’s delegation of authority to adopt such measures found at 29 Del.C. §§5029(a) and 5054(e)(1) and in compliance with Delaware’s Administrative Procedures Act, 29 Del.C. §10115. The proposed regulation constitutes a revision of the Strategic Fund procedures used to administer the Fund to retain, attract and expand Delaware employment. DEDO is also proposing that four regulations that deal with tourism be repealed. These programs are no longer operating and have been declared obsolete by DEDO.

DEDO and the Authority solicit, and will consider, timely filed written comments from interested individuals and groups concerning the proposed amended regulation and the repeal of obsolete regulations. The deadline for the filing of such written comments will be thirty days (30) after these regulations are published in the *Register of Regulations*.

Any such submissions should be mailed or delivered to Lee Porter, 99 Kings Highway, Dover, DE 19901 by September 30, 2012.

402 Procedures Governing The Delaware Strategic Fund, 451 Matching Grants Program, 452 Direct Grants Program, 453 Co-Op Advertising Program, 454 Procedures Governing Delaware Tourism Grant Program

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

402 Procedures Governing The Delaware Strategic Fund, 451 Matching Grants Program, 452 Direct Grants Program, 453 Co-Op Advertising Program, 454 Procedures Governing Delaware Tourism Grant Program

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF AGRICULTURE
FOOD PRODUCTS INSPECTION SECTION**

Statutory Authority: Statutory Authority: 3 Delaware Code, Section 8708(8) (3 **Del.C.** §8708(8))
3 **DE Admin. Code** 301

ORDER**301 Food Products Inspection****I. NATURE OF PROCEEDINGS**

Pursuant to its delegated authority under 3 **Del.C.** §8708(8) and Delaware's Administrative Procedures Act, 29 **Del.C.** §10100 *et seq.*, the State of Delaware Department of Agriculture ("DDA") proposed to amend its regulations in order to ensure that its procedures for inspecting meat, poultry and egg products, and for slaughtering animals, were always at least equal to those mandated by the U.S. Department of Agriculture and federal law.

Notice of a public comment period of thirty (30) days relating to the proposed regulations was published in the Delaware *Register of Regulations* for June 1, 2012 as required by law. This is the DDA's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

DDA received no public comments in response to its notice of intent to adopt the proposed regulations.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of DDA's intent to adopt the proposed regulations and the opportunity to provide comments concerning them. Having received no such comments, the DDA concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority, it is

now free to adopt them.

IV. ORDER

AND NOW, this 11 day of July, 2012 it is hereby ordered that:

The proposed amended regulations are adopted;

The text of the proposed regulations shall be in the form attached hereto as Exhibit A;

The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and

DDA reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

IT IS SO ORDERED.

Edwin Kee, Secretary

Delaware Department of Agriculture

301 Food Products Inspection

1.0 Authority

- 1.1 These proposed amendments to existing Delaware regulations as well as the adoption of new regulations governing meat, poultry, and egg products inspection and the humane slaughtering of livestock are promulgated pursuant to the Department's authority specifically set forth in Section 8708(8) of Title 3 of the **Delaware Code**.

2.0 Purpose

- 2.1 The purpose of these proposed regulations is to re-establish the standards and procedures for the meat, poultry, and egg product inspection programs of Delaware as well as Delaware's humane slaughtering of livestock procedures so that they shall be equal to those imposed by the Federal Meat Inspection Act, the Federal Poultry Inspection Act, the Federal Egg Products Inspection Act and the Federal Humane Methods of Slaughter Act with respect to operations occurring within the State of Delaware.

3.0 Substantive Provisions

- 3.1 The Department adopts and incorporates by reference herein the rules, regulations, definitions and standards of the U.S. Department of Agriculture governing meat and meat products inspection, poultry products inspection, voluntary inspection of poultry, egg and egg products inspection and humane methods for slaughtering animals as they are currently ~~written and which are found~~ appear, and as they may be amended from time to time, at Title 9 of the Code of Federal Regulations, at Subchapters A, E, and I of Title 9, Parts 301 through 592, Parts 301 through 592, excluding Parts 390 and 391, of the Code of Federal Regulations.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 275

REGULATORY IMPLEMENTING ORDER

275 Charter Schools

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** 275 Charter Schools. The amendments reflect the process for Performance Reviews as well as other amendments to align with specific Delaware Code revised during the 146th General Assembly. The Department, State Board of Education and Governor's office held several meetings with stakeholders prior to publication. In addition, individuals from the Department of Education charter school office and the Executive Director of the State Board of Education met with a subcommittee of the Governor's Advisory Council for Exceptional Citizens.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 30, 2012, 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. Comments were also made by members of the State Board of Education during the discussion period in June. Some of the comments were grammatical in nature and have been addressed. Additional comments with Department responses are as follows:

GACEC and SCPD Comment

§3.6 authorizes a "Highly Successful Charter School Operator" to bypass any annual ban on new charter school applications to address the needs of students whose current charter school is closing. The definition of "Highly Successful Charter School" is included in §2.1. This is a salutary concept which is loosely based on Title 14 **Del.C.** §511(n). See also Title 14 **Del.C.** §511(e)(2). SCPDs concern is that there are charter schools which focus on "at risk" students. See §4.2.1.5. If such a charter school were closing, it would be logical for another charter school serving "at risk" students to be solicited to apply for a charter to cover the students in the school which is closing. This would be undermined by the definition of "Highly Successful Charter School" which categorically requires above average performance on student assessment tests. The DOE should consider modifying the definition of "Highly Successful Charter School" to allow a charter school for "at risk" students to qualify without meeting the "above average performance" standard. Parenthetically, SCPD also recommends not capitalizing "Operator" in §3.6.

Department Response

The Department has made the grammatical corrections as offered; however, after consideration, the Department believes the proposed definition meets the intent of the law. This does not prohibit a charter school that focuses primarily on "at risk" students from applying and operating in Delaware.

GACEC and SCPD Comment

§4.3.1 "red flags" the need for a charter school to include the capacity for "summer school", "extra instructional time", and other remedial services for underperforming students in its program based on Title 14 **Del.C.** §512(6). It would be preferable to add another sentence to implement the recently adopted Title 14 **Del.C.** §122(b)(24). This is a new statute which requires charter schools to offer supportive instruction (e.g. homebound; instruction in hospitals) which charter schools could easily overlook. It does not appear in Title 14 **Del.C.** Ch. 5. The following sentence could be added: "The educational program shall include the provision of supportive services conforming to 14 **Del.C.** §122(b)(24)."

Department Response

The Department is promulgating a separate regulation related to supportive instruction. This regulation is published for comment in the August *Register of Regulations*.

GACEC and SCPD Comment

§4.5.1.1, the reference and citation to the Gun Free Schools Act does not match that in the DOE's "Compliance with the Gun Free Schools Act" regulation, 14 **DE Admin. Code** 603.

Department Response

The reference has been revised.

GACEC and SCPD Comment

§10.4, it would be preferable to include a recital that the results of the Performance Review would also be published on the DOE's Website. For example, the second sentence could be amended to read as follows: "The Department shall provide the results of the Performance Review to the school and publish the results on the

Department's Website."

Department Response

The Department will take the comment under consideration for future revisions to this regulation.

GACEC and SCPD Comment

§12.0 literally requires a new member of the charter school's board of directors to directly submit the member's criminal background check results to the DOE. The Councils raised concerns with the process.

Department Response

The Department has a process in effect to receive and review the reports in compliance with §511(q).

GACEC and SCPD Comment

The overall regulation is somewhat myopic in focusing on academic performance to the exclusion of other factors which make a school "successful". For example, Section 4.2 contains multiple references to the State Assessment System. Section 4.2.1.4 defines the scope of the Performance Agreement as only covering organizational, academic, and financial performance. Charter schools are intended to be "innovative" and not "cookie cutter" institutions. See Title 14 **Del.C.** §501 and 506(b)(3)c. If a school focuses on the arts (dancing; acting; singing), solely evaluating that school based on academics ignores the primary reason students attend the school. Similarly, for a military charter, it would be logical to assess what percentage of the student body who choose to apply to enlist in the Armed Services are accepted. Other factors to consider in assessing "performance" would include statistics on discipline, attendance, graduation, participation in extracurricular activities, substantiated special education and non-special education complaints to DOE, student satisfaction, and parent satisfaction.

Department Response

The proposed regulation proposes a less myopic approach to evaluating charter school performance than is in the current regulation. The single performance measure in the existing regulation is that a school meets or exceeds state average performance on the state assessment. The proposed regulation proposes to measure a charter school against their compliance with their Performance Agreement, which is evaluated by the Performance Framework. The Performance Framework measures academic performance expectations, organizational responsibilities, and economic viability requirements. The references to "school focuses" such as the arts or military service are able to be incorporated through the "Mission Specific Measures" in the academic framework as well as included in the Renewal Application. The intent of the Performance Framework and Performance Review is to shift from what is felt to be a currently limiting measure to a process that is more inclusive of multiple measures thus able to show a more comprehensive picture of a charter school's performance.

GACEC and SCPD Comment

Neither the statute nor §4.2.1.5 define "students at risk of academic failure". The DOE may wish to include a definition to provide guidance in this context.

Department Response

The Department has taken the comment under advisement; however, maintains the need for flexibility in this area.

GACEC Comment

§4.2.1.5 this section previously applied only to schools with an enrollment preferences for students in special education. As it is written in the proposed regulation, it will apply to any school and in essence can give any school a blanket waiver from performance measures. The potential implications are lowered expectations for students with disabilities and the ability of any charter to avoid adverse performance ratings for sub-groups of their choice.

Department Response

The previous §4.2.2.1 allowed for a charter school proposing to have enrollment preferences for students at risk of academic failure to have the ability to be measured by alternative performance goals and timelines appropriate for its student population. The Department had to agree to any alternative measures and timelines.

In the proposed amendments, this ability remains in place; however, any alternative proposed measures or performance goals must be incorporated into the charter school's Performance Agreement, which requires approval by the Secretary and the State Board of Education.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools in order to reflect the process for Performance Reviews as well as to align with specific Delaware Code revised during the 146th General Assembly.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 275 Charter Schools attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 275 Charter Schools 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** 275 Charter Schools amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 275 Charter Schools 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 July 19, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of July 2012.

Department of Education
Mark T. Murphy, Secretary of Education

Approved this 19th day of July 2012

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes

275 Charter Schools**1.0 Purpose and Effect**

1.1 The purpose of these regulations is to provide rules to govern the implementation of 14 **Del.C.** Ch. 5 (hereafter, the "Charter School Law") develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:

1.1.1 Agency commitment and capacity;

1.1.2 Application process and decision-making;

1.1.3 Performance-based accountability;

1.1.4 Ongoing oversight and evaluation; and

1.1.5 Renewal and revocation decision-making.

- 1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.
- 1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff administrators and boards of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.
- 1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by, or transferred to the Department with the consent of the State Board.

2.0 Definitions

- 2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:
- “Accountability Committee”**: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.
- “Applicant”**: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the **[R]** renewal or modification of such a charter, as the context indicates.
- “Audit”**: An informal financial, programmatic, or compliance audit of a charter school.
- “Charter Holder”**: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.
- “Charter School”**: A non home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to the Department with the approval of the State Board for the personal physical attendance of all students.
- ~~“DSTP”~~: ~~The Delaware Student Testing Program or successor statewide assessment program established at 14 Del.C. §151, et seq., and, as the context requires, the assessments administered pursuant to the program.~~
- “Delaware Comprehensive Assessment System (DCAS)”** means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities.
- “Department”**: The Delaware Department of Education.
- “Financial Audit”**: The audit required to be conducted pursuant to 14 Del.C. 513(a).
- “First Instructional Day”**: The first day a Charter School is open with students in attendance.
- “Formal Review”**: The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school’s operations and educational programs.
- “Founding Board of Directors”**: The Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.
- “Highly successful charter school [operator]”**: A charter school with sustained high levels of student achievement and sustained financial stewardship. A highly successful charter school is one which has been in operation for at least three years and which, during the three years prior to filing a charter application in Delaware, has a combined student performance which exceeds the statewide average student performance in the state in which the highly successful charter school is located based upon that state’s performance score or measure on its statewide assessment for purposes of the Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof. In addition, during the same three year period the school must have had no adverse financial findings and successfully completed any required financial audits in the state in which it is located, and be able to demonstrate that it will be economically viable.

“Parent”: The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. “Parent” also includes individuals authorized to act as Relative Caregivers under the provisions of 14 Del.C. §202(e)(2).

“Performance Agreement”: The document which describes the academic performance expectations, identifies economic viability requirements, defines organizational responsibilities, and outlines accountability of the Charter School. An approved charter school application serves as the basis for the performance agreement, which is for a specified term and as prescribed by the Department with the assent of the State Board of Education. The Performance Agreement is enforceable as part of the school’s charter.

“Performance Framework”: A rubric based tool established by the Department with the assent of the State Board of Education, as amended from time to time, which contains the details, utilizing multiple measures, used by the Department to assess compliance with the Performance Agreement in the areas of academic performance, economic viability, organizational responsibilities and accountability of the Charter School. The completed frameworks will be provided to the Charter School Accountability Committee, Secretary and State Board of Education to inform their decision making for [fR]enewals, modifications and formal reviews.

“Performance Review”: Reserved The process by which the Charter School’s compliance with its Performance Agreement is evaluated annually to inform [fR]enewal, major modification and formal review decisions. Compliance with the charter and the Performance Agreement, as assessed through the Performance Framework, is the basis for the Performance Review. Review and results will be reported in the Department’s annual report.

“Renewal”: The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for four years. Renewal decisions are based on the criteria set forth in 14 Del.C. §512, and informed by a Charter School’s compliance with its Performance Agreement as evaluated by the Performance Framework.

“Secretary”: The Secretary of the Delaware Department of Education.

“State Assessment System” means the statewide assessment used to measure student achievement of the Delaware academic content standards including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, and other assessments such as, but not limited to, the National Assessment for Educational Progress (NAEP), a college readiness assessment, an assessment for English Language Learners (ELL), a norm-referenced assessment that may be administered or required as determined by the Department of Education.

“State Board”: The Delaware State Board of Education.

3.0 Application Process

- 3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the first day of school of the second school year thereafter, unless otherwise agreed upon by the authorizer and the applicant to allow the applicant to serve students who would otherwise be displaced because of the closure of an existing charter school.
- 3.2 All applications, whether for an original charter, a modification of a charter or the [Rr]enewal of a charter, shall be made on forms approved by the Department.
- 3.3 ~~The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.~~
- 3.43 An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered; an electronic copy shall also be submitted at the same time either as an attachment to an e-mail message or by electronic portable storage. The electronic copy shall be identical in all respects to the original application. Incomplete applications, or applications received after the deadline, will not be considered.

- 3.54 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.
- 3.65 An application is not complete unless all of the following requirements are met:
- 3.65.1 All questions on the application form are answered.
- 3.65.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.
- 3.76 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications; except for an application submitted by a Highly ~~Successful~~ Charter Operator for the purpose of operating a charter school at a site of and serving students currently attending a charter school whose charter has been revoked, has not been renewed, or whose charter is on formal review and whose Board of Directors has agreed to abandon their charter.
- 3.87 Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.
- 3.98 The State Board of Education may designate one or more of its members to sit as nonvoting members of the Accountability Committee.
- 3.409 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter, the renewal of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the ~~Performance Framework~~ (not applicable for new applications), the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. In the case of the renewal, major modification, or formal review of a charter, the record ~~may~~ shall also include performance documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, compliance with the school's Performance Agreement, audits and performance reviews, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.
- 3.10 Applicants and Charter Holders shall make the financial disclosures relating to ownership and financial interest as required by 14 Del.C. §511(o). A charter school founder or member of a charter school board has a "financial interest" in the charter school if that person receives compensation in excess of \$5,000.00 from the charter school in any calendar year. Compensation means money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by a charter school founder or member of a charter school board. "Ownership" shall have the meaning commonly ascribed to it as appropriate in context.

4.0 Standards and Criteria for Granting Charter

- 4.1 Applicant Qualifications
- 4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:
- 4.1.1.1 Research based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.
- 4.1.1.2 Business management, including but not limited to accounting and finance.
- 4.1.1.3 Personnel management.

- 4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.
- 4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.
- 4.1.1.6 School operations, including but not limited to facilities management.
- 4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.
- 4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:
 - 4.1.3.1 ~~The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day, further provided a single individual shall not represent both the certified teacher and parent role on the board~~ At the time at which the school commences its instructional program and all times thereafter, the board of directors of the charter holder must include a Delaware certified teacher employed as a teacher at a charter school operated by the Applicant in Delaware and also include at least one parent of a student enrolled in a charter school operated in Delaware by the charter holder; further provided a single individual shall not represent both the certified teacher and parent role on the board;
 - 4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.
 - 4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School's business.
- 4.2 Student Performance Requirements
 - 4.2.1 Minimum Requirements
 - 4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and the Department's implementing rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program or any successor statewide assessment program including without limitation those relating to the State Assessment System.
 - 4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the applicable assessments administered pursuant to the Delaware Student Testing Program (DSTP) State Assessment System, and a timetable for accomplishment of those goals.
 - 4.2.1.3 ~~The Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet or exceed the statewide average student performance of students in the same grades for each year of test administration, unless the student population meets the criteria established in Section 4.2-2.~~ If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the State Assessment System, the application and performance agreement must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the State Assessment System.
 - 4.2.1.4 Following charter approval, but not later than a date established by the Department, the Applicant must enter into a Performance Agreement approved by the Department with the assent of the State Board, which shall address the organizational, academic and financial

performance expectations of the Applicant during the term of the charter. The Department, with the assent of the Board, shall establish and publish a Performance Framework which shall be used to assess the school's compliance with its Performance Agreement. Nothing contained herein shall be interpreted to relieve an applicant of its obligation to comply with any approval criteria or requirement set forth in 14 Del.C. Ch. 5. The Department shall conduct annual audits using the Performance Framework to ensure ongoing compliance with the school's Performance Agreement.

4.2.1.5 For an Applicant proposing to serve students at risk of academic failure, the school's Performance Agreement shall specify what, if any, portion of the Performance Framework shall or shall not apply to the school, or whether the Performance Framework shall be modified to more appropriately measure the performance of the school.

4.2.2 Special Student Populations

~~4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement shall be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.~~

~~4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.~~

~~4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.~~

4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 Del.C. §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

- 4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** ~~925 922 through 929~~, specifically including a plan for having a continuum of educational placements available for children with disabilities.
 - 4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.
 - 4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.
 - 4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.
- 4.4 Economic Viability.
- 4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start up period prior to the opening of the school.
 - 4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.
 - 4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.
 - 4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, or the construction or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.
 - 4.4.5 ~~Reserved~~
- 4.5 Attendance, Discipline, Student Rights and Safety
- 4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.
 - 4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §~~8924~~ **7151**) and Department Regulation ~~878~~ **605**.
 - 4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.
 - 4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

- 4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.
 - 4.5.2.2 11 **Del.C.** Ch. 85 and applicable 14 **Del.C.** §511(p), and Department regulations regarding criminal background checks for public school related employment.
 - 4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.
 - 4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.
 - 4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.
- 4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

5.0 Nature of Charter

- 5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.
 - 5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.
- 5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

6.0 Funding

- 6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.
- 6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.
- 6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.
- 6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

7.0 Reserved Financial Audit

After July 1st of each year, each Charter Holder shall contract to have an audit of the business and financial transactions, records, and accounts of the school, in a form and manner satisfactory to the Department, and shall provide the audit results to the Department.

8.0 Enrollment Preferences, Solicitations and Debts**8.1 Enrollment Preferences**

8.1.1 An Applicant to establish a new Charter School shall indicate in its application whether children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.

8.2 Solicitations.

8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.

8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."

8.3 Debts

8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

9.0 Modifications of Charters

9.1 A charter holder may apply to the Department for a modification of the charter following the granting of the charter.

9.2 The application shall be submitted on a form approved by the Department and shall specify the exact modification requested and describe the need for the modification.

9.3 The standards for deciding a modification application shall be as provided in Section 4.0 of these regulations for the original grant of the charter.

9.4 The following are considered applications for a new charter and shall not be processed or considered as a modification application:

9.4.1 An application to collectively change the mission, goals for student performance and educational program of the charter school; or

9.4.2 An application, at any time before the First Instructional Day, to offer educational services at a site other than the site approved as part of the school's charter, when the charter has previously been amended to change the school's site; or

9.4.3 An application to replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter holder at any time before the First Instructional Day.

9.5 An application for a major or minor charter modification may not be filed while a school's charter is on formal review, except where the Secretary determines that the requested modification is unrelated to the reason the school's charter has been placed on formal review or where the modification addresses the reason the school was placed on formal review provided the modification is filed before the preliminary report is approved by the Accountability Committee.

- 9.6 A charter shall not be modified to permit a charter school's first instructional day to occur later than the third September 15th after the date the charter is originally granted. In the event that the first instructional day does not occur by that date, the charter shall be deemed forfeited and the authority to open and operate a charter school expired. Further, no charter shall be modified to permit a charter school to obtain a certificate of occupancy, either temporary or final, for all or any part of the premises to be occupied by the school, later than June 15 immediately preceding the authorized opening date of the school.
- 9.7 An increase or decrease of up to 5% in a charter school's current authorized enrollment shall not be considered a modification of the school's charter. Any modification application to increase or decrease a charter school's current authorized enrollment by more than 5% must be filed between November 1st and December 31st and, if approved, shall be effective the following school year.
- 9.8 Major modifications.
- 9.8.1 A major modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which would:
- 9.8.1.1 Replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter school at anytime on or after the First Instructional Day; or
- 9.8.1.2 Alter enrollment preferences; or
- 9.8.1.3 Result in an increase or decrease in the school's total authorized enrollment of more than 15%, provided further the major modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or
- 9.8.1.4 Alter grade configurations; or
- 9.8.1.5 At any time after the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, except where such change is the unavoidable result of a loss by fire or other "casualty" as that term is defined in *Black's Law Dictionary*; or
- 9.8.1.6 At any time before the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, provided that the charter has not previously been amended to change the school's site; or
- 9.8.1.7 Alter any two of the following: the school's mission, goals for student performance, or educational program; or
- 9.8.1.8 Alter the charter school's performance agreement with the Department; or
- 9.8.1.9 Alter the charter school's charter to satisfy the provisions of "restructuring" as prescribed in the federal Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof.
- 9.8.1.10 Transfer of the charter, and of oversight of that charter school, from another authorizer to the Department, before the expiration of the charter term, shall be made by filing a written petition with the Department, on a form approved by the Department, by the public charter school or its original authorizer. The Department will approve a transfer only where the Charter School is fully in compliance with the current terms of its charter and any applicable rules, regulations and statutes. The Department may impose conditions upon the transfer in order to ensure continuing compliance with the approval criteria and the regulations of the Department.
- 9.9 Minor modifications.
- 9.9.1 A minor modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which is not a major modification. Minor modifications include, but are not limited to:
- 9.9.1.1 Changes to the name of either the charter school or charter holder; or

- 9.9.1.2 The first extension of any deadline imposed on the charter school or charter holder by thirty (30) working days or less (or by 15 calendar days in the case of the First Instructional Day); or
- ~~9.9.1.3 Changes in the standards or assessments used to judge student performance (other than the State standards or the assessments administered pursuant to the DSTP); or~~
- 9.9.1.43 In the case of a charter school which is open with students in attendance, offering educational services at a site other than, or in addition to, the site approved as part of the school's charter, when use of the approved site has unavoidably been lost by reason of fire or other casualty as that term is defined in *Black's Law Dictionary*; or
- ~~9.9.1.5 Changes to alter not more than one of the following: the school's mission, goals for student performance, or educational program; or~~
- 9.9.1.64 An increase or decrease in the school's total authorized enrollment of more than 5%, but not more than 15%, provided further the minor modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or
- 9.9.1.75 Alter, expand or enhance existing or planned school facilities or structures, including any plan to use temporary or modular structures, provided that the applicant demonstrates that the school will maintain the health and safety of the students and staff and remain economically viable as provided in 4.4 above; or
- 9.9.1.86 Any change in the school's agreement with an educational management organization other than as set forth in 9.4.3 and 9.8.1.1 above; or
- 9.9.1.97 A change to the current authorized number of hours, either daily or annually, devoted to actual school sessions. Regardless of any proposed change, the school shall maintain the minimum instructional hours required by 14 **Delaware Code**; or
- 9.9.1.108 A change in the terms of the current site facilities arrangements including, but not limited to, a lease to a purchase or a purchase to a lease arrangement; or
- 9.9.2 The Secretary may decide the minor modification application based on the supporting documents supplied with the application unless the Secretary finds that additional information is needed from the applicant.
- 9.9.3 The Secretary may refer a minor modification request to the Accountability Committee for review if the Secretary determines, in her/his sole discretion, that such review would be helpful in her/his consideration of the application. If the Secretary refers a minor modification application to the Accountability Committee, she/he may decide the application based on any report from the Committee and the supporting documents related to the application. The applicant for a minor modification shall be notified if the minor modification request has been forwarded to the Accountability Committee. The applicant may be asked to provide additional supporting documentation.
- 9.9.4 The Secretary may deny a minor modification request if the supporting documentation is incomplete or insufficient provided the applicant has been advised additional information was needed
- 9.9.5 Upon receiving an application for a minor modification, the Secretary shall notify the State Board of the application and her/his decision on whether to refer the application to the Accountability Committee.
- 9.9.6 The meeting and hearing process provided for in Section 511(h), (i) and (j) of the Charter School Law shall not apply to a minor modification application even where the Secretary refers the application to the Accountability Committee.
- 9.9.7 Decisions for minor modifications to a charter ~~shall~~ may be decided by the Secretary, with the concurrence of the State Board of Education, within 30 working days from the date the application was filed, unless the timeline is waived by mutual agreement of the Secretary and the applicant, or in any case where the Secretary, in the sole discretion of the Secretary, deems that it would be

beneficial to either refer the matter to the Accountability Committee or to seek advice from the State Board prior to deciding the matter.

10.0 Renewals

- 10.1 Charters are granted for an initial period of 4 years of operation and are renewable every 5 years thereafter.
- 10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.
- 10.3 Charters shall be renewed only if the school receives a satisfactory ~~P~~performance ~~R~~review. Performance reviews shall be conducted by the Department using the Performance Framework approved by the Department with the assent of the State Board.
- 10.4 The Department shall conduct annual performance reviews based on the Performance Framework. The Department shall provide the results of the Performance Review to the school.

11.0 Public Hearings

- 11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

12.0 Background Checks

In addition to the criminal background check and Child Protection Registry check required by law to be provided during the application process, whenever a new member shall be elected to the board of directors of a charter school, the school shall promptly provide the name and mailing address of such new member to the Department of Education, Charter School Office; the newly elected member of the board shall, within 45 days of election to the board, provide the Department of Education with any authorization necessary to conduct the Child Protection Registry check and with a copy of that member's criminal background check.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

ORDER

Transitional Resources to Relative Caregivers

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 *Transitional Resources to Relative Caregivers*. 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 June 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced June 30, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding *Transitional Resources to Relative Caregivers*.

Statutory Authority

- 31 Delaware Code, Section 356, *Kinship Care Program*
- 45 CFR §205.10, *Hearings*
- Social Security Act §404, Use of Grants

Background

The Kinship Care Program provides assistance for relative caregivers during the 180-day transition period when a child first moves into the non-parent caregiver's home (relative caregivers are non-parental relatives, such as grandparents or aunts and uncles, who take on the responsibility of caring for a relative child). The program assists in meeting immediate needs for clothing, shelter, health, safety, and educational supplies.

Financing of the program is provided by the Delaware General Assembly and is limited to available funds. The program is provided through a partnership between the Division of State Service Centers, the Division of Social Services, and the Division of Services for Aging and Adults with Physical Disabilities.

Summary of Proposed Changes

DSSM 6100 through DSSM 6111, ~~Relative Caregivers' (Non-Parent) Transitional Resource Program Providing Transitional Resources to Relative Caregivers~~: The name of the section is being changed to more accurately indicate the content of the policy. All policy sections are reformatted and reworded for clarity and ease of readability. Applicable federal and state citations are also added to policy sections.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following observations. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Social Services (DSS) proposal to rename and revise the regulations covering the "Kinship Care Program". We **endorse** the proposed regulation.

The regulations define eligibility, scope of services and appeal rights. In general, the standards appear to be consumer-oriented.

Agency Response: DSS thanks GACEC for their endorsement.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Transitional Resources to Relative Caregivers* is adopted and shall be final effective August 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #12-36**REVISION:****DSSM 6100 - 6111 Transitional Resources to Relative Caregivers**

*Please note that no changes were made to the regulation as originally proposed and published in the June 2012 issue of the *Register* at page 1670 (15 DE Reg. 1670). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

DSSM 6100 - 6111 Transitional Resources to Relative Caregivers

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program

Determining Income Eligibility

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 Child Care Subsidy Program, specifically, *Determining Income Eligibility*. 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 June 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced June 30, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Income Eligibility*.

Statutory Authority

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

Summary of Proposed Changes

DSSM 11003.6, *Income Limits Determining Income Eligibility*: The name of the section is being changed to more accurately indicate the content of the policy. This policy section is reformatted and clarifying language is also provided to make the rules easier to understand and follow. Specifically, this regulatory action adds the statement that families that are referred by and active with the Delaware Division of Family Services (DFS) are exempt from the income requirements. This exemption has long been in practice and is also found in DSSM 11003.9.2. The applicable federal citation is also added to the policy section.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor’s Advisory Council for Exceptional Citizens (GACEC) offered the following observations. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Social Services proposal to revise the “income eligibility” standard in its child care subsidy regulation. This changes the heading of the section and clarifies that “(f)amilies referred by and active with the Division of Family Services do not have to meet the income limit.”

We did not identify any concerns with the revised standards; therefore, we endorse the proposed regulation.

Agency Response: DSS thanks GACEC for their endorsement.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Income Eligibility* is adopted and shall be final effective August 10, 2012.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #12-37
REVISION:**

11003.6 ~~Income Limits~~ Determining Income Eligibility

45 CFR 98.20

To be eligible for child care services, a family is to have gross income equal to or less than 200 percent of the current federal poverty level for a family of equal size. This income requirement typically applies to all income eligible child care programs. Refer to the most current Cost of Living Adjustment Administrative Notice for current rates.

This policy applies to applicants for and recipients of child care assistance.

1. Gross Income Is Capped

Gross monthly income must be equal to or less than 200% of the Federal Poverty Limit for the family size.

2. Income Requirement

The income requirement applies to all income eligible child care programs.

<u>Exception: Families referred by and active with the Division of Family Services do not have to meet the income limit.</u>
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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1125

Secretary's Order No.: 2012-A-0025

Date of Issuance: July 16, 2012

Effective Date of the Amendment: August 11, 2012

1125 Requirements for Preconstruction Review

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

Background and Procedural History

This Order considers proposed *revised* regulations to amend 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review. Sections 1.9 ("Definitions"). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-05. The Department published its initial proposed regulation Amendments in the June 1, 2012 *Delaware Register of Regulations*, and held a public hearing on June 25, 2012. It should be noted that public comment was received from the Delaware Solid Waste Authority by the Department with regard to this proposed promulgation, and the Department provided a very thorough and detailed response to the same.

The proposed *revised* amendments to 7 **DE Admin. Code** 1125 will clarify that a major source for any pollutant subject to regulation under the Clean Air Act ("CAA") is subject to Prevention of Significant Deterioration ("PSD") review for all pollutants emitted at greater than the significance level. Without this clarification, the U.S. EPA will be unable to approve Delaware's State Implementation Plan ("SIP")'s November 10, 2010 revision. Additionally, the Department seeks to correct (1) existing clerical errors contained within the proposed rule language as set forth in

the June 1, 2012 edition of the Delaware *Register of Regulations*; and (2) an additional typographical error contained within the current version of this regulation.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 7, 2012 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will (1) clarify that a major source for any pollutant subject to regulation under the Clean Air Act ("CAA") is subject to Prevention of Significant Deterioration ("PSD") review for all pollutants emitted at greater than the significance level; and (2) correct both existing clerical errors contained within the proposed rule language as set forth in the June 1, 2012 edition of the Delaware *Register of Regulations*, as well as one additional typographical error contained within the current version of this regulation.

In conclusion, the following findings and conclusions are entered:

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

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on June 25, 2012;

3.) The Department held a public hearing on June 25, 2012 in order to consider public comment before making any final decision;

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

5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) clarify that a major source for any pollutant subject to regulation under the Clean Air Act ("CAA") is subject to Prevention of Significant Deterioration ("PSD") review for all pollutants emitted at greater than the significance level; (2) correct both existing clerical errors contained within the proposed rule language as set forth in the June 1, 2012 edition of the Delaware *Register of Regulations*, as well as one additional typographical error contained within the current version of this regulation.; and, lastly, because (3) the amendments are well supported by documents in the record;

6.) Moreover, promulgation of the proposed *revised* amendments to 7 **DE Admin. Code** 1125 will further enable the U.S. EPA to approve Delaware's State Implementation Plan ("SIP")'s November 10, 2010 revision.

7.) The Department shall submit this Order approving the final *revised* 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

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

1125 Requirements for Preconstruction Review

DIVISION OF FISH AND WILDLIFE

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

Secretary's Order No.: 2012-F-0026

Date of Issuance: July 16, 2012

Effective Date of the Amendment: August 11, 2012

3531 Tautog

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

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3531 regarding Tautog. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-07. The Department published the proposed amendments in the June 1, 2012 *Delaware Register of Regulations* and held a public hearing on June 22, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 11, 2012 (Report). The Report recommends certain findings and the adoption of the proposed regulation amendments 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. 3531 as final, Delaware will be able to modify its existing regulations to allow for less restrictive management measures, consistent with a 39% reduction in exploitation, while remain in compliance with the federal guidelines for the management of Tautog, as set forth by the ASMFC, to wit: *to reduce the size limit from 16 inches to 15 inches*. The current creel limit of five (i.e., five fish per day), with the exception of the time period from April 1 through May 11, at which time the creel limit will be 3, as well as the two current closures (the first at the beginning of summer, from May 12th through July 16th, and then a second closure at the end of summer, from Sept. 1st through Sept. 28th) shall all remain the same.

Of the two possible options vetted to the public during this promulgation process, the Department believes Option #1, as set forth above, to be the preferred reduction strategy with regard to tautog management for the 2012 season. Tautog exhibit site fidelity (aggregate around structure and return to the same sprawling areas), which makes them vulnerable to fishing pressure. Prior to the development of Addendum VI, Delaware's recreational tautog anglers expressed sentiment for Delaware to voluntarily reduce its ten fish creel limit, despite the fact that Delaware would receive no credit for taking a voluntary reduction. The requests for such action were largely prompted by concerns that out-of-state charter boats were relocating to Delaware to fish for tautog in the winter, due to the liberal reel limits (highest along the Atlantic coast). The eight fish creel limit contained in "Option 2" would have continued to give Delaware the highest creel limits of any state along the coast, and would have thus perpetuated this concern. Furthermore, the ASMFC's Tautog Technical Committee has historically favored the use of lower creel limits to constrain the fishery in an effort to reduce the likelihood of recoupment.

The recreational spear fishing sector appears to prefer "Option 2", as the longer season may decrease the likelihood that poor water clarity will impact tautog catchability, as it does later in the summer. Comments from this sector of the recreational fishery appeared disproportionate to the larger recreational hook and line sector. As

referenced above, the hook and line sector has a history of advocating for a reduced creel limit in recent years, based largely on concern that the local stock is being targeted by out of state vessels. Further, a popular Delaware fishing discussion website conducted a poll that substantiates a preference by the broader recreational fishing community for Option #1, with 66% (47) of the respondents supporting Option #1, and 34% (24) of the respondent supporting Option #2. This poll was incorporated into the public hearing record for consideration.

The Department concludes that, while either Option #1 or #2 would be consistent with the requirements contained in Addendum VI, Option #2 reduces the likelihood of recoupage and addresses concerns regarding Delaware's liberal creel limits. For these reasons, the Department's Division of Fish & Wildlife supports the formal adoption of Option #1 as Delaware's preferred reduction strategy for tautog management in 2012.

In conclusion, the following findings and conclusions are entered:

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

2.) The Department provided adequate public notice of the proposed 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 satisfy the aforementioned federal requirements of reduction strategies with regard to Delaware's management of Tautog, and do not result in any change from the proposed amendments as originally published in the June 1, 2012, *Delaware Register of Regulations*;

6.) The recommended amendments should be adopted as final because Delaware will be enabled to modify its existing regulations to allow for less restrictive management measures, consistent with a 39% reduction in exploitation, while remain in compliance with the federal guidelines for the management of Tautog, as set forth by the ASMFC. Furthermore, with the promulgation of Option #1 as the preferred reduction strategy for tautog management in 2012, Delaware will be able to meet the aforementioned 39% reduction mandate by the *reduction of the size limit for tautog from 16 inches to 15 inches*. The current creel limit of five (i.e., five fish per day), with the exception of the time period from April 1 through May 11, at which time the creel limit will be 3, as well as the two current closures (the first at the beginning of summer, from May 12th through July 16th, and then a second closure at the end of summer, from Sept. 1st through Sept. 28th) shall all remain the same; and

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

3531 Tautog

- 1.0 Notwithstanding the provisions of 7 Del.C. §939, it shall be unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~sixteen (16)~~ **[fifteen (15) inches]** in total length.
- 2.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, it shall be unlawful for any person to possess more than ~~five (5)~~ **[five (5)]** tautog during the period beginning at 12:00 a.m. on January 1 and ending at 11:59 p.m. on March 31, and during the period beginning at 12:00 a.m. on ~~July 17~~ **[July 17]** and ending at 11:59 p.m. on August 31, and during the period beginning at 12:00 a.m. on September 29 and ending at 11:59 p.m. on December 31, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.
- 3.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:00 a.m. on April 1 and ending at 11:59 p.m. on May 11, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

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- 4.0 Notwithstanding the provisions of subsections 1.0, 2.0 and 3.0 of this regulation, it shall be unlawful for any person to possess any tautog during the period beginning at 12:00 a.m. on May 12 and ending at 11:59 p.m. on July 16 and during the period beginning at 12:00 a.m. on September 1 and ending at 11:59 p.m. on September 28, except in said person's personal abode or temporary or transient place of lodging.
-

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
Statutory Authority: Title 7 Delaware Code, Chapter 91
7 DE Admin. Code 1375

Secretary's Order No.: 2012-WH-0024
Date of Issuance: July 10, 2012
Effective Date of the Amendment: August 11, 2012

1375 Regulations Governing Hazardous Substance Cleanup

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

Background and Procedural History

This Order considers proposed regulatory amendments to **7 DE Admin. Code 1375**, *Delaware Regulations Governing Hazardous Substance Cleanup* ("HSC Regulations"). The Department's Site Investigation and Restoration Section (formerly known as the Site Investigation and Restoration Branch) of the Division of Waste and Hazardous Substances (formerly known as the Division of Air & Waste Management) commenced the regulatory development process with Start Action Notices 2008-26. The Department initially published the proposed regulatory amendments in the May 1, 2012 *Delaware Register of Regulations* and held a public hearing on May 31, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 27, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. Throughout the lengthy regulatory development process regarding this promulgation, the Department received absolutely no public comment from the regulated community, as noted in the Report, and no member of the public attended the hearing held on May 31, 2012.

I find that the Department's experts in the Site Investigation and Restoration Section of the Division of Waste and Hazardous Substances fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will be enabled to amend its Hazardous Substance Cleanup ("HSC") Regulations to establish new procedures for implementing the Hazardous Substance Cleanup Act, including Subchapter II, the Brownfields Development Program. Other substantive revisions to Delaware's HSC Regulations are as follows: (1) new definitions; (2) reporting requirements for releases of hazardous substances; (3) Environmental Consultant Certification Requirements; (4) additional types of investigations for sites with releases; (5) new cleanup, oversight, and reporting requirements for remedial actions; (6) incorporation of the Uniform Environmental Covenant Act (UECA) and Consolidation of Long Term Stewardship Requirements; (7) facility closure for cleaned up sites; (8) Natural Resource Damage Assessment; and (9) formal reformatting and re-organization of HSC Regulations to enhance overall clarity and understanding for the regulated community.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed

Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on May 31, 2012;

3.) The Department held a public hearing on May 31, 2012 in order to consider public comments before making any final decision;

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

5.) The recommended Amendments do not reflect any changes from the proposed Amendments as published in the May 1, 2012, *Delaware Register of Regulations*;

6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be enabled to (1) establish new procedures for implementing the Hazardous Substance Cleanup Act, including Subchapter II, the Brownfields Development Program; (2) update and revise the existing HSC regulations to more closely follow the HSCA process; (3) clarifications and reorganizations made to specific sections of these regulations will promote a greater understanding of said regulations for the regulated community; and (4) the amendments are well supported by documents in the record; and that

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

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1559 (15 DE Reg. 1559). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1375 Regulations Governing Hazardous Substance Cleanup

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board**

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)
10 DE Admin. Code 101, 102, 103 & 104

ORDER

101 Regulations Governing Bingo; 102 Regulations Governing Raffles; 103 Regulations Governing Charitable Gambling Other Than Raffles; 104 Regulations Governing Texas Hold'em Poker

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on Thursday, July 5, 2012, at a scheduled meeting of the Delaware Board of Charitable Gaming, to receive comments and to review written comments submitted by the public, if any, regarding proposed amendments to the Board's Rules.

There are several proposed amendments. Some would simply eliminate references to specific statutes, because pending legislation will probably result in those statutes being renumbered. Certain language is changed as well to update the rules. One change would amend 10 DE Admin. Code 101, by adding Rule 2.6, prohibiting the playing of bingo at a charitable gaming vendor's facility.

Another would amend 10 DE Admin. Code 102, by allowing raffles over an extended period of time, with a chance to win on multiple occasions, and an opportunity to purchase a chance throughout the period of the raffle. It would also make clear that such a raffle, lasting up to six months, would be charged a single application fee. In

addition, the rules will make it clear that one must be 18 years of age to purchase a raffle ticket. Another amendment would clarify that the sponsoring organization must handle all money, and no third party vendor, such as PayPal, may be used. A new section 3.8 will provide that no houses or other buildings may be won in a raffle. A new Rule 3.9 will provide that no raffle tickets may be sold until a license to conduct the raffle has been issued.

There will also be amendments to 10 **DE Admin. Code** 103 to update language and eliminate certain statutory references. A new section 6.4 will require a new owner of a charitable gaming vendor to produce a Delaware business license to the Board. Also, an organization using that vendor for an event must inform the Board that it knows of the change in ownership and will continue with the event using the new owners. An amendment to Rule 3.1.6 will make it clear that no tip cups are permitted at charitable gaming events. Donations are permitted, but must be placed in containers located near the entrance and be at all times accessible to the member in charge of the event.

The proposed amendments were published in the *Register of Regulations*, Volume 15, Issue 12, on June 1, 2012.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written comments were received by the Board. No member of the public appeared to testify at the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide written comments and testimony on the proposed amendments.
2. The Board finds that the proposed amendments are necessary and in the public interest.
3. Pursuant to 28 **Del.C.** §1122, the Board has statutory authority to promulgate regulations governing charitable gaming.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the proposed amendments to its rules in the manner to be published in the *Register of Regulations* in August, 2012, to be effective ten days after publication of the Order in the *Register of Regulations*.

TEXT AND CITATION

The text of the revised rules shall be as published in the *Register of Regulations* in June, 2012, as attached hereto as Exhibit A.

SO ORDERED this 5th day of July, 2012.

DELAWARE BOARD OF CHARITABLE GAMING

Scott Angelucci, Chair

James Greene, Member

Sharon McDowell, Member

Deborah Messina, Member

Janet Williams-Coger, Member

***Please note that no changes were made to the regulation as originally proposed and published in the June 2012 issue of the *Register* at page 1679 (15 DE Reg. 1679). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

101 Regulations Governing Bingo; 102 Regulations Governing Raffles; 103 Regulations Governing Charitable Gambling Other Than Raffles; 104 Regulations Governing Texas Hold'em Poker

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2905 (24 **Del.C.**, §2905)
24 **DE Admin. Code** 2930

ORDER

2930 Council on Real Estate Appraisers

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §4006(1), the Delaware Council on Real Estate Appraisers issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on July 17, 2012 the Board makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Council posted public notice of the proposed amendments in the June 1, 2012 *Register of Regulations* and in the *Delaware News Journal Review* and *Delaware State News*. The Commission proposed to change rule 2.2.4 to extend the maximum period of time during which a licensee may maintain inactive status from six years to an indefinite time period.

2. The Council received no written comments during June or July of 2012. The Council held a public hearing on July 17, 2012 and received no public comments. The Council marked at **Board Exhibit 1** affidavits of publication of the proposed rule change and public hearing.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed amendments to the Council's Rules. Having received no comments, the Council finds no basis to make any additional changes to the proposed changes to the regulations and hereby adopts the changes as proposed:

2.2.4 A licensee or certificate holder may apply for inactive status for an indefinite time period ~~not to exceed 6~~ years if he or she is not performing appraisals in Delaware.

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

IT IS SO ORDERED this 17th day of July, 2012.
William Dively, Chair

*Please note that no changes were made to the regulation as originally proposed and published in the June 2012 issue of the *Register* at page 1707 (15 DE Reg. 1707). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2930 Council on Real Estate Appraisers

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 **Del.C.** §5306(a)(1))
24 **DE Admin. Code** 5300

ORDER

5300 Board of Massage and Bodywork

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on June 21, 2012 at a scheduled meeting of the Delaware Board of Massage and Bodywork (“the Board”) to receive comments regarding proposed amendments to the Board’s Rules and Regulations. The Board has proposed revisions to Rule 3.0, pertaining to the examination required for licensure as a massage therapist. Currently, an applicant is required to take and pass the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork (“NCBTMB”). The proposed revision will permit an applicant to take either the NCBTMB examination, or the MBLEx examination administered by the Federation of State Massage Therapy Boards. This revision will give applicants two methods to achieve licensure. In addition, the Board has proposed a new Rule 7.9, which will permit professional Board members to use Board meeting attendance towards CE requirements, pursuant to the limitations of Rule 7.3.2.

Pursuant to the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed amendments to the Rules and Regulations was published on May 1, 2012 in the *Delaware Register of Regulations*, Volume 15, Issue 11 at 15 **DE Reg.** 1581.

Summary of the Evidence and Information Submitted

There was no written or verbal comment presented at the June 21, 2012 hearing.
The following notices were admitted as exhibits and made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Findings of Fact and Conclusions

There was no written or verbal comment presented.

Pursuant to 24 **Del.C.** §5306(a)(3), the Board has the authority to “[d]esignate the written examination to be taken by all persons applying for licensure as massage and bodywork therapists.” This provision recognizes the expertise of the Board to make this determination. Currently, an applicant is required to take and pass the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork (“NCBTMB”). The proposed revision will permit an applicant to take either the NCBTMB examination, or the MBLEx examination administered by the Federation of State Massage Therapy Boards. The Board determined that both examinations will ensure that applicants are qualified to practice massage and bodywork in the State of Delaware. Permitting applicants to choose which examination to take will simply give applicants two methods to achieve licensure.

With respect to the proposed new Rule 7.9, professional members will be able to use Board meeting attendance towards CE requirements, pursuant to the limitations of Rule 7.3.2. The Board determined that this Rule is appropriate and consistent with what a number of other Title 24 boards permit, such as the Delaware Real Estate Commission and the Delaware Board of Occupational Therapy Practice.

The Law

The Board’s rulemaking authority is provided by 24 **Del.C.** §5306(a)(1)).

Decision and Effective Date

The Board hereby adopts the proposed amendments to the Rules and Regulations as effective 10 days following publication of this Order in the *Delaware Register of Regulations*.

Text and Citation

The text of the revised Rules and Regulations remains as published in the *Delaware Register of Regulations*, Volume 15, Issue 11 on May 1, 2012, without modification.

SO ORDERED this 21st day of June 2012.

DELAWARE BOARD OF MASSAGE AND BODYWORK

Holly Overmyer, President	Rachel Dunning
Sandra Jachimowski, Vice President	Gordon Gelley
Kari Ainsworth	Sharon Harris, Secretary
Wayne Dawson	

*Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1581 (15 DE Reg. 1581). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

5300 Board of Massage and Bodywork

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, July 19, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Estate Recovery and Civil Unions and Medicare Cost Sharing**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to update current regulations in the Division of Social Services Manual (DSSM) regarding Medicaid Estate Recovery, *specifically 1) asset protections recognized for civil union partners; and, 2) eliminating Medicare cost-sharing expenses from estate recovery.*

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Program of All Inclusive Care for the Elderly (PACE)**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to establish PACE Program enrollee eligibility requirements.

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

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

DIVISION OF SOCIAL SERVICES**Emergency Assistance Services****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding *Emergency Assistance 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 August 31, 2012.

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL
DIVISION OF AIR QUALITY
1120 New Source Performance Standards
PUBLIC NOTICE**

Congress sought to reduce public health impacts due to the exposure to criteria pollutants in the 1990 Amendments to the Clean Air Act. Under Section 111(b), the EPA Administrator is required to establish Federal standards of performance for new sources in prescribed source categories. Under Section 111(d)(1), each State is required to submit a plan to the EPA Administrator which establishes standards of performance for existing sources in those prescribed source categories.

On September 15, 1997, the EPA adopted a New Source Performance Standard and an Emission Guideline, 40 CFR Part 60 Subparts Ec and Ce, respectively, which were applicable to new and existing hospital, medical and infectious waste incinerator (HMIWI) units. As required under the Clean Air Act, Delaware adopted Section 29, "New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators" into Regulation 1120 on September 1, 1998. At the time of the adoption of Section 29, there were 3 existing Delaware HMIWI units in operation. Since the 1998 adoption of Section 29, those 3 existing HMIWI units have been dismantled and no new HMIWI units have been built.

Delaware is proposing to repeal Section 29 as its inherent regulatory requirements are currently outdated and its continuance is no longer justified by present realities. Any new HMIWI units would be regulated under the amended 40 CFR Part 60, Subpart Ec that the EPA adopted on October 6, 2009.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, August 22, 2012 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 Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

**DIVISION OF AIR QUALITY
1138 Emission Standards for Hazardous Air Pollutants for Source Categories
PUBLIC NOTICE**

Under Section 112(k) of the 1990 Clean Air Act Amendments, Congress mandated that the EPA identify not less than 30 hazardous air pollutants (HAPs) which pose the greatest threat to public health in urban areas, identify the area source categories emitting those HAPs, and develop regulations to address 90% of the emissions of those same 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 would be developed.

On January 5, 2010, the EPA promulgated one of these area source category standards that would affect existing and future Delaware sources, the area source standard for prepared feed manufacturing facilities, under 40 CFR Part 63 Subpart DDDDDDD.

Delaware is proposing to amend Regulation 1138 by adding a new Section 17 that addresses the emissions of chromium and manganese compounds from prepared feed manufacturing facilities. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects. The major health effects from chronic inhalation exposure are diseases associated with the respiratory tract (chromium compounds) and the central nervous system (manganese compounds). The proposed amendment will provide greater consistency between Delaware's air toxics standards for these types of facilities and the recently promulgated federal standard (40 CFR Part 63 Subpart DDDDDDD) on which this proposed

amendment is heavily based.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, August 22, 2012 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 Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

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

The Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass. Addendum XXII established a regional management approach and requires the southern region states (Delaware to North Carolina) to implement management measures consistent with those required for federal waters. The Department was notified on May 17, 2012 by the National Oceanic and Atmospheric Administration that a federal rule was approved that included among its provisions an open season for the recreational black sea bass fishery from May 19 through October 14. In response, the Department issued an Emergency Order (2012-F-0019) to remain consistent with Addendum XXII and to prevent Delaware anglers and dependent businesses from being disadvantaged by remaining closed to recreational sea bass fishing through May 21.

The purpose of this action is to formally adopt the full provisions of the federal rule for the recreational black sea bass fishery and remain compliant with Addendum XXII by amending Tidal Finfish Regulation 3507 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas through the normal regulatory process. The federal rule establishes a 12.5-inch minimum size limit; an open season from January 1 through February 28 with a corresponding 15-fish per person possession limit; and open seasons from May 19 through October 14 and from November 1 through December 31 with corresponding 25-fish per person possession limits.

Based on the stock projections completed in 2011, the black sea bass stock is not overfished and overfishing is not occurring. The projections indicate the stock is at about 111% of its biomass target.

The hearing record on the proposed changes to the black sea bass regulation will be open August 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on August 30, 2012 beginning at 7 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WATERSHED STEWARDSHIP
Surface Water Discharges Section
Proposed Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed, Delaware
PUBLIC NOTICE

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding a Proposed Total Maximum Daily Load (TMDL) Regulation for nutrients and oxygen consuming materials for the Lums Pond Sub-Watershed. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

The proposed TMDL Regulation calls for pollutant load reductions from point and nonpoint sources of the Lums Pond State Park, an area managed by the Division of Parks and Recreation, DNREC, and from nonpoint sources from the area surrounding the Lums Pond State Park. DNREC will work with local citizen groups and internally among the Division of Parks and Recreation, the Division of Water's Surface Water Discharges Section, and the Division of Watershed Stewardship to implement the point and nonpoint source load reduction requirements.

The Public Hearing for the proposed TMDL Regulations for the Lums Pond Sub-Watershed will be held at 3:00

p.m., Tuesday, August 21, 2012, at the New Castle Conservation District, 2430 Old Country Road, Newark, DE 19702.

The hearing record for this proposed TMDL Regulation will remain open until 4:30 p.m., Friday, September 14, 2012. Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by 4:30 p.m., Friday, September 14, 2012. Electronic submission is preferred.

Copies of the Proposed TMDL Regulations and technical support document will be available as of Wednesday, August 1, 2012 on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us).

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1400 Board of Electrical Examiners
PUBLIC NOTICE

The Delaware Board of Electrical Examiners in accordance with to 24 **Del.C.** §1406 (a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to define electrical work more broadly to include any work covered by the National Electrical Code and specifically adding solar, generators and windmills to the list of work that is considered electrical services or electrical work. This rule change will also add the continuing education credits required for licensed Journeypersons and Apprentices and except Journeypersons and Apprentices from rules that do not apply to them.

A public hearing will be held on September 5, 2012 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jennifer Witte, Administrative Assistant for the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 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 15 (fifteen days) after the public hearing.

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

DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND POLICY
PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Background

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to the current provisions concerning Traffic Impact Studies and Traffic Operational Analyses. Changes are proposed several areas of Chapter 2, Traffic Impact Studies and several sections from Chapter 3, Site Plan Design, are proposed for movement to Chapter 2.

As detailed in the current Manual, the Department has broad statutory authority to regulate the process of determining whether and under what conditions property developers may gain access to the state highway system. These authorities include Sections 131, 141, 146, 507, and 508 of Title 17, Delaware Code; Chapter 41 of Title 21, Delaware Code; Section 6103 of Title 29, Delaware Code; and certain provisions in Title 9 of the Delaware Code.

The Department previously entered into agreements with county governments regarding traffic impact studies and traffic operational analyses. For New Castle County, for example, the agreement calls for the Department, as part of its scoping of the study areas for TIS work, to assure that the study looks at a minimum number of intersections from the proposed site entrance(s). However, what is considered an intersection for this purpose may be subject to differing interpretations, and may risk unduly limiting or unduly expanding the TIS study area.

The draft regulations are intended to provide sufficient guidance to the state, local governments, the development community, and those interested in development matters in this regard. The Department wishes to assure that the study areas selected match well with what intersections the Department reasonably expects to be significantly affected by the traffic from the subject property, given its proposed uses.

The proposed changes also include a new section on Transportation Improvement Districts, which were previously discussed in much less detail. The Department seeks to promote the creation of such districts as a superior approach to assessing the transportation impacts of development relative to Traffic Impact Studies for individual developments.

Other proposed changes include the addition of rules for the requirement of Traffic Operational Analyses, previously published as informal guidelines, and the changes to how contributions to the Traffic Signal Revolving Fund should be calculated.

Public Comment Period and Public Workshop Schedule

The Department will accept written comments on the proposed Amendment to its Standards and Regulations for Subdivision Streets and State Highway Access from August 1, 2012 through October 1, 2012. The proposed Regulations appear below.

The Department will hold public workshops on the proposed Amendment, as follows:

- New Castle County: Thursday, September 13, 2012, Troop 2 Conference/Training Room, Newark, Delaware.
- Kent County: Monday, September 17, 2012, Felton/Farmington Room, DelDOT Administration Building, Dover, Delaware.
- Sussex County: Thursday, September 20, 2012, DelDOT South District Conference Room, Georgetown, Delaware.

The workshops shall be held from 4 p.m. to 7 p.m. at each location.

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

Shailen P. Bhatt, Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)
(302) 739-2895 (fax)
shailen.bhatt@state.de.us

DIVISION OF TRANSPORTATION SOLUTIONS

PUBLIC NOTICE

2404 Traffic Calming Manual

The Delaware Department of Transportation Division of Transportation Solutions hereby gives notice of its intention to adopt revisions to the existing Delaware Traffic Calming Manual pursuant to 29 **Del.C.** §8404(8) and in compliance with the Delaware Administrative Procedures Act, 29 **Del.C.** §10115. Traffic calming is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior, and improve conditions for non-motorized street users. The regulations contained in this manual are an attempt to control speeding and cut through traffic, primarily on neighborhood streets, through use of physical measures and education.

The Department solicits, and will consider timely filed written comments from interested individuals and groups

concerning these proposed regulations. The deadline for the filing of such comments will be thirty (30) days after the proposed amendments are promulgated in the Delaware Register of Regulations. Any such submissions should be mailed, emailed or hand-delivered to Michael Somers, whose address is Delaware Department of Transportation, 169 Brick Store Landing Road, Smyrna, DE, 19977, or Michael.Somers@state.de.us by August 31, 2012.

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
PUBLIC NOTICE

402 Procedures Governing The Delaware Strategic Fund, 451 Matching Grants Program, 452 Direct Grants Program, 453 Co-Op Advertising Program, 454 Procedures Governing Delaware Tourism Grant Program

The State of Delaware, Delaware Economic Development Office (“DEDO”) and The Delaware Economic Development Authority (the “Authority”) hereby give notice of their intention to adopt amended regulations pursuant to the General Assembly’s delegation of authority to adopt such measures found at 29 **Del.C.** §§5029(a) and 5054(e)(1) and in compliance with Delaware’s Administrative Procedures Act, 29 **Del.C.** §10115. The proposed regulations constitute a regulatory adoption of Strategic Fund procedures used to administer the Fund to retain, attract and expand Delaware employment, and the deletion of obsolete programs.

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

Any such submissions should be mailed or delivered to Lee Porter, 99 Kings Highway, Dover, DE 19901 by September 30, 2012.