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# Delaware Register of Regulations

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Issue Date: December 1, 2009

Volume 13 - Issue 6, Pages 698- 870

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Governor:  
Executive Orders

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 November 15, 2009.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

12 **DE Reg.** 761-775 (12/01/08)

Refers to Volume 12, pages 761-775 of the *Delaware Register* issued on December 1, 2008.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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## Symbol Key

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

## Proposed Regulations

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

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 103

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

### 103 Accountability for Schools, Districts and the State

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State to make additional changes from what was proposed in the June 2009 Register of Regulations. At that time, the amendments focused on: 1) corrections and updates to align with the State Accountability Plan provided to the U.S. Department of Education for NCLB; 2) amendments to reflect changes to the DSTP; and 3) alignment with the budget language. The additional changes are substantive and require the regulation to be republished. These changes include, but are not limited to, options and requirements for schools and districts in school improvement. Comments were received by the State Board of Education, the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities on the first publication. A response will be forthcoming on the comments not incorporated in this revised version.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. IMPACT CRITERIA

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

standards? It is anticipated that the changes will help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? It is anticipated that the changes continue to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not specifically address the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? While the amended does not specifically address students' legal rights, it is anticipated that the changes continue to ensure these 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 regulation does not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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? It is anticipated a reallocation of resources may be needed at times for compliance.

### **103 Accountability for Schools, Districts and the State**

#### **1.0 Accountability Purpose and Definitions**

1.1 **Accountability Purpose:** All public schools, including charter schools, reorganized and career technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and career technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

#### **1.2 Definitions:**

**"Charter School"** shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

**"Department"** or **"Department of Education"** shall mean the Delaware Department of Education.

**"Delaware Department of Education Achievement Metric"** or **"DDOE Achievement Metric"** shall mean the calculation that is based on the risk and need of each school as demonstrated by its performance on the DSTP or successor statewide assessment.

**"District"** shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

**"ESEA"** shall mean the Elementary and Secondary Education Act of 1965 or any reauthorization thereof.

**"Local Educational Agency"** or **"LEA"** means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

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## "Persistently low-achieving school" means

- (i) Any Title I school in improvement, corrective action, or restructuring that:
  - (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or
  - (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent for two of the last three years; and
- (ii) Any secondary school that is eligible for, but does not receive, Title I funds that:
  - (a) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or
  - (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent for two of the last three years; and
- (iii) Any non-Title I eligible secondary school that would be considered a persistently low-achieving school pursuant to one or more of the aforementioned requirements if it were eligible to receive Title I funds.

7 DE Reg. 57 (07/01/03)

10 DE Reg. 89 (07/01/06)

## 2.0 Adequate Yearly Progress (AYP)

- 2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools, including charter schools, reorganized and career technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or career technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as identified in ESEA, must meet or exceed the target for percent proficient using a confidence interval to be determined by the Department of Education in the state assessments of reading/language arts and mathematics; 95% of the students as an aggregate and within each subgroup must participate in the state assessments of reading/language arts and mathematics, and the respective entity must meet the requirements of the Other Academic Indicator(s) as defined in 2.6. In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used to determine the school, district or State AYP status.
  - 2.1.1 Adequate Yearly Progress shall include three levels: Above Target, Meets Target and Below Target.
    - 2.1.1.1 Above Target shall mean that the school, district or State in the aggregate student population and for each subgroup exceeds the annual target in English language arts and mathematics for percent proficient as defined in 2.3 and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.
    - 2.1.1.2 Meets Target shall mean that at the school, district or State in the aggregate student population and for each subgroup meets the annual target in English language arts and mathematics with or without the application of a confidence interval for percent proficient as defined in 2.3 or meets the criteria of Safe Harbor defined in 2.5, and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.
    - 2.1.1.3 Below Target shall mean that at the school, district or State in the aggregate student population and for each subgroup did not meet the annual target in English language arts and mathematics through the application of a confidence interval for percent proficient as defined in 2.3 or does not meet the criteria of Safe Harbor defined in 2.5, or does not meet the criteria for participation as defined in 2.4 or does not meet the criteria of Other Academic Indicator(s) as defined in 2.6.

- 2.2 Full academic year for accountability:
- 2.2.1 For school accountability students enrolled continuously in the school from September 30 through May 31 of a school year including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.
  - 2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through May 31 of a school year, including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.
  - 2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through May 31 of a school year shall be considered enrolled for a full academic year.
- 2.3 Proficient: For accountability purposes students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2 or Level 1 who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.
- 2.4 Participation Rate: ~~For accountability purposes in school years 2002-2003 through 2004-2005, the participation rate for each subgroup, all public schools, including charter schools, districts, and the State, shall be the number of students who participate in the DSTP in grades 3, 5, 8 and 10 divided by the number of students enrolled in these tested grades during the testing period.~~ Beginning with the 2005-2006 school year the participation rate for each subgroup shall include be the number of students who participate in the DSTP in grades 3 through 8 inclusive and grade 10 divided by the number of students enrolled in these tested grades during the testing period. Students exempted by 14 **DE Admin. Code** 101.9.0 shall be included in the participation rate calculation unless their medical condition prevents them from being in school during the testing period.
- 2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the target for percent proficient for a given subgroup or for the entity in aggregate, Safe Harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup meets the requirements of the Other Academic Indicator(s) as defined in 2.6. the subgroup will have met AYP.
- 2.6 Other Academic Indicator(s):
- 2.6.1 High School: For AYP purposes, the Other Academic Indicator(s) shall be graduation rate as defined as the number of students in one cohort in the aggregate or, as applicable, in a subgroup, who started in the school, the district or the State in 9<sup>th</sup> grade and graduated four years later or in the time frame specified in the Individual Education Program (IEP), excluding students who earn a GED certificate, divided by the same number plus those that have dropped out during the same four year period. Students who were enrolled, because of accountability sanctions, for a second year in 8th grade while attending high school and entered 10th grade the following year are included in the 9th grade cohort of the year they began attending classes in the high school.
    - 2.6.1.1 The statewide target for the high school Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for ~~2003-2004~~ 2009-2010 shall be ~~75%~~ 84% and shall increase by 1.5% each year until 90% is reached in 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for Safe Harbor purposes, the high school, or, as applicable, the subgroup, shall maintain its graduation rate or show positive progress when compared to the previous year or meet or exceed the statewide target for that school year.
    - 2.6.1.2 A school, or, as applicable, the subgroup, that does not maintain its graduation rate or show positive progress from the previous year or meet or exceed the statewide target for that school year shall be considered as not meeting AYP for that year.  - 2.6.2 Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be determined by improvement of the scores of the low achieving students, defined as students performing below Performance Level 3, in reading and mathematics combined or a decrease in the percent of students scoring at Performance Level 1 in reading and

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mathematics. The average scale score for the students who perform at Performance Level 1 and 2 in reading and mathematics combined shall be determined for the current and previous years. The scores from the current year will be compared to the previous year to determine if the school has shown progress. A confidence interval determined by the Department of Education shall be applied to the average scale scores when making this determination. Students included in this calculation shall have been in the school for a full academic year.

- 2.6.2.1 The statewide target for the elementary and middle school Other Academic Indicator shall be 0% of students scoring at Performance Level 1 in reading and mathematics by the school year 2013-2014. Beginning with the school year 2003-2004, when compared to the previous year, the school or subgroup, if used for Safe Harbor purposes, shall maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year.
- 2.6.2.2 An elementary or middle school that does not maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year shall be considered as not meeting AYP for that year.
- 2.6.3 For state and district accountability purposes, the state or a district shall be expected to meet the requirements in 2.6.1.2 and 2.6.2.2.
- 2.7 Annual Objective: The annual objectives for reading/language arts and mathematics shall be determined by the Department of Education and published annually. The annual objectives shall be the same for all schools, districts and subgroups of students.
- 2.8 Intermediate Target: The results shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the end of the school year 2013-2014, all students in all subgroups shall be proficient in reading/language arts and mathematics. The intermediate targets shall be calculated using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.
- 2.9 Starting Point: A single statewide starting point shall be calculated for reading/language arts and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.
- 2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for free and reduced lunch program; 3) Students with Limited English Proficiency, as determined by the language proficiency assessment; and 4) Race and ethnicity, to be further divided into African American and Black, American Indian and Alaska Native, Asian and Pacific Islander, Hispanic, and White. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this Chapter. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.
- 2.11 AYP Determinations
- 2.11.1 For each public school, including charter schools, reorganized and career technical school districts, and the State, AYP shall be calculated annually.
- 2.11.2 School AYP: In order to meet AYP, the school shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator (s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.
- 2.11.3 District AYP: In order to meet AYP, the district shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are

40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported and used to determine AYP status and accountability ratings.

- 2.11.4 State AYP: In order to meet AYP, the State shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported and used to determine AYP status and accountability ratings.
- 2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading/language arts or mathematics for percent proficient or for participation rate, or if a school or district in the aggregate does not meet the requirements of the Other Academic Indicator(s) as defined in 2.6.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

### **3.0 Accountability School and Accountability District**

3.1 For AYP purposes, the school or district to which a student's performance is assigned for a full academic year shall be the Accountability School or Accountability District. No student shall have his/her performance assigned to more than one Accountability School or Accountability District in a given school year.

3.1.1 For a student enrolled in an intradistrict intensive learning center intradistrict special school, or intradistrict special school program operating within one or more existing school facilities, the district has the option of tracking the assessment scores of the students back to the school of residence or to the school or program that is providing the instruction. The school or program shall be the Accountability School. The district shall communicate its decision regarding this option to the State Department of Education by May 15th in any year when a district determines a change is needed, 2006. The option that the district decides for accountability purposes for one year must remain the same for the second year. ~~Further provided, the State Department of Education will monitor the assignment of students to ensure students are appropriately assigned.~~ For a student enrolled in interdistrict special schools or programs that have an agreement to serve students from multiple school districts, the special school that provides the instructional program shall be considered the Accountability School for that student. For district accountability purposes, the district of residence shall be the district to which the special school students are included for accountability.

3.1.2 For a student enrolled in an alternative program pursuant to 14 ~~Del.C.~~ Ch.16 or the ~~Delaware Adolescent Program, program serving pregnant students pursuant to 14 Del.C. § 203,~~ the Accountability School or District shall be the school/district that assigned such student to the program ~~or the school or district of residence~~. The time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School or District.

3.1.3 For a student who participates in a choice program the Accountability School or District shall be the school or district to which the student has choiced.

3.1.4 For accountability purposes, a school shall be considered a new school if: less than sixty percent of the students would have been enrolled in the same school together without the creation of the new school; or it is the first year of operation of a charter school; or two or more grade levels have been added to the school or to a charter school's charter.

3.1.5 If a school is determined not to be a new school, the school shall receive the accountability rating and related consequences of the school in which the majority of students would attend in that year.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

**4.0 Assessment Criteria**

- 4.1 ~~For a student who takes a portion of the assessment more than once during the school year, the first score shall be included in the AYP calculation; however, provided a student takes a portion of the assessment because of state mandated summer school attendance in grades 3, 5, or 8 in reading, or grade 8 in mathematics, the highest of the student's scores shall be used to recalculate the AYP determination.~~
- 4.21 A student who tests with non aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have his/her earned performance level included in the calculation of AYP.
- 4.32 For accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency.
- 4.43 A student participating in alternate assessments shall have her/his earned performance level included in the AYP calculation consistent with the regulations as prescribed by the federal Elementary and Secondary Education Act (ESEA) 20 U.S. C.A. §6301 et seq. or Individuals with Disabilities Education Act (IDEA).
- 4.54 Schools with more than one tested grade shall receive a single accountability rating.
- 4.65 Student performance in a tested grade shall be apportioned in equal weights to each grade in a standards cluster, except that Kindergarten shall be weighted at 10% and grade 10 shall be weighted at 100%. Beginning with the school year 2005-2006 students in grades 4, 5, 6, 7, 8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K to 3 standards cluster.
- 4.76 For AYP purposes the reading/language arts percent proficient shall be based on 100% of the DSTP reading assessment ~~a combination of the reading and writing DSTP assessments. The reading percent proficient scores shall be weighted to count 90% and the writing percent proficient scores shall be weighted to count 10%.~~
- 4.87 For AYP purposes, the mathematics percent proficient shall be based on 100% of the DSTP mathematics assessment.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

**5.0 State Progress Determinations**

- 5.1 Each school and district shall receive a State Progress Determination of Above Target, Meets Target or Below Target. The State Progress shall be determined by improvement in the composite score of the reading, mathematics, science and social studies DSTP assessments combined. The composite score range shall be from 25 to 125 and is determined by the following formula: Composite Score = 25 (reading score x reading weight) + (math score x math weight) + (science score x science weight) + (social studies score x social studies weight) where: Reading score = (5 x % of students in level 5 in reading) + (4 x % of students in level 4 in reading) + (3 x % of students in level 3 in reading) + (2 x % of students in level 2 in reading) + (1 x % of students in level 1 in reading); Math score = (5 x % of students in level 5 in math) + (4 x % of students in level 4 in math) + (3 x % of students in level 3 in math) + (2 x % of students in level 2 in math) + (1 x % of students in level 1 in math); Science score = (5 x % of students in level 5 in science) + (4 x % of students in level 4 in science) + (3 x % of students in level 3 in science) + (2 x % of students in level 2 in science) + (1 x % of students in level 1 in science); Social Studies = (5 x % of students in level 5 in social studies) + (4 x % of students in level 4 in social studies) + (3 x % of students in level 3 in social studies) + (2 x % of students in level 2 in social studies) + (1 x % of students in level 1 in social studies). Each of the subject areas shall be weighted equally at 25%. A two year average of the composite score shall be used if it is higher than the current year's composite score.
- 5.1.1 Above Target shall mean that the school or district has a minimum composite score of 75.00 for the current year; or the school or district has demonstrated a growth of 6.00 or more points when comparing last year's composite score to the current year's composite score provided the composite score is 45.00 or more.

- 5.1.2 Meets Target shall mean that the school or district with a composite score of 61.00 or less than 75.00 in the current year, shall demonstrate a growth of 1.00 or more points when comparing last year's composite score to the current year's composite score. For a school or district with a composite score of 45.00 but less than 61.00 in the current year, the school or district shall demonstrate a growth of 2.00 or more points when comparing last year's composite score to the current year's composite score.
- 5.1.3 Below Target shall mean that the school or district has a composite score of less than 45.00; or the school or district does not meet the criteria of 5.1.2.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

## **6.0 Performance Classifications**

- 6.1 Schools and districts shall receive one of five levels of performance classification annually which shall be based on a combination of AYP determinations and State Progress determinations.
- 6.1.1 Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and is a combination of Above Target for AYP and Above Target for State Progress or Above Target for AYP and Meets Target for State Progress or Meets Target for AYP and Above Target for State Progress.
- 6.1.2 Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement. Combinations of Above Target for AYP and Below Target for State Progress or Meets Target for AYP and Meets Target for State Progress shall be rated as Commendable. A school or district with a combination of Meets Target for AYP and Below Target for State Progress shall be determined Commendable for no more than one year; if this same combination exists for the school or district in the following year, the school or district shall be rated Academic Review.
- 6.1.3 Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category are not Under Improvement. Combinations of: Below Target for AYP and Above Target for State Progress; or Below Target for AYP and Meets Target for State Progress shall be rated as Academic Review for no more than one year; if the same combination exists for the school or district in the following year, the school or district shall be rated Academic Progress unless the provisions of 6.1.5 or 6.1.6 are met. A school or district with a combination of Below Target for AYP and Below Target for State Progress shall be rated as Academic Review unless the provisions of 6.5 and 6.6 are met.
- 6.1.4 Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.
- 6.1.5 Academic Progress Under Improvement: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.
- 6.1.6 Academic Watch: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.
- 6.1.7 Academic Watch Under Improvement: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more consecutive years in the same content area as described in 2.11.5 and shall be Under Improvement.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

## **7.0 Schools or Districts that are classified as Under Improvement**

- ~~7.1 Accountability sanctions for schools that are classified as Under Improvement:~~

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- 7.1.1 Under Improvement Year 1, a school shall review and modify its current School Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall provide supplemental services to students according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.
- 7.1.2 Under Improvement Year 2, a school shall continue to review and modify the School Improvement Plan as needed. A school designated as Title I shall offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.
- 7.1.3 Under Improvement Year 3, a school shall continue with the activities as per 7.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements. The district or school shall provide the corrective action plan to the Department for approval.
- 7.1.4 Under Improvement Year 4, a school shall continue with the activities as per 7.1.3. In addition, the district or school shall develop a plan for restructuring as outlined by federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the school's performance and shall consult with the State Board of Education prior to making comment for approval or non approval of the plan.
- 7.1.4.1 Any non-charter school that plans to restructure into a charter school shall be considered a new charter applicant and be subject to the provisions, procedures and timelines as outlined in 14 ~~Del.C.~~ Chapter 5 and 14 ~~DE Admin. Code~~ 275.
- 7.1.4.2 A charter school, whether authorized by a local school district or the Department, that plans to restructure for purposes of the federal ESEA shall consider such restructuring as a major modification and be subject to the provisions, procedures, and timelines as outlined in 14 ~~Del.C.~~ Chapter 5 and 14 ~~DE Admin. Code~~ 275.
- 7.1.5 Under Improvement Year 5, a school shall continue with the activities as per 7.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.
- 7.1.5.1 Any non-charter school that has been approved by the Department to restructure into a charter school shall implement the restructuring plan as approved and shall be subject to the provisions, procedures and timelines as outlined in 14 ~~Del.C.~~ Chapter 5 and 14 ~~DE Admin. Code~~ 275.
- 7.1.5.2 A charter school, whether authorized by a local school district or the Department, that has been approved by the Department to restructure shall implement the restructuring plan as approved and shall be subject to the provisions, procedures, and timelines as outlined in 14 ~~Del.C.~~ Chapter 5 and 14 ~~DE Admin. Code~~ 275.
- 7.2 Accountability sanctions for districts that are classified as Under Improvement:
- 7.2.1 Under Improvement Year 1, a district shall develop and implement a District Improvement Plan.
- 7.2.2 Under Improvement Year 2, a district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.
- 7.2.3 Under Improvement Year 3, a district shall continue with the activities outlined in 7.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to making comment for approval or non approval of the plan.
- 7.2.4 Under Improvement Year 4, a district shall continue with the activities as outlined in 7.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

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## **7.0 Accountability for Schools that are Under Improvement**

- 7.1 Under Improvement Phase 1 -- A school that meets the definition of "Under Improvement" found in 2.11.5 shall, in the first school year after meeting the definition of Under Improvement, be considered in "Under Improvement Phase 1." A school that is in Under Improvement Phase I shall:
- 7.1.1 Review and modify its current School Improvement Plan, outlining specific school improvement activities to be implemented; and
  - 7.1.2 Utilize the Department's Comprehensive Success Review process, which includes an audit tool, an on-site visit, and feedback on strengths and opportunities for improvement; and
  - 7.1.3 Schools designated as Title I shall fund the transportation costs for students whose parents choose to enroll them in a different school, as required by the ESEA.
- 7.2 Under Improvement Phase 2 - A school that is identified as Under Improvement Phase 1 pursuant to 7.1 and fails to meet AYP for an additional year shall be considered "Under Improvement Phase 2." Such schools shall:
- 7.2.1 Amend the School Improvement Plan to add, at a minimum, one or more of the following options deemed appropriate and that should be closely aligned with the areas in which the school failed to make AYP. Districts and charter schools may use federal, state or local funding and may request funding from the Department to implement these initiatives:
    - 7.2.1.1 Development of community partnerships for after school opportunities/tutoring, increasing parental involvement;
    - 7.2.1.2 Educator professional development or mentoring;
    - 7.2.1.3 Supplemental services as defined in 7.2.2 or other nontraditional services such as credit recovery programs;
    - 7.2.1.4 Performance incentives for Highly Effective Teachers, as defined in 14 DE Admin Code 106A;
    - 7.2.1.5 Use of family crisis therapists and/or counseling and support programs for students;
    - 7.2.1.6 Technical assistance to assist with budget development/usage, professional development and evaluation, engaging parents and the community;
    - 7.2.1.7 Attendance and school climate initiatives.
  - 7.2.2 Schools designated as Title I shall continue to provide school choice as defined by ESEA and shall offer students supplemental services, defined as tutoring and other supplemental academic enrichment services that are designed to increase the academic achievement of students, and are offered in addition to instruction provided during the school day and are of high quality and research-based.
- 7.3 Corrective Action Phase 1 - A school that is identified as Under Improvement Phase 2 pursuant to 7.2 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 1" status. Districts having schools in this category and charter schools in this category shall:
- 7.3.1 Develop and implement a Corrective Action Plan for the school that should be closely aligned with the areas in which the school failed to make AYP and that includes at least one of the following:
    - 7.3.1.1 Replace school leadership;
    - 7.3.1.2 Significantly decrease management authority at school level;
    - 7.3.1.3 Appoint outside expert to advise school;
    - 7.3.1.4 Restructure internal organizational structure of school;
    - 7.3.1.5 Replace school staff relevant to failure to achieve AYP; or
    - 7.3.1.6 Adopt and fully implement new curriculum.
  - 7.3.2 In addition, districts and charter schools shall examine and include one or more of the following items in their Corrective Action Plan as they deem appropriate. Districts and charter schools may use federal, state or local funding and may request funding from the Department to implement these initiatives:
    - 7.3.2.1 Institute flexible funding at school level to the extent authorized by applicable law;

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- 7.3.2.2 Provide performance incentives for teachers and principals based in significant part on student achievement;
- 7.3.2.3 Renegotiate collective bargaining agreements to permit hiring without regard to seniority;
- 7.3.2.4 Decrease class size;
- 7.3.2.5 Implement comprehensive instructional reform, including improved instructional program and differentiated instruction;
- 7.3.2.6 Make changes to scheduling to increase learning time for students and maximize collaboration time for teachers - consider extended learning time, modified or block scheduling; and
- 7.3.2.7 Increase community-oriented supports, create partnerships with community services programs providing assistance to students outside of school hours, and implement a community-based school model, by which the school would partner with community groups in utilizing school facility to provide extended services to students and the community, which may include permitting student activities at the school after the end of the school day and offering services and support to parents.
- 7.3.3 Schools designated as Title I shall continue to offer supplemental services (as defined in 7.2.2) and choice as required by ESEA.
- 7.4 Corrective Action Phase 2 -- A school that is identified as Corrective Action Phase 1 pursuant to 7.3 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 2" status. Districts and charter schools in this category shall:
- 7.4.1 Continue with the activities of Corrective Action Phase 1 at the school;
- 7.4.2 Provide retention incentives for effective educators at the school, subject to funding availability; and
- 7.4.3 Develop a Restructuring Plan pursuant to 7.5. The district shall select from the category of options based on the school's outcome on the DOE Achievement Metric based on the assessments taken during Corrective Action Phase 1.
- 7.4.4 Schools designated as Title I shall continue to offer supplemental services and choice as required by ESEA.
- 7.5 Restructuring - A school that is identified as Corrective Action Phase 2 pursuant to 7.4 and that fails to make AYP for an additional year shall be considered in "Restructuring," unless that school falls within the category of Partnership Zone schools addressed in 7.6. Districts and charter schools having schools in Restructuring shall work with the schools to implement the Restructuring Plan developed pursuant to 7.4.3. The District may request funding from the Department for implementation of these provisions. The Restructuring Plan shall include one of the following:
- 7.5.1 For district schools, reopening the school as a public charter school;
- 7.5.2 Entering a contract with a private management company approved by the Department to operate the school;
- 7.5.3 Closing the school
- 7.5.4 Replacing all or most of the school staff (which may include, but may not be limited to, replacing the principal) who are relevant to the school's failure to make AYP; or
- 7.5.5 Implementing a major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance and longer school days, to improve student academic achievement in the school and that has substantial promise of enabling the school to make AYP. Whether or not a particular school is showing growth on the DOE Achievement Metric shall be a significant factor in the determination of what type of major restructuring is required pursuant to this provision.
- 7.6 Partnership Zone Schools - A school that is a Persistently Low-Achieving School and that is determined by the Secretary as likely to benefit from assignment to Partnership Zone Schools status shall be designated as a Partnership Zone School by the Secretary. The Secretary shall determine which Persistently Low-Achieving Schools would benefit from Partnership Zone School status through consideration of the academic achievement of the "all students" group in a school in terms of

proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the "all students" group.

- 7.6.1 Districts with a Partnership Zone school and Partnership Zone charter schools shall enter a memorandum of understanding ("MOU") between the Department and the district or the charter school. The Partnership Zone MOU shall include the following provisions:
- 7.6.1.1 Selection of one of the models outlined in section 7.6.2;
  - 7.6.1.2 Provisions for regular oversight of the Partnership Zone school by the Department or its designee;
  - 7.6.1.3 For schools at which a collective bargaining agreement governs its employees, a further agreement between and among the district or charter school, the collective bargaining unit, and the Department addressing those subjects, if any, that may inhibit the schools' successful implementation of its model, including but not limited to:
    - 7.6.1.3.1 Limitations on hiring, reassigning and transferring covered employees into and out of the Partnership Zone school, such as seniority limitations;
    - 7.6.1.3.2 The methodology for determining which teachers will be transferred or reassigned as part of the model;
    - 7.6.1.3.3 Work rules relating to the educational calendar and scheduling of instructional time and non-instructional time;
    - 7.6.1.3.4 Instructional reform;
    - 7.6.1.3.5 Professional development requirements and other specialized training;
    - 7.6.1.3.6 Retention and employment incentives, including performance incentives for effective teachers and principals; and
    - 7.6.1.3.7 Any other subject required by these regulations to be addressed in the Partnership Zone school's selected model.
  - 7.6.1.4 In the event the parties are not able to reach the agreement required by 7.6.1.3 within seventy-five (75) days of notice as a Partnership Zone school, each party shall present its last best offer on the areas of disagreement along with a draft agreement, to the Secretary of the Department, who shall accept one of the last best offers, or reject all of them. Should the Secretary reject all offers, the parties shall have thirty (30) days to confer and present the Secretary revised offers for re-consideration pursuant to this section.
  - 7.6.1.5 Other provisions required by the model or mutually agreed upon by the Department and the district or charter school, which may include the following:
    - 7.6.1.5.1 Instituting flexible funding at school level and oversight of same;
    - 7.6.1.5.2 Engagement of a partner, consultant, education management organization or other alternative leadership structure; and
    - 7.6.1.5.3 Extending learning time and community-oriented supports, including more learning time for students, collaboration time for teachers, enrichment activities, and mechanisms for family and community engagement.
  - 7.6.1.6 Schools designated as Title I shall continue to offer supplemental services and choice as required by ESEA.
  - 7.6.1.7 Partnership Zone schools that are not making AYP by the end of the second school year following implementation of the restructuring plan shall renegotiate the MOU or select one of the other available models under 7.6.2.
- 7.6.2 Districts having Partnership Zone schools and Partnership Zone charter schools shall work with the Department to implement a plan from the list below. The District may request funding from the Department for implementation of these provisions.
- 7.6.2.1 School Closure Model, in which a district closes a school and enrolls the students who attended that school in other schools in the district that are higher achieving that are within

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reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available;

7.6.2.2 Restart Model, in which a district converts a school into a public charter school pursuant to the requirements of Chapter 5 of Title 14 of the Delaware Code, or closes and reopens a school under a charter school operator, a charter management organization or an education management organization that has been selected through a rigorous review process. A restart model shall enroll, within the grades it serves, any former student who wishes to attend the school.

7.6.2.3 Turnaround Model, in which

7.6.2.3.1 A district or charter school shall:

7.6.2.3.1.1 Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

7.6.2.3.1.2 Using the Delaware Performance Appraisal system II or any locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students, (a) screen all existing staff and rehire no more than 50 percent; and (b) select new staff;

7.6.2.3.1.3 Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

7.6.2.3.1.4 Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

7.6.2.3.1.5 Adopt a new governance structure, which includes, but is not limited to, requiring the school to report to a liaison of the Department or directly to the Secretary;

7.6.2.3.1.6 Use data to identify and implement an instructional program that is research-based and "vertically aligned" from one grade to the next as well as aligned with State academic standards;

7.6.2.3.1.7 Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

7.6.2.3.1.8 Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and provide appropriate social-emotional and community-oriented services and supports for students.

7.6.2.3.2 A district may implement other strategies, such as:

7.6.2.3.2.1 Any of the required and permissible activities under the transformation model; or

7.6.2.3.2.2 A new school model (e.g., themed, dual language academy).

7.6.2.4 Transformational Model, in which

7.6.2.4.1 A district or charter school shall:

7.6.2.4.1.1 Replace the principal who led the school prior to commencement of the transformation model;

7.6.2.4.1.2 Use rigorous, transparent, and equitable evaluation systems for teachers and principals that-

7.6.2.4.1.2.1 Take into account data on student growth (as defined in this notice) as a significant factor as well as other factors such as multiple observation-based

assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduations rates; and

7.6.2.4.1.2.2 Are designed and developed with teacher and principal involvement;

7.6.2.4.1.3 Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high-school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, pursuant to the Delaware Performance Appraisal System II or any successor thereto, have not done so;

7.6.2.4.1.4 Provide staff with ongoing, high-quality, job-embedded professional development (e.g., regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

7.6.2.4.1.5 Implement new financial incentives and increase opportunities for promotion and career growth of effective teachers, and provide more flexible work conditions designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school;

7.6.2.4.1.6 Use data to identify and implement an instructional program that is research-based and "vertically aligned" from one grade to the next as well as aligned with State academic standards;

7.6.2.4.1.7 Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

7.6.2.4.1.8 Establish schedules and implement strategies that provide increased learning time, which means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects, including English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects;

7.6.2.4.1.9 Provide ongoing mechanisms for family and community engagement;

7.6.2.4.1.10 Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates;

7.6.2.4.1.11 Ensure that the school receives ongoing, intensive technical assistance and related support from the district, the Department, or a designated external lead partner organization.

7.6.2.4.2 A district may:

7.6.2.4.2.1 Provide additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;

7.6.2.4.2.2 Institute a system for measuring changes in instructional practices resulting from professional development;

7.6.2.4.2.3 Ensure that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority;

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- 7.6.2.4.2.4 Conduct periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;
- 7.6.2.4.2.5 Implement a schoolwide "response-to-intervention" model;
- 7.6.2.4.2.6 Provide additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills to master academic content;
- 7.6.2.4.2.7 Use and integrate technology-based supports and interventions as part of the instructional program;
- 7.6.2.4.2.8 In secondary schools-
- 7.6.2.4.2.8.1 Increase rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;
- 7.6.2.4.2.8.2 Improve student transition from middle to high school through summer transition programs or freshman academies;
- 7.6.2.4.2.8.3 Increase graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills;
- 7.6.2.4.2.8.4 Establish early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.
- 7.6.2.4.2.9 Extend learning time and create community-oriented schools, by
- 7.6.2.4.2.9.1 Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;
- 7.6.2.4.2.9.2 Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;
- 7.6.2.4.2.9.3 Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or
- 7.6.2.4.2.9.4 Expanding the school program to offer full-day kindergarten or pre-kindergarten.
- 7.6.2.4.2.10 Allowing the school to be run under a new governance arrangement; or
- 7.6.2.4.2.11 Implementing a per-pupil school-based budget formula that is weighted based on student needs.
- 7.6.2.5 If a school identified as a Persistently Low-Achieving School has implemented within the last two years an intervention that meets the requirements of the Turnaround, Restart, or Transformation models, the school may continue or complete the intervention being implemented.
- 7.6.2.6 If elements of the model adopted by a Partnership Zone school with the approval of the Department require funding and are not funded or require statutory authorization and are not so authorized, the school may apply to the Department for an annual waiver of said

requirement, and such waiver shall be granted only insofar as compliance with said requirement is rendered impracticable thereby.

## **8.0 Frozen Status**

A school in Under Improvement, Corrective Action, Restructuring, or Persistently Low-Achieving School status that meets AYP for one year shall freeze at its then current level and shall continue to implement the School Improvement Plan for one year. If the school again meets AYP after the year during which it was frozen, the school shall be removed from Under Improvement, Corrective Action, Restructuring or Persistently Low-Achieving School status and shall no longer be subject to the requirements of 7.0. A school that does not meet AYP after the year during which it was frozen shall move to the next category in the continuum without regard to the frozen year.

## **9.0 Department Responsibilities for Schools Under Restructuring and for Persistently Low-Achieving Schools**

- 9.1 The Department shall provide continuing technical assistance to schools that are in any of the above categories.
- 9.2 The Department shall assign a School Support Team to schools beginning with Under Improvement Phase 2 and continuing through the Restructuring or Persistently Low-Achieving School phase. The School Support Team shall monitor the school's progress, ensure that all technical assistance and any other supports available are provided to the school, assist the school in developing and implementing its improvement plans, act as a liaison between the Department and the school, and take any other actions deemed appropriate by the Team to provide support to the school.

## **10.0 Process**

- 10.1 The Department shall provide districts and schools with preliminary notification of a school's identification pursuant to 7.0 no later than the end of July following the year on which the identification is based, and final notice shall be given no later than August 1st.
- 10.2 Notice -- A district that includes a school or a charter school identified as Under Improvement shall, before the first day of the upcoming school year, provide the following notification to parents of students enrolled in that school:
  - 10.2.1 Information regarding the school's identification and reason for its identification;
  - 10.2.2 Their right to enroll their child(ren) in a different school;
  - 10.2.3 Their right to have their child receive supplemental services, if provided for in §103.7.0;
  - 10.2.4 How they can be involved in addressing the academic issues that led to identification; and
  - 10.2.5 Any other notifications required by the ESEA regulations.
- 10.3 Plan Development, Approval, and Modification
  - 10.3.1 Schools receiving notice that they are identified as Under Improvement Phase I shall develop their School Improvement Plan within three months of their preliminary notification and shall provide the Plan to the district in which the school is located for approval or to the body that granted its charter. The school shall then work with the district to make any necessary revisions such that final approval from the district is received within 45 days of submission. The Plan shall be implemented immediately upon approval.
  - 10.3.2 Schools receiving notice that they are identified as Under Improvement Phase II shall modify their School Improvement Plan within two months of their preliminary notification and submit said modifications to the Department. Following submission, the Department shall review the plan, make comment, and require revisions, if needed, by the school within 30 calendar days. The Plan shall be implemented immediately.
  - 10.3.3 Districts having schools that are identified as in Corrective Action Phase I and charter schools so identified shall develop their Corrective Action Plan within three months of their preliminary notification and shall provide the Plan to the Department for approval. Following submission, the

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- Department shall collaborate with the school and the district and make any necessary revisions such that the Plan is approved within 45 days of submission. If the school, the district and the Department are unable to agree on the Plan at the end of the 45 day period, then the Department shall develop the Plan within 2 weeks of that deadline. The Plan shall be implemented immediately.
- 10.3.4 Districts having schools that are identified as in Corrective Action Phase II and charter schools so identified shall develop the Restructuring Plan required in 7.5. Such Plan shall be submitted to the Department by April 30th of the Corrective Action Phase II year. Prior to the date of submission, the district or charter school shall have performed all necessary steps to ensure that the restructuring choice selected is viable and will be implemented, subject only to approval by the Department. The Department, in consultation with the State Board of Education, shall review the plan, make comment, and require revisions, if needed, and shall approve or disapprove within 60 days of submission. If the Department disapproves the plan, the district or charter school submitting the plan shall make an other selection from among the Restructuring options in 7.5.1. Department approval of the Restructuring Plan shall be subject to the results of that year's accountability activities. Upon receipt of the final identification for that year, if results show that the school is in Restructuring, the district or charter school shall immediately implement the Restructuring Plan.
- 10.3.5 Schools that are selected by the Department for participation in the Partnership Zone shall be notified of such selection by September 1st. The district or charter school shall immediately begin negotiating the MOU required by 7.6.1. If the parties to the MOU are unable to agree on the MOU within 120 days, the district or charter school shall select from the Restructuring models found in 7.5.1, 7.5.2, or 7.5.3.
- 10.3.6 All plans submitted by schools and districts pursuant to 7.0 shall be developed with input from parents, teachers, and outside experts. Such plans shall establish measurable goals/benchmarks for the school. Once a plan is approved, information regarding the plan shall be provided to parents.
- 10.3.7 In evaluating School Improvement Plans, Corrective Action Plans, and Restructuring Plans, the Department shall ensure that each such plan satisfies applicable law, reflects input required in 10.3.6, includes measurable goals/benchmarks for the school, and is likely to result in the school improving its performance classification and exiting "under improvement" status.

### **11.0 Accountability for Districts that are classified as Under Improvement:**

- 11.1 Under Improvement Phase 1 - A district that meets the definition of Under Improvement found in 2.11.5 shall, in the first school year after meeting the definition of Under Improvement, be considered in "Under Improvement Phase 1." A district that is in Under Improvement Phase I shall develop and implement a District Improvement Plan.
- 11.2 Under Improvement Phase 2 - A district that is identified as Under Improvement Phase 1 pursuant to 11.1 and fails to meet AYP for an additional year shall be considered "Under Improvement Phase 2." Such districts shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application of the Education Success Planning and Evaluation System.
- 11.3 Corrective Action Phase 1 - A district that is identified as Under Improvement Phase 2 pursuant to 11.2 and fails to meet AYP for an additional year shall enter "Corrective Action Phase 1" status. The Department shall develop a corrective action plan for the district as outlined by Federal ESEA requirements. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to finalizing the plan. The corrective action plan may include requirements found in 20 U.S.C.A. Section 6316(c)(10)(C) as permitted by State law and may also include implementation of provisions found in 7.0. The district shall implement the corrective action plan.

11.4 Under Improvement greater than Corrective Action Phase 2, a district shall continue with the activities as outlined in 11.3. In addition the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

**12 DE Reg. 202 (08/01/08)**

### **812.0 Review Process**

A school or district may review school or district level data, including academic assessment data upon which the proposed classification is based. The school or district shall present statistical evidence or other substantive reasons why the classification should be changed before the final classification will be determined.

**812.1** The school or district must file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its proposed classification. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or the signature of the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.

**812.2** Upon receipt of a written notice of review, the Secretary shall refer the review to his or her designee.

**812.2.1** The designee shall be responsible for bringing the review forward to the Review Advisory Committee. The Review Advisory Committee shall be composed of a minimum of three members and assigned by the Secretary.

**812.2.2** The Review Advisory Committee shall conduct a review of the statistical evidence or other substantive reasons presented by the school or district.

**812.2.3** The Review Advisory Committee shall make a recommendation to the Secretary about whether the proposed classification should remain as is or should be changed.

**812.3** The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the proposed classification of the school or district based on the evidence or other substantive reasons presented by the school or district.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

**10 DE Reg. 1795 (06/01/07)**

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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 106**

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

### **106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)**

#### **A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or

before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments are intended to continue to help improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amendments to the regulation are intended to help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments to the regulation do not specifically address the health and safety of students.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments to the regulation are intended to ensure all students' legal rights continue to be respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments to the regulation preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments to the regulation do not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for teacher evaluation does not change through 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 amended regulation is consistent with other state educational policies, in particular the educational policies related to achievement in the core academic subjects.
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 at this time.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments do not substantively change the process so no anticipated costs are expected.

### 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

**1.0** The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

- Appoquinimink
- Caesar Rodney
- Colonial
- Lake Forest
- Laurel
- Sussex Technical
- MOT Charter
- Providence Creek Academy Charter
- Sussex Academy of the Arts and Sciences

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

**11 DE Reg. 502 (10/01/07)**

**2.0 Definitions**

The following definitions shall be apply for purposes of this regulation:

**"Announced Observation"** shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

**"Board"** shall mean a local board of education or charter school board of directors.

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

**"DASA"** shall mean the Delaware Association of School Administrators.

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

**"DSEA"** shall mean the Delaware State Education Association.

**"Experienced Teacher"** shall mean a teacher who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the Delaware Code; or Standard or Professional Status Certificate issued prior to August 1, 2003.

**"Improvement Plan"** shall be the plan that a teacher and evaluator mutually develop in accordance with 8.0.

**"Novice Teacher"** shall mean a teacher who holds a valid and current Initial License, issued pursuant to Chapter 12 of Title 14 of the Delaware Code.

**"Satisfactory Component Rating"** shall mean the teacher's performance demonstrates an understanding of the concepts of the component, issued pursuant to Chapter 12 of Title 14 of the Delaware Code.

**"Satisfactory Evaluation"** shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

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

**"Summative Evaluation"** shall be the final evaluation at the conclusion of the appraisal cycle.

**"Unannounced Observation"** shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

**"Unsatisfactory Component Rating"** shall mean the teacher's performance does not demonstrate an understanding of the concepts of the component.

**"Unsatisfactory Evaluation"** shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

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

**11 DE Reg. 502 (10/01/07)**

**3.0 Appraisal Cycles**

- 3.1 Experienced teachers who have earned a rating of "Effective" on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years.
- 3.2 Experienced teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Guide for Teachers.

- 3.3 Novice teachers shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Guide for Teachers.

**11 DE Reg. 502 (10/01/07)**

#### 4.0 DPAS II Guide for Teachers

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

**11 DE Reg. 502 (10/01/07)**

#### 5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
- 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.
- 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.
- 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.
- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
- 5.1.2 Classroom Environment
- 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
- 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
- 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.
- 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.
- 5.1.3 Instruction

- 5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.
- 5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.
- 5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.
- 5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.
- 5.1.4 Professional Responsibilities
  - 5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns.
  - 5.1.4.2 Developing a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.
  - 5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students.
  - 5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.
- 5.1.5 Student Improvement
  - 5.1.5.1 Showing Student Improvement: Teacher uses school goals from the school improvement process to set his or her annual data driven goal(s) for student improvement. Data used to establish goals shall include school accountability data, State Assessment data where available, and classroom based assessment data where available.
  - 5.1.5.2 Aligning Assessments to Teacher Data Driven Goal(s): Teacher uses assessments and scoring criteria that accurately measure progress towards the student improvement goal(s).
  - 5.1.5.3 Measuring Student Improvement: Teacher has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.
  - 5.1.5.4 Reflecting on Student Improvement: Teacher reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information with other staff as appropriate.

**11 DE Reg. 502 (10/01/07)****6.0 Summative Evaluation Ratings**

- 6.1 Each of the five (5) components pursuant to 5.0 shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
  - 6.1.1 A satisfactory rating for each Appraisal Component shall mean the teacher demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.
- 6.2 The Summative Evaluation shall also include one of the three overall ratings: "Effective", "Needs Improvement", or "Ineffective".

- 6.2.1 "Effective" shall mean that the teacher has received Satisfactory Component ratings in at least four (4) of the five (5) components in accordance with the Appraisal Criteria in 5.0.
- 6.2.2 "Needs Improvement" shall mean that the teacher has received three (3) Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.
- 6.2.3 "Ineffective" shall mean that the teacher has received two (2) or fewer Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.
- 6.2.3.1 If the teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

## 11 DE Reg. 502 (10/01/07)

### 7.0 Pattern of Ineffective Teaching Defined

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

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

### 8.0 Improvement Plan

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

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

**11 DE Reg. 502 (10/01/07)**

**9.0 Challenge Process**

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

**11 DE Reg. 502 (10/01/07)**

**10.0 Evaluator Credentials**

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

**11 DE Reg. 502 (10/01/07)**

**11.0 Evaluation of Process**

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

**12.0 Effective Date**

This regulation shall be in effect until the effective date of 14 DE Admin. Code 106 A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

**8 DE Reg. 431 (9/1/04)**

**9 DE Reg. 522 (10/1/05)**

**11 DE Reg. 502 (10/01/07)**

# PROPOSED REGULATIONS

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 106A

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

#### 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

#### A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 DE Admin. Code 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation will become effective July 1, 2011 and will replace 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). The changes from the current teacher appraisal process include re-defining the Student Improvement component of DPAS II to require a showing of Student Growth. Changes were also made to the Summative Evaluation ratings, adding a new "Highly Effective" rating and amending the means of determining the Summative rating. The amendments also change some of the appraisal cycles and the improvement plan components.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation supports an increase in student achievement as measured against the state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address the health and safety of students.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation is intended to ensure all students' legal rights continue to be respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new 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 new 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 for teacher evaluation does not change with this new regulation.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation is consistent with other state educational policies, in particular the educational policies related to achievement in the core academic subjects.
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 at this time.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no anticipated increased costs to the State or to the local school boards for compliance with this regulation;

however, reallocation of current resources may be needed.

## 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

### 1.0 Effective Date

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2011 and shall, at such time, replace the current 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

### 2.0 Definitions

The following definitions shall be apply for purposes of this regulation:

"**Announced Observation**" shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"**Board**" shall mean a local board of education or charter school board of directors.

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

"**DASA**" shall mean the Delaware Association of School Administrators.

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

"**DSEA**" shall mean the Delaware State Education Association.

"**Experienced Teacher**" shall mean a teacher who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the Delaware Code; or Standard or Professional Status Certificate issued prior to August 1, 2003.

"**Improvement Plan**" shall be the plan that a teacher and evaluator mutually develop in accordance with 8.0.

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

"**Novice Teacher**" shall mean a teacher who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the Delaware Code.

"**Satisfactory Component Rating**" shall mean the teacher's performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the Delaware Code.

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

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

"**Student Achievement**" shall mean

(a) For tested grades and subjects:

(1) A student's score on the DSTP or successor statewide assessment; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are

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rigorous and comparable across classrooms. Such alternative measures must be approved by the Department and developed in partnership with the local collective bargaining representatives.

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

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

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Unsatisfactory Component Rating" shall mean the teacher's performance does not demonstrate an understanding of the concepts of the component.

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

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

## 3.0 Appraisal Cycles

- 3.1 Experienced teachers who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced teachers who have earned a rating of "Effective" and have earned "Satisfactory" ratings on four (4) of the components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years.
- 3.3 Experienced teachers who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.4 Novice teachers shall receive a minimum of two (2) Announced Observations and one (1) Unannounced Observation with a Summative Evaluation every year. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.

## 4.0 DPAS II Guide for Teachers

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

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**5.0 Appraisal Components and Appraisal Criteria**

5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:

**5.1.1 Planning and Preparation**

5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.

5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.

5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.

5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning; knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.

**5.1.2 Classroom Environment**

5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.

5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.

5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.

5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.

**5.1.3 Instruction**

5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.

5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.

5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.

5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.

**5.1.4 Professional Responsibilities**

5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for

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two way communication with families about student progress, behavior, and personal needs or concerns.

5.1.4.2 Developing a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students.

5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

## 5.1.5 Student Improvement

5.1.5.1 Measuring Student Improvement: Teacher's collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

## **6.0 Summative Evaluation Ratings**

6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the components.

6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.

6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".

6.2.1 "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in four (4) of the five (5) Appraisal Components in accordance with 5.0 and that the teacher's students on average achieve high rates of student growth, that is, more than one grade level improvement in an academic year.

6.2.2 "Effective" shall mean that:

6.2.2.1 The teacher has received a Satisfactory Component Rating in at least three (3) Appraisal Components including the Student Improvement Component, and

6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.

6.2.3 "Needs Improvement" shall mean that:

6.2.3.1 The teacher has received one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or

6.2.3.2 The teacher has received three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has received an Unsatisfactory rating in the Student Improvement Component.

6.2.4 "Ineffective" shall mean that:

6.2.4.1 The teacher has received zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and

6.2.4.2 The teacher has received an Unsatisfactory Component Rating in the Student Improvement Component.

6.2.5 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."

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## 7.0 Pattern of Ineffective Teaching Defined

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

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

## 8.0 Improvement Plan

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

## 9.0 Challenge Process

- 9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement

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"PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.

- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, and issue a written decision.
- 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school's level credentialed evaluator shall be final.

## **10.0 Evaluator Credentials**

- 10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Revised Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

## **11.0 Evaluation of Process**

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

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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 108

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

### **108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)**

#### **A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include an effective date and a cross reference to a new proposed regulation designed to replace this regulation

with the 2011-2012 school year. Other technical amendments have been made.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

### **C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments are intended to support an increase in student achievement as measured against the state achievement standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments to the regulation do not specifically address the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments to the regulation are intended to ensure all students' legal rights continue to be respected.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for teacher evaluation does not change through 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 amended regulation is consistent with other state educational policies, in particular the educational policies related to achievement in the core academic subjects.

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 at this time.

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

### **108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)**

**1.0** The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

Appoquinimink

Caesar Rodney

Colonial

Lake Forest

Laurel

Sussex Technical

MOT Charter

Providence Creek Academy Charter

Sussex Academy of the Arts and Sciences

The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

- 1.1 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

11 DE Reg. 510 (10/01/07)

## 2.0 Definitions

The following definitions shall apply for purposes of this regulation:

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

“**Credentialed Evaluator**” shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as “Evaluator”.

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

“**DPAS II Guide for Administrators**” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process.

“**DSEA**” shall mean the Delaware State Education Association.

“**Experienced Administrator**” shall mean an administrator who has three (3) or more years of service as an administrator.

“**Formative Process**” shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the *DPAS II Guide for Administrators*.

“**Improvement Plan**” shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

“**Inexperienced Administrator**” shall mean an administrator who has less than three (3) years of service as an administrator.

“**Satisfactory Component Rating**” shall mean the administrator’s performance demonstrates an understanding of the concepts of the component.

“**Satisfactory Evaluation**” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

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

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

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

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

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

11 DE Reg. 510 (10/01/07)

## 3.0 Appraisal Cycles

- 3.1 Experienced administrators who have earned a rating of “Effective” on his or her most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years.

- 3.2 Experienced administrators who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one year period. The administrators shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the *DPAS II Guide for Administrators*.

- 3.3 Inexperienced administrators shall have a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one (1) year period. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the *DPAS II Guide for Administrators*.

**11 DE Reg. 510 (10/01/07)**

#### **4.0 *DPAS II Guide for Administrators***

- 4.1 All districts and charter schools shall use the manual entitled *DPAS II Guide for Administrators* as developed and as may be amended by the Department of Education in collaboration with DSEA and DASA to implement the appraisal system.
- 4.1.1 The manual shall contain at a minimum the following:
- 4.1.1.1 Specific details about each of the five (5) Appraisal Components pursuant to 5.1.
  - 4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.1.1.3 Specific procedures to implement the appraisal system.

**11 DE Reg. 510 (10/01/07)**

#### **5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):
- 5.1.1 Vision and Goals
- 5.1.1.1 Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.
  - 5.1.1.2 Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.
  - 5.1.1.3 Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.
  - 5.1.1.4 Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement planning goals. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.
- 5.1.2 Culture of Learning
- 5.1.2.1 Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.
  - 5.1.2.2 Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on-going coaching for improvement. Administrator uses a variety of sources of information to make decisions.
  - 5.1.2.3 Sustaining the Culture of Learning: Administrator helps to ensure that staff have professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.

- 5.1.2.4 Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.
- 5.1.3 Management
- 5.1.3.1 Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.
- 5.1.3.2 Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.
- 5.1.3.3 Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.
- 5.1.3.4 Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.
- 5.1.4 Professional Responsibilities
- 5.1.4.1 Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of others' opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.
- 5.1.4.2 Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.
- 5.1.4.3 Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.
- 5.1.4.4 Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school or district.
- 5.1.5 Student Improvement
- 5.1.5.1 Showing Student Improvement: Administrator uses school or district goals from the school or district improvement process to set his or her personal annual data driven goal(s) for student improvement. Data used to establish goals shall include school or district accountability data, State Assessment data, and other assessment data where available.
- 5.1.5.2 Measuring Student Improvement: Administrator has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.
- 5.1.5.3 Implementing Strategies for Student Improvement: Administrator designs and implements appropriate strategies to show progress towards or attainment of goal(s) for student improvement.
- 5.1.5.4 Reflecting on Student Improvement: Administrator reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information with other staff as appropriate.

**11 DE Reg. 510 (10/01/07)**

## 6.0 Summative Evaluation Ratings

- 6.1 Each of the five (5) components pursuant to 5.0 shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
  - 6.1.1 A satisfactory rating for each Appraisal Component shall mean the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.
- 6.2 The Summative Evaluation shall also include one of three overall ratings: “Effective”, “Needs Improvement” or “Ineffective”.
  - 6.2.1 “Effective” shall mean that the administrator has received Satisfactory Component ratings in at least four (4) of the five (5) components in accordance with the Appraisal Criteria in 5.0.
  - 6.2.2 “Needs Improvement” shall mean that the administrator has received three (3) Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.
  - 6.2.3 “Ineffective” shall mean that the administrator has received two (2) or fewer Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.
    - 6.2.3.1 If an administrator’s overall Summative Evaluation rating is determined to be “Needs Improvement” for the third consecutive year, the administrator’s rating shall be re-categorized as “Ineffective”.

**11 DE Reg. 510 (10/01/07)**

**7.0 Pattern of Ineffective Administrative Performance**

A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. Two consecutive ratings of “Ineffective” shall be deemed as a pattern of ineffective administration. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

**11 DE Reg. 510 (10/01/07)**

**8.0 Improvement Plan**

- 8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of “Needs Improvement” or “Ineffective” on the Summative Evaluation or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.
  - 8.1.1 An Improvement Plan shall also be developed if an administrator’s overall performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting “PERFORMANCE IS UNSATISFACTORY” and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
  - 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
  - 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
  - 8.2.3 Specific professional development or activities to accomplish the goals;
  - 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience;
  - 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

**11 DE Reg. 510 (10/01/07)**

## 9.0 Challenge Process

9.1 An administrator may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or an administrator may challenge the conclusions of the Formative Process if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, an administrator shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator, if any.

9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of all documents used in the appraisal and the written challenge, and issue a written decision.

9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.

9.1.3 The decision of the supervisor of the evaluator shall be final.

**11 DE Reg. 510 (10/01/07)**

## 10.0 Evaluator(s) Credentials

10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the *DPAS II Guide for Administrators*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

10.3 The credentialing process shall be conducted by the Department of Education.

**11 DE Reg. 510 (10/01/07)**

## 11.0 Evaluation of Process

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

**8 DE Reg. 431 (9/1/04)**

**11 DE Reg. 510 (10/01/07)**

## 12.0 Effective Date

This regulation shall be in effect until the effective date of 14 DE Admin Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 108A

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

#### 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

#### A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation will become effective July 1, 2011 and will replace 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS I). The changes from the current administrator appraisal process include re-defining the Student Improvement component of DPAS II to require a showing of Student Growth. Changes were also made to the Summative Evaluation ratings, adding a new "Highly Effective" rating and amending the means of determining the Summative rating. The amendments also change some of the appraisal cycles and the improvement plan components.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation supports an increase in student achievement as measured against the state achievement standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation is intended to ensure all students' legal rights continue to be respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new 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 new 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 for teacher evaluation does not change with the new regulation.

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

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 at this time.

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

however, reallocation of current resources may be needed.

## 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

### **1.0 Effective Date**

- 1.1 The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2011, and shall, at such time, replace the current 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).
- 1.1 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

### **2.0 Definitions**

The following definitions shall apply for purposes of this regulation:

"Board" shall mean the local board of education or charter school board of directors.

"Credentialed Evaluator" shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

"DASA" shall mean the Delaware Association of School Administrators.

"DPAS II Revised Guide for Administrators" shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"Experienced Administrator" shall mean an administrator who has three (3) or more years of service as an administrator.

"Formative Process" shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the DPAS II Guide for Administrators.

"Improvement Plan" shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

"Inexperienced Administrator" shall mean an administrator who has less than three (3) years of service as an administrator.

"Satisfactory Component Rating" shall mean the administrator's performance demonstrates an understanding of the concepts of the component.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation.

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

"Student Achievement" shall mean

(a) For tested grades and subjects:

(1) Students scores on the DSTP or successor statewide assessment; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measure of student achievement that are rigorous and comparable across classrooms.

Such alternative measures shall be approved by the Department and developed in partnership with the local collective bargaining representatives.

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

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

"Unsatisfactory Component Rating" shall mean the administrator's performance does not demonstrate an understanding of the concepts of the component.

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

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

### **3.0 Appraisal Cycles**

- 3.1 Experienced administrators who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced administrators who have earned a rating of "Effective" and have earned Satisfactory ratings in four (4) of the Appraisal Components found in 5.0, including Student Improvement on his or her most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years.
- 3.3 Experienced administrators who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.
- 3.4 Inexperienced administrators shall have a minimum of one (1) Formative Process with a Summative Evaluation every year. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.

### **4.0 DPAS II Revised Guide for Administrators**

- 4.1 All districts and charter schools shall use the manual entitled DPAS II Revised Guide for Administrators as developed and as may be amended by the Department of Education in collaboration with DSEA and DASA to implement the appraisal system.
  - 4.1.1 The manual shall contain at a minimum the following:
    - 4.1.1.1 Specific details about each of the five (5) Appraisal Components pursuant to 5.1.
    - 4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process.
    - 4.1.1.3 Specific procedures to implement the appraisal system.

### **5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):
  - 5.1.1 Vision and Goals
    - 5.1.1.1 Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing

# PROPOSED REGULATIONS

data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.

5.1.1.2 Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.

5.1.1.3 Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.

5.1.1.4 Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement plans. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.

## 5.1.2 Culture of Learning

5.1.2.1 Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.

5.1.2.2 Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on-going coaching for improvement. Administrator uses a variety of sources of information to make decisions.

5.1.2.3 Sustaining the Culture of Learning: Administrator helps to ensure that staff have professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.

5.1.2.4 Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.

## 5.1.3 Management

5.1.3.1 Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.

5.1.3.2 Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.

5.1.3.3 Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.

5.1.3.4 Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.

## 5.1.4 Professional Responsibilities

5.1.4.1 Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and

- demonstrates an appreciation for and sensitivity to diversity in the school or district community.
- 5.1.4.2 Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.
- 5.1.4.3 Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.
- 5.1.4.4 Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school or district.
- 5.1.5 Student Improvement
- 5.1.5.1 Measuring Student Improvement: Administrator's students have collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

## **6.0 Summative Evaluation Ratings**

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
- 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the components.
- 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the administrator has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".
- 6.2.1 "Highly Effective" shall mean that the administrator has a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, and that the administrator's students on average achieve high rates of student growth, that is, more than one grade level improvement in an academic year.
- 6.2.2 "Effective" shall mean that:
- 6.2.2.1 The administrator has received a Satisfactory Component Rating in at least three (3) Appraisal Components including the Student Improvement Component, and
- 6.2.2.3 The administrator does not meet the requirement for a "Highly Effective" rating found in 6.2.1.
- 6.2.3 "Needs Improvement" shall mean that:
- 6.2.3.1 The administrator has received one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The administrator has received three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0 and the administrator has received an Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 "Ineffective" shall mean that:
- 6.2.4.1 The administrator has received zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The administrator has received an Unsatisfactory Component Rating in the Student Improvement Component.

# PROPOSED REGULATIONS

6.2.5 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the administrator's rating shall be re-categorized as "Ineffective".

## 7.0 Pattern of Ineffective Administrative Performance

A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective administration. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

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

## 8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan shall also be developed if an administrator's overall performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
  - 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
  - 8.2.3 Specific professional development or activities to accomplish the goals;
  - 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience;
  - 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
  - 8.2.7 Procedures for determining satisfactory improvement.
- 8.3 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect shall be certified by the Department and shall be directly related to areas identified as needing improvement.
- 8.4 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.5 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.6 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

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## 9.0 Challenge Process

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

## 10.0 Evaluator(s) Credentials

- 10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the DPAS II Revised Guide for Administrators. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

## 11.0 Evaluation of Process

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

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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 251

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

### 251 Family Educational Rights and Privacy Act (FERPA)

#### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

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

The Secretary of Education intends to readopt 14 DE Admin. Code 251 Family Educational Rights and Privacy Act (FERPA). This regulation was reviewed subject to the five year review requirement. This regulation

contemplates the state, local school districts and charter schools develop, adopt, and maintain policies for educational records that are consistent with the federal Family Educational Rights and Privacy Act (FERPA).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

## C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to educational records and not student achievement. The regulation is being readopted with no changes.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to educational records and has been readopted with no changes.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to educational records and has been readopted with no changes. The regulation contemplates the students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to educational records and has been readopted with no changes. The regulation contemplates the students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is related to educational records and has been readopted with no changes. The regulation continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to educational records and is being readopted with no changes. The regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability remains with the same entity as this regulation is being readopted with no changes.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is related to educational records and is not an impediment to the implementation of other state educational policies. The regulation is being readopted with no changes.

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

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

## 251 Family Educational Rights and Privacy Act (FERPA)

### 1.0 Authority and Incorporation of Federal Regulations

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

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

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

## 3.0 State Adoption of FERPA

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

## 4.0 Federal Complaints and Investigations

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

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

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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 252

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

#### 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 252 Required Educational Records and Transfer and Maintenance of Educational Records as a result of the five year review cycle. The amendments make changes to the definition of Discipline Records to align with federal reporting; references to the state student assessment program; a cross regulatory reference because of changes to the Children with Disabilities regulations; and outlines a charter schools responsibility in regard to Delaware Public Archives.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

## C. Impact Criteria

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to student records and does not specifically address an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to student records and does not specifically address the health and safety of students; however successful transfer of student medical records when the child transfers or transitions from one school to another, ensures continuity of care for medical conditions.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to student records and continues to ensure student legal rights are respected in relation to their records.

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

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

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

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

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 with the amended regulation.

## 252 Required Educational Records and Transfer and Maintenance of Educational Records

### 1.0 Definitions

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

“**Court Orders**” shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student's care or custody.

“**Discipline Record**” shall mean information about any and all periods of ~~out-of-school~~ suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district’s code of conduct or other rules.

“**Emergency Treatment Card**” shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 **DE Admin Code** 811.

“**Identifying Data**” shall mean the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

“**Progress Report**” shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the DSTP or successor state student assessment; and attendance data for each year of the student’s attendance.

“**School Health Record**” shall mean the form required by 14 **DE Admin Code** 811 for Delaware public school students.

“**Student Transcript**” shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the DSTP or successor state student assessment, SAT, PSAT, ACT; attendance data and school activities. If applicable, a list of the career technical competencies achieved by a student enrolled in a specific career technical program shall also be included.

## 2.0 Education Records Required by Schools in Delaware

- 2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.
  - 2.1.1 The student Cumulative Record File shall contain the Emergency Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.
  - 2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district’s possession, to the extent the school or district maintains such documents for an individual student.
  - 2.1.3 In addition, the Cumulative Record File for a child with a disability as defined in 14 **DE Admin Code** 925 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

## 3.0 Transfer of the Records of Public School and Private Schools Students

- 3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.
- 3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.
  - 3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children Youth and Their Families shall promptly transfer a student’s Cumulative Record File upon the request of a receiving school.
  - 3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children Youth and Their Families to deny or to delay transfer of the Cumulative Record File.
  - 3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student’s Cumulative Record File has not been received.

# PROPOSED REGULATIONS

- 3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.
- 3.4 When students transfer to a Delaware school from any other school including a school in a foreign country the receiving school is responsible for having the transcripts evaluated.

## 4.0 Maintenance of the Education Records of Public Schools

- 4.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.
- 4.2 Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district or charter school and the Delaware Public Archives.
- 4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

## 5.0 Destruction of Education Records of Public Schools

- 5.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.
- 5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 DE Admin Code 925 927.

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

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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 714

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

### 714 Professional Employee Work Stoppage or Strike

#### 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 714 Professional Employee Work Stoppage or Strike for formatting purposes only. This regulation has been reviewed as a result of the 5 year mandatory review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments are for formatting purposes only.
2. Will the amended regulation help ensure that all students receive an equitable education? The amendments are for formatting purposes only.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments are for formatting purposes only.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments are for formatting purposes only.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments are for formatting purposes only.
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 are for formatting purposes only.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments are for formatting purposes only.
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 for formatting purposes only. The amendments are for formatting purposes only.
9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments are for formatting purposes only.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments are for formatting purposes only.

**714 Professional Employee Work Stoppage or Strike****1.0 Work Stoppage or Strike**

- 1.1 If it is determined that illegal activity such as a work stoppage or strike has taken place, the local Board of Education or charter school shall:
  - 1.1.1 Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 **Del.C.** §4016, and such organization as the exclusive representative will be revoked at a time to be determined by the local Board of Education or charter school;
  - 1.1.2 Refrain from making payroll deductions for the dues of any employee organization, which violated the law unless such dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine;
  - 1.1.3 Deduct salary for unexcused absence in accordance with 14 **Del.C.** §1320;
  - 1.1.4 Execute items 1.1.2 and 1.1.3 above in the preparation of the next regular payroll;
  - 1.1.5 Require a medical certificate for each employee absent claiming sick leave during the period of the strike.

**2.0 School Days Lost**

- 2.1 As a part of any settlement following a strike or work stoppage, the local Board of Education or charter school shall not enter into an y direct or implied agreement, which would permit school days lost because of the strike to be rescheduled.
- 2.2 Similarly, the local Board of Education or charter school shall not agree to extend the school year or to request such an extension from the Secretary of Education.

**3 DE Reg. 1077 (2/1/00)****8 DE Reg. 1132 (2/1/05)**

# PROPOSED REGULATIONS

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 725

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

#### 725 School Administrator Contracts and Agreements

#### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

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

The Secretary of Education intends to reauthorize 14 DE Admin. Code 725 School Administrator Contracts and Agreements. This regulation has been reviewed pursuant to 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 January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

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

2. Will the amended regulation help ensure that all students receive an equitable education? The reauthorized regulation is related to school administrator contracts and does not specifically address all students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation is related to school administrator contracts and does not specifically address health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The reauthorized regulation is related to school administrator contracts and does not specifically address legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The reauthorized regulation is related to school administrator contracts and continues to preserve local board and school level authorities.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The reauthorized regulation preserves the decision making authority and accountability that already exists.

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 reauthorized regulation is related to school administrator contracts and does not specifically address the implementation of other state educational policies.

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

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10. What is the cost to the State and to the local school boards of compliance with the regulation? No additional costs to the state or local boards are contemplated by the reauthorization of this regulation.

### **725 School Administrator Contracts and Agreements**

#### **1.0 Duties of a School Administrator**

The Administrator shall faithfully perform those duties which may be assigned by the local Board of Education and shall serve the School District in a professional manner. The Administrator shall observe and comply with the laws of the State of Delaware and with the regulations of the State Department of Education and the local Board of Education as currently in force and as from time to time amended, enacted or promulgated.

#### **2.0 Non Renewal of the Existing Contract and Agreements**

Failure on the part of the local Board of Education or the Administrator to notify the other in writing by certified mail, no later than six (6) months prior to the expiration of the Agreement, of either party's intent not to renew the Agreement, will automatically result in a one year extension of the existing Agreement.

#### **3.0 Termination of a Contract with a School Administrator Prior to Expiration of the Agreement**

- 3.1 The Administrator shall not vacate his or her position during the term of this Agreement without the written consent of the local Board of Education.
- 3.2 The local Board of Education shall not terminate the Contract, prior to the expiration date, except for good and just cause and shall provide the opportunity for a fair hearing before the local Board of Education or before a Hearing Officer designated by the local Board of Education. Prior to any hearing in regard to the termination of the Administrator, the local Board of Education shall serve the Administrator with a written statement of the reasons for termination.
- 3.3 If the local Board of Education designates a Hearing Officer to conduct such a hearing, a majority of the local Board of Education shall convene to review the record of the proceedings before the Hearing Officer and the Hearing Officer's report and recommendation to the local Board of Education, and within fifteen (15) days of the hearing before the Hearing Officer, shall submit to the Administrator its decision in writing.
- 3.4 If the Administrator chooses to be represented by legal counsel, all legal expenses incurred by the Administrator in connection with any termination hearing shall be borne by the Administrator.
- 3.5 Appeal from a decision of the local Board of Education concerning the provisions of the Agreement may be made to the State Board of Education.

**3 DE Reg. 1077 (2/1/00)**

**8 DE Reg. 1133 (2/1/05)**

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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 738**

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

#### **738 Financial Goals for Instruction and Instruction-related Expenditures**

#### **A. Type of Regulatory Action Required**

New Regulation

## B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code by adding 738 Financial Goals for Instruction and Instruction-related Expenditures. This regulation is a result of legislation from the 145th General Assembly, House Substitute 1 to House Bill No. 119.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

## C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation is related to instruction and instruction-related expenditure goals for local school districts and charter schools and contemplates improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation is related to instruction and instruction-related expenditure goals for local school districts and charter schools and would contemplate equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation is related to instruction and instruction-related expenditure goals for local school districts and charter schools and is not intended to affect health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation is related to instruction and instruction-related expenditure goals for local school districts and charter schools and contemplates 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 new regulation is not intended to change any authority and flexibility at the local board and charter school levels.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and charter school levels. These data are currently reported to the Department.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The new regulation does not change where the decision making authority or accountability for addressing instruction and instruction-related expenses exists.

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 new regulation has been developed based on the legislation and is consistent with other state educational policies related to achievement in the core academic subjects.

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation was developed as required by the legislation with local school district and charter school capacity issues in mind.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The new regulation requires additional reporting at the state level. The Department does not expect additional reporting or other data collection by the districts or charter schools at this time.

## 738 Financial Goals for Instruction and Instruction-related Expenditures

### 1.0 Purpose

The purpose of this regulation is to outline goals for Delaware's local school districts and charter schools with respect to the percentage of cumulative revenues that shall be used for instruction and instruction-related expenditures, as those terms are used by the National Center for Educational Statistics or its successor organization, as required pursuant to 14 Del.C. §1510.

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## 2.0 Definitions

"Charter School" shall mean a school pursuant to 14 **Del.C.**, Chapter 5.

"Expenditures" shall mean all amounts of money paid out by a school system, net of recoveries and other correcting transactions, other than for retirement of debt, purchase of securities, extension of loans, and agency transactions. Expenditures include only external transactions of a school system and exclude noncash transactions such as the provision of prerequisites or other in-kind payments. Definition from the National Center for Education Statistics NCES 2009-338 Sept 2009.

"Instruction and Instruction-related expenditure" shall mean payments for instruction and Instruction staff support services. These are expenditures that are directly related to providing instruction and for activities that assist with classroom instruction. These include salaries and benefits for teachers, teaching assistants, librarians and library aides, in-service teacher trainers, curriculum development, student assessment, technology (for students but outside the classroom), and supplies and purchased services related to these activities. Definition from the National Center for Education Statistics NCES 2009-338 Sept 2009.

"Local Educational Agency" or "LEA" means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency, as defined in this section, and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

"Local School District" shall mean a reorganized school district or vocational technical school district established pursuant to 14 **Del.C.**, Chapter 10.

"Total revenues" is the sum of revenue contributions emerging from local, state, and federal sources. Revenue received from bond sales or the sale of property or equipment is not included. Definition from the National Center for Education Statistics NCES 2009-338 Sept 2009.

## 3.0 Goals for Instruction and Instruction-Related Expenditures

- 3.1 Each local school district shall increase Instruction and Instruction-related expenditures as a percentage of Total Revenues to exceed the national average by at least 5% from the most current data available from the U. S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline shall be 54.9%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.
- 3.2 Each charter school shall increase Instruction and Instruction-related expenditures as a percentage of Total Revenues to meet the national average from the most current data available by the U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline for the 2010-2011 school year shall be 52.3%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.
- 3.3 Beginning with the 2009-2010 school year, local school districts and charter schools shall provide data as required by NCES for that current school year to the Department as required by timelines imposed by NCES, but no later than July 15th.
- 3.4 Beginning with the 2010-11 school year, the goal for each local school district and charter school shall be to budget to reflect 3.1 and 3.2.

## 4.0 Department Review and Oversight

- 4.1 By December 1st of each year, the Department shall notify the local school district and charter schools the goals, based the latest NCES data, for 3.1 and 3.2.
- 4.2 By March 1, 2010 for the 2008-2009 school year, and December 31st following the end of each school year thereafter, the Department shall provide a report on its website describing each local school district and charter school status with respect to the goals in 3.1 and 3.2. For charter schools, the description shall at a minimum include any expenses associated with facilities.

# PROPOSED REGULATIONS

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1511

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

#### 1511 Issuance and Renewal of Continuing License

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1511 Issuance and Renewal of Continuing License. Delaware Code mandates that the Professional Standards Board shall review the professional development requirements within the regulation on an ongoing basis. Upon review, the Board has amended many sections to reflect research-based best practice and to align the Options with a more current definition of professional development. Other requisite amendments address expired licenses, educators coming from other jurisdictions or who have been out of the profession for an extended period of time and renewal details.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, January 4, 2010 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

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

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del. C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

## 1511 Issuance and Renewal of Continuing License

### 1.0 Content

This regulation shall apply to the issuance and renewal of a Continuing License for educators, pursuant to 14 Del.C. §1211 and §1213.

#### 6 DE Reg. 518 (10/1/02)

### 2.0 Definitions

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

**"A Product Shall Be Available For Verification"** means that the culminating, tangible result of the professional development activity is accessible by the individual signing the certificate of participation or the Activity Documentation Form. Examples of a product include, but are not limited to a publication, a Professional Learning Community protocol, standards-based assessments or curriculum, copies of a presentation or other substantial work as a result of Action Research.

**"Action Research"** means a process by which educational issues and problems are identified and researched at either the school or the classroom level. By integrating current research in to the settings and engaging the relevant educators in research activities, the findings can be applied immediately to solve the targeted problems more quickly.

**"Activity Documentation Form"** means the official form approved by the Standards Board that includes specific details about the activity to be used for License renewal and the signature of an instructional leader within the Professional Learning Community, or a school, district or charter school instructional leader the applicant is responsible to.

**"College Credit"** means graduate or undergraduate level course work and continuing education units (CEUs) completed at, or through, a regionally accredited college or university or other approved provider.

**"Clock Hour"** means actual time spent in professional development, not credit hours.

**"Cooperating Teacher or Intern Supervisor"** means an individual working with student teachers or graduate or undergraduate interns as part of a state approved educator preparation program.

**"Clusters"** means focused groups of approved professional development activities that lead to measurable and observable knowledge and skills. Clusters ~~must~~ shall be approved by the Standards Board and the State Board.

**"Curriculum or Assessment Development"** means work with a local, state, national, or international education agency, Professional Learning Community, or organization designing curriculum or assessments for improved educational practice in an area related to an individual's professional responsibilities.

**"Delaware Administrator Standards"** means standards for education administrators approved by the Secretary of Education Professional Standards Board and the State Board of Education, as per 14 Del.C. **DE Admin. Code** §1590, Delaware Administrator Standards.

**"Delaware Professional Teaching Standards"** means standards of teaching approved by the Secretary of Education Professional Standards Board and the State Board of Education, as per 14 DE Admin. Code §1597, Delaware Professional Teaching Standards.

**"Department"** means the Delaware Department of Education.

**"DPAS"** means an approved state educator performance system pursuant to 14 Del.C. Chapter 12, Subchapter VII.

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**"Educational Project"** means an individual professional growth project of 15 or more clock hours, including a research project not related to a course for which credit is claimed, completed to enhance the individual's professional practice, with the development of a final product or report.

**"Educational Travel"** means a travel experience including 15 or more clock hours of work time directly related to the individual's professional responsibilities, including a final project product to be used to enhance the individual's work.

**"Educator"** means a person licensed and certified by the State under 14 Del.C. §1202 Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term 'educator' does not include substitute teachers.

**"Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, or management companies.

**"Exigent Circumstances"** means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of an Initial or Continuing license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

**"Experienced Educator"** is an educator who holds a Continuing or Advanced License, or an educator who held a Professional Status Certificate issued prior to August 1, 2003. An educator from another jurisdiction who has completed three (3) or more years of successful teaching may be considered an experienced educator.

**"Formal Study Group"** means documented participation in a study group, related to an individual's professional responsibilities, such as reviewing, discussing, and implementing strategies from a book or creating a group product as part of an action research project, a staff form of professional development.

**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

**"Initial License"** means a license issued as part of the three tiered licensure system set forth in 14 Del.C. §1210.

**"Knowledge and Skills"** means understandings and abilities that, when acquired by educators, lead to more effective instruction.

**"Leave of Absence"** means an authorized, temporary break in service of an educator for a maximum of three (3) years during the term of a n Initial or Continuing License caused by the educator not actively working due to some type of leave, including but not limited to medical leave, military leave, personal leave, sabbatical leave or Family and Medical Leave Act (FMLA) leave.

**"Mentoring"** means training and service in providing mentoring support or assistance through a formally organized and approved state or district mentoring program to educators during the initial licensure period activities, training and service in mentoring support or assistance provided through a formally organized Department approved mentoring program or such supplemental mentoring programs as required by regulation or the educator's employing authority. Mentoring includes, but is not limited to the mentoring programs required for educators during a three (3) year Initial Licensure period, a Continuing Licensure period, or any other mentoring program as required by law.

**"NBPTS or Similar National Certification"** means a certificate from the National Board for Professional Teaching Standards, or similar body as approved by the Standards Board, verifying completion of all requirements in an individual's job related area of the profession or, in the case of an individual seeking, but not earning, the national certificate, verification of the clock hours devoted to completing the requirements for the national certificate.

**"Out of the Profession"** means the period of time that an educator has not been actively working in the field of education.

**"Peer Coaching"** means training and service as a peer coach or peer assistant in a formally organized and approved state or school district peer coaching or peer assistance program.

**"Planned Professional Development Program"** means a structured program with in a building, district or charter school that has been specifically identified through a Success Plan. Such programs shall be designed to enhance knowledge and skills that promote continuous professional growth and improve student performance.

**"Presentation"** means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual's professional responsibilities.

**"Professional Committee Conference, Workshop, Institute, or Academy"** means a program offered either within, or outside, the state that contributes to the participant's professional knowledge or skills in effectively conducting his/her work in education.

**"Professional Development"** means classes, seminars, workshops, collaborative work groups, learning communities, cohort school or district teams which result in the acquisition of knowledge and skills which lead to more effective instruction a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include a multitude of opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

**"Professional Development Activities"** means activities designed to enhance knowledge and skills to promote continuous professional growth and to improve educator performance.

**"Professional Development Cluster"** or **"Cluster"** means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

**"Professional Learning Community (PLC)"** consists of a minimum of four (4) educators with the following attributes: supportive and shared leadership, collective creativity, shared values and vision, supportive conditions, shared personal practice, and whose focus over an extended period of time is on improving student learning with an accountability measure built in to their process. An extended period of time would be considered a minimum of ten (10) consecutive weeks and a minimum accumulation of fifteen (15) clock hours.

**"Professional Portfolio"** means a formal collection of artifacts and exhibits that include required examples of an individual's professional work based upon specific performance tasks or standards.

**"Professional Programs or Committees"** means job related service, designed to enhance the profession.

**"Program"** means an activity with a cohesive educational plan of action with goals and objectives.

**"Publication"** means the preparation of a formally published book, article, report, study, or grant that contributes to the education profession or adds to the body of knowledge in an individual's specific field, but does not include such items prepared as part of a course for which an individual is also claiming credit.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 Del.C. §104.

**"State"** means State of Delaware.

**"State Board"** means the State Board of Education of the State of Delaware established in response to 14 Del.C. §104.

6 DE Reg. 518 (10/1/02)

7 DE Reg. 197 (8/1/03)

10 DE Reg. 97 (7/1/06)

### 3.0 Issuance of ~~Initial~~ the Original Continuing License

- 3.1 In accordance with 14 Del.C. §1211, the Department shall issue, upon application, a Continuing License to an qualified educator who has successfully completed the requirements under the initial licensure as set forth in 14 Del.C. §1210 and §1211. ~~The Department shall issue a Continuing License to an applicant licensed as a n-educator in an other jurisdiction who provides evidence of having completed three (3) or more years of successful teaching experience. A Continuing License is valid for~~

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~~5 years unless extended pursuant to 14 Del.C. §1216 or revoked for cause, as defined in 14 Del.C. §1218.~~

- 3.2 An applicant for a Continuing License shall submit a complete application on the Department approved application form to the Department. Verification by the school district, charter school, or other employing authority of satisfactory DPAS annual summative evaluations for the period of initial licensure shall be submitted with an initial application for a Continuing License.
- 3.3 An applicant with more than one (1) unsatisfactory DPAS annual summative evaluation during the period of initial licensure is ineligible to be issued a Continuing License.
- 3.4 Incomplete applications shall not be processed.
- 3.4.1 The Department shall send notice of the incomplete application. The applicant shall be responsible for maintaining current contact information with the Department.
- 3.4.2 Notification of an incomplete application shall also be sent to the applicant's employing authority.
- 3.5 Applicants from Another Jurisdiction
- 3.5.1 The Department shall issue a Continuing License to a qualified applicant currently licensed as an educator in another jurisdiction who provides evidence of having completed three (3) or more years of successful teaching experience with the following conditions:
- 3.5.1.1 The educator may demonstrate three (3) years of successful teaching experience by submitting documentation to the Department of a minimum of three (3) years of teaching experience and of having received at least two (2) satisfactory evaluations from the other jurisdiction that the Department finds are the equivalent of the two (2) satisfactory summative evaluations required of a Delaware educator.
- 3.5.1.2 If the educator has been out of the profession for more than three (3) years, the educator must meet the following as a condition of maintaining the original Continuing License:
- 3.5.1.2.1 The educator shall, within the first year of employment, successfully complete a Department approved mentoring program which focuses on current best practices in curriculum, instruction and assessment and aligned to state and national standards.
- 3.5.1.2.1.1 Failure to successfully complete the approved mentoring program shall result in the suspension of the License. If the Continuing License expires during the term of the suspension, the educator must apply for an Initial License and meet the requirements in effect at the time of the application.
- 3.5.1.2.1.2 Upon request by the applicant and employing authority, the Department may extend the time to complete the approved mentoring program for a period of up to one (1) year upon a showing of exigent circumstances.
- 3.5.1.3 The educator shall be entitled to notice and the right to a hearing as provided within Section 12.
- 3.5.2 Experienced educators from other jurisdictions with an expired license from another jurisdiction
- 3.5.2.1 Experienced educators coming from another jurisdiction with an expired license shall apply for an Initial License and meet the requirements in effect at the time of the application.
- 3.6 A Continuing License is valid for five (5) years unless extended pursuant to 14 Del.C. §1216 or revoked or suspended for cause, as defined in 14 Del.C. §1218 or suspended for failure to meet the other conditions of maintaining a License.
- 3.27 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.
- 3.7.1 The Department shall send notice of the inability to process the application.
- 3.7.2 The applicant shall be responsible for maintaining current contact information with the Department.

6 DE Reg. 518 (10/1/02)

7 DE Reg. 197 (8/1/03)

7 DE Reg. 1350 (4/1/04)

10 DE Reg. 97 (7/1/06)

## 4.0 Educators with Expired Delaware Licenses applying for their Original Continuing License

### 4.1 Delaware Certificates issued prior to July 2, 2001

4.1.1 In accordance with 14 Del.C. §1215, the Department may issue an original Continuing License to a qualified educator who holds a Delaware certificate issued by an education certifying board prior to July 13, 1971 or who previously held a valid Delaware Standard or Professional Status certificate that has expired

4.1 ~~An educator returning to employment and holding a current Standard or Professional Status Certificate will be issued a Continuing License upon employment.~~

4.1.1.1 As a condition of maintaining the original Continuing License, the educator shall successfully complete the first year of the Department's approved mentoring program required of educators on an Initial License within their first year of employment.

4.1.1.1.1 Upon request by the applicant and employing authority, the Department may extend the time to complete the approved mentoring program for a period of up to one (1) year upon a showing of exigent circumstances.

4.1.1.1.2 Failure to successfully complete the approved mentoring program shall result in the suspension of the License. If the Continuing License expires during the term of the suspension, the educator must apply for an Initial License and meet the requirements in effect at the time of the application.

4.1.1.2 The educator shall be entitled to notice and the right to a hearing as provided in Section 12.

4.2 ~~An educator who previously held a valid Delaware Standard or Professional Status Certificate which has expired and who has been out of the profession for less than three (3) years may be issued a Continuing License, valid for 5 years, upon employment and application on the approved form and evidence of previous Delaware certification. Application Procedures and Requirements~~

4.2.1 The educator shall make application to the Department on a Department approved form and provide evidence of previous Delaware certification.

4.2.2 The educator shall provide evidence that all other requirements have been successfully met.

4.2.3 Incomplete applications shall not be processed.

4.2.3.1 The Department shall send notice of the incomplete application. The applicant shall be responsible for maintaining current contact information with the Department.

4.2.3.2 Notification of an incomplete application shall also be sent to the applicant's employing authority.

4.3 ~~An educator who has completed three (3) or more years of successful teaching and who holds a Continuing License which has expired who has been out of the profession for more than three (3) years may be issued a Continuing License, but must, within the first year of employment, successfully complete a district sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards. A Continuing License is valid for five (5) years unless extended pursuant to 14 Del.C. §1216 or revoked or suspended for cause, as defined in 14 Del.C. §1218 or suspended for failure to meet the other conditions of maintaining a License.~~

4.4 ~~An educator holding a Temporary Certificate and currently employed as an educator in a Delaware public school will be issued a Continuing License upon completing all requirements for the current Standard Certificate. Requirements must be completed by the expiration date of the Temporary Certificate.~~

4.5 ~~An educator holding a current or expired Professional Status or Standard Certificate assigned to work outside the area covered by the Professional Status or Standard Certificate will be issued a Continuing~~

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~~License, with an Emergency Certificate for the new area issued for a period of three years to enable the educator to fulfill the requirements for the Standard Certificate in the area of the new assignment. Professional Status or Standard Certificates held by an educator at the time of reassignment will be added to the Continuing License as Standard Certificates.~~

~~6 DE Reg. 518 (10/1/02)~~

~~7 DE Reg. 197 (8/1/03)~~

~~10 DE Reg. 97 (7/1/06)~~

## 5.0 Renewal of a Continuing License

5.1 In accordance with 14 **Del.C.** §1212, the Department shall renew a Continuing License, valid for an additional five ( 5) years, to a qualified educator who has fulfilled the ninety ( 90) clock hours requirement for professional development and other requirements of this regulation. At least one half of the required hours [forty-five (45) hours every five (5) years] for educators must shall be in activities that relate to the educator's work with students or staff. Satisfactory evidence of such completion, as set forth in Section 5-15 or Section 16, shall be submitted to the Department with the application for renewal. The ninety (90) clock hours of professional development must shall have taken place during the term of the Continuing License.

### 5.2 Renewal of Expired Delaware Continuing License

5.2.1 The Department may issue a Continuing License to a qualified educator who previously held a Delaware Continuing License that expired not more than five years before the renewal application, with the following conditions:

5.2.1.1 If the educator has been out of the profession for more than three (3) years, the educator shall, within the first year of employment, successfully complete a Department approved mentoring program which focuses on current best practices in curriculum, instruction and assessment and aligned to state and national standards.

5.2.1.2 Prior to renewal of the License, the educator shall provide to the Department evidence of successfully completing ninety (90) clock hours of professional development during the last five (5) years, pursuant to Section 7.

5.2.1.3 A Continuing License is valid for five ( 5) years unless extended pursuant to 14 **Del.C.** §1216 or revoked or suspended for cause, as defined in 14 **Del.C.** §1218 or suspended for failure to meet the other conditions of maintaining a License.

5.2.2 The Department may not reissue a Continuing License to an educator who previously held a valid Continuing License which expired more than five (5) years prior to application for renewal.

5.2.2.1 The educator shall apply for an Initial License and meet the requirements in effect at the time of the application.

5.43 Professional Development Options for Relicensure are listed in Section 15 and Section 16.

OPTION	HOUR VALUE	VERIFICATION	CRITERIA
College Credit	1 semester hour = 15 clock hours. 1 quarter hr./CEU = 10 clock hours.	Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs.	Must be completed at a regionally accredited college or other approved provider. College Credit must be taken for credit with grade of "C" or better or a "P" in pass or fail course.
"Clusters" of skills and knowledge.	Verified clock hours in completion of cluster activities.	Approval Slip or Form Verifying Completion.	Cluster must be prior approved by Professional Development and Associated Compensation Committee, the Professional Standards Board and the State Board of Education.

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Planned School professional development day	Verified clock hours actively involved in professional development activities	Certificate of Attendance provided by school district or school sponsoring the professional development	Must focus on district or school identified curriculum, instruction, assessment, school climate, or other need identified in district or school improvement plan, or be related to the educator's position.
Professional Conference or Workshop or Institute or Academy	Verified clock hours actively involved in workshop or conference sessions	Original Certificate of Attendance or Completion OR Letter from Supervisor and Conference Staff. Copies and Exhibits of products developed by Applicant. Course Attendance Slip	Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education. Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education. Includes workshops offered by districts or other employing authorities either as part of professional development day or after school hours.
Required recertification to retain DE Professional license	Verified clock hours involved in recertification activities.	Certificate of Attendance. Original Certificate of Completion for CEUs.	Must be required to renew DE professional license.
Mentoring	Verified clock hours involved in mentoring activities	Activity Documentation Form. (No prior approval required)	Must be mentoring of teacher, administrator, or specialist. Must be part of a formal state or local program.
Cooperating Teacher or Intern Supervisor	Verified clock hours involved in support of student teacher or intern	Activity Documentation Form completed by higher education director of field based clinical studies. (No prior approval required)	Must be supervision of graduate or undergraduate intern or student teacher in a state approved educator preparation program.
Presentation	Verified clock hours preparing and presenting	Activity Documentation Form* (Prior approval required)	Must include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)
Educational Project	Verified clock hours completing project. Minimum of 15 clock hours	Activity Documentation Form* (Prior approval required)	Project must have been prior approved by the Professional Development and Associated Compensation Committee. Must have obtained final approval after completion and verification by PDAC

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Curriculum/ Assessment Development	Verified clock hours of service; Minimum of 3 clock hours	Original documentation from committee chair verifying actual clock hours of participation	Must be service on formal committee organized by local, state, national, or international education agency or organization.
Educational Travel	Verified clock hours of experience. Minimum of 15 clock hours per travel activity. Final Project.	Activity Documentation Form* (Prior approval required)	Must be prior approved by Professional Development and Associated Compensation Committee. Must have obtained final approval after completion and verification by PCAG.
Professional Programs or Committees	Verified clock hours of service or experience.	Original documentation from committee chair or activity leader verifying actual clock hours of participation.	Must be a formal activity provided through a recognized local, state, national, or international education agency or organization
Peer Coaching	Verified clock hours of service or experience.	Activity Documentation Form. (No prior approval required)	Must be part of a formal program.
Publication	30 clock hours for book. Up to 15 clock hours per other publication.	Copy of Publication or Document.	Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding.
Professional Portfolio (to be developed by Standards Board).	45 clock hours for completed and approved portfolio.	The Completed or Approved Portfolio.	Must satisfy the standards established for teaching portfolios. Must be submitted to DOE by December 31 of the final year of the certificate for assessment and approval.
NBPTS Certification or similar National Certification	45 clock hours for attaining national certification  Not complete, then use verified clock hours completing portfolio activities.	A Valid Copy of the National Certificate. For candidate not completing certificate, use the Activity Documentation Form. (No prior approval required)	Holds a certificate indicated by NBPTS as related to an individual's work or assignment. Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.
Formal Study Groups	Verified clock hours working as a member of a study group.	Activity Documentation Form and The Product of the Study.* (Prior approval required)	Must relate to the individual's work or assignment. Must include a product.

**5.24** Documentation of Clock Hours for Relicensure

5.24.1 For renewal of the Continuing License, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies ~~will~~ shall be used: one (1) semester hour equals fifteen (15) clock hours, one (1) quarter hour equals ten (10) clock hours, one (1) CEU equals ten (10) clock hours. To be documented for clock hours, activities ~~must~~ shall meet the criteria set forth in the regulations and ~~must~~ shall be appropriately verified and applied for. Professional development activities that are part of a DPAS assistance or improvement plan may be used to satisfy this requirement. Individuals, schools or school districts, or other agencies organizing or conducting professional development activities which may be used for fulfilling the requirements for renewal of a license are responsible for providing documentation of participation to all participants. Each educator is responsible for obtaining any necessary approvals, as set forth in ~~5.4~~ Section 14 and in Section 15, from his or her employer before participating in a professional development activity. An employer may not impose additional activity requirements on the award of clock hours towards renewal of a Continuing License.

5.24.2 Criteria for determining if activities are acceptable for clock hour credit for an educator include the following:

5.24.2.1 The activity enhances the knowledge and skills in the educator's job or contributes to his/her school or profession.

5.24.2.2 The activity meets one of the relicensure options.

5.24.2.3 The activity addresses one of the standards for the educator's area of the profession.

5.24.2.4 The activity is completed during the term of the educator's current Continuing License.

5.24.2.5 The activity addresses specific Professional Teaching or ~~Administrator~~ Educator Standards.

5.24.2.6 Participation in, or completion of, the activity can be documented.

5.35 The Relicensure Application, Activity Documentation Form, and, where required, original or official documents ~~will~~ shall be used to verify activities for renewal of a Continuing License. Official transcripts or original grade slips are required documentation for successful completion of college courses.

5.46 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.) during the five (5) year term of a Continuing License, clock hours documented ~~must~~ shall have been appropriate to the educator's position at the time the clock hours were completed.

5.7 The Department shall have the responsibility to verify clock hours for applicants that are not currently employed by a Delaware employing authority or those employed in another jurisdiction and wish to renew their Continuing License. The Department may require that the applicant submit verifying documentation.

**6 DE Reg. 518 (10/1/02)**

**7 DE Reg. 197 (8/1/03)**

**7 DE Reg. 1350 (4/1/04)**

**10 DE Reg. 97 (07/01/06)**

**6.0 Required Professional Development**

To obtain renewal of a Continuing License, educators are required to participate in professional development activities totaling a minimum of ninety (90) clock hours every five (5) years and any other professional development or mentoring requirements required. The ninety (90) clock hours must shall be completed during the five (5) year term of the license. All activities ~~must~~ shall relate to the 14 **Del.C.** §1597, Delaware Professional Teaching or 14 **Del.C.** §1590, Delaware Administrator Standards, or appropriate specialty organization standards ~~or appropriate specialty organization standards.~~

**6 DE Reg. 518 (10/1/02)**

**7 DE Reg. 197 (8/1/03)**

**10 DE Reg. 97 (07/01/06)**

## 7.0 Professional Development Options for Renewal of a Continuing License

Candidates for renewal of a Continuing License may select from a variety of professional development options, as set forth in the relicensure options approved by the Professional Standards Board, set forth in Section 5-4 14 and in Section 15 and contained in the Guidelines for Issuance and Renewal of a Continuing License. The activities selected must be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure for which educators receive compensation may be submitted in fulfillment of the ninety (90) clock hour requirement for relicensure. Graduate credits used to satisfy the ninety (90) clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule, if they meet the requirements set forth in 14 DE Admin. Code 15052. The activities or options used to satisfy the ninety (90) clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement.

6 DE Reg. 518 (10/1/02)

7 DE Reg. 197 (8/1/03)

10 DE Reg. 97 (07/01/06)

## 8.0 Extension of Continuing License for Exigent Circumstances

8.1 The Department may extend a Continuing License for a period not to exceed one (1) year, upon the educator showing exigent circumstances warranting the necessity of such extension.

8.1.1 The expiration of an educator's License before the end of the school year shall be considered an exigent circumstance; however the educator's License may only be extended to the end of the current school year.

8.1.2 An educator shall establish exigent circumstances to the satisfaction of the Department by showing circumstances in a written request to the Department with any necessary documentation.

8.1.3 Notwithstanding any extension, the effective date of any renewed License shall be the original expiration date.

6 DE Reg. 518 (10/1/02)

10 DE Reg. 97 (07/01/06)

## 9.0 Leave of Absence

9.1 An educator may take an authorized leave of absence of up to three years with no effect upon the validity or expiration of the Continuing License.

9.1.1 Upon a pplication by the educator to the Department on a Department approved form, the educator's Continuing License may be extended for up to three (3) years for the time period of an authorized leave of absence.

9.1.2 The Department may require that the educator use a Department approved form.

9.1.3 The Department may require that the educator provide documentation sufficient to establish the authorized leave of absence.

9.1.4 An educator's Continuing License shall not be automatically extended under this section and the burden is on the educator to make proper application to the Department and to establish the authorized leave of absence.

6 DE Reg. 518 (10/1/02)

## 10.0 Criminal Conviction History and Investigation of Misconduct

10.1 An applicant shall disclose his or her criminal conviction history upon application for a Continuing License, or within ninety (90) days prior to the expiration of a Continuing License if the applicant requests the renewal of their Continuing License, or upon application of renewal of an expired Continuing License. Failure to disclose a criminal conviction history is grounds for denial or revocation of a Continuing License as specified in 14 Del.C. §1219.

10.2 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications.

where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

10.2.1 The Department shall send notice of the inability to process the application.

10.2.2 The applicant shall be responsible for maintaining current contact information with the Department.

**6 DE Reg. 518 (10/1/02)**

## **11.0 Effect of Regulation**

This regulation shall apply to all requests for Continuing License, issuance and renewal, except as specifically addressed herein. ~~Educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 shall have until June 30, 2007 to meet the new Continuing License renewal standards. All administrators in instructional areas issued a Continuing License as of July 1, 2001, shall have until June 30, 2007 to meet the new Continuing License renewal standards. Educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new Continuing License renewal standards as set forth herein.~~

11.1 Effective February 11, 2010, as educators receive either their original Continuing License or as they renew their Continuing License, only the Options listed in Section 15 shall be valid.

**6 DE Reg. 518 (10/1/02)**

**10 DE Reg. 97 (07/01/06)**

## **12.0 Exigent Circumstances**

~~A license holder whose license expires during the school year may have the Continuing License extended until the last day of the school year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.~~

## **12.0 Suspension of a Continuing License For Failure To Meet Conditions of Issuance**

12.1 Failure of an educator to meet the requirements of the Continuing License after issuance shall result in the suspension of the educator's Continuing License.

12.2 Notice of Action

12.2.1 The Secretary or his or her designee shall not take action against a person to suspend their Continuing License without providing the person with written notice of the suspension and the reasons therefore and with an opportunity for a full and fair hearing before the Standards Board.

12.2.2 Notice shall be sent to the person's last known address. Notice shall be sent by certified mail, with return receipt requested and may also be sent electronically.

12.2.3 The license holder shall have thirty (30) calendar days from the date the notice of the suspension was mailed to make a written request for a hearing.

12.2.4 If no written request for a hearing is received by the Standards Board within thirty (30) calendar days from the date the notification was mailed, the license holder's license shall be deemed to be suspended and the holder shall be so notified.

12.2.5 Notice of the suspension shall be made by the Secretary, or his or her designee, to the educator's employer.

12.2.6 All communications between a license holder and the Department or Standards Board provided for in this Section shall be by certified mail, with a return receipt requested. Additional notice may also be sent electronically.

12.3 Standards Board Hearings and Procedures

12.3.1 In any hearing before the Standards Board to challenge action taken under this regulation, the Standards Board shall have the power to administer oaths, order the taking of depositions, issue

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subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

12.3.2 Unless otherwise provided for in this Section, the burden of proof in a license suspension action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has failed to comply with the applicable laws and regulations relating to the retention of the license.

12.3.3 Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

**7 DE Reg. 197 (8/1/03)**

**10 DE Reg. 97 (07/01/06)**

## 13.0 Secretary of Education Review

The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Continuing License on an individual basis and grant a Continuing License to an applicant who otherwise does not meet the requirements for a Continuing License, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

**7 DE Reg. 197 (8/1/03)**

**10 DE Reg. 97 (7/1/06)**

## 14.0 Continuing License Options

Options for Relicensure

14.1 Options listed in this Section shall be valid for educators holding a Continuing License whose expiration date does not exceed February 10, 2015.

14.2 Educators holding a Continuing License whose expiration date does not exceed February 10, 2015 may also use the Continuing License options listed in Section 15.

14.3 Options listed in this Section for the renewal of a Continuing License shall expire on February 10, 2015.

14.4 Educators either receiving their original Continuing License after February 11, 2010 or upon renewing their Continuing License on or after February 11, 2010 shall use the options listed in Section 15.

<b>OPTION</b>	<b>HOUR VALUE</b>	<b>VERIFICATION</b>	<b>CRITERIA</b>
College Credit	1 semester hour = 15 clock hours. 1 quarter hr./CEU = 10 clock hours.	Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs.	Shall be completed at a regionally accredited college or other approved provider. College Credit shall be taken for credit with grade of "C" or better or a "P" in a pass or fail course.
"Clusters" of skills and knowledge.	Verified clock hours in completion of cluster activities.	Approval Slip or Form Verifying Completion.	Cluster shall be prior-approved by Professional Development and Associated Compensation Committee, the Professional Standards Board and the State Board of Education.
Planned School professional development day	Verified clock hours actively involved in professional development activities	Certificate of Attendance provided by school district or school sponsoring the professional development	Shall focus on district or school identified curriculum, instruction, assessment, school climate, or other need identified in district or school improvement plan, or be related to the educator's position.

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Professional Conference or Workshop or Institute or Academy	Verified clock hours actively involved in workshop or conference sessions	Original Certificate of Attendance or Completion OR Letter from Supervisor and Conference Staff. Copies and Exhibits of products developed by Applicant. Course Attendance Slip.	Shall include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education. Includes workshops offered by districts or other employing authorities either a part of professional development day or after school hours.
Required recertification to retain DE Professional license	Verified clock hours involved in recertification activities.	Certificate of Attendance. Original Certificate of Completion for CEUs.	Shall be required to renew DE professional license.
Mentoring	Verified clock hours involved in mentoring activities	Activity Documentation Form. (No prior approval required)	Shall be mentoring of teacher, specialist or administrator. Shall be part of a formal state or local program.
Cooperating Teacher or Intern Supervisor	Verified clock hours involved in support of student teacher or intern	Activity Documentation Form completed by higher education director of field based clinical studies. (No prior approval required)	Shall be supervision of graduate or undergraduate intern or student teacher in a state approved educator preparation program.
Presentation	Verified clock hours preparing and presenting	Activity Documentation Form* (Prior approval required)	Shall include only a actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)
Educational Project	Verified clock hours completing project. Minimum of 15 clock hours	Activity Documentation Form* (Prior approval required)	Project shall have been prior approved by the Professional Development and Associated Compensation Committee. Shall have obtained final approval after completion and verification by PDAC
Curriculum/ Assessment Development	Verified clock hours of service; Minimum of 3 clock hours	Original documentation from committee chair verifying actual clock hours of participation	Shall be service on formal committee organized by local, state, national, or international education agency or organization.
Educational Travel	Verified clock hours of experience. Minimum of 15 clock hours per travel activity. Final Project.	Activity Documentation Form* (Prior approval required)	Shall be prior approved by Professional Development and Associated Compensation Committee. Shall have obtained final approval after completion and verification by PCAC.
Professional Programs or Committees	Verified clock hours of service or experience.	Original documentation from committee chair or activity leader verifying actual clock hours of participation.	Shall be a formal activity provided through a recognized local, state, national, or international education agency or organization
Peer Coaching	Verified clock hours of service or experience.	Activity Documentation Form. (No prior approval required)	Shall be part of a formal program.

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Publication	30 clock hours for book. Up to 15 clock hours per other publication.	Copy of Publication or Document.	Shall contribute to the education profession or add to the body of knowledge in the individual's specific field. Shall be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, shall be approved for funding.
Professional Portfolio (to be developed by Standards Board).	45 clock hours for completed and approved portfolio.	The Completed or Approved Portfolio.	Shall satisfy the standards established for teaching portfolios. Shall be submitted to DOE by December 31 of the final year of the certificate for assessment and approval.
NBPTS Certification or similar National Certification	45 clock hours for attaining national certification Not complete, then use verified clock hours completing portfolio activities.	A Valid Copy of the National Certificate. For candidate not completing certificate, use the Activity Documentation Form. (No prior approval required)	Holds a certificate indicated by NBPTS as related to an individual's work or assignment. Certificate or participation as a candidate shall be completed and verified by the expiration date of the Delaware certificate.
Formal Study Groups	Verified clock hours working as a member of a study group.	Activity Documentation Form and The Product of the Study.* (Prior approval required)	Shall relate to the individual's work or assignment. Shall include a product.

## 15.0 Amended Continuing License Options

15.1 Options listed in this Section shall be valid for educators holding a Continuing License who see expiration date does not exceed February 10, 2015.

15.2 Educators either receiving their original Continuing License after February 11, 2010 or upon renewing their Continuing License on or after February 11, 2010 shall use the options listed in this Section.

OPTIONS	CRITERIA	VERIFICATION
Action Research as an individual or by participating in Action Research as a member of a Professional Learning Community	The verified hours shall be accrued during the Action Research as an individual or within a Professional Learning Community. The documented goal for the participant(s) shall be a product and a new set of educator knowledge and skills. These shall complement the school, district or charter school's Success Plan or State's initiative and shall be focused on student learning. A product shall be available for verification.	A certificate of participation or the completed <i>Activity Documentation Form</i> shall be presented which documents the goals and results of the Action Research as an individual or as a member of a Professional Learning Community.
Certification required to retain a State of Delaware Professional License	The certification to maintain the State of Delaware Professional License shall be required within the Standards Board's regulation.	A Certificate of Attendance and the original Certificate of Completion for CEUs shall be presented.

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<p><u>College Course</u></p>	<p>The course shall be completed within a matriculated Masters, Doctoral program, a graduate level course of study or may be an undergraduate course as seen by the educator as necessary to acquire new knowledge and skills related to their position. Courses shall be taken at a regionally accredited College or University. College or University Credit shall be taken for credit and the educator shall attain a grade of "B" or better in the course, or a "P" in Pass / Fail course.</p>	<p>Official transcripts, or original grade slips or an original certificate of completion for CEUs shall be presented.</p> <p>Hours may be accrued where 1 semester hour equals 15 hours and 1 quarter semester hour/CEU equals 10 hours.</p>
<p><u>Cooperating Teacher or Intern Supervisor</u></p>	<p>The supervision shall be of a graduate or undergraduate intern or of a student teacher in a state-approved educator preparation program</p>	<p>The <i>Activity Documentation Form</i> shall be completed by the Higher Education Director of field-based studies.</p>
<p><u>Curriculum/Assessment Development as an individual or as a result of work with in a Professional Learning Community</u></p>	<p>The educator may work individually or as a contributing member of a Professional Learning Community. The documented goal is a curricular component and/or an encompassing assessment. A product shall be available for verification.</p>	<p>The educator shall present documentation from the school, district, charter school or state Professional Learning Community verifying the actual hours of participation and creation of a product. A certificate of participation or the completed <i>Activity Documentation Form</i> shall be presented.</p>
<p><u>Educational Travel</u></p>	<p>The request shall be approved by the Professional Standards Board's Professional Development and Associated Compensation Committee (PDAC). The educator shall subsequently obtain the PDAC's final approval upon submission of the required post-travel documents.</p>	<p>The completed <i>Educational Travel Activity Documentation Form*</i> is required in addition to the required post-travel documents and subsequent PDAC approval letter. Hours may be accrued for Travel components that will directly impact the educator's delivery of new instruction. (*Prior approval required)</p>
<p><u>Mentoring</u></p>	<p>The mentor or lead mentor may use hours accrued during the initial training sessions, during subsequent refresher training sessions, or during the actual mentoring of a novice educator.</p>	<p>The completed <i>Activity Documentation Form</i> is required.</p>
<p><u>NBPTS Certification or a National Certification as specified in 14 Del.C. §1305(l)</u></p>	<p>If the educator does not attain the national certification or become re-certified within their 5 year Continuing License time frame, they may use the hours accrued while completing the required professional development activities to ward their relicensure. The <i>Activity Documentation Form</i> and a certificate attesting to their application as a candidate by the national certification agency shall be completed and verified.</p>	<p>Educators will use the <i>Activity Documentation Form</i> for the hours accrued in addition to the certificate attesting to their application to the national certification agency.</p>

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Planned Professional Development Program	The Planned Professional Development Program shall focus on the school, district or charter school's Success Plan which may be targeting curriculum, instruction, assessment, school climate, other identified need or shall be related to the educator's work with students or staff.	A certificate of participation or a completed <i>Activity Documentation Form</i> shall be presented.
Presentation and/or Publication as a result of Action Research or similar work as an individual or within a Professional Learning Community	The hours shall be accrued during the Action Research or similar work within a Professional Learning Community that the presentation and/or publication is based upon. A product shall be available for verification.	The completed <i>Activity Documentation Form*</i> is required.  (*Prior approval required)
Professional Development "Cluster" of skills and knowledge	The cluster shall be approved by the Professional Development and Associated Compensation Committee, the Professional Standards Board and the State Board of Education.	The approval slip or documentation verifying the successful completion of a cluster shall be presented. The successful completion of a cluster equates to 90 hours.
Professional Committee, Conference, Workshop, Institute or Academy	The educator may include time spent in those portions of the Committee, Conference, Workshop, Institute or Academy that contribute to the participant's knowledge and skills, competence, performance or effectiveness in education that are directly connected to the school, district or charter school's Success Plan or State initiative. This option includes workshops offered by districts or other employing authorities either as part of a professional development day or during after school hours. Examples of expected student or educator outcomes are anticipated.-	The original certificate of attendance or completion, a letter from the Professional Committee, Conference, Workshop, Institute or Academy staff certificate and the completed <i>Activity Documentation Form with examples of expected outcomes</i> shall be presented.
Professional Learning Community	The educator shall be a contributing member of a formal or informal Professional Learning Community whose documented goal for participants is a product or new set of knowledge and skills which are focused on student learning.	The educator shall present documentation from the school, district, charter school or state Professional Learning Community verifying the actual hours of participation and creation of a product. A certificate of participation or the completed <i>Activity Documentation Form</i> shall be presented.
Skilled and Technical Sciences specific career area program certification or Career and Technical program certification	Skilled and Technical Sciences or Certified Career and Technical Education teachers may use hours they have accrued in acquiring the specific knowledge and skills necessary for their program or specific career area program approval.	A valid copy of the certificate attesting to the successful completion of the activity required for the Career and Technical program area or the Skilled and Technical Sciences specific career area program certification shall be presented.

Teacher Leader Professional Development	The hours shall be accrued during a Teacher Leader professional development activity that contribute to the participant's knowledge and skills, competence, performance or effectiveness in teacher leadership that directly impact the productiveness of the school. Examples of expected outcomes are anticipated.	The original certificate of attendance or completion and the completed <i>Activity Documentation Form</i> with examples of expected outcomes shall be presented.
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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**

**Food Supplement Program: DSSM 9068 & 9085 - Certification Periods Reporting Changes**

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 Food Supplement Program policies in the Division of Social Services Manual (DSSM) related to *Certification Periods* and *Reporting Changes*.

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 December 31, 2009.

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

**SUMMARY OF PROPOSAL**

The proposal amends the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP).

**Statutory Authority**

- 7 CFR §273.10(f), *Certification Periods*; and,
- 7 CFR §273.12, *Requirement for Change Reporting Households*

**Summary of Proposal**

The purpose of the proposed amendments at DSSM 9068, *Certification Periods* and DSSM 9085, *Reporting Changes* is to extend the food benefit certification periods from 6 and 12 months to **12 and 24 months**. The changes allow DSS to give simplified reporting households a 12-month certification period, with a 6-month interim report; and, elderly or disabled households with no earned income a 24-month certification period with a 12<sup>th</sup> month interim report.

These changes will benefit households by allowing more time between applications and reducing staff workload. The households are required to submit an interim report in month 6 and month 12 of their respective certification periods in order to continue benefits for the 12 and 24 month periods. Failure to return the interim reports will result in the food benefit case closing.

Also, removed language requiring clients to report changes that occur between the interview and before their certification notice is received. This no longer applies due to simplified reporting.

## DSS PROPOSED REGULATION #09-44

### REVISIONS:

#### 9068 Certification Periods

[7 CFR 273.10(f)]

~~Certification periods means the period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility will be established only upon a recertification based upon a newly completed application, an interview and verification. Under no circumstances will benefits be continued beyond the end of a certification period without a new determination of eligibility. The first month of the certification period will be the first month for which the household is eligible to participate.~~

~~The certification periods for all households shall not exceed 12 months.~~

DSS approves eligible households for a defined number of months called a certification period. The certification period is the period of time that DSS determines a household is eligible to receive benefits.

At the end of the certification period, entitlement to food benefits expires. DSS will not issue any further food benefits until the household completes a new application, is interviewed and provides all necessary verifications.

The first month for which the household is eligible to participate starts the first month of the certification period. DSS will assign certification periods according to each household's circumstances.

The certification periods for all households shall not exceed 12 months, except households listed in DSSM 9068.2.

#### ~~9068.1 Certification Period Length~~

~~DSS will assign the longest certification period possible according to each household's circumstances.~~

- ~~• DSS will assign households subject to simplified reporting requirement a six-month certification period, except for elderly or disabled households with no earned income.~~
- ~~• DSS will assign households where all members are elderly or disabled with no earned income a 12-month certification period.~~
- ~~• DSS can assign a shorter certification period of no less than 4 months on a case-by-case basis if the household's circumstances warrant it.~~

#### 9068.1 12-Month Certification Periods

Assign households subject to simplified reporting, except the elderly or disabled households per DSSM 9068.2, a 12-month certification period.

Households assigned a 12-month certification period are required to complete and return an interim report in the 6<sup>th</sup> month of the certification period.

**2 DE Reg. 2271 (6/1/1999)**

**8 DE Reg. 114 (7/1/2004)**

**12 DE Reg. 462 (10/01/08)**

#### ~~9068.2 Shortening Certification Periods~~

~~Do not end a household's certification period earlier than its assigned recertification period unless DSS receives information that the household has become ineligible. Loss of cash assistance or change in employment status is not sufficient in and of itself to shorten a certification period. Close or adjust the household's benefits according to DSSM 9-085 in response to reported changes. Do not use the Notice of Expiration to shorten a certification period.~~

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## **9068.2 24-Month Certification Periods for Elderly or Disabled Households**

Assign a 24-month certification period to households where all members are elderly or disabled and have no earned income.

Households assigned a 24-month certification period are required to complete and return an interim report in the 12<sup>th</sup> month of the certification period.

## **9068.3 Lengthening Certification Periods**

~~A household's certification period may be lengthened after it has been assigned as long as the total months of certification does not exceed 12 months.~~

~~Households whose certification is lengthened must be informed of the new certification ending date with a notice containing the same information as the notice of eligibility.~~

## **9068.3 Length of Certification Periods**

Assign each household the longest certification period possible based on its circumstances.

Households with unstable circumstances can be assigned a certification period consistent with their circumstances, but no less than 4 months.

## **9068.4 Shortening Certification Periods**

Households certification periods will not be terminated before the assigned certification periods end except for the following reasons:

- DSS receives information that the household has become ineligible, or
- The household fails to respond to a Request for Contact to resolve unclear information.

Households certification periods will not be shortened due to loss of cash assistance or change in employment status.

Close or adjust households benefits in response to reported changes according to DSSM 9085.

Do not use the Notice of Expiration to shorten a certification period.

## **9068.5 Lengthening Certification Periods**

When needed, lengthen a household's certification period after it has been assigned as long as the total months of certification do not exceed 12 months.

Inform households whose certification is lengthened of the new certification ending date with a notice containing the same information as the notice of eligibility.

*(Break in Continuity of Sections)*

## **9085 Reporting Changes**

[7 CFR 273.12]

Certified food stamp households are required to report the following changes in circumstances:

Simplified Reporting Requirements

The following reporting requirements are for all households:

- Households are required to ~~only~~ report income changes only when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of the certification or recertification.
- When a household's monthly income exceeds ~~the~~ 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.

# PROPOSED REGULATIONS

- Households will not have to report any changes in the household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid resources exceed \$2000.00 ~~and or~~ changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

- Adults living in a home without any minor children, who are getting food ~~stamp~~ benefits because they are working ~~over~~ more than 20 hours a week, must report when they start working less than 20 hours a week.

An applying applicant household must report all changes related to its food ~~stamp~~ benefit eligibility and benefits at the certification interview. ~~Changes, listed above, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.~~

Households assigned a 12-month certification period are required to complete and return an interim report in the 6th month of the certification period. DSS will close the food benefit case when a household fails to complete and return the interim report.

Households assigned a 24-month certification period are required to complete and return an interim report in the 12th month of the certification period. DSS will close the food benefit case when a household fails to complete and return the interim report.

Only the reporting requirements in this Section ~~and no other reporting requirements~~ can be imposed by the Division.

**10 DE Reg. 560 (09/01/06)**

**12 DE Reg. 462 (10/01/08)**

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### **DSSM: 11000 Child Care Subsidy Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding Definition and Explanation of Terms, Income Eligible/Loss of Employment or Job Transition, Income Eligible/Training, Explanation of Certificates and Loss of Need Transition.

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 December 31, 2009.

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

### SUMMARY OF PROPOSED CHANGES

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) to increase the period of extended child care for the purpose of job search from one month to three months.

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## Statutory Authority

- 45 CFR Part 98, Child Care and Development Fund
- 45 CFR §98.20, A child's eligibility for child care services

## Summary of Proposed Changes

1) DSSM 11002.9, Definition and Explanation of Terms, DSSM 11003.7.3, Income Eligible/Loss of Employment or Job Transition, DSSM 11003.7.4, Income Eligible/Training; and, DSSM 1104.12.1, Loss of Need Transition are being amended as the child care extension for job search has increased from one month to three months for child care recipients who:

- lost a job and need to look for another job;
- have a gap in employment because of a transition between jobs;
- ended an education/training program and need to look for work; or,
- have a break in an education/training program.

Definitions are being revised throughout to coincide with the amended policy. Additionally, other revisions are made to clarify existing definitions.

2) DSSM 11004.4.1, Explanation of Certificates, is being amended to correct a misnomer in the policy. Group homes, as used in child care policy, are actually large family homes. All instances of group home, erroneously used in lieu of large family home, are being removed from the child care policy.

Also, the term "Food Stamp" has been replaced with "Food Benefit" throughout, as appropriate.

## DSS PROPOSED REGULATIONS #09-45

### REVISIONS:

#### 11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

- A. TANF - Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).
- B. Authorization - Form 618d is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.
- C. Caregiver/Provider - The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.
- D. Caretaker - The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.
- E. CCDBG - Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:
  1. provide child care to low income families,
  2. enhance the quality and increase the supply of child care,
  3. provide parents the ability to choose their provider, and
  4. increase the availability of early childhood programs and before and after school services.Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41.

## PROPOSED REGULATIONS

- F. CFR - Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.
- G. CCMIS - Child Care Management Information System, the name used to describe the Division's payment system for child care.
- H. Child - A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.
- I. Child Care Category - The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:
- 11 - Participants receiving TANF and not working, but participating in TANF E&T;
  - 12 - Participants receiving TANF and working;
  - 21 - Participants receiving Food ~~Stamps~~ Benefits who are mandatory or voluntary participants in E&T and not receiving TANF;
  - 31 - SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;
  - 41 - A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.)
  - 51 - A participant is coded category 51 when s/ he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.
- J. Child Care Certificate - A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.
- K. Child Care Parent Fee - The amount the parent/ caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.
- L. Child Care Services - Those activities that assist eligible families in the arrangement of child care for their children.
- M. Child Care Centers - A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.
- N. Child Care Type - Refers to the setting or place where child care is provided. The four types of care are:
1. Center based (under DCIS II Child Care Sub system Site #17 or 18),
  2. ~~Group~~ Large Family Home (under DCIS II Child Care Sub system Site #16),
  3. Family Home (under DCIS II Child Care Sub system Site #15), and
  4. In-Home (under DCIS II Child Care Sub system Site #19).
- O. DCIS II - Delaware Client Information System, the automated client information system for the Department of Health and Social Services.
- P. Educational Program - A program of instruction to achieve:
1. a basic literacy level of 8.9;
  2. instruction in English as a second language;
  3. a GED, Adult Basic Education (ABE), or High School Diploma;
  4. completion of approved special training or certificate courses; or
  5. a post-secondary degree where the degree is part of an approved DSS Employment and Training program.
- The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second ~~associates~~ associate's degree may be attained if it leads to a ~~bachelors~~ bachelor's degree.

- The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.
- Q. Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to the federal minimum wage or an equivalent. It also includes periods of up to ~~one month~~ three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.
- R. Family Size - The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.
- S. Family Child Care Home - A ~~place~~ private residence where licensed care is provided for one to six children who are not related to the caregiver. In some instances, care may be provided in excess of 24 hours if warranted due to the nature of the parents/caretakers work.
- T. TANF Child Care - The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.
- U. Food ~~Stamp~~ Benefit Employment and Training - The program by which certain unemployed mandatory and/ or voluntary Food ~~Stamp~~ Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food ~~Stamp~~ Benefit Employment & Training (FS E&T). Under the Division's DCIS II Child Care Sub system, this is Category 21.
- V. In-Home Care - Care provided for a child in the child's own home by either a relative or non-relative, other than the parent/caretaker where such care is exempt from licensing requirements. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.
- W. Income - Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.
- X. Income Eligible - A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.
- AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.
- AB. Job Training/Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food ~~Stamp~~ Benefit Employment & Training (FS ~~FB~~ E&T) contracted programs, WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.
- AC. Large Family Child Care Home - ~~A place where licensed care is provided for more than six but less than twelve children.~~ A private residence other than the child's residence, where child care services are provided by a caregiver for fewer than 24 hours per day per child.
- AD. Legal Care - Care which is either licensed or exempt from licensing requirements.
- AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.
- AF. Parental Choice - The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.
- AG. Protective Services - The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.
- AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child can not function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.
- AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.
- AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.

- AK. Residing With - Living in the home of the parent or caretaker.
- AL. SSBG - Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.
- AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.
- AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.
- AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Benefit Employment & Training (FSFB E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.
- AP. Special Needs Child - A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the ~~competence~~ authority to do so.
- AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the ~~competence~~ authority to do so.
- AR. Technical Eligibility - Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.
- AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.
- AT. Purchase of Care Plus (POC+) - Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee if applicable, and any additional provider-determined co-pay.
- AU. Work Force Investment Act (WIA) - Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.

**8 DE Reg. 1154 (02/1/05)**

**9 DE Reg. 572 (10/01/05)**

**10 DE Reg. 564 (09/01/06)**

**11 DE Reg. 1488 (05/01/08)**

*(Break in Continuity of Sections)*

### 11003.7.3 Income Eligible/Loss of Employment or Job Transition

Parent/caretakers who lose employment or who have a gap in employment because of a transition between jobs, can continue service for up to ~~one month~~ three months. Child care services will cease if employment does not begin again after this time.

### 11003.7.4 Income Eligible/Training

Parent/caretakers who participate in a DSS Food Stamp or TANF Employment and Training program can continue receiving child care services for the duration of their participation as long as:

- A. the training was part of a TANF or Food Stamp Benefit Employability Development Plan; and

- B. there is a reasonable expectation that the training course will lead to a job within a foreseeable time frame (6 to 18 months), such as persons participating in apprenticeship programs, on-the-job training programs, or vocational skill programs.

Child care services can continue for up to ~~one month~~ three months to allow for breaks between training programs or to allow for an employment search upon completion of training.

**10 DE Reg. 1007 (12/01/06)**

*(Break in Continuity of Sections)*

**11004.4.1 Explanation of Certificates**

Use the following as a guide to explain the child care certificate package.

- A. Parents/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.
- B. Licensed Care: In Delaware, all family child care homes, ~~group homes~~, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, ~~group~~, or center child care provider.
- C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:
1. persons who come into the child's own home to care for the parent/caretaker's child,
  2. relatives who provide care in their home for the parent/caretaker's child;
  3. public or private school care,
  4. preschools and kindergarten care, and
  5. before and after school care programs.

Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
  2. safe and clean building premises,
  3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and
  4. relatives who provide care cannot be part of the welfare grant.
- D. Once parents/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parents/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

- E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/ Neglect History Clearance Form or forms for all members 18 and older living in

# PROPOSED REGULATIONS

the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child abuse and criminal history declaration statement on file for each child care staff member.

- F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parents/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.
- G. Allow parents/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parents/caretakers will need to obtain a new certificate if they still wish to receive service.
- H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.
- I. The client has 60 days from confirmation of eligibility to provide the DSS Case Manager with the name of his/her provider. If the client fails to provide this information his/her case will close.

**8 DE Reg. 1153 (2/1/05)**

**9 DE Reg. 572 (10/01/05)**

*(Break in Continuity of Sections)*

## **11004.12.1 ~~Loss of Need Transition~~ Continuing Child Care after Loss of Need**

45 CFR 98.20

~~If parent/caretakers should lose their need for service, child care authorization should generally end. However, under certain circumstances, continue to authorize service for up to one month for parent/caretakers who:~~

Under certain circumstances, DSS will continue child care for up to three months after parents/caretakers lose their need for service. DSS will continue to authorize service for up to three months for parents/caretakers who:

- A. lose employment and who need to search for new employment,
- B. experience a gap in employment because of a transition between jobs,
- C. end an education/training program and need to search for employment, or
- D. experience a break in an education/training program.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF AIR AND WASTE MANAGEMENT**

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

**7 DE Admin. Code 1124**

### **1124 Control of Volatile Organic Compound Emissions**

#### **REGISTER NOTICE**

**SAN #2009-10; SAN #2009-11; SAN #2009-12; SAN #2009-13**

#### **1. Title of the Regulation:**

Amendments to 7 **DE Admin. Code** 1124 "Control of Volatile Organic Compounds", Section 2, "Definitions"; Section 12.0, "Surface Coating of Plastic Parts"; Section 19.0, "Coating of Metal Furniture"; Section 20.0, "Coating of Large Appliances"; Section 22.0, "Coating of Miscellaneous Metal Parts."

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

The Department proposes to revise Sections 2.0, 12.0, 19.0, 20.0 and 22.0 of 7 DE Admin. Code 1124 to conform to Control Techniques Guidelines (CTG) documents issued by EPA. Section 182(b)(2) of the Clean Air Act (CAA) requires all ozone non-attainment areas, including Delaware, to update relevant regulations for Reasonably Available Control Technology (RACT) controls for emission sources covered in an EPA CTG and to submit the regulations to EPA as State Implementation Plan (SIP) revisions. These sections of 1124 were based upon CTG and ACT information developed in 1977, 1978 and 1994. The proposed revisions regulate the volatile organic compound (VOC) contents of additional products, require the use coating application equipment that provides for high transfer efficiency, and include clean-up solvent emissions in the applicability determinations.

## 3. Possible Terms of the Agency Action:

None.

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

7 Delaware Code, Chapter 60, Environmental Control.

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

None.

## 6. NOTICE OF PUBLIC COMMENT:

A hearing on these proposed amendments will be held on Tuesday, January 5, 2010 beginning at 6pm in the Departments Priscilla Building conference room, 156 South State Street, Dover, DE 19901. Interested parties may submit comments in writing to David F. Fees, Air Quality Management Section, 156 South State Street, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

## 7. Prepared By:

David F. Fees, P. E. 302-739-9415

November 2, 2009

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

[1124 Control of Volatile Organic Compound Emissions](#)

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### DIVISION OF AIR AND WASTE MANAGEMENT

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

### 1125 Requirements for Preconstruction Review

#### REGISTER NOTICE

SAN # 2009-28

## 1. Title of the Regulation:

7 DE Admin. Code 1125 "Requirements for Preconstruction Review," 3.0, "Prevention of Significant Deterioration of Air Quality."

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

7 DE Admin. Code 1125 regulates emissions of pollutants from new and modified facilities, and is organized by attainment status of pollutants emitted relative to federal national ambient air quality standards (NAAQS); 2.0 covers non-attainment and 3.0 covers attainment areas.

This action is to amend 3.0 of 7 DE Admin. Code 1125 to cite explicitly that nitrogen oxides (NO<sub>x</sub>) is a precursor to the formation of ground-level ozone. EPA requires this revision (see 73 FR 16205, March 27, 2008) because they have determined the regulatory language is not clear that nitrogen oxides (NO<sub>x</sub>), in addition to volatile organic compounds, is a ground-level ozone precursor.

This action has no immediate impact because all of Delaware is classified as non-attainment of the ground-level ozone national ambient air quality standard (NAAQS), and regulated under 2.0 of 7 DE Admin. Code 1125. 2.0 clearly states that NO<sub>x</sub> is a precursor to the formation of ground-level ozone.

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

None.

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

7 DE Code, Chapter 60, Environmental Control.

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

None.

**6. Notice of Public Comment:**

There will be a hearing on this proposed amendment on January 5, 2010 beginning at 6 pm in DNREC's Priscilla Building Conference Room, 156 South State Street, Dover, DE 19901. Interested parties may submit comments in writing to Ronald Amirikian, Air Quality Management Section, 156 South State Street, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

**7. Prepared By:**

Ronald A. Amirikian

October 13, 2009

**\*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](#)

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**DIVISION OF AIR AND WASTE MANAGEMENT**

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

**REGISTER NOTICE**

**SAN # 2009-09**

**1. Title of the Regulations:**

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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

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

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

Delaware is proposing to amend Regulation 1138 by adding a new Section 14 that covers miscellaneous parts or products surface coating operations. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to cadmium, chromium, lead, manganese, or nickel compounds. In addition, some of these compounds, except the manganese compounds, are classified as known or probable human carcinogens by the EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for these types of operations and the recently promulgated federal standard (40 CFR Part 63 Subpart HHHHHH) on which this proposed amendment is heavily based. In addition, this amendment proposes to include more health protective requirements that currently exist in similar area source air toxics standards found in Regulation 1138 and other Delaware air regulations.

## 3. Possible Terms of the Agency Action:

None

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

7 Delaware Code, Chapter 60

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

None

## 6. Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, January 5, 2010 beginning at 6:00 PM in the DNREC's Priscilla Building Conference Room, 156 S. State Street, Dover, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

## 7. Prepared By:

James R. Snead (302) 323-4542 james.snead@state.de.us October 5, 2009

**\*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](#)**

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# PROPOSED REGULATIONS

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## DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 1141

### REGISTER NOTICE

**SAN # 2009-28**

#### 1. Title of the Regulation:

To amend 7 **DE Admin. Code** 1141 "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products" by revising Section 3.0 "Portable Fuel Containers," and to revise Delaware State Implementation Plan (SIP) for attainment of ground-level ozone standard.

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

Delaware adopted Section 3.0 of 7 **DE Admin. Code** 1141 in January 2001 in order to reduce volatile organic compound (VOC) emissions from portable fuel containers (i.e., gas cans). Effective January 1, 2009, the EPA began to regulate emissions from portable fuel containers under a federal rule (37 FR 8428). The federal rule provides for better emission control of portable fuel containers, and therefore achieving greater VOC emission reductions than the current Delaware regulation. As such, DNREC proposes that 3.0 of 7 **DE Admin. Code** 1141 not apply to portable fuel containers manufactured on and after January 1, 2009, and that Delaware rely on the federal rule to control emissions from this source.

Also, DNREC proposes to make a corresponding revision to its ozone SIP, demonstrating that the revision to Section 3.0 of 7 **DE Admin. Code** 1141 and the reliance on the new federal rule will not adversely impact Delaware's efforts for attaining the ozone air quality standard.

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

None.

#### 4. Statutory Basis or Legal Authority To Act:

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

#### 5. Other Regulations that may be Affected by the Proposal:

None.

#### 6. Notice of Public Comment:

The revised Section 3.0 of 7 **DE Admin Code** 1141 and the proposed ozone SIP revision are available for public review at DNREC's Air Quality Management Section (AQMS) offices in both Dover and New Castle. A public hearing will be held on **January 5, 2010**, beginning at 6:00 pm, in AQMS Conference Room, 2<sup>nd</sup> Floor, Priscilla Building, 156 South State Street, Dover, DE 19901. Comments on the regulation revision and the related SIP revision can be sent to AQMS at the above address, or presented at the hearing.

#### 7. Prepared By:

Frank F. Gao, Phone: (302) 323-4542 Date: October 29, 2009

E-Mail: Frank.Gao@state.de.us

**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**

*(Break in Continuity of Sections)*

41/11/2004 xx/xx/2010

## 3.0 Portable Fuel Containers

### 3.1 Applicability

- 3.1.1 The provisions of 3.0 of this regulation apply to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel container (or containers) or spout (or spouts) or both portable fuel container (or containers) and spout (or spouts) for use in the State of Delaware; except:
- 3.1.1.1 Safety cans meeting the requirements of 29 CFR 1926, Subpart F.
- 3.1.1.2 Portable fuel containers with a nominal capacity less than or equal to one quart.
- 3.1.1.3 Rapid refueling devices with nominal capacities greater than or equal to four gallons provided such devices are designed for use in officially sanctioned off-highway motorcycle competitions, and either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.
- 3.1.1.4 Portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating that outboard engine.
- 3.1.2 Compliance with the requirements of 3.0 of this regulation does not exempt any spill-proof system or spill-proof spout from compliance with other applicable Federal or State requirements.
- 3.1.3 The requirements of 3.0 of this regulation apply ~~on and after January 1, 2003, to any portable fuel container or spout or both portable fuel container and spout manufactured between~~ before January 1, 2003 and December 31, 2008, inclusive, except that any portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003 that does not meet the requirements of 3.0 of this regulation, may be sold, supplied, or offered for sale until January 1, 2004, provided that the date of manufacture or a date code, representing the date of manufacture, is clearly displayed on the portable fuel container or spout. Note: Portable fuel containers became regulated under federal regulation 37 FR 8428 effective January 1, 2009.
- 3.1.4 Any person subject to any requirement of 3.0 of this regulation may comply with an alternative control plan that has been approved by the Department and the U. S. EPA as part of Delaware's State Implementation Plan.

### 3.2 Definitions.

For the purpose of 3.0 of this regulation, the following definitions apply:

**"Fuel"** means a hydrocarbon mixture used to power any spark ignition internal combustion engine.

**"Manufacturer"** means any person who imports, manufactures, produces, assembles, packages, repackages, or re-labels a portable fuel container or spout or both portable fuel container and spout.

**"Nominal capacity"** means the volume, indicated by the manufacturer that represents the maximum recommended filling level.

**"Outboard engine"** means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the operating position, houses the engine and drive unit external to the hull of the marine watercraft.

**"Permeation"** means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

**"Person"** means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, estate or any legal entity whatsoever.

**"Portable fuel container"** means any container or vessel with a nominal capacity of ten gallons or less that is intended for reuse and that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.

**"Spill-proof spout"** means any spout that complies with all of the performance standards specified in 3.3.2 of this regulation.

## PROPOSED REGULATIONS

**"Spill-proof system"** means any configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in 3.3.1 of this regulation.

**"Spout"** means any device that can be firmly attached to a portable fuel container, through which the contents of a portable fuel container can be dispensed.

**"Target fuel tank"** means any receptacle that receives fuel from a portable fuel container.

### 3.3 Standards.

3.3.1 No person subject to the requirements of 3.0 of this regulation shall sell, supply, offer for sale, or manufacture for sale portable fuel container (or containers) or spout (or spouts) or both portable fuel container (or containers) and spout (or spouts) for use in the State of Delaware which does not:

3.3.1.1 Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

3.3.1.2 Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.

3.3.1.3 Have only one opening for both filling and pouring.

3.3.1.4 Provide a fuel flow rate and fill level of:

3.3.1.4.1 not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

3.3.1.4.1.1 less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

3.3.1.4.1.2 greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any; or

3.3.1.4.2 not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

3.3.1.4.3 not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

3.3.1.5 Meet a permeation rate of 0.4 grams per gallon per day or less.

3.3.1.6 Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

3.3.2 No person subject to the requirements of 3.0 of this regulation shall sell, supply, offer for sale, or manufacture for sale any spout for use in the State of Delaware, which does not:

3.3.2.1 Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

3.3.2.2 Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.

3.3.2.3 Provide a fuel flow rate and fill level of:

3.3.2.3.1 not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

3.3.2.3.1.1 less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or,

3.3.2.3.1.2 greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or,

3.3.2.3.2 not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

3.3.2.3.3 not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

3.3.2.4 Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

#### 3.4 Testing Procedures.

Any manufacturer subject to the requirements of 3.3 of this regulation shall perform the following compliance tests in accordance with test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. Records of compliance testing shall be maintained for as long as the product is available for sale in Delaware, and test results shall be made available to the Department within 60 days of request.

3.4.1 The following tests shall be carried out to determine compliance with 3.3.2 of this regulation prior to the product being manufactured for sale in Delaware:

3.4.1.1 "Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by California Air Resources Board (CARB) on July 6, 2000. This test method is hereby adopted by reference.

3.4.1.2 "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

3.4.1.3 "Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

3.4.2 The following tests shall be carried out to determine compliance with 3.3.1 of this regulation prior to the product being manufactured for sale:

3.4.2.1 All of the test procedures stated in 3.4.1 of this regulation.

3.4.2.2 "Test Method 513, Determination of Permeation Rate for Spill-Proof Systems," adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

#### 3.5 Administrative Requirements.

3.5.1 Any manufacturer subject to the requirements of 3.3.1 of this regulation shall clearly display on each spill-proof system:

3.5.1.1 the phrase "Spill-Proof System";

3.5.1.2 a date of manufacture or representative date code; and

3.5.1.3 a representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with the requirements of 3.3.1 of this regulation.

3.5.2 Any person subject to the requirements of 3.3.2 of this regulation shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

3.5.2.1 the phrase "Spill-Proof Spout";

3.5.2.2 a date of manufacture or representative date code; and

3.5.2.3 a representative code identifying the spout as subject to and complying with the requirements of 3.3.2 of this regulation.

3.5.3 Any manufacturer subject to 3.5.1 or 3.5.2 or both 3.5.1 and 3.5.2 of this regulation shall file an explanation of both the date code and representative code with the Department prior to manufacturing the product for sale in the State of Delaware.

3.5.4 Any person subject to 3.5.1 or 3.5.2 or both 3.5.1 and 3.5.2 of this regulation shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

3.5.5 Any person subject to 3.5.2 of this regulation shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate.

# PROPOSED REGULATIONS

- 3.5.6 Any person not subject to or not in compliance with 3.3 of this regulation may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout, respectively, on any sticker or label affixed thereto, or on any accompanying package.
- 3.5.7 Any person subject to and complying with 3.3 of this regulation, that due to its design or other features, cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:
- 3.5.7.1 For a portable fuel container or portable fuel container and spouts sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and
- 3.5.7.2 For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

**5 DE Reg. 1497 (01/01/02)**

**5 DE Reg. 1759 (03/01/02)**

**5 DE Reg. 1125 (11/01/02)**

**10 DE Reg. 868 (11/01/06)**

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

## DIVISION OF AIR AND WASTE MANAGEMENT

### TANK MANAGEMENT BRANCH

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 (7 Del.C. Ch. 60 & 74)  
7 DE Admin. Code 1351

**SAN # 2008-20 and 2008-23**

#### 1. Title of the Regulations:

1351 Delaware Regulations Governing Underground Storage Tank Systems

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

The Delaware Regulations Governing Underground Storage Tank Systems were first effective July 11, 1986. The most recent revision date is January 11, 2008. The DNREC is proposing changes to the UST Regulations to incorporate federal requirements, to add clarifying language, and to ensure the greatest protection of human health, safety and the environment in Delaware.

The changes to the Delaware UST Regulations are proposed for the following reasons:

- Addition of requirements for a Tank Operator training program are required by the Federal Energy Policy Act of 2005 (EPACT). The EPACT requires the state to promulgate regulations by August 8, 2009.
- Requirements prohibiting the installation of new USTs within specific distances of public, industrial and domestic wells have been added to ensure protection of drinking water supplies.
- Clarification language added to specific sections in response to public comment requesting such.
- Corrections to errors in January 11, 2008 edition of the UST Regulations
- Corrections and Additions to conform to Federal requirement that State regulations are at least as stringent as the Federal UST regulations

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

None

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

7 Del.C. Chapter 74, 7 Del.C. Chapter 60

**5. Other Regulations that May be Affected by the Proposal:**

N/A

**6. Notice of Public Comment:**

The DNREC will conduct a Public Hearing on Tuesday, January 12, 2010. The hearing is scheduled to begin at 6:00pm in the conference room at the DNREC office located at 391 Lukens Drive, New Castle, DE. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Ms. Jill Williams Hall, DNREC/TMB, 391 Lukens Drive, New Castle, DE 19720 and must be received by the Department by the end of the comment period, as designated by the hearing officer at the hearing.

Copies of the proposed regulations are available online at <http://www.dnrec.delaware.gov/info/Pages/Rules.aspx>

Copies may be viewed during regular business hours at the following DNREC offices:

DNREC, 391 Lukens Drive, New Castle, DE

DNREC, R&R Building, 89 Kings Highway, Dover, DE

DNREC, Route 113, Sussex Suites, Unit #6, Georgetown, DE

**7. Prepared by:**

Jill Williams Hall, Planner IV, 395-2500, 3/6/09, [jill.hall@state.de.us](mailto:jill.hall@state.de.us)

Regulation Reference	Proposed Change
"Effective Date of Regulations" throughout Regulations	Date these Regulations became effective inserted = January 11, 2008
<b>PART A</b>	
Part A, 1.2.2.	Add 1.2.2.5. "Wastewater treatment tank systems"
Part A, 1.2.2.	Add "with the exception of requirements in Part A, 1.3. and Part E..."
Part A, Definitions, Class A, B, C Operators	Class A,B and C Operator definitions for Operator Training
Part A, Definitions, Containment Sump	Added "Piping" to Containment Sump definition to capture transition sumps in the definition
Part A, Definitions Heating Fuel UST System	Clarification added to define Heating Fuel UST as one connected directly to heat generating equipment
Part A, Definitions, Domestic, Public and Industrial Wells	Added definition of Public well, Industrial well and Domestic well for new UST citing requirements
Part A, Definitions, Regulated Substance	Verbage in definition of "Petroleum" that was inadvertently deleted in Jan 2008 promulgation added.
Part A, Definitions -Secondary Containment	Deleted "primary containment"
Part A, Definitions, Tank	Clarification added to define a "tank" solely as the stationary storage vessel and not any of the Ancillary equipment
Part A, Definitions Pipe	Added "line" to mean the same as "pipe"
Part A, Definitions, UST System	means an Underground Storage Tank, connected underground product, vent and vapor recovery Piping and its associated Ancillary Equipment, and containment systems <i>and all appurtenances</i> . Appurtenances added to include equipment such as spill containment as part of the UST System.

# PROPOSED REGULATIONS

Part A, definitions	Add " <i>Consumptive Use HF UST System</i> " and " <i>Non-Consumptive Use HF UST System</i> "
Part A, definitions	Delete "Heating Fuel UST"
Part A, Definitions	Modify definition of "Non-Commercial" to remove reference to specific Regulated Substances
Part A, definitions	Tangible net worth ... <i>and all probable future economic</i> benefits
Part A, 4.1.1.	Change "protection" to " <i>Detection</i> "
Part A, 4.1.5.	Add tank registration fee req.for Consumptive Use HF UST systems
Part A, Section 4.1.5.	change "tank fee" to "Tank registration fee" to mirror statute
Part A, Section 4.1.7.	"change in product stored" to defined term "Change in Substance Stored". Added Retrofit and Upgrade to list of changes to the UST System that require notification to the Dept.
Part A, Section 4.4.11.	Added Upgrade and Retrofit records to documentation that must be given to a new Owner
Part A, Section 4.6.10.	Correction of title of the State of Delaware Fire Regulations
Part A, Section 4.6.12., Installation Notification Requirements	changed 'tank' to 'UST System" for clarification
Part A, 5.1.3.3.	Added requirement that repair records be kept for the life of the UST system to comply with federal requirements
Part A, Section 10	Added Operator Training requirements as required by the federal Energy Policy Act
<b>PART B</b>	
Part B	All titles changed to "excluding <i>Consumptive Use Heating Fuel</i> "
All applicable sections	Spill protection and Overfill protection changed to <i>Spill prevention</i> and <i>Overfill prevention</i>
Part B, §1.2.4. & §1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part B, Section 1.2.3.3.	change "tank location" to "UST System location" for clarification
Part B, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps
Part B, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance requirements for interstitial monitoring in Section 1.9.4.4.
Part B, Section 1.9.1.3.	change "tank tightness test" to "UST System tightness test"
Part B, 1.9.1.1.4.	Added .... Release Detection on all UST Systems.... " <i>Is operational prior to Regulated Substance being placed in the UST System</i> "
Part B, 1.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing <i>at a minimum of once every 30 calendar days</i> "
Part B, 1.9.3.1.1.7. and 1.9.3.1.1.8.	Add: For UST systems <i>storing ethanol blended Regulated Substance with a storage capacity ....</i>
Part B, 1.9.3.1.1.9.2.	Change "Regulated Substance" to "calculated daily inventory" ....For any day in which there is a loss of five percent (5%) or more of the <i>calculated daily inventory</i>
Part B, Section 1.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification

Part B, Section 1.9.3.1.1.9.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part B, Section 1.9.3.3.	Automatic systems utilized for performing inventory procedures must comply with preventative maintenance program requirements in Section 1.9.5.3.
Part B, Section 1.9.4.2.	Change "once during each calendar month" to "once every 30 calendar days" for Interstitial monitoring testing when used for tank release detection to meet federal requirements
Part B, Section 1.9.4.3.	Added - interstitial monitoring equipment must be capable of producing a record of Release detection monitoring results.
Part B, Section 1.9.5.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part B, Section 1.9.5.1.4.	Added - Records of ATG tests must be kept for the life of the UST System
Part B, 1.9.5.3.1.	words added: "Inspection of the ATG console for <i>proper printer operation</i> "
Part B, 1.17.1.	Add ...Suction Piping shall <i>operate at less than atmospheric pressure</i> and.."
Part B, Section 1.19.1.4.	Line Leak Detector Testing - Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part B, Section 1.19.2.3.	Added language to allow continuous interstitial monitoring of double wall piping in lieu of an annual piping tightness test. Inadvertently omitted in Jan 2008 draft.
Part B, 1.19.3. - 1.19.3.1.6.	Section deleted: "Line Leak Detector & Tightness Test Requirements for Double Wall Piping Systems"
Part B, Section 1.20.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part B, 1.21.2.	Delete "one of"
Part B, 1.21.7.	Delete "calendar"
Part B, 1.21.8.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part B, 1.21.8.1. and 1.21.8.2.	Deleted
Part B, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part B, 1.22.3.4.	Deleted "(s)"
Part B, 1.22.2.3.	Deleted "in a container"
Part B, 1.24.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part B, Sections 1.24.2.8.	Added requirements: Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part B, 1.24.2.8.	Add " <i>Repair or replacement</i> "
Part B, Section 1.24.2.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.

# PROPOSED REGULATIONS

Part B, 1.24.2.10.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement for a failed Sacrificial Anode Cathodic Protection system after January 1, 2008."
Part B, 1.25.2.	Added: Double wall containment sumps with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part B, Section 1.25.6	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump"
Part B, 1.25.6. and 1.29.7.4.	change "immediately" to "immediately upon discovery"
Part B, 1.27.1.	Added "sensors utilized for Release Detection"
Part B, 1.27.2.	Owners and Operators shall perform a <i>functionality</i> test of all <i>sump and interstitial sensors</i> at a minimum of once every twelve (12) months in accordance with the manufacturer's specifications or as directed by the Department to verify proper sensor operation.
Part B, Section 1.27.3.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump.
Part B, Section 1.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements; added site assessment req. and record documentation
Part B, Section 1.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part B, 1.29.2.1.2	ATG performing tank tightness test " <i>at a minimum of once every 30 calendar days</i> "
Part B, Section 1.29.3.3	Added option to use modified inventory control procedures to comply with inventory control req. for Used Oil USTs.
Part B, 1.29.4.3.2.	Add requirement the stick readings for manual tank gauging must be <i>an average of 2 consecutive stick readings</i>
Part B, 1.29.4.3.3.	Added "the change in Tank volume shall be calculated <i>from the difference in the average beginning and average ending liquid level measurements and...</i> "
Part B, 1.29.4.3.4.	change "monthly tank volume" to " <i>4 most recent change in tank volume numbers calculated in 1.29.4.3.3. of this Part shall be averaged and this test average...</i> "
Part B, 1.29.4.3.5.	change "tank volume" to " <i>tank volume test average</i> "
Part B, Section 1.29.5.	Added requirements for modified inventory control for Used Oil USTs.
Part B, 1.29.5.1.2.	Deleted requirement for water removal within 7 days; Added requirement that DNREC be notified if water changes more than 2 inches
Part B, 1.29.6.1.4.	Added " <i>the amount of used oil removed from the UST shall be recorded</i> "
Part B, 1.29.7.7.	Added requirements for exemption from testing for double wall spill prevention devices with interstitial monitoring on Used Oil USTs
Part B, Section 1.30.4.	Added requirement for piping on emergency generator UST Systems that
Part B, 1.30.4.	Added requirement that emergency generators cannot utilize a piping tightness test to comply with piping release detection; must use interstitial monitoring

Part B, Section 1.31	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part B, 1.31.1.5.	Added: manual check of emergency shut off valves to routine inspection requirements
Part B, Section 1.32.3.3.	Deleted requirement that lined USTs be inspected as lining cannot be used to meet corrosion protection requirements.
Part B, Section 2.2.3.	change "Tank Facility" to "UST System Facility"
Part B, Section 2.4.2.3.	Change "once during each calendar month" to "once every 30 calendar days" for clarification
Part B, 2.4.4.	Deleted
Part B, 2.9.1.1.4.	Added .... Release Detection on all UST Systems.... <i>"Is operational prior to Regulated Substance being placed in the UST System"</i>
Part B, 2.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing <i>at a minimum of once every 30 calendar days"</i>
Part B, Section 2.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part B, Section 2.9.3.1.1.9.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part B, 2.9.3.1.1.9.2.	Change "Regulated Substance" to "calculated daily inventory" ....For any day in which there is a loss of five percent (5%) or more of the <i>calculated daily inventory</i>
Part B, Section 2.9.3.1.1.9.4.	Added requirement that automatic systems utilized for performing inventory must comply with preventative maintenance requirements
Part B, 2.9.5.1.5.1.	words added: "Inspection of the ATG console for <i>proper printer operation</i> "
Part B, Section 2.9.5.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part B, 2.9.6.5.3. and 2.9.8.5.3.	Change "Free Product" to "LNAPL"
Part B, 2.9.6.6.3.2. and 2.9.8.6.3.2. and 2.9.10.4.3.2.	Add ... <i>"and the results reported to the owner or operator within 21 days"</i>
Part B, 2.9.8.6.2. & 2.9.8.6.3.	Changed "tested" to "testing" and "sampled" to "sampling"
Part B, 2.9.9.9.3.	Change "31" to "30" days
Part B, Section 2.9.9.9.2. And 2.9.9.9.5.	change "Tank system" to "UST System"
Part B, Section 2.9.10.4.3.	Change "once during each calendar month" to "once every 30 calendar days" for clarification
Part B, Section 2.16.1.3.	Changed time frame for repair of cathodic protection systems on metallic piping from 30 to 60 days to be consistent with time frames for repair of cathodic protection on Tanks.
Part B, Section 2.16.1.5.	Clarification language added to define what "remote cathodic protection" requires
Part B, 2.18.1.	Added suction piping shall <i>operate at less than atmospheric pressure</i>
Part B, Section 2.20.1.4.	Line Leak Detector Testing - Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.

# PROPOSED REGULATIONS

Part B, Section 2.20.2.3.2.	Changed "automatic tank gauge" to "interstitial monitoring equipment" for clarification
Part B, Section 2.20.2.3.5.	Cross referenced with Section 2.26 for clarification
Part B, Section 2.21.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part B, Section 2.22.7.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part B, 2.22.2.	Delete "one of"
Part B, 2.22.7.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part B, 2.22.7.1. and 2.22.7.2.	Deleted
Part B, 2.23.3.4.	Deleted "(s)"
Part B, 2.25.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part B, Section 2.25.2.8.	Added requirements: Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part B, 2.25.2.8.	Add "Repair or replacement"
Part B, 2.25.2.12.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Up grade or Replacement for a failed Sacrificial Anode Cathodic Protection system after January 1, 2008.
Part B, 2.25.3.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part B, 2.25.3.8.	Add "Repair or replacement"
Part B, Section 2.25.2.9. and 2.25.3.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part B, Section 2.25.3.8.	Added requirement: Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part B, Section 2.26.1.	Added containment sump testing for sumps with sensors used for compliance with Release Detection requirements for double wall suction piping - necessary after section 2.21.3. was added
Part B, Section 2.26.3.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump"
Part B, 2.26.3. and 2.30.7.4.	change "immediately" to "immediately upon discovery"
Part B, Section 2.28.1.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used in stead of annual testing of spill containment
Part B, 2.28.1.	Owners and Operators shall perform a <i>functionality</i> test of all sump and interstitial sensors
Part B, Section 2.28.2.	Added: All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump
Part B, Section 2.29.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements. Includes req. for soil sampling and documentation submittal to DNREC.

Part B, Section 2.29.2.	Cross r eferenced r equirement to report ab normal o perating conditions with Part E, Section 1.2.
Part B 2.29.4.	Add "Retrofits or Upgrades"
Part B, Section 2.30.2.1.	Deleted "as prescribed in section 2.9. of this Part" as not all Used Oil Release detection methods are listed in section 2.9.
Part B, 2.30.2.1.3.	Delete tank tightness testing as a method of Release Detection for Used Oil USTs
Part B, Section 2.30.3.3.	Added option to use mo dified in ventry con trol pr ocedures to comply with inventory control req. for Used Oil USTs.
Part B, Section 2.30.4.	Changed heading to "Manual Tank Gauging Requirements for Used Oil USTs"
Part B, 2.30.4.3.2.	Add requirement that an <i>average of 2 stick readings</i> must be taken for MTG
Part B, 2.30.4.3.3.	Added " th e change in Tank volume shall be c alculated <i>from the difference in the average beginning and average ending liquid level measurements and...</i> "
Part B, 2.30.4.3.4.	change "monthly tank volume" to " <i>4 most recent change in tank volume numbers calculated in 1.29.4.3.3. of this Part shall be averaged and this test average...</i> "
Part B, 2.30.4.3.5.	change "tank volume" to " <i>tank volume test average</i> "
Part B, Section 2.30.5.	Added requirements for m odified in ventry contr ol for Used Oil USTs.
Part B, 2.30.5.1.2.	Deleted requirement for water re moval with in 7 da ys; Added requirement that DNREC be notified if water changes more than 2 inches
Part B, Section 2.30.6.1.	Correct section reference that is incorrect; Section 1.22. changed to Section 2.23.
Part B, Section 2.30.6.1.3.	Deleted requirement that amount added to Used Oil be measured and recorded; added "2.30.6.1.3. The amount of Used Oil added shall be such that the UST is not more than ninety percent (90%) full"
Part B, Section 2.30.6.1.3.	Added requirement for overfill prev ention on Used Oil U STs that amount of Used Oil add ed cannot be more that 90% of ullage in tank
Part B, 2.30.7.4.	change "immediately" to " <i>immediately upon discovery</i> "
Part B, 2.30.7.7.	Added requirements for exemption from testing for double wall spill prevention devices with interstitial monitoring on Used Oil USTs
Part B, Section 2.31.1.	Added language that emergency generator USTs must comply with all requirements of the Regulations except where modifications are specifically listed in section 2.32.
Part B, Section 2.31.3.	Added option to use tank tightness testing OR any other approved method in section 2.9.
Part B, Section 2.32.1.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days and listed minimal parts of the UST System that must be checked
Part B, 2.32.1.5.	Added: manual check of emergency shu t off valves to ro utine inspection requirements

# PROPOSED REGULATIONS

Part B, Section 2.33.3.4.	If an internally lined tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part B, Section 2.34.2.3.	Added "Internal Lining on ly" to allo wable upgrades for exis ting tanks. Inadvertently omitted in original
Part B, Section 3.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part B, Section 3.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part B, Section 3.3.1.1.	Added Section 1 to requirements to correct omission from Jan 2008 regulations
Part B, Section 3.3.1.2.	Deleted r eference to Se ction 2. 9.7. be cause t his is o nly t ank tightness testing and the requirement is for the en tire UST System to be tightness tested as applicable.
Part B, Section 5.5.1.	5.5._____ "Owners an d Op erators sh all comp ly with the requirements of Part F of these Regulations <i>until the UST System is permanently Removed or Closed In Place in accordance with these Regulations or does not store a Regulated Substance</i> a nd a ll requirements of Par t E o f th ese Regu lations a re co mpleted." Italicized wording adding for clarification
<b>PART C</b>	
Part C	All titles changed to " <i>Consumptive Use Heating Fuel UST Systems</i> "
All applicable sections	Spill protection and Overfill pr otection changed to Spill <i>prevention</i> and Overfill <i>prevention</i>
Part C, Section 1.2.3.3.	change "tank location" to "UST System location" for clarification
Part C, Section 1.2.3.15.	Added Map of UST installation must include Domestic and Industrial Wells within 150 foot radius of the proposed UST location
Part C, Section 1.2.4. and 1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minim um distance re quirements fro m domestic, public and industrial w ells to a new UST System to mirror the Delaware Regulations Gov erning the Con struction and Use of Water Wells.
Part C, Section 1.4.3.3.	Containment sumps installed to meet se condary co ntainment requirements mu st comp ly with th e testin g a nd m aintenance requirements for containment sumps
Part C, Section 1.4.3.4.	Interstitial mon itoring inst alled to meet se condary co ntainment requirements must comp ly with the pr eventative m aintenance program for interstitial monitoring in Section 1.9.4.3.
Part C, 1.9.1.1.4.	Added .... Release Detection on all UST Systems.... "Is operational prior to Regulated Substance being placed in the UST System"
Part C, 1.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing <i>at a minimum of once every 30 calendar days</i> "
Part C, 1.9.3.3.	Added: " interstitial monitoring eq uipment sh all b e ca pable of producing a record of release detection monitoring results.
Part C, Section 1.9.3.1.1.6.4.	Added requirement that automatic systems utilized for performing inventory must comply with preventative maintenance requirements
Part C, Section 1.9.4.1.3.	Change "o nce d uring each ca lendar m onth" to "o nce e very 3 0 calendar days" for ATG when used for tank release detection

Part C, 1.9.4.3.1.	words added: "Inspection of the ATG console for <i>proper</i> printer operation"
Part C, 1.17.1	Added suction piping shall "operate at less than atmospheric pressure"
Part C Section 1.19.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part C, Section 1.19.2.3.	Added language to allow continuous interstitial monitoring of double wall piping in lieu of an annual piping tightness test. Inadvertently omitted in Jan 2008 draft.
Part C, 1.19.3. - 1.19.3.1.6.	Section deleted: "Line Leak Detector & Tightness Test Requirements for Double Wall Piping Systems"
Part C, Section 1.20.3.	Added requirements for Double wall Suction Piping systems to utilize to comply with release detection requirements
Part C, 1.21.2.	Delete "one of"
Part C, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part C, 1.21.8.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part C, 1.21.8.1. and 1.21.8.2.	Deleted
Part C, 1.22.3.4.	Deleted "be" and changed "Lines" to "Piping"
Part C, 1.24.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part C, Sections 1.24.2.8.	Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part C, 1.24.2.8.	Add "Repair or replacement"
Part C, Section 1.24.2.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part C, 1.24.2.10.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement for a failed Sacrificial Anode Cathodic Protection system after January 1, 2008.
Part C, 1.25.2.	Added: Double wall containment sumps with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part C, Section 1.25.6.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part C, 1.25.6.	change "immediately" to "immediately upon discovery"
Part C, 1.26.1.	Added "sensors utilized for Release Detection"
Part C, 1.26.2.	Owners and Operators shall perform a <i>functionality</i> test of all <i>sump and interstitial sensors</i> at a minimum of once every twelve (12) months in accordance with the manufacturer's specifications or as directed by the Department to verify proper sensor operation.
Part C, Section 1.26.3.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump.

# PROPOSED REGULATIONS

Part C, Section 1.27.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements; added requirements for soil sampling and documentation submittal to DNREC.
Part C, Section 1.27.2	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part C, Section 1.27.3.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used instead of annual testing of spill containment
Part C, 1.27.4	Add "Retrofits or Upgrades"
Part C, Section 1.28.1	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part C, Section 1.29.3.3.	Deleted requirement that lined USTs be inspected as lining cannot be used to meet corrosion protection requirements.
Part C, Section 2.2.3.	change "Tank Facility" to "UST Facility"
Part C, 2.4.4.	Deleted
Part C, 2.5.2.	Corrected section references
Part C, 2.9.1.1.4.	Added .... Release Detection on all UST Systems.... "Is operational prior to Regulated Substance being placed in the UST System"
Part C, 2.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing <i>at a minimum of once every 30 calendar days</i> "
Part C, 2.9.4.1.4.1.	words added: "Inspection of the ATG console for <i>proper printer operation</i> "
Part C, Section 2.9.5.6.2.	changed "each calendar month" to "every thirty days"
Part C, 2.9.5.6.3.2.	Add ..." <i>and the results reported to the owner or operator within 21 days</i> "
Part C, Section 2.9.5.7.	Correct incorrect Section reference from 2.9.6.6. to 2.9.5.6.
Part C, 2.9.7.5.3.	Change "Free Product" to "LNAPL"
Part C, 2.9.7.6.2. & 2.9.7.6.3.	Changed "tested" to "testing" and "sampled" to "sampling"
Part C, 2.9.7.6.3.2.	Add ..." <i>and the results reported to the owner or operator within 21 days</i> "
Part C, Section 2.16.1.3.	Changed time frame for repair of cathodic protection systems on metallic piping from 30 to 60 days to be consistent with time frames for repair of cathodic protection on Tanks.
Part C, Section 2.16.1.5.	Clarification language added to define what "restore cathodic protection" requires
Part C, 2.18.1.	Added suction piping shall "operate at less than atmospheric pressure"
Part C, Section 2.20.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part C, Section 2.20.2.3.5.	Cross referenced with Section 2.26. for clarification
Part C, Section 2.21.3.	Added requirements for Double wall Suction Piping systems to utilize to comply with release detection requirements
Part C, 2.22.2.	Delete "one of"
Part C, Section 2.22.7.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification

# PROPOSED REGULATIONS

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Part C, 2.22.7.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part C, 2.22.7.1. and 2.22.7.2.	Deleted
Part C, 2.23.3.5.	Changed "storage" to "UST" and changed "Lines" to "Piping"
Part C, 2.25.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part C, Section 2.25.2.8.	Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part C, 2.25.2.8.	Add "Repair or replacement"
Part C, Section 2.25.2.9. and 2.25.3.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part C, Section 2.25.3.8.	Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part C, 2.25.2.10.	Move last sentence of 2.25.2.7. to create 2.25.2.10.
Part C 2.25.2.12.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement for a failed Sacrificial Anode Cathodic Protection system after January 1, 2008.
Part C, 2.25.3.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part C, 2.25.3.8.	Add "Repair or replacement"
Part C, 2.25.3.8.3.	Add "2.25.3.8.3. Records of required rectifier readings from the date of the most recent passed impressed current Cathodic Protection test"
Part C, 2.26.2.	Added requirements for exemption from testing for double wall containment sumps with interstitial monitoring
Part C, 2.26.3.	change "immediately" to "immediately upon discovery"
Part C, Section 2.26.3.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part C, Section 2.27.1.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used in stead of annual testing of spill containment
Part C, 2.27.1.	Owners and Operators shall perform a <i>functionality</i> test of all sump and interstitial sensors
Part C, Section 2.27.2.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed at the lowest point in the sump
Part C, Section 2.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements; added site assessment req. and record documentation
Part C, Section 2.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part C, 2.28.4	Add "Retrofits or Upgrades"
Part C, Section 2.29.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days

# PROPOSED REGULATIONS

Part C, Section 2.31.3.4.	If an internally lined HF tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part C, Section 2.32.	Reworded for clarity and added "internal lining only" to allowable upgrades for existing tanks. Inadvertently omitted in original.
Part C, Section 3.2.3.	Section 3.2.3. is created by splitting 3.2.2. into 2 sections. The verbage is the same. ____
Part C, Section 3.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part C Section 3.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part C Section 3.3.1.1.	Added Section 1 to requirements to correct omission from Jan 2008 regulations
Part C, Section 3.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
<b>PART D</b>	
All applicable sections	Spill protection and Overfill protection changed to Spill <i>prevention</i> and Overfill <i>prevention</i>
Part D, 1.1.1.	Add "manufacturing defects"
Part D, Section 1.2.3.3.	change "Tank Facility" to "UST System Facility"
Part D, Sections 1.2.4. and 1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part D, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps
Part D, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance program for interstitial monitoring in Section 1.9.4.3.
Part D, 1.9.1.1.4.	Added .... Release Detection on all UST Systems.... "Is operational prior to Regulated Substance being placed in the UST System"
Part D, Section 1.9.2.1.2.	Deleted ATG performing a tank tightness test as an option for Release Detection to comply with federal requirements which require interstitial monitoring
Part D, Section 1.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part D, Section 1.9.3.1.1.3.	Changed drop tube from 6 inches to 5.9 inches from tank bottom to be consistent with Part B and C
Part D, Section 1.9.3.1.1.6.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part D, 1.9.3.1.1.7.	Change "Regulated Substance" to "calculated daily inventory" ....For any day in which there is a loss of five percent (5%) or more of the <i>calculated daily inventory</i>
Part D, 1.9.4.4.1.	Add ..."proper printer operation"

Part D, Section 1.9.5.1.	Deleted ATG performing a tank tightness test as an option for Release Detection to comply with federal requirements which require interstitial monitoring
Part D, Section 1.9.5.1.2.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part D, 1.17.1	Added suction piping shall "operate at less than atmospheric pressure"
Part D, Section 1.19.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part D, Section 1.19.2.	Deleted option for annual piping tightness test for Hazardous Substance piping to comply with Federal requirements that require interstitial monitoring
Part D, Section 1.19.2.1.	Added requirements for continuous interstitial monitoring of pressurized Piping systems to comply with federal release detection requirements.
Part D, Section 1.19.3.1.3.	Change "once during each calendar month" to "once every 30 calendar days"
Part D, 1.19.3. - 1.19.3.1.6.	Section deleted: "Line Leak Detector & Tightness Test Requirements for Double Wall Piping Systems"
Part D, Section 1.20.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part D, 1.21.2.	Delete "one of"
Part D, 1.21.5.and 1.25.7.	change "immediately" to "immediately upon discovery"
Part D, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part D, 1.21.8.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part D, 1.21.8.1. and 1.21.8.2.	Deleted
Part D,1.22.3.4.	Deleted "(s)"
Part D, 1.24.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part D, 1.24.2.8.	Add "Repair or replacement"
Part D, Section 1.24.2.8.	Added: Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part D, 1.24.2.10.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement for a failed Sacrificial Anode Cathodic Protection system after January 1, 2008.
Part D, 1.25.2.	Added: Double wall containment sumps with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part D, Section 1.25.7.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part D, 1.27.1	Added "sensors utilized for Release Detection"

# PROPOSED REGULATIONS

Part D, 1.27.2. & 1.27.3.	Owners and Operators shall perform a <i>functionality</i> test of all <i>sump and interstitial sensors</i> at a minimum of once every twelve (12) months in accordance with the manufacturer's specifications or as directed by the Department to verify proper sensor operation.
Part D, Section 1.27.4.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed at the lowest point in the sump
Part D, Section 1.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements including a addition of site assessment req and documentation submittal
Part D, Section 1.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part D, 1.28.4.	Add "Retrofits or Upgrades"
Part D, Section 1.29.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part D, Section 1.29.1.2.	Added "intrusion of water" to routine inspection requirements
Part D, Section 1.30.3.4.	If an internally lined Hazardous Substance tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part D, Section 2.2.3.	Section 2.2.3. is created by splitting 2.2.2. into 2 sections. The verbage is the same. ____
Part D, Section 2.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part D Section 2.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part D, Section 2.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
Part D, 3.3.3.	Change "Free Product" to "LNAPL"
Part D, 4.3.2.	Change "Free Product" to "LNAPL"
Part D, Section 4.5.	4.5.____ "Owners and Operators shall comply with the requirements of Part F of these Regulations <i>until the UST System is permanently Removed or Closed In Place in accordance with these Regulations or does not store a Regulated Substance</i> and all requirements of Part E of these Regulations are completed." Italicized wording adding for clarification
<b>PART E</b>	
Part E, Section 1.1.1.2.	Changed to require notification of the DNREC hotline of an indicated release only when required to do by Chapter 60 statute and regulations
Part E, Section 1.1.1.1. and 1.3.2.1.	Deleted in-state hot line number. 800 number is now nationwide.
Part E, Section 1.1.1.3.	If the phone numbers listed in these Regulations are not valid it is the responsibility of the <i>Person discovering the Release (changed from Responsible Party)</i> to take all reasonable steps to ascertain a valid phone number.
Part E, Section 1.1.3.1.	Added Repair and Upgrade to situations where a site assessment is required.

# PROPOSED REGULATIONS

Part E. 1.1.3.10.	Added "1.1.3.10. Release Detection required under these Regulations indicates a Release may have occurred"
Part E, Section 1.3.2.1., Section 1.4. and Section 1.5.	Corrected phone number for release reporting
Part E, 1.3.2.	"Any Person, including but not limited to environmental consultants or contractors, utility companies, financial institutions or real estate transfer companies, that discovers any Release of Regulated Substance, shall report the discovery within 24 hours to:"
Part E, 1.3.3.	<i>Any Person</i> who discovers a Release of any quantity of a petroleum substance that produces a visible sheen on surface waters shall immediately notify the National Response Center (800-424-8802).
Part E, 1.5.2.	<i>Owners and Operators shall report....</i>
Part E, Section 1.6. Public Notice Requirements for Confirmed Releases	Requires DNREC to inform the public of any confirmed release that requires clean up; posting on the internet is an appropriate mechanism
Part E, 1.6.2.	Added "1.6.2. <i>The DNREC shall ensure that relevant site release information relating to Remedial Action Plans is available to the public upon request.</i> "
Part E, Section 2.1.1. and 2.2.1.	Changed "Owner and Operator" to "Responsible Party"
Part E, Section 2.2.1.2.1.	Added additional relevant sections; Part C 1.13. and Part D, 1.13.
Part E, 2.2.1.3.	If the abnormal operating condition is the result of an equipment failure or malfunction, Owners and Operators shall Repair or replace all faulty equipment in accordance with <i>all applicable portions</i> of these Regulations.
Part E, Section 2.2.2.	Deleted section in Part E; included in Parts B, C and D in Repair, Retrofit and Upgrade requirements sections
Part E, 2.3.2.	Added " <i>Owners and Operators shall notify the Department....</i> "
Part E, Section 3.1.1.	Added situation where there is an Indicated Release to situations where the Dept can assume control.
Part E, Section 3.2.1.6.	Deleted "Owners and Operators" - redundant as they are included in Responsible Parties
Part E, Section 3.3.4.2.	Added "safety"; typo
Part E, Section 3.3.5.	Added req. that LCSM when updated must be submitted to the Dept.
Part E, Section 4.2.2.	Added path to go directly to a request for a NFA if the results of the investigation do not require remedial action.
Part E, Section 4.2.3.	Investigation reports must be organized in a report form in accordance with Department guidance
Part E, Section 4.4. and 5.4.	Site safety plans must be submitted only if the Department requests.
Part E, Sections 5 & 6	"Site Closure" changed to "No Further Action" throughout the Section
Part E, Section 6.1.3.	Request for NFA must be signed by a PG or PE when required by the Department.
<b>PART F</b>	
Part F, entire section	Added throughout Part F .... Identical to the wording specified in Part F, §.."of the Delaware Regulations Governing Underground Storage Tank Systems"
Part F, entire section	Change "Secretary" to "Department"

# PROPOSED REGULATIONS

Part F, Section 1.11.	Added requirement that Owners/Operators send documentation of current FR mechanism to the Dept within 30 days of confirmation of a Release, as req. by Federal regulations
Part F, Section 1.12.	Any UST System that does not have current FR must immediately empty the UST.
Part F	All Appendices changed to Forms and each Form given a section number to conform with the Del Registrar Style Manual
Part F	"Owner and Operator" changed to "Owner or Operator" - only one must show proof of compliance - are jointly and severally liable
Part F, 2.2.2.3.1.	Deleted "Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation"
Part F, 2.3.6.	Changed citation from 2.16 to 2.15
Part F, 2.4.3.	Added A.M. Best to the list of insurance ratings allowable.
Part F, 2.5.4.	change 2.16. to 2.15.
Part F, 2.6.1.	Add " <i>in the State of Delaware</i> "
Part F, 2.6.3.	change 2.16. to 2.15.
Part F, 2.10.1.	Change "Business" to " <i>Governmental</i> "
Part F, 2.14.2.2.	Add after Owner and Operator: " <i>as required under the terms of the guarantee</i> "
Part F, 2.14.2.3. & 2.14.2.4.	Add language from 40 CFR 280.114
Part F, Form A, Alternative I and II	Added specific types of liability " <u>Amount of <i>corrective action, closure and post-closure care costs, plugging and abandonment costs</i> and other liability coverage covered by a financial test, and/or guarantee</u> "
Part F, Form B	Add 2.2.1. to Recital 1 and 4 - "Guarantor meets or exceeds the financial test criteria of Part F, §2.2.1 and either §§2.2.2. or §2.2.3.
Part F, Form B	Change "business entity organized under the laws of the State of Delaware" to "State of _____".
Part F, Form B	Recital 3 - Add " <i>owner or operator</i> " to blank bracket
Part F, Form B	Recital 7 - change "shall" to " <i>must</i> "
Part F, Form G	Delete Section 2
Part F, Form M	(6) change "shall" to " <i>must</i> "
Part F, Form N	#3 change "Business" to " <i>Governmental</i> "
Part F, Form N	#3 change 2.12. to 2.15.
Part F, Form N	#7 change "shall" to " <i>must</i> "
Part F, Form O	(6) change "shall" to " <i>must</i> "
Part F, Form P	#7 change "shall" to " <i>must</i> "
Part F, Form Q	Change §24 to §2.11.1.3.
<b>PART G</b>	
Part G, Section 1.4.1.7.	Clarified reporting requirements
<b>PART H</b>	
No changes	

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

[1351 Underground Storage Tanks](#)

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103 (7 Del.C. §103)  
7 DE Admin. Code 3304

### REGISTER NOTICE

SAN #2009-29

**1. Title of the Regulations:**

Amend Non-tidal Finfish Regulation No. 3304, Creel Limits and Seasons.

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

The Department promulgated these specialized largemouth bass size regulations in May 1990 to address an unbalanced bass population within three state-managed impoundments. The specialized regulations were designed to allow harvest of smaller bass in order to allow better growth of the remaining larger fish. However, the high incidence of catch and release fishing by Delaware anglers did not affect the hoped-for result. The regulations have occasionally had a negative effect on scheduled fishing tournaments in these ponds by not allowing the weigh-in of bass within the protected slot-size. Recent surveys of the bass populations have shown a more normal size distribution and the special regulations are no longer necessary. Therefore the Division has no reason to maintain these specialized size regulations.

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

These changes would go into effect February, 2010 and remain in effect indefinitely unless changed.

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

7 Delaware Code; Chapter 1, §103; Chapter 11 §1104.

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

This would eliminate under 3304 subsection 2.3 Andrews Lake 2.3.1 and 2.3.2 and subsection 2.4 Derby Pond and Hearns Pond 2.4.1 and 2.4.2. No other regulations are affected.

**6. Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 5:00 PM on Tuesday, December 29, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us. The hearing record will remain open for written or email comments until 4:30 PM December 31, 2009.

**7. Prepared By:**

Craig A. Shirey      Phone # 302-739-9914      November 13, 2009

### 3304 Creel Limits and Seasons

(Penalty Section 7 Del.C. §1304)

1.0 Closed Seasons.

- 1.1 Unless otherwise provided by law or regulation of the Department, there shall be no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State.

# PROPOSED REGULATIONS

## 2.0 Bass.

### 2.1 Statewide limits.

- 2.1.1 It shall be unlawful for any person to have in possession more than six (6) largemouth and/or smallmouth bass at or between the place where said largemouth and/or smallmouth bass were caught and said person's personal abode or temporary or transient place of lodging.
- 2.1.2 Unless otherwise authorized in this regulation, it shall be unlawful for any person to possess any largemouth bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length shall be immediately returned to the water with the least possible injury.
- 2.1.3 It shall be unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is greater than twelve (12) inches and less than seventeen (17) inches shall be immediately returned to the water with the least possible injury.
- 2.1.4 Notwithstanding 2.1.1 of this section, it shall be unlawful for any person to have in possession more than one (1) smallmouth bass measuring more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person's personal abode or temporary or transient place of lodging.
- 2.1.5 It shall be lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.

### 2.2 Becks Pond.

- 2.2.1 Notwithstanding 2.1.1 of this section, it shall be unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth bass.
- 2.2.2 Notwithstanding 2.1.2 of this section, it shall be unlawful for any person to have in possession while fishing on Becks Pond any largemouth bass less than fifteen (15) inches in total length. Any largemouth bass less than fifteen (15) inches in total length shall be immediately returned to Becks Pond with the least possible injury.

### 2.3 Andrews Lake.

- 2.3.1 Notwithstanding 2.1.1 of this section, it shall be unlawful for any person to have in possession while fishing on Andrews Lake more than one (1) largemouth bass of the six (6) allowed in possession to be larger than fifteen (15) inches in total length. Largemouth bass measuring less than twelve (12) inches may be taken and possessed within the six (6) allowed in possession while fishing on Andrews Lake.
- 2.3.2 Notwithstanding 2.1.2 of this section, it shall be unlawful for any person to have in possession while fishing on Andrews Lake any largemouth bass measuring from twelve (12) inches to and including fifteen (15) inches in total length.

### 2.4 Derby Pond and Hearn's Pond.

- 2.4.1 Notwithstanding 2.1 of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond more than one (1) largemouth bass of the six (6) allowed in possession to be larger than eighteen (18) inches. Largemouth bass measuring less than fifteen (15) inches may be taken and retained up to the legal possession limit while fishing on Derby Pond or Hearn's Pond.
- 2.4.2 Notwithstanding the provisions of 2.1.2 of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond any largemouth bass measuring from fifteen (15) inches to and including eighteen (18) inches in total length.

### 2.53 Trout.

- 2.53.1 Season. It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams, except between and including the first Saturday of April and the second Saturday of March of each succeeding year.
- 2.53.2 Hours of Fishing. It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams on the opening day of the trout season before 7:30 a.m.

and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

2.53.3 Possession. It shall be unlawful for any person to catch and/or have in his or her possession in any one day during the prescribed open season more than six (6) rainbow, brown and/or brook trout. On any day after a person takes his or her legal limit of trout, said person shall be prohibited from fishing in a designated trout stream on the same day, unless otherwise authorized by law or this regulation.

2.53.4 Trout Stamp. It shall be unlawful for any person to fish in a designated trout stream on or before the first Saturday in April and June 30, of the same year, and on or before the first Saturday in October and November 30, of the same year, unless said person has in his or her possession a valid trout stamp, or, unless said person is exempted by law from having a trout stamp.

2.53.5 Restricted Trout Stream.

2.53.5.1 It shall be unlawful for any person to fish in a restricted trout stream with more than two (2) flies on a line at any one time.

2.53.5.2 It shall be unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs and/or natural bait on any restricted trout stream.

2.53.5.3 It shall be unlawful for any person to have in his or her possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.

2.53.6 Closure of Trout Stream. It shall be unlawful for any person to fish in a designated trout stream within two weeks (14 days) of a scheduled opening of the trout season.

2.64 Striped Bass (hybrids)

2.64.1 It shall be unlawful for any person to have in his or her possession while fishing in the non-tidal waters of this State more than two (2) striped bass (*Morone saxatilis*) and/or striped bass hybrids (*Morone saxatilis crysops*) or any striped bass or striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail.

2.75 Panfish Limits.

2.75.1 It shall be unlawful for any person to have in possession while fishing in any State-owned non-tidal water more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, redear sunfish, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any one species.

**3 DE Reg. 289 (8/1/99)**

**3 DE Reg. 1738 (6/1/00)**

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 1775 (c) (24 Del.C. §1775 (c))  
24 DE Admin. Code 1770

**PUBLIC NOTICE****1770 Respiratory Care Practice Advisory Council**

PLEASE TAKE NOTICE, pursuant to 29 Delaware Code Chapter 101 and 24 Delaware Code Section 1775 (c), the Respiratory Care Advisory Council of the Delaware Board of Medical Practice has developed and proposes to

modify Regulation 8.0 Continuing Education to require that at least 10 of the required 20 hours of continuing education be obtained from traditional programs attended remotely or with the use of interactive technology that allows the attendee to ask questions of the presenter during the presentation. The regulations are also being amended to provide for the licensee to attest to the completion of continuing education online.

The amendments also add a new rule 12 that clarifies that unlicensed personnel engaged in home medical equipment set up are prohibited from performing patient assessments.

Finally, several minor technical changes have been made to the regulations.

A public hearing will be held on the proposed Rules and Regulations on January 12, 2010 at 3:15 p.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Council will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Council in care of Gayle MacAfee, Executive Director, at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Gayle MacAfee at the above address or by calling (302) 739-4520.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of hearing.

## 1770 Respiratory Care Practice Advisory Council

### 1.0 Definitions

**“Board”** - means Delaware Board of Medical Practice.

**“Certified Respiratory ~~Therapy Technician~~ Therapist (CRTT)”** - means the credential awarded by the NBRC to individuals who pass the certification examination for entry level respiratory therapy practitioners.

**“Council”** - means the Respiratory Care Practice Advisory Council of the Board of Medical Practice.

**“Direct Supervision”** - means supervising licensee or supervising physician will be present and immediately available within the treatment area.

**“General Supervision”** - means whether by direct observation and monitoring, protocols approved by physicians, or orders written or verbally given by physicians.

**“NBRC”** means the National Board for Respiratory Care, Inc.

**“Programs Approved by the Board”** - means initial course of study programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organizations which have been approved by the Board.

**“Registered Respiratory Therapist ( RRT)”** - means the credential awarded by the NBRC to individuals who pass the registry examination for advanced respiratory therapy practitioners.

**“Respiratory Care”** - means treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under the direction of a physician. Respiratory care includes inhalation therapy and respiratory therapy under 24 Del.C. §1770B(a)(2), Medical Practices Act.

**“Respiratory Care Practitioner (RCP)”** - means an individual who practices respiratory care under 24 Del.C. §1770B(a)(1) and (7), Medical Practices Act.

**“Student Respiratory Care Practitioner ( Student-RCP)”** - means an individual enrolled in an accredited Respiratory Care Program recognized and approved by the Board.

**“Unlicensed Personnel (UP)”** - means an individual not otherwise authorized or exempt to provide respiratory care services except as provided in Rule 12.0.

**“Working Student Respiratory Care Practitioner”** - means a student respiratory care practitioner who is employed to perform respiratory care under a limited scope of practice established by the Board.

*(Break in Continuity of Sections)*

**6.0 Disciplinary Proceedings**

- 6.1 The license or permit of a respiratory care practitioner or student found to have committed unprofessional conduct may be subject to revocation, suspension, or non-renewal. The practitioner or student may be placed on probation subject to reasonable terms and conditions, or reprimanded.
- 6.2 Any licensed respiratory care practitioner found, after notice and hearing, to have engaged in behavior in his or her professional activity which is likely to endanger the public health, safety or welfare or who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol may have his or her license revoked, suspended, not renewed or may be placed on probation.
- 6.3 Unprofessional Conduct
- Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, or dishonesty and shall include, without limitation, the following:
- 6.3.1 Performing acts beyond the scope of authorized practice by a respiratory care practitioner to include violations of 24 **Del.C.** §1770B or of these regulations.
- 6.3.2 Assuming duties and responsibilities within the practice of respiratory care without adequate preparation or supervision or when competency has not been maintained.
- 6.3.3 Performing new respiratory care techniques and/or procedures without adequate education and practice or without proper supervision.
- 6.3.4 Failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices.
- 6.3.5 Inaccurately recording on, falsifying or altering a patient or agency record.
- 6.3.6 Committing verbal, physical or sexual abuse or harassment of patients or co-employees.
- 6.3.7 Assigning unqualified persons to perform the practice of licensed respiratory care practitioners.
- 6.3.8 Delegating respiratory care responsibilities to unqualified persons.
- 6.3.9 Failing to supervise persons to whom respiratory care responsibilities have been properly delegated.
- 6.3.10 Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations.
- 6.3.11 Failing to safeguard a patient's dignity and right to privacy in providing respiratory care services which shall be provided without regard to race, color, creed or status.
- 6.3.12 Violating the confidentiality of information concerning a patient except where disclosure is required by law.
- 6.3.13 Practicing respiratory care when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired.
- 6.3.14 Diverting drugs, supplies, or property of a patient or agency or attempting to do so.
- 6.3.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so.
- 6.3.16 Providing respiratory care in this state without a currently valid license or permit and without other lawful authority to do so.
- 6.3.17 Allowing another person to use his/her license or temporary permit to provide respiratory care for any purpose.
- 6.3.18 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a respiratory care practitioner or other health care provider.
- 6.3.19 Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice respiratory care.
- 6.3.20 Failing to report unprofessional conduct by another respiratory care practitioner licensee or permit holder or as specified in 4.1.8.

# PROPOSED REGULATIONS

6.3.21 Failing to provide respiratory care to a patient in accordance with the orders of the responsible physician without just cause.

6.3.22 Violating a lawful provision of Title 24, Chapter 17, Subchapter VII, or any lawful regulation established thereunder.

## 6.4 Disciplinary Investigations And Hearings

6.4.1 Upon receipt of a written complaint against a respiratory care practitioner or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against a respiratory care practitioner and the process established by 29 **Del.C.** §8807 shall be followed with respect to any such matter.

6.4.2 Where feasible, within sixty (60) days of receiving a complaint from the Attorney General's Office after an investigation pursuant to 29 **Del.C.** §8807(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

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

## 8.0 Continuing Education

### 8.1 Contact Hours Required for Renewal

8.1.1 The respiratory care practitioner shall be required to complete twenty (20) ~~twenty~~ contact hours of continuing education biennially. ~~and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year. At least ten (10) of the required twenty (20) contact hours shall be from traditional programs attended either in person or remotely by the use of telecommunication technology that allows the attendee to interact with and ask questions of the presenter during the presentation. The remaining ten (10) hours may be obtained in non-traditional programs in which the participant learns the material at their own pace and place of choosing and demonstrates their mastery of the course content by examination in order to earn contact hours or by participating in the activities described in rules 8.3.1.8 or 8.3.1.9 below.~~

8.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 8.0.

8.1.3 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

8.1.3 Licensees selected for random audit will be required to supplement the attendance verification pursuant to Rule 8.1.4.

8.1.4 The respiratory care practitioner shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.

8.1.25 Contact hours shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires -	20 hours
One year remaining in the licensing cycle requires -	10 hours
Less than one year remaining in the licensing cycle -	exempt

### 8.2 Exemptions

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

### 8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

#### 8.3.1 Definition of Contact Hours

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory ~~therapy technician~~ therapist, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.

8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1.9 Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

#### 8.3.2 Learner Objectives

8.3.2.1 Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

#### 8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3.1 Respiratory care science and practice and other scientific topics related thereto

8.3.3.2 Respiratory care education

8.3.3.3 Research in respiratory care and health care

8.3.3.4 Management, administration and supervision in health care delivery

8.3.3.5 Social, economic, political, legal aspects of health care

8.3.3.6 Teaching health care and consumer health education

8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

#### 8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

#### 8.3.5 Types of Activities/Programs

## PROPOSED REGULATIONS

8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5.2 A correspondence course contains the following elements:

8.3.5.2.1 developed by a professional group, such as an education corporation or professional association.

8.3.5.2.2 follows a logical sequence.

8.3.5.2.3 involves the learner by requiring a active response to module materials and provides feedback.

8.3.5.2.4 contains a test to indicate progress and to verify completion of module.

8.3.5.2.5 supplies a bibliography for continued study.

8.3.5.3 A workshop contains the following elements:

8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.

8.3.5.3.2 follows a logical sequence.

8.3.5.3.3 involves the learner by requiring active response, demonstration and feedback.

8.3.5.3.4 requires hands-on experience.

8.3.5.3.5 supplies a bibliography for continued study.

8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

- Recredentialing exam.
- ~~Pediatric/perinatal~~ Neonatal pediatric specialty exam.
- Pulmonary function credentialing exams
- Sleep Disorders Specialty (SDS) Certification
- Advanced practitioner exam

8.3.5.5 Course preparation

8.3.5.6 Clinical education experience must be:

8.3.5.6.1 Planned and supervised.

8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.

8.3.5.6.3 Based on a planned program of study.

8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.

8.3.5.6.5 Conducted in a clinical setting.

### 8.4 Educational Providers

8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

- American Association for Respiratory Care.
- American Medical Association under Physician Category I.
- American Thoracic Society
- American Association of Cardiovascular and Pulmonary Rehabilitation
- American Heart Association
- American Nurses Association
- American College of Chest Physicians
- American Society of Anesthesiologists
- American Sleep Disorders Association
- Other professional or educational organizations as approved periodically by the Council.

### 8.5 Accumulation of Continuing Education

8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours per renewal period shall include the following categories:

**4 DE Reg. 694 (10/1/00)**

8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3.

8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours per renewal period as follows:

8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.

8.5.2.6 Academic course work, related to health care or health care administration, to a maximum of four contact hours.

**8.6 Review/Approval Audit of Continuing Education Contact Hours**

~~8.6.1 The Council may re-view the documentation of any respiratory care practitioner's continuing education.~~

~~8.6.2 The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.~~

~~8.6.3 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.~~

~~8.6.4 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.~~

~~8.6.5 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.~~

~~8.6.6 Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware.~~

~~8.6.7 An applicant wishing to reinstate an expired license during the three (3) year period permitted under subsection 8.6.6 shall provide documentation establishing completion of the required 20 hours of continuing education during the two year period preceding the application for renewal.~~

~~8.6.8 An applicant whose license has been expired for a period of three (3) or more years and who has been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement demonstrating proof of active practice satisfactory to the Council and shall demonstrate proof of completion of 20 hours of continuing education during the two year period preceding the application.~~

~~8.6.9 An applicant whose license has been expired for three (3) or more years and who has not been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement and shall be required to give evidence of satisfactory completion of an approved respiratory care examination within two (2) years prior to the~~

## PROPOSED REGULATIONS

- application for reinstatement before licensure will be granted. In addition the applicant shall demonstrate completion of 20 hours of continuing education during the two-year period preceding the application.
- 8.6.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licenses a percentage of licenses, determined by the Council, to be audited. The Council may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 8.6.2 Documentation. When a license is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Council shall attempt to verify the CEUs shown on the documentation provided by the licensee. Upon completion of the review, the Council decide whether the licensee's CEU's meet the requirements of these rules and regulations.
- 8.6.2.1 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council
- 8.6.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.
- 8.6.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.
- 8.6.3 Council Review and Hearing Process. The Council shall review all documentation requested of any licensee shown on the audit list. If the Council determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Council initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with the requirements. Unjustified noncompliance of these regulations shall be considered unprofessional conduct in the practice of respiratory care pursuant to Rule 6.3.
- 8.6.4 Sanctions for Unjustified Noncompliance. The minimum penalty for the first finding of unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Council may recommend to the Board imposing any of the additional penalties specified in 24 **Del.C.** §1777(e). The minimum penalty for the second finding of unjustified noncompliance shall be a thirty (30) day license suspension; however, the Council may recommend to the Board imposing any of the additional penalties specified in 24 **Del.C.** §1777(e).
- 8.6.5 Requests for Extension- Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Council shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Council shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Council. Make-up credits may not be used in the next renewal period.

8.6.6 Appeal. Any licensee sanctioned pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

**4 DE Reg. 694 (10/1/00)**

**8 DE Reg. 1438 (4/1/05)**

**8 DE Reg. 1587 (5/1/05)**

**10 DE Reg. 354 (08/01/06)**

## **9.0 Renewal of License**

~~9.1 To renew a license to practice respiratory care, a licensee must complete a renewal form provided by the Division of Professional Regulation certifying completion of continuing education.~~

~~9.2 Renewal notices will be mailed by the Division of Professional Regulation sixty (60) days prior to the expiration of the license.~~

## **40-09.0 Application for a License**

### ~~409.1 Application~~

~~409.1.1 An application for a license to practice respiratory care must be completed on a form provided by the Board of Medical Practice and returned to the Board Office with the required, non-refundable fee.~~

### ~~409.2 Completed Application~~

~~409.2.1 An application for a license to practice respiratory care shall be considered completed when the Board has received the following documentation:~~

~~409.2.1.1 Non-refundable application fee~~

~~409.2.1.2 Completed application for licensure~~

~~409.2.1.3 Verification of education form~~

~~409.2.1.4 Verification of national examination score. Individuals who have not been licensed in any jurisdiction within three (3) years of initially passing the NBRC entry level examination will be required to re-take the NBRC examination and provide proof of a current passing score before a license will be issued.~~

~~409.2.1.5 Letter(s) of good standing from other states where the applicant may hold a license, if applicable.~~

~~409.2.1.6 Any other information requested in the application.~~

### ~~409.3 Appeals Process~~

~~409.3.1 When the Council determines that an applicant does not meet the qualifications for licensure as prescribed under 24 **Del.C.** §1770B and the Rules and Regulations governing the practice of respiratory care, the Council shall make such recommendation to the Board proposing to deny the application. The Council shall notify the applicant of its intended action and reasons thereof. The Council shall inform the applicant of an appeals process prescribed under 29 **Del.C.** §10131.~~

**10 DE Reg. 354 (08/01/06)**

## **10.0 Renewal of Licenses**

10.1 Each license shall be renewed biennially. The failure of the Council/Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Council's regulations and 24 **Del.C.** Ch. 17.

10.2 Renewal may be effected by:

10.2.1 filing a renewal application online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);

10.2.2 attesting on the renewal application to the completing of continuing education as required by Rule 8.0;

10.2.3 payment of fees as determined by the Division of Professional Regulation.

10.3 Failure of a licensee to renew his/her license shall cause his/her license to expire.

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## PROPOSED REGULATIONS

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- 10.3.1 A license which has expired may, within a period of three years thereafter, be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware and by the applicant providing documentation establishing that he /she has completed 20 hours of continuing education during the two-year period preceding the application for reinstatement.
- 10.3.2 An applicant whose license has been expired for a period of three (3) or more years and who has been actively engaged in the practice of respiratory care during the period of expiration in another jurisdiction shall be required to submit an application for reinstatement demonstrating proof of active practice satisfactory to the Council and shall demonstrate proof of completion of 20 hours of continuing education during the two-year period preceding the application.
- 10.3.3 An applicant whose license has been expired for three (3) or more years and who has not been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement and shall be required to give evidence of satisfactory completion of an approved respiratory care examination within two (2) years prior to the application for reinstatement before licensure will be granted. In addition the applicant shall demonstrate completion of 20 hours of continuing education during the two-year period preceding the application.

*(Break in Continuity of Sections)*

### **12.0 Unlicensed Home Equipment Personnel**

- 12.1 Unlicensed personnel (UP) working for a home medical equipment company may only perform the following indirect respiratory care related services in the home setting or for the purposes of patient transfer to the home setting:
- 12.1.1 Deliver durable medical equipment to patients including, but not limited to, ventilators and C-PAP/Bi-PAP devices; and
- 12.1.2 Assemble equipment and instruct in the safety and care of the equipment including C-PAP/Bi-PAP for sleep apnea.
- 12.2 The UP shall not:
- 12.2.1 Perform any clinical assessments including, but not limited to, pulse oximetry;
- 12.2.2 Instruct in the use of the equipment delivered; or
- 12.2.3 Have any clinical patient contact including touching the patient or placing any device upon the patient while engaged in the set up and instruction of the equipment.
- 12.3 Any UP found to have violated the provisions of this section shall be prosecuted for the unlicensed practice of respiratory care.

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

**[1770 Respiratory Care Practice Advisory Council](#)**

## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1806 (24 Del.C. 1806)  
24 DE Admin. Code 1800

### 1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

#### PUBLIC NOTICE

The Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration in accordance with 24 Del.C. §1806 has proposed amendments to rule 1.0 General Provisions of its rules and regulations. The proposed amendments define the term "full-time employee" as it relates to supervision, and allows for the definitions to be applicable to the statute as well as the regulations. The Board had received a number of requests from applicants and licensees for a definition of the term "full-time employee", which appears in 24 Del.C. §1802 (18). The Board determined that the requirement that the supervision be provided by a master licensee who was a full-time employee needed clarification to assist licensees and applicants in the determination and selection of acceptable supervision. The Board modeled its proposed definition on the definition of full-time employee in the Delaware State Fire Prevention Regulations.

A public hearing will be held on January 12, 2010 at 8:45 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 the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration, 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 at the public hearing.

### 1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

#### 1.0 General Provisions.

- 1.1 Election of Officers. The Board will elect a President, Vice-President, and Secretary annually in May. In the event of a resignation, termination or departure of one of the officers, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose.
- 1.2 Definitions - Words and terms defined in Title 24, Section 1802 of the **Delaware Code** are applicable to these regulations. The following additional words and terms, ~~when used within these regulations,~~ shall have the following meaning, unless the context clearly indicates otherwise:
  - "Certificate of Good Standing"** means a certified statement of the applicant's disciplinary and complaint record as a license holder in another jurisdiction, which is sent directly from the other jurisdiction to the Board.
  - "Complete application"** means the Division of Professional Regulation has received the application form, all supporting documents (including verifications of disciplinary record), and all required fees.
  - "Full-Time Employee"** for purposes of supervision means any employee working a minimum of thirty hours per week, averaged over a period of one year, who regularly receives compensation from the entity providing services and receives a W-2 form annually from the entity providing services.

11 DE Reg. 86 (07/01/07)

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

[1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners](#)

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# PROPOSED REGULATIONS

## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 Del.C. §3706(a)(1))  
24 DE Admin. Code 3700

### 3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

#### PUBLIC NOTICE

Pursuant to 24 Del.C. §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers has proposed revisions to its rules and regulations.

A public hearing will be held on January 13, 2010 at 2:15 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes revisions to ensure that the rules are consistent with recent changes to the Board's licensing law, Chapter 37 of Title 24 of the Delaware Code. Specifically, the rules are amended to state that an audiologist must have a doctoral degree and is no longer required to complete a practicum and clinical fellowship. Further, Rule 3.1 is added to state that audiologists are authorized to dispense hearing aids, and the amended Rule 3.2.2.2 states that an audiologist may supervise a hearing aid dispenser trainee.

Rule 2.2.1, addressing the clinical practicum for speech/language pathologists, has been amended to state that the applicant must complete 400, rather than 375, hours.

The rules concerning reciprocity are revised to ensure compliance with 24 Del.C. §3710.

Rule 2.5.2, pertaining to temporary licensure, is amended to provide that a licensee must take the examination at least once prior to requesting a renewal of the temporary license.

Rule 8.2.7, concerning requirements for compliance with the continuing education audit, states that the licensee must submit documentation of completion of the courses.

Finally, certain sections are reorganized for greater clarity, and certain grammatical and typographical errors are corrected.

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

### 3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

#### 1.0 General

- 1.1 Applications and other forms may be obtained from and be returned to the Division of Professional Regulation (Division). Please address correspondence to the Board: ATTN: SLP-AUD-HAD and mail to 861 Silver Lake Blvd., Ste. 203, Dover, DE 19904-2467. Information and forms are also available on the Division's web site [dpr.delaware.gov](http://dpr.delaware.gov).
- 1.2 Fees required by statute shall be made payable to: "State of Delaware" and remitted to the Division. No license shall be issued until all required fees are paid.
- 1.3 The Administrative Specialist assigned to the Board by the Division performs support functions and serves as the contact person for the Board.

**6 DE Reg. 1340 (4/1/03)**

**11 DE Reg. 814 (12/01/07)**

#### 2.0 Licensure Requirements for Speech/Language Pathologists and Audiologists

- 2.1 Education

- 2.1.1 To be eligible for a license as a ~~Speech/Language Pathologist or Audiologist~~, the applicant must submit verification by an official transcript of completion of at least a master's degree or its equivalent, from an accredited college or university with major emphasis in speech/language pathology, ~~audiology~~, communication disorders or speech/language and hearing science.
- 2.1.2 To be eligible for a license as an Audiologist, the applicant must submit verification by an official transcript of completion of a doctoral degree from an accredited college or university.
- 2.2 Clinical Practicum for Speech/Language Pathologists
- 2.2.1 The ~~Speech/Language Pathology and Audiology~~ applicant must have completed a minimum of ~~375~~ 400 clock hours of supervised clinical practicum ~~with major emphasis in the professional area for which the license is being sought~~. Clinical observation may qualify for up to 25 of the hours in the supervised clinical practicum.
- 2.2.2 A minimum of 250 clock hours in the area of specialty of the supervised clinical practicum must have been obtained at the graduate level.
- 2.3 Clinical Fellowship Year (CFY) for Speech/Language Pathologists
- 2.3.1 The ~~Speech/Language Pathology or Audiology~~ applicant must have the equivalent of nine (9) months of full-time or eighteen (18) months of part time (defined as 15-20 hours per week) supervised ~~\* CFY supervision~~ in the major professional area in which the license is being sought. The CFY must start after completion of the academic and clinical practicum requirements.
- \* Supervision is defined as direct observation consisting of 36 supervisory activities, including 18 one hour on-site observations and 18 other monitoring activities. (From ~~Appendix E of Clinical Fellowship Year standards adopted by the American Speech-Language-Hearing Association (ASHA) in 1985 and revised in 2009, which can be found at www.asha.org.~~)
- 2.4 National Examination
- 2.4.1 The ~~Speech/Language Pathology and Audiology~~ applicant must have completed and passed the national examination approved by the Division of Professional Regulation for the area of specialty with at least the minimum nationally recommended score. Scores must be sent directly from the testing service to the Division of Professional Regulation.
- 2.4.2 A ~~Speech/Language Pathology or Audiology~~ applicant with a temporary license is permitted to complete the appropriate national examination during the period of the temporary license.
- ~~2.4.3 Anyone who fails two examinations may not be reexamined for a period of one year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of additional course work and/or clinical experience.~~
- 2.5 Application Process-Temporary Licensure
- 2.5.1 An applicant must complete a notarized application for temporary licensure. Items which must be provided to the Division of Professional Regulation include:
- 2.5.1.1 Official Transcript(s);
- 2.5.1.2 Payment of appropriate fees.
- 2.5.1.3 In addition, Speech/Language Pathologist applicants must also provide:
- 2.5.1.3.1 Documents verifying the appropriate number and level of supervised clinical practicum hours;
- 2.5.1.3.2 A CFY plan on a form approved by the Board, signed by the licensed professional who will provide the supervision;
- ~~2.5.1.4 payment of appropriate fees.~~
- 2.5.2 A temporary license is valid for one year from the date of issuance and may be renewed for one year in extenuating circumstances upon application to the Board. The licensee shall take the examination at least once prior to submitting a request for renewal of the temporary license. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.
- 2.6 Application Process -Permanent Licensure

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- 2.6.1 Speech/Language Pathology and Audiology applicants must complete the application on a form approved by the Board and submit the appropriate fee.
- 2.6.2 An applicant who has ASHA Certification must comply with Section 2.6.1 and submit a copy of current ASHA certification.
- 2.6.3 An applicant who is currently licensed in another state, the District of Columbia, or territory of the United States whose standards for licensure are substantially similar to those of this state, must comply with ~~Section 2.6.1 and submit verification of licensure in good standing from all jurisdictions where he or she is or has been licensed~~ 24 Del.C. §3710. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 Del.C. §3710. Verification of practice ~~should~~ shall be by notarized letter from the employer(s).
- 2.6.4 An Speech/Language Pathologist applicant who has completed the supervised CFY in Delaware and has a current temporary license, must submit the following documentation to the Division of Professional Regulation 30 days prior to expiration of the temporary license:
- 2.6.4.1 proof of completion of the CFY,
- 2.6.4.2 national examination score unless previously provided, and
- 2.6.4.3 licensure fee.

## 6 DE Reg. 1340 (04/01/03)

### 3.0 Licensure Requirements for Hearing Aid Dispensers

- 3.1 Delaware-licensed Audiologists are authorized to dispense hearing aids, pursuant to 24 Del.C. §3702(9), and are not required to obtain a separate Hearing Aid Dispensing license. All other applicants shall meet the following requirements:
- 3.42 Original Licensure
- 3.42.1 Education: Applicants must have earned a high school diploma or its equivalent.
- 3.42.2 Training: [~~Note: Licensed audiologists are exempt from this requirement as indicated in the synopsis of SB 18-3 as passed by the 143<sup>rd</sup> General Assembly and signed into law by the Governor on July 6, 2006. Licensed audiologists need only request permission to take the exam from the Board in writing.~~]
- 3.42.2.1 Applicants shall complete six (6) months of training. The Board will not authorize applicants to take the exam until the training is complete.
- 3.42.2.2 Training shall be completed under the direct supervision of a Delaware-licensed Hearing Aid Dispenser or Delaware-licensed Audiologist. "Direct supervision" means direct, on-site observations of the applicant by the supervisor. Applicants shall be under direct supervision for 100% of the time during the first two (2) months, 50% of the time during the subsequent two (2) months, and 25% of the time during the final two (2) months of the training period.
- 3.42.2.3 Applicants shall hold a valid, active temporary license during the training period; [Training conducted while the applicant is without a valid, active temporary license will not count toward fulfillment of the six-month training requirement.
- 3.2.2.4 Upon completion of the training period, temporary Hearing Aid Dispensing licenses must submit verification of completion of the training period on a Board-approved form, which shall include the notarized signature of the Delaware-licensed sponsor stating that the training was completed under his or her direct supervision in accordance with Regulation 3.2.2.2. Upon receipt and approval of the training verification, the Board will authorize the applicant to take the examination.
- 3.42.3 National Examination
- 3.42.3.1 Applicants for full Hearing Aid Dispensing licensure must have completed and passed the national examination approved by the Division, in accordance with scores as recommended by the national testing service, National Institute for Hearing Instruments

Studies (N IHIS), or its successor. Upon confirmation from the testing service that an applicant has passed the exam, the Board will issue a full Hearing Aid Dispensing license to the applicant.

3.42.3.2 Applicants who fails two (2) examinations may not be reexamined for a period of one (1) year following the second failure. After a second exam failure, an applicant must complete an additional training period pursuant to Regulation 3.42.2 et seq before the Board will grant authorization to retake the exam.

### 3.3 Temporary Licensure

3.4.2.33.1 To obtain a temporary license, applicants must complete the Board-approved licensure application and submit:

3.4.2.33.1.1 verification of a high school diploma or its equivalent,

3.4.2.33.1.2 payment of the appropriate fees, and

3.4.2.33.1.3 a plan for completing the six (6) month training period, which shall include the notarized signature of a Delaware-licensed sponsor stating a willingness to provide direct supervision and training.

3.4.2.33.2 A temporary license is valid for one (1) year from the date of issuance and may be renewed once for an additional one-year period in extenuating circumstances upon approval by the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division at least 60 days prior to expiration.

### 3.23 Reciprocal Licensure

~~3.2.1 Applicants currently licensed in a jurisdiction whose standards for licensure are substantially similar to those of this state shall submit verification of licensure in good standing from all jurisdictions where they are and have been licensed.~~

~~3.2.2 Applicants currently licensed in another jurisdiction, but not in a jurisdiction whose standards for licensure are substantially similar to those of this state, shall provide proof of practice in their current licensing jurisdiction for at least five (5) years after licensure. Proof of practice shall be by notarized letter from employers. Applicants under this subsection shall also submit verification of licensure in good standing from all jurisdictions where they are and have been licensed.~~

~~3.2.3 Upon completion of the training period, temporary Hearing Aid Dispensing licensees must submit verification of completion of the training period on a Board-approved form, which shall include the notarized signature of the Delaware-licensed sponsor stating that the training was completed under their direct supervision in accordance with regulation 3.1. Upon receipt and approval of training verification, the Board will authorize the applicant to take the exam.~~

An applicant who is currently licensed in another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this state, must comply with 24 Del.C. § 3710. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 Del.C. § 3710. Verification of practice shall be by notarized letter from the employer(s).

**11 DE Reg. 814 (12/01/07)**

## 4.0 Expired Licenses and Inactive Status

### 4.1 Expired Licenses

4.1.1 A holder of an expired license may renew the license within one year of the date the renewal was due by fulfilling all of the renewal requirements and paying the late fee established by the Division of Professional Regulation.

### 4.2 Inactive Status

4.2.1 A licensee may apply to the Board for inactive status for up to five years. The license may be reactivated upon application on a form approved by the Board and proof of ~~20 CE's~~ CEs completed within the preceding 24 months (~~30 CE's for a triple license~~) as required by Section

Regulation 8.2.3, and ~~paying~~ payment of the fee established by the Division of Professional Regulation.

*(Break in Continuity of Sections)*

## 6.0 Requirements for Speech/Language Pathology Aides

### 6.1 Education

6.1.1 A Speech/Language Pathology Aide must have a minimum of a high school diploma or its equivalent.

### 6.2 Direct Supervision

6.2.1 A Speech/Language Pathology Aide assists a licensed Speech/Language Pathologist in professional activities with direct supervision of the Speech/Language Pathologist. Direct supervision requires the presence of the supervising Speech/Language Pathologist at all times where an aide is assisting with testing, and/or treatment.

### 6.3 Duties of the Speech/Language Pathology Aide

6.3.1 Duties of the Speech/Language Pathology Aide must be specified by the supervising Speech/Language Pathologist and may include the following:

6.3.1.1 Assisting with testing or treatment.

6.3.1.2 Clerical support.

6.3.1.3 Client escort.

6.3.1.4 Preparation of therapeutic materials

6.3.1.5 Equipment maintenance.

6.3.1.6 Participation with the professional in research projects, in service training, or similar endeavors.

6.3.1.7 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed Speech/Language Pathologist.

*(Break in Continuity of Sections)*

## 8.0 Continuing Education For All Licensees:

### 8.1 Philosophy

8.1.1 Continuing education is required by the Board to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.

8.1.2 The Board is keenly aware of existing educational opportunities in Delaware and neighboring states and has established regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities that increase knowledge and enhance professional growth.

8.1.3 These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

### 8.2 Continuing Education Criteria

8.2.1 One continuing education contact hour (CE) is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and continuing education units (CEUs) issued by various organizations must be translated. e.g., 1.0 ASHA CEU = 10 CEs)

- 8.2.2 The required number of CEs varies with the date of issuance of license, certification and/or professional status. Effective as of the license renewal period beginning August 1, 2009, licensees must meet the following CE requirements:
- 8.2.2.1 New License: There is no CE requirement for a license issued for less than one year. If a license would cover more than one year, but less than 2 years, the licensee is required to obtain 15 CEs or one-half of the required total hours.
  - 8.2.2.2 Single License: Individuals with a license in only one (1) area of specialty must obtain a minimum of 30 CEs each two-year license renewal period.
  - 8.2.2.3 Dual License: Individuals with licenses in two (2) areas of specialty must obtain a minimum of 30 CEs during each two-year license renewal period, with 15 CEs obtained in each specialty area. One course may be split between specialty areas to fulfill multiple CE requirements. Content must be shown to be relevant to those areas.
  - ~~8.2.2.4 Triple License: Individuals with licenses in three (3) areas of specialty must obtain a minimum of 45 CEs during each two-year license renewal period, with 15 CEs obtained in each specialty area. One course may be split between specialty areas to fulfill multiple CE requirements. Content must be shown to be relevant to those areas.~~
  - 8.2.2.5~~4~~ Temporary License: All CE requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during their CFY period.
  - 8.2.2.6~~5~~ Hardship. An applicant for license renewal may be granted an extension of time in which to complete CE hours or a total or partial waiver of CE requirements upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. No extension of time or waiver shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.
- 8.2.3 CE courses must focus on the enhancement of clinical skills and professional growth as defined below.
- 8.2.3.1 Clinical Skills: conferences, workshops, courses, etc., that expand a licensee's scope of practice by enhancing skills in the areas of prevention, assessment, diagnosis, and treatment of the client (minimum of 20 CEs per licensure renewal period).
  - 8.2.3.2 Professional Growth: conferences, workshops, courses, etc., that may not directly impact on clinical services to the population being served but are of interest to the licensee and will allow the licensee the opportunity to stay abreast of current trends in the profession or related fields of interest (maximum of 10 CEs per licensure renewal period).
- 8.2.4 All CE activities must be approved by the Board. A licensee or CE course sponsor may request advance approval from the Board by submitting a completed Board Approval form. Approval may be requested after the conclusion of a course, but there is no guarantee the course will be approved.
- 8.2.5 CE is required for license renewal and shall be completed by July 31 of odd-numbered years.
- 8.2.5.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0
  - 8.2.5.2 Attestation may be completed online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.
- 8.2.6 Random audits will be performed by the Board to ensure compliance with the CE requirements. The Board will determine the percentage of licensees to be audited.
- 8.2.6.1 The Board will notify licensees within sixty (60) days after July 31 of each biennial renewal period that they have been selected for audit.
  - 8.2.6.2 Licensees selected for random audit shall be required to submit verification within ~~ten (10)~~ twenty (20) days of receipt of notification of selection for audit.
- 8.2.7 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 8.0. While course brochures may be used

## PROPOSED REGULATIONS

to verify CE hours, they are not considered to be acceptable proof for use of verification of course attendance. Verification must include, but is not limited to, the following information:

8.2.7.1 Date of CE course;

8.2.7.2 Instructor of CE course;

8.2.7.3 Sponsor of CE course;

8.2.7.4 Title of CE course; and

8.2.7.5 Number of hours of CE course.

8.2.7.6 Certificate of completion and/or AS HA or American Academy of Audi ology (AAA) continuing education registry documenting course completion.

8.2.8 In response to the audit, audiologists and hearing aid dispensers shall submit documentation of calibration of electronic equipment used to assess hearing, as set forth in Rule 7.0.

8.2.9 Licensees who are not audited shall retain their CE documentation for three (3) years after renewal.

8.2.10 Licensees who renew their license under the late renewal provision shall be audited for CE completion (and equipment calibration, if applicable). These licensees shall submit documents that evidence satisfactory completion of their CE requirements (and annual equipment calibration pursuant to regulation 7.0, if applicable) for the prior licensure period.

8.2.11 The Board shall review all documentation submitted by licensees pursuant to the CE audit. If the Board determines that the licensee has met the CE requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the CE requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the CE requirements. Unjustified noncompliance with the CE requirements set forth in these rules and regulations shall constitute a violation of 24 Del.C. §3715(a)(7) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 Del.C. §3716.

### 8.3 Acceptable CE Courses/Activities

8.3.1 CE activities sponsored by accredited professional organizations, such as ASHA or AAA, are acceptable, provided the topics are relevant to the improvement of the licensee's clinical skills or professional growth as defined in Rule ~~8.2.4~~ 8.2.3. ~~Agenda of sessions is required for approval of convention activities.~~

8.3.2 A licensee may receive up to three (3) CEs for training obtained from a colleague who, after attending a professional conference, gives a formal presentation of the information from the conference after developing an agenda and outline.

8.3.3 University/College coursework for academic credit in the field of Speech/ Language Pathology, Audiology, or Hearing Aid Dispensing. A course description must be submitted to the Board for approval. (1 undergraduate credit = minimum of 3 CEs; 1 graduate credit = minimum of 5 CEs)

8.3.4 Professional presentations. A presentation summary must be submitted to the Board for approval. Credit may be given for a presentation only once during a licensure period. (1 hour of presentation = 3 CEs)

8.3.5 Professional publication in related specialty journals. A reprint of the publication must be submitted to the Board for approval.

8.3.6 Other continuing education may be approved by the Board with documentation of content.

8.3.7 Excluded are any job related duties in the workplace such as staff meetings, CPR, etc.

**10 DE Reg. 1830 (06/01/07)**

**11 DE Reg. 814 (12/01/07)**

**12 DE Reg. 1525 (06/01/09)**

*(Break in Continuity of Sections)*

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**9.0 Code of Ethics for speech/language Pathologists, Audiologists, and Hearing Aid Dispensers**

- 9.1 PREAMBLE. The preservation of the highest standards of conduct and integrity is vital to achieving the statutory declaration of objectives in 24 **Del.C.** §3701. Adopting a code of ethics by regulation puts licensees on notice of the kinds of activity that violate the level of care and protection to which the clients are entitled. The provisions are not intended to be all-inclusive but rather they should serve as examples of obligations that must be satisfied to maintain minimum standards.
- 9.2 Standards of Professional Conduct
- 9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 **Del.C.** §3715(a)(2).
- 9.2.1.1 Licensees shall provide all services competently. Competent service refers to the use of reasonable care and diligence ordinarily employed by similarly licensed individuals.
- 9.2.1.2 Licensees shall use every resource, including referral, to provide quality service.
- 9.2.1.3 Licensees shall maintain reasonable documentation of professional services rendered.
- 9.2.1.4 Licensees shall not evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication.
- 9.2.1.5 Licensees shall delegate responsibility only to qualified individuals as permitted by law with appropriate supervision.
- 9.2.1.6 Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.
- 9.3 Standards of Professional Integrity.
- 9.3.1 A licensee who violates the following Standards of Professional Integrity may be guilty of consumer fraud, deception, restraint of competition, or price-fixing and disciplined pursuant to 24 **Del.C.** §3715(a)(6).
- 9.3.1.1 Licensees shall not charge for services not rendered nor misrepresent the services or products dispensed.
- 9.3.1.2 Licensees shall inform clients of the nature and possible effects of services. Care must be taken to speak to a client in lay terms that he or she can understand.
- 9.3.1.3 Licensees may use clients in research or as subjects of teaching demonstrations only with their informed consent. An informed consent must be explained and written in lay terms.
- 9.3.1.4 Licensees shall inform clients in any matter where there is or may be a conflict of interest. Conflicts of interest may be found when a client is steered to a particular provider by one with an expectation of financial gain (kickbacks) or a provider is involved in double dipping by providing services in a private practice that he or she is obligated to provide through public employment (double-dipping).
- 9.3.1.5 Licensees shall make no guarantees of the results of any product or procedure but may make a reasonable statement of prognosis.
- 9.3.1.6 Licensees shall provide services or dispense products only when benefits can reasonably be expected.
- 9.3.1.7 Licensees shall not engage in misrepresentation, dishonesty, fraud, or deceit. Misrepresentation includes statements like lying to mislead or an omission of material information.
- 9.3.1.8 Licensees who advertise shall provide information in a truthful manner that is direct and not likely to mislead the public. Any written disclaimer or condition that limits or modifies an offer of services or merchandise must be provided in a clear and conspicuous manner in a type size that is at least one-half the size of the type used in making the offer of services or merchandise.
- 9.3.2 A licensee who violates the following Standards of Professional Integrity may be guilty of misrepresentation, impersonation, or facilitating unlawful practice and disciplined pursuant to 24 **Del.C.** §3715(a)(1).

# PROPOSED REGULATIONS

- 9.3.2.1 Licensees shall accurately represent any credentials, education, and experience to the public.
- 9.3.2.2 A licensee who has evidence that an individual is practicing the profession without a license in violation of 24 Del.C. §3707 has a duty to report that information to the Division of Professional Regulation.

## 9.4 Miscellaneous Professional Standards

- 9.4.1 A licensee who violates the following Professional Standards may be subject to disciplinary action under 24 Del.C. §3715(a)(7)
- 9.4.1.1 Licensees shall respect the privacy of clients and not reveal, without written authorization, any professional or personal information unless required by law.
- 9.4.1.2 Licensees shall not discriminate on the basis of race, sex, age, religion, national origin, sexual orientation, or disability.
- 9.4.1.3 Licensees shall offer services and products on their merits and should refrain from making disparaging comments about competing practitioners or their services and products.

**8 DE Reg. 1106 (2/1/05)**

**9 DE Reg. 1267 (2/1/06)**

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

**[3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers](#)**

## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 Del.C. §4416(b)(1))  
24 DE Admin. Code 4400

### 4400 Delaware Manufactured Home Installation Board

#### PUBLIC NOTICE

Pursuant to 24 Del.C. §4416(b)(1), the Manufactured Home Installation Board has proposed revisions to its rules and regulations.

A public hearing will be held on January 11, 2010 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Manufactured Home Installation Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The proposed revisions implement recent amendments to the Board's licensing law, Chapter 44 of Title 24 of the Delaware Code. Specifically, Rule 3.1.4 is amended to clarify that either the applicant, or the applicant's employer, must hold a surety bond or an irrevocable letter of credit in an amount equal to or greater than \$10,000 and that original documentation must be submitted to the Board by the provider of the bond or letter of credit. Similarly, Rule 3.1.5 is amended to clarify that either the applicant or the applicant's employer must carry liability insurance in an amount equal to or greater than \$10,000 and that a notarized certificate of insurance must be submitted to the Board by the insurance carrier.

A new Rule 8.5.3 is added to give the Board the express authority to impose the full range of available sanctions on licensees who are found to be in violation of the CE requirements.

Finally, Rule 12.0 is revised to provide that the designation to be displayed on work vehicles may include the abbreviation "Lic. Mfd. Home Installer" and that the designation must be displayed in not less than two inch, rather than three inch, letters and numbers.

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

## 4400 Delaware Manufactured Home Installation Board

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

### 3.0 License and Certificate Requirements

- 3.1 Each applicant for a manufactured home installer license must provide the Board with the following, or have this information provided from the appropriate source, where indicated:
- 3.1.1 Evidence in a form satisfactory to the Board that the applicant has successfully passed the examination designated by the Board. Evidence shall include confirmation from the Division or other authorized testing agency that the applicant has achieved a passing score on the Board-approved examination.
  - 3.1.2 Evidence in a form satisfactory to the Board that the applicant has completed education requirements set forth in Rule 4.0. Evidence shall include a certificate or other acknowledgement of completion of the education requirement that is submitted to the Board by the education provider. This document shall identify the course, the course provider and location, and the date completed.
  - 3.1.3 Evidence in a form satisfactory to the Board that the applicant is at least 18 years old. Such evidence includes a certified copy of the applicant's birth certificate, a passport, an identification card issued by the State of Delaware or a driver's license issued by the State of Delaware.
  - 3.1.4 Evidence in a form satisfactory to the Board that the applicant, or the applicant's employer, holds a surety bond or irrevocable letter of credit issued by a federally-insured financial institution in an amount of equal to or greater than \$10,000. Evidence shall include an acknowledgement the original bond or original letter of credit submitted to the Board ~~from~~ by the provider of the bond or the letter of credit. Where a bond is submitted, the Division of Professional Regulation shall be listed as the bond holder.
  - 3.1.5 Evidence in a form satisfactory to the Board that the applicant, or the applicant's employer, carries liability insurance in an amount equal to or greater than \$100,000. Evidence shall include ~~an acknowledgement~~ a notarized certificate of insurance submitted to the Board ~~from~~ by the insurance carrier.
  - 3.1.6 A statement under oath or other verification satisfactory to the Board that the applicant agrees to be responsible for all acts or omissions of any individual acting under the supervision of the applicant while assisting in the installation of manufactured housing.
  - 3.1.7 Reciprocity
    - 3.1.7.1 An applicant for licensure as a manufactured home installer 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 the reciprocal state's current licensure requirements
- 3.2 Each applicant for a certificate of manufactured home installation inspector must provide the Board with the following
- 3.2.1 A completed application on the form approved by the Board.
  - 3.2.2 Evidence in a form satisfactory to the Board that the applicant has successfully completed the certification course designated by the Board. Evidence shall include a certificate or other acknowledgement of completion of the education requirement that is submitted to the Board by the

## PROPOSED REGULATIONS

education provider. This document shall identify the course, the course provider and location, and the date completed.

- 3.2.3 Evidence in a form satisfactory to the Board that the applicant is a full-time, part-time or casual/seasonal employee of an authorized inspection agency. Evidence shall include a current written statement signed by the applicant's supervisor in his capacity as a supervisor identifying the applicant's employment status and date of employment.

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

#### **8.0 Continuing Education ("CE")**

- 8.1 Licensees and certificate holders shall complete 10 hours of approved CE by September 30 of each biennial renewal period.
- 8.1.1 This requirement is prorated for license or certificate holders during their initial licensing period as follows:
- 8.1.1.1 A person licensed less than one year does not need to complete CE at the first renewal.
- 8.1.1.2 A person licensed one year but less than two years must submit 5 CE hours at the first renewal.
- 8.1.2 An "hour" for purposes of continuing education credit shall mean fifty (50) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.
- 8.2 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.
- 8.3 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.
- 8.3.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to the installation of manufactured housing.
- 8.3.2 Course providers, licensees and certificate holders may request Board approval of courses at any time by submitting a written request to the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor.
- 8.3.3 Course providers, licensees and certificate holders seeking re-approval should submit the request a sufficient amount of time in advance of the CE course to permit the Board to consider the request at a regularly-scheduled Board meeting.
- 8.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0.
- 8.4.1 Attestation may be completed electronically if the renewal is accomplished online. Alternatively, licensees and certificate holders may submit the attestation in paper form on forms approved by the Board.
- 8.4.2 Licensees and certificate holders selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 8.5.
- 8.4.3 Approval of CE automatically expires on September 30, 2008 and every two years thereafter on each September 30. A sponsor must reapply for approval as provided in Rule 8.3.
- 8.5 Random audits will be performed by the Board to ensure compliance with the license and certificate requirements. Licensees and certificate holders selected for the random audit shall submit verification that they maintain the required bond and liability insurance, verification of required employment status, and the completion of the required CE, as applicable and any other information required by the Board to confirm their continued eligibility for the license or certificate.
- 8.5.1 In a renewal year, the Board will notify licensees and certificate holders within sixty (60) days after September 30 that they have been selected for audit.
- 8.5.2 Licensees selected for random audit are required to submit verification within ~~ten (10)~~ twenty (20) days of receipt of notification of selection for audit.

8.5.3 The Board shall review all documentation submitted by licensees pursuant to the CE and it. If the Board determines that the licensee has met the CE requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the CE requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the CE requirements. Unjustified noncompliance with the CE requirements set forth in these rules and regulations shall constitute a violation of 24 Del.C. §4441(a) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 Del.C. §4441.

*(Break in Continuity of Sections)*

## 12.0 Use of Designations

- 12.1 A licensee shall prominently display the words "Licensed Manufactured Home Installer" or the abbreviation "Lic. Mfd. Home Installer" and his license number on the exterior of all vehicles used for work in not less than ~~three~~ two inch letters and numbers.
- 12.2 Only an individual who is registered with the Board and holds a license as a manufactured home installer may use the designation "Licensed Manufactured Home Installer" and other designations which suggest that the user is a licensed manufactured home installer.
- 12.3 No individual, sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state shall hold him/her/itself or otherwise use the title or designation "licensed manufactured home installer or any other title, designation, or abbreviation of any titles or designations likely to be confused with "licensed manufactured home installer".

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

[4400 Delaware Manufactured Home Installation Board](#)

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## PUBLIC SERVICE COMMISSION

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

### PUBLIC NOTICE

IN THE MATTER OF THE CONSIDERATION OF RULES,		
STANDARDS AND INDICES TO ENSURE RELIABLE		
ELECTRICE SERVICE BY ELECTRIC DISTRIBUTION		
COMPANIES (OPENED SEPTEMBER 26, 2000;		PSC REGULATION DOCKET NO. 50
REOPENED OCTOBER 11, 2005;		
REOPENED NOVEMBER 19, 2009		

### ORDER NO. 7689

AND NOW, this 19th day of November, 2009:

**WHEREAS**, by Order No. 70-02 dated August 8, 2006, the Delaware Public Service Commission (the "Commission") approved proposed revisions to the Rules Governing Electric Service Reliability and Quality Standards (the "Rules") for electric distribution companies subject to the Commission's jurisdiction; and

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## PROPOSED REGULATIONS

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**WHEREAS**, Section 9.0 of the Rules requires all electric distribution companies subject to Commission jurisdiction to convene a stakeholder meeting for interested parties to discuss electric service reliability of quality concerns prior to March 31 of each year; and

**WHEREAS**, the annual reliability statistics for Delmarva Power & Light Company ("Delmarva"), currently the only electric distribution company subject to the Commission's jurisdiction, are not compiled and available until May 1 of each year, and therefore the participants at the stakeholders' meeting discuss and review data that are nearly one year old; and

**WHEREAS**, Delmarva, the Commission Staff and the Division of the Public Advocate ("Public Advocate") believe that it is in the interests of the participating stakeholders to have available the most relevant and timely annual reliability performance statistics at the time of the annual meeting; and

**WHEREAS**, moving the date of the annual stakeholder meeting to a date later in the year would permit Delmarva to consider recommendations made at the stakeholder meeting during its budget cycle for possible implementation in the following year; and

**WHEREAS**, on October 29, 2009 Delmarva filed a motion to modify the Rules to amend Section 9.0 to change the deadline for convening the annual stakeholder meeting from March 31 to May 31 of each year; and

**WHEREAS**, the Staff and the Public Advocate agree with the proposed revision; and

**WHEREAS**, the Commission now proposes to revise the Rules to change the deadline for convening the annual stakeholder meeting from March 31 to May 31 of each year; and

**WHEREAS**, the Commission (out of an abundance of caution) believes that the proposed revision to the Rules could be deemed to make a substantive change in the Rules and, as such, should be published in the Delaware Register of Regulations to provide public notice of the proposed revision;

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

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 Del.C. §§201, 1002, 1003 and 1009 and 29 Del.C. §10115, the Commission proposes to revise its "Electric Service Reliability and Quality Standards," originally adopted by PSC Order No. 6745 (October 11, 2005) and revised by PSC Order No. 7002 (Aug. 8, 2006). A copy of those rules in their current form as approved by the Commission in Order No. 7002, dated August 8, 2006, is appended as Exhibit "B" to this Order. The proposed revised Rules, which include the revision now being proposed for adoption, are attached to this Order as Exhibit "A."

2. That, pursuant to 29 Del.C. §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations a copy of this Order; a copy of the current "Electric Service Reliability and Quality Standards" (adopted in PSC Order No. 7002 (August 8, 2006)) (Exhibit "B"); and a copy of the revised "Electric Service Reliability and Quality Standards" now being proposed for adoption (Exhibit "A").

3. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making attached hereto as Exhibit "C" to the Registrar of Regulations for publication in the Delaware Register of Regulations. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on **December 1, 2009**. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity that has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 Del.C. §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before **December 31, 2009**. Pursuant to 29 Del.C. §10117, the Commission will conduct a public hearing on the proposed revisions and resulting new "Electric Service Reliability and Quality Standards" on **January 7, 2010** beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

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

6. That Regina A. Iorii, Esquire, Deputy Attorney General, is designated Staff Counsel for this matter.

7. That, pursuant to 26 Del.C. § 114 and 1012(c)(2), Delmarva Power & Light Company is hereby notified that it will be charged the costs incurred in connection with this proceeding under the provisions of 26 Del.C. § 114(b)(1).

8. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

ATTEST:

Secretary

**3007 Electric Service Reliability and Quality Standards**

EFFECTIVE DATE: September 10, 2006

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

**9.0 Planning and Studies Report**

- 9.1 Prior to ~~March~~ May 31 of each year, each EDC shall convene a stakeholder meeting offering opportunity for interested parties to discuss electric service reliability or quality concerns within Delaware. Such meetings shall be limited to discussion of publicly available information and at a minimum be open to generation companies, electric suppliers, municipalities or other EDCs, PJM, state agencies and wholesale/retail consumers. Each EDC shall consider the resulting issues and include mitigation efforts in annual plans as appropriate.
- 9.2 By March 31 of each year, each EDC shall submit a reliability planning and studies report to the Commission for review. The report will identify current reliability objectives, load study results and planned actions, projects or programs designed to maintain the electric service reliability and quality of the delivery facilities.
- 9.3 The report shall include the following information:
- 9.3.1 Objective targets or goals in support of reliable electric service and descriptions of planned actions to achieve the objectives;
  - 9.3.2 Delivery load study results as described in Section 8., to include at a minimum the information for both year b and year c as specified in Section 8., Paragraph 8.3.;
  - 9.3.3 Description and estimated cost of capital projects planned to mitigate loading or contingent conditions identified in load studies or required to manage hours of congestion;
  - 9.3.4 The EDC's power quality program and any amendments as required in Section 6.;
  - 9.3.5 The EDC's inspection and maintenance program, any amendments as required in Section 7., and any specific actions aimed at reducing outage causes;
  - 9.3.6 Copies of all recent delivery facility planning studies and network capability studies (including CETO and CETL results) performed for any delivery facilities owned by the utility; and
  - 9.3.7 Summaries of any changes to reliability related requirements, standards and procedures at PJM, MAAC, First Reliability Corporation, NERC or the EDC.
  - 9.3.8 Summary of any issues that resulted from the EDC stakeholder meeting and any projects or planning changes that may have been incorporated as a result of such meeting.

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

**[3007 Electric Service Reliability and Quality Standards](#)**

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**Symbol Key**

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

**Final Regulations**

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

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

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**DELAWARE COUNCIL ON POLICE TRAINING**

Statutory Authority: 11 Delaware Code, Section 8404(a)(5) (11 Del.C., §8404(a)(5))

**801 Regulations of the Delaware Council on Police Training****Regulatory Implementing Order****I. Summary of the Evidence and Information Submitted.**

The Council on Police Training published the proposed amendments to its regulations in the Delaware Register of Regulations on November 2, 2009. Notices of the proposed regulations were published in The News Journal and the Delaware State News on October 24 and 26, 2009, respectively. The newspaper notices invited written comments from the public but none were received. The newspaper notices also invited the public to attend a hearing on November 23, 2009 to comment on the proposed regulations. No members of the public attended the hearing.

**II. Findings of Fact**

The Chairman of the Council on Police Training finds it necessary to adopt the amended regulations to promote public safety by requiring minimum qualifications for the certification of law enforcement officers in the State of Delaware.

**III. Decision To Adopt the Regulations**

The Chairman of the Council on Police Training hereby adopts the amended regulations pursuant to 11 Delaware Code §8404(a)(14).

## IV. Text and Citation

The text of the amended regulations shall be in the form published in the Register of Regulations on November 2, 2009 and shall be cited in "Part 801 – Council on Police Training."

## V. Effective Date of Order

The decision of the Chairman of the Council on Police Training to adopt the amended regulations was taken on November 23, 2009. The effective date of this Order shall be ten (10) days from the date of publication of this Final Regulatory Implementing Order in the Register of Regulations.

**IT IS SO ORDERED**, this 23<sup>rd</sup> day of November, 2009.

Lewis D. Schiliro, Chairman  
Council on Police Training

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 593 (13 DE Reg. 593). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[801 Regulations of the Delaware Council on Police Training](#)

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## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)\  
3 DE Admin. Code 501

### 501 Harness Racing Rules and Regulations

#### ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on November 3, 2009, the Commission makes the following findings and conclusions:

#### Summary of the Evidence

The Commission posted public notice of the proposed amendments to DHRC Rule 7 in the July 1, 2009 *Register of Regulations* (Volume 13, Issue 3) and for two consecutive weeks in September in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 7 in its entirety after Rules Committee review.

The Commission received no written comments. The Commission held a public hearing on November 3, 2009, in which no public comments were made.

#### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed.

The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2009.

**IT IS SO ORDERED** this 3rd day of November, 2009.

Beverly H. (Beth) Steele, Chairman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

\*Please note that no changes were made to the regulation as originally proposed and published in the July 2009 issue of the *Register* at page 17 (13 DE Reg. 17). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2009/final/13 DE Reg 841 12-01-09.htm>

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## **DEPARTMENT OF EDUCATION**

### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 742

### **REGULATORY IMPLEMENTING ORDER**

#### **742 Compensation of School District and Charter School Personnel Under Federal Projects**

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects in order to clarify local school districts and charter schools must follow the federal U.S. Office of Management and Budget's processes for compensation of personnel under federal projects and for formatting purposes.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Friday, October 2, 2009, in the form hereto attached as *Exhibit "A"*. No comments were received.

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

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects in order to clarify local school districts and charter schools must follow the federal U.S. Office of Management and Budget's processes for compensation of personnel under federal projects.

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

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects. Therefore, pursuant to 14

**Del.C. §122, 14 DE Admin. Code 742 Compensation of School District and Charter School Personnel Under Federal Projects** attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C. §122(e)**, 14 **DE Admin. Code 742 Compensation of School District and Charter School Personnel Under Federal Projects** 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 742 Compensation of School District and Charter School Personnel Under Federal Projects** amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code 742 Compensation of School District and Charter School Personnel Under Federal Projects** 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 November 13, 2009. 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 13th day of November 2009.

#### DEPARTMENT OF EDUCATION

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

Approved this 13th day of November 2009

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2009 issue of the Register at page 443 (13 DE Reg. 443). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[742 Compensation of School District and Charter School Personnel Under Federal Projects](#)

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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 746**

#### REGULATORY IMPLEMENTING ORDER

#### 746 Criminal Background Checks for Student Teaching

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

The Secretary of Education intends to amend 14 **DE Admin. Code 746 Criminal Background Checks for Student Teaching** to delay the implementation date. The date is being changed because current state law does not enable the Delaware State Bureau of Identification to submit a request for a federal background check (28 CFR 50.12A and 28 CFR 20.33A 3). The Department will pursue a legislative change to accommodate the federal requirement. The Department continues to work with the district personnel directors, Delaware's higher education

institutions, the State Police and State Bureau of Identification to ensure consistent implementation of this new requirement. Currently nine school districts are requiring criminal background checks of student teachers voluntarily. By imposing the January 2011 date, this will allow legislation to be introduced and discussed, and to provide the time for the higher education institutions to establish implementation procedures. Depending on the timing of legislative action, the Department will work with the higher education institutions and districts/charter schools to move up the implementation date.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Friday, October 2, 2009, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities which state their concern that student safety is being compromised by the delay of implementing the regulation because Delaware law does not enable the Delaware State Bureau of Investigation to submit a request for a federal background check. They would like the Department to expedite State legislation to allow these requests for federal background checks. The Councils also encouraged DOE to initiate a model standard that districts, charter schools and colleges could adopt, if desired. The Department will work to expedite legislation and initiate a model standard.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Checks for Student Teaching in order to delay the implementation date. The date is being changed because current state law does not enable the Delaware State Bureau of Identification to submit a request for a federal background check (28 CFR 50.12A and 28 CFR 20.33A3).

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Checks for Student Teaching. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 746 Criminal Background Checks for Student Teaching attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 746 Criminal Background Checks for Student Teaching 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** 746 Criminal Background Checks for Student Teaching amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 746 Criminal Background Checks for Student Teaching 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 November 13, 2009. 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 13th day of November 2009.

### DEPARTMENT OF EDUCATION

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

Approved this 13<sup>th</sup> day of November 2009

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\*Please note that no changes were made to the regulation as originally proposed and published in the October 2009 issue of the *Register* at page 445 (13 DE Reg. 445). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

## 746 Criminal Background Checks for Student Teaching

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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 1105

### REGULATORY IMPLEMENTING ORDER

### 1105 School Transportation

#### 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** 1105 School Transportation, Section 20.0 Bus Replacement Schedules only. The amendment changes the mandatory replacement age of a school bus from 12 years to 14 years. The change was mandated in Section 410 of the Grants-In-Aid House Bill 295 of the 145<sup>th</sup> General Assembly. A change was made last February to increase the minimum mileage and/or age a bus may be on the road before replacement. The mandatory replacement age of a bus was not changed at that time. The National Association of State Directors of Pupil Transportation Services provided a position paper in 2002. The suggested lifetimes under normal operating conditions was stated to be 12 to 15 years. The position paper also noted the importance of mileage factors, which the State currently and continues to take into consideration.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Friday, October 2, 2009, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the change; however, both Councils submitted a request for clarifying language. The Department has made the changes to reflect the requests.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1105 Bus Replacement Schedules Section 20.0 Bus Replacement Schedules only. The amendment changes the mandatory replacement age of a school bus from 12 years to 14 years consideration.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1105 Bus Replacement Schedules. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1105 Bus Replacement Schedules attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1105 Bus Replacement Schedules 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** 1105 Bus Replacement Schedules amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1105 Bus Replacement Schedules 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 November 19, 2009. 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 November 2009.

#### DEPARTMENT OF EDUCATION

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

Approved this 19th day of November 2009

#### STATE BOARD OF EDUCATION

Teri Quinn Gray, President

G. Patrick Heffernan

Jorge L. Melendez

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

#### 1105 School Transportation

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

#### 20.0 Bus Replacement Schedules

- 20.1 The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.
- 20.2 The following age and mileage requirements apply:
- 20.2.1 42<sup>th</sup> 14<sup>th</sup> year shall be replaced (it may then be used as a spare); or
- 20.2.2 **[At least]** 190,000 miles no matter age of bus **[may be replaced]**; or
- 20.2.3 **[At least]** 9 years and 130,000 miles **[may be replaced]**; or
- 20.2.4 May be replaced after 10 years.
- 20.3 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.
- 20.4 School buses purchased with state allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.
- 20.5 In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State allocated transportation funds for purposes other than the regular transportation

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of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

12 DE Reg. 1086 (02/01/09)

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

[1105 School Transportation](#)

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

### 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 Delaware Temporary Assistance for Needy Families (TANF) program's Contract of Mutual Responsibility. 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 October 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Delaware Temporary Assistance for Needy Families (TANF) program's Contract of Mutual Responsibility. The proposed change adds a new section to policy establishing timely participation requirements for clients referred to the Transitional Work Program.

#### Statutory Authority

- Social Security Act §402(a)(1)(A)(i), *Eligible States; State Plan*
- 31 Del.C §512, *Administration*
- 31 Del.C §518, *Failure To Comply With Job Placement, Education, Training, Work Eligibility, Parenting Or Personal Responsibility Requirements*

#### Summary of Proposed Change

**DSSM 3017, Other CMR Elements:** The *Transitional Work Program* (TWP) is a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management leading to employment when appropriate or to a application for federally funded disability programs. TWP participants who fail to complete specified tasks within specified time frames, without good cause, are subject to a sanction that reduces their TANF grant by \$50.00. The sanction increases \$50.00 every month until the grant is closed or all past due TWP activities are completed.

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**Summary of Comments Received With Agency Response and Explanation of Changes**


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

In a nut shell, the proposal authorizes DSS to require persons with disabilities determined unemployable to participate in a new transitional work program ("TWP"). Failure to meet the expectations and timetable of a TWP employability plan will result in TANF sanctions. GACEC and SCPD have the following observations.

First, there is no regulatory definition of the "transitional work program". It is described in the summary as follows:

The Transitional Work Program (TWP) is a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management leading to employment when appropriate or to application for federally funded disability programs.

At 451. At a minimum, DSS should consider adding a definition of "transitional work program" to its compilation of definitions at Section 3001.

Second, there is no description of the beneficiary's ability to influence the timelines and content of the TWP. The DSS regulations (§ 3010) covering the Contract of Mutual Responsibility ("CMR") at least authorize some beneficiary input:

The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections upfront, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.

DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited to, participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the Contract and its requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.

Section 3010.

There is no corresponding authorization for input into the TWP by the beneficiary. At a minimum, such authorization should be added to the regulations.

Third, there is a "disconnect" between the new regulation and the definition of "unemployable" in §3001N. The definition of "unemployable" is as follows:

N. Unemployable - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited because s/he is physically or mentally disabled. An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.

[emphasis supplied]

Thus, by definition, an “unemployable” beneficiary is someone who cannot benefit from job training, job readiness activities, etc. In contrast, the regulation [3017.1] anomalously requires the “unemployable” beneficiary to enroll in a transitional work program which includes activities medically certified (3001N) as beyond the capabilities of the beneficiary. If a doctor has certified that a beneficiary is incapable of even job readiness activities, why authorize DSS workers to require enrollment in such activities? The predictable result will be application of sanctions to persons with disabilities who will be penalized despite lack of fault.

Fourth, the proposed regulations provide conflicting information on whether enrollment in the TWP is mandatory or discretionary. On the one hand, the “Summary of Proposed Change” describes the TWP as “a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work ...”. In contrast, the actual regulation (§3017.1) provides the DSS worker with discretion to require participation since it recites that persons “may be required to enroll and participate in the Transitional Work Program”. There are no standards to guide DSS workers in determining which beneficiaries with disabilities will be required to enroll and participate in the TWP under §3017.1. Since there will be circumstances under which participation would clearly be of negligible value (e.g. caretaker with terminal illness awaiting results of SSI application), it makes sense to offer workers discretion.

Fifth, there is a “disconnect” between the definition of “sanction” and §3017.1.1. The definition of “sanction” recites as follows:

If a TANF client refuses or fails to attend a Contract of Mutual Responsibility requirement (e.g. participate in parenting education) the penalty is a \$50 reduction in the grant for each month the client refuses or fails to participate.

Section 3001K.

In contrast, the sanction for non-compliance with the Contract of Mutual Responsibility (“CMR”) under proposed §3017.1.1 is not limited to a \$50 monthly reduction of the grant. Rather, the penalty increases exponentially each month:

The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.

Section 3017.1.1. DSS may wish to ensure consistency among the regulations.

Sixth, if beneficiaries with disabilities are being involuntarily required to participate in the transitional work program, it would be preferable to explicitly recite that reasonable accommodations will be provided to facilitate effective participation. Compare §3006.1.

Finally, GACEC and SCPD prefer a voluntary participation approach to “unemployable” persons with disabilities enrolling in pre-vocational activities. Compare §3006.1. In addition, the Councils objects to the concept of subjecting medically certified unemployable beneficiaries with disabilities to strict compliance with TWP employability plans developed by unknown entities with no regulatory guidance on content, consumer input, or feasibility.

**Agency Response:** In regards to your recommendation regarding proposed regulations regulating client’s participation with the Transitional Work Program, the following italicized language is being added to the DSSM 3017.1. It is our belief that this language addresses your concerns that:

1. The Transitional Work Program should be defined in regulations
2. It should be clear that clients are involved in the development of the TWP employability plan.

3. The TWP should accommodate the needs of the clients referred to it.
4. Clients should not be expected to engage in activities which a healthcare professional has determined they should not engage in.

*The Transitional Work Program (TWP) is designed to help TANF parents and caretakers who as a result of physical and/or mental disability have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management. Services will be provided in a manner that accommodates the individual needs of clients including in-home services when necessary. Clients will not be expected to participate beyond the maximum limits established by health care professionals. All parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP.*

*The goal of the TWP program is to support clients in achieving the highest level of self-sufficiency possible given their individual circumstances. This goal will be reached by:*

- *Promoting wellness activities and health maintenance planning for clients with disabilities that are expected to be of limited duration.*
- *Identifying and accessing accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.*
- *Identifying and assisting clients who are likely eligible for federal disability programs gain entry into those programs.*

*The TWP Employability Plan is a tool used to assist clients in reaching TWP program and client identified goals. The Employability Plan will detail the activities clients will need to engage in to reach the goals. The TWP program will collaborate with each client to develop their TWP Employability Plan. Goals and activities will include but are not limited to; completion of assessments and healthcare appointments, enrollment/completion of training activities, completion of activities aimed at improving or maintaining wellbeing and the completion of activities necessary for application for federally funded disability programs.*

As requested in your letter, a definition of the Transitional Work Program will also be added to Section 3001 of the DSS Policy Manual.

In your letter you asked for clarification regarding the mandatory nature of the TWP program. The TANF clients that can be referred to the program are as defined in the text above: *parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP*“. Once a client is referred to the TWP program their participation with the program is mandatory. The Division of Social Services may decide based on individual case dynamics, TWP program limitations, funding limitations, or other factors to withdraw referrals to the program or not to refer clients to the TWP.

You asked for clarification regarding the Contract of Mutual Responsibility (CMR) sanction policy as stated in the proposed regulation. Your interpretation for the CMR sanction definition is different than it is explained in the policy that relates to each CMR area. In your example of parent education the sanction calculation is delineated in DSS policy 3015.1 Sanctions for Not Meeting Parenting Education Requirements as follows: “The fiscal sanction for failure, without good cause, to attend parenting education classes will be an initial \$50.00 reduction in TANF benefits. Increase this reduction each month by \$50.00, either until there is compliance or the case is closed”. You appear to be interpreting the definition of the CMR Sanction to mean the CMR sanction results in a \$50.00 grant reduction, which remains at \$50.00 until the sanction is cured. But the definition is repeatedly operationalized in the policy as: the grant reduction resulting from a CMR sanction is calculated by multiplying \$50.00 by the number of months of failure to cooperate.

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the October 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Other Contract of Mutual Responsibility (CMR) Elements* is adopted and shall be final effective December 10, 2009.

Rita M. Landgraf, Secretary, DHSS

### **3017 ~~Other CMR Elements~~ Additional CMR Elements**

~~When staff has reason to believe that the family needs other services to become self-sufficient, these services will be identified and specified in the Contract of Mutual Responsibility. Additional family specific CMR elements will be identified and added to a TANF household's CMR. These elements may be identified by DSS, the family, or other agencies that are involved with the family.~~

#### **3017.1 Transitional Work Program (TWP) Requirements**

~~[Parents and relative caretakers that the agency has determined are unemployable and unable to achieve self-sufficiency, because they are too physically or mentally disabled to work in an unsubsidized work may be required to enroll and participate in the Transitional Work Program.]~~

The Transitional Work Program (TWP) is designed to help TANF parents and caretakers who as a result of physical and/or mental disability have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management. Services will be provided in a manner that accommodates the individual needs of clients including in-home services when necessary. Clients will not be expected to participate beyond the maximum limits established by health care professionals. All parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP.

The goal of the TWP program is to support clients in achieving the highest level of self-sufficiency possible given their individual circumstances. This goal will be reached by:

- Promoting wellness activities and health maintenance planning for clients with disabilities that are expected to be of limited duration.
- Identifying and accessing accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.
- Identifying and assisting clients who are likely eligible for federal disability programs gain entry into those programs.

The TWP Employability Plan is a tool used to assist clients in reaching TWP program and client identified goals. The Employability Plan will detail the activities clients will need to engage in to reach the goals. The TWP program will collaborate with each client to develop their TWP Employability Plan. Goals and activities will include but are not limited to; completion of assessments and healthcare appointments, enrollment/completion of training activities, completion of activities aimed at improving or maintaining wellbeing and the completion of activities necessary for application for federally funded disability programs.]

~~The CMR and the TWP Employability Plan will establish time limits for the completion of TWP activities or goals.~~

#### **3017.1.1 Sanctions for Not Meeting the TWP Requirements**

~~The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.~~

**3017.1.2 Curing TWP Sanctions**

The sanction will end when all activities which exceed the time limits established in the CMR and TWP Employability Plan are completed.

**3017.2 Division of Social Services (DSS) Identified CMR Elements**

When staff has reason to believe that the family needs other services to become self-sufficient, these services will be identified and specified in the Contract of Mutual Responsibility.

**3017.2.1 Sanctions for Not Meeting Division of Social Services Identified CMR Elements**

The sanction for failure, without good cause, to comply with DSS identified elements in the Contract of Mutual Responsibility will be an initial \$50.00 reduction in TANF benefits. This reduction increases each month by \$50.00, either until there is compliance or the case is closed. The case worker will give the client written notification of what s/he has to do to be in compliance.

**3017.2.2 Curing Division of Social Services Identified CMR Sanction Penalties**

The sanction will end when the client has met the requirements as listed in the sanction notification.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT**

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

**Secretary's Order No.: 2009-A-0043**

**Amendments to the Delaware Regulations Governing Hazardous Waste,**

**Date of Issuance: November 12, 2009**

**Effective Date of the Amendment: December 21, 2009**

**I. Background:**

A public hearing was held on Thursday, October 22, 2009, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware Regulations Governing Hazardous Waste (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U. S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer federal authority as part of its State hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program. To accomplish this, the State is proposing to make miscellaneous changes to the RGHW that correct existing errors, add clarification, and/or otherwise enhance its current hazardous waste regulations.

The Department is proposing amendments to reflect changed federal regulations. Thus, Delaware is proposing very minor changes to the following sections of its existing Regulations Governing Hazardous Waste: (1) Transporter Permit Requirement; (2) Exception Report DNREC notification clarification; (3) Performance Track Program deletion; (4) Insurance for Used Oil Transporters; (5) Used Oil correction; (6) 24 hours vs. 1 day clarification; (7) Contingency Plan clarification; and (8) Permit Modification list.

Due to the fact that the proposed changes to RGHW are required by the EPA, are self explanatory, and are not controversial, no workshop to explain these changes to the public was held by the Department. Instead, a letter

was sent to all interested persons (i.e., the regulated community throughout Delaware) on June 30, 2009, encouraging the public to review the proposed amendments on the Department's web page, and to submit any comments prior to or at the hearing. No comments of any kind were received from the public or the regulated community regarding these proposed amendments during any phase of this proceeding. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated November 9, 2009, and that Report in its entirety is expressly incorporated herein by reference.

## **II. Findings:**

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's Regulations Governing Hazardous Waste, as reflected in the Hearing Officer's Memorandum of November 9, 2009, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The correction of clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation, as published in the October 1, 2009 Delaware Register of Regulations and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the Delaware Register of Regulations;
10. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

## **III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated November 9, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the State of Delaware's Regulations Governing Hazardous Waste be promulgated in final form in the customary manner and established rule-making procedure required by law.

#### IV. Reasons:

The promulgation of the amendments to the State of Delaware's Regulations Governing Hazardous Waste will update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to correct clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Chapters 60 and 63.

Collin P. O'Mara, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2009 issue of the *Register* at page 452 (13 DE Reg. 452). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[1302 Amendments to the Delaware Regulations Governing Hazardous Waste](#)

#### DIVISION OF SOIL AND WATER CONSERVATION

Statutory Authority: 7 Delaware Code, Chapter 42 (7 Del.C., Ch. 42)

**Secretary's Order No. 2009-S-0044**

**Delaware Dam Safety Regulations**

**Date of Issuance: November 16, 2009**

**Effective Date: December 11, 2009**

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 regulation entitled "Delaware Dam Safety Regulations." The Department's Division of Soil and Water Conservation commenced the regulatory development process with Start Action Notice 2006-16, which was approved on ...DSWC's Dam Safety Program held 4 meetings with the regulatory advisory committee, as required by the Dam Safety Act (Act), and a public workshop on December 11, 2008.

The Department published the proposed regulations in the April 1, 2009 *Delaware Register of Regulation* and held a public hearing on April 27, 2009. The Department's presiding hearing officer, Robert P. Haynes, prepared a Hearing Officer's Report dated November 9, 2009 (Report). The Report recommends certain findings and the adoption of as a final regulation as "Delaware Dam Safety Regulations," attached to the Report as Appendix A (Regulation).

#### Findings and Discussion

I find that the Regulation is well-supported by the record developed by DSWC and adopt the Report to the extent it is consistent with this Order. DSWC's experts developed the record and the Regulation was drafted with the cooperation and coordination by members of the regulatory advisory committee. In addition, DSWC held a

public workshop. As a result of the extensive informal regulatory development process, the proposed regulation only received two public comments. DSWC and the Report recommend that one comment's editorial and clarifying changes be reflected as non-substantive changes and the other comment was on a specific problem with one pond that did not require any change to the proposed regulation.

I find that the Department's experts in DSWC fully developed the record to support adoption of the final regulations. As final regulations, the Department will have improved authority to regulate dams, particularly the existing 53 dams that are subject to the Department's regulation. The regulation also will regulate to any new dams that fall within the size and classification that are subject to the regulation. The regulations will require annual inspections of high hazard dams and inspections of the significant hazard dams every two years. All dams will be subject to review and supervision by a licensed Delaware professional engineer. The dams that are regulated are public owned dams that have a certain height or size of impoundment or hazard classification to warrant regulation under the Act, or any privately owned dam that may seek to be regulated by agreement.

The regulation adopted by this Order provides more details and clarification to the owners of dams regulated by the Act. The regulation's procedures set forth how to apply to the Department for permission to design, construct, operate, maintain, inspect and abandon a regulated dam. The regulation that this Order adopts will provide a comprehensive and sound basis to regulate those dams in Delaware that are subject to regulation under the Act. In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this final regulation;
- 2.) The Department provided adequate public notice of the proposed regulation and provided the public with an adequate opportunity to comment on the proposed regulations, including at a public hearing;
- 3.) The Department held a public hearing on the proposed regulations in order to consider public comments before making any final decision, and has considered all relevant and timely public comments it received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the Recommended Regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The Recommended Regulation does not reflect any substantive changes from the Proposed Regulation published in the April 1, 2009, *Delaware Register of Regulations*;
- 6.) The Recommended Regulation should be adopted as a final regulation because it is consistent with the Act and its purposes to reduce the risk of loss of life and property damage from a failure of a dam subject to the Act's regulation, will enable the Department to administer its duties under the Act, and is 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: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

[5103 Delaware Dam Safety Regulations](#)

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**FINAL REGULATIONS**

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**

Statutory Authority: 24 Delaware Code, Section 2311 (24 **Del.C.** §2311)  
24 **DE Admin. Code** 2300

**2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors****ORDER**

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Secretary of Safety and Homeland Security ("Secretary") hereby issues this Order. Following public notice on the proposed adoption of amendments to rule 3.0 - Revocations and Emergency Suspensions, the Secretary makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. The Secretary did not receive written evidence or information pertaining to the proposed adoption.
2. The Secretary expressed his intent to adopt the amendment to issue a revocation and emergency suspension to pawnbrokers, secondhand dealers and scrap metal processors.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Secretary with comments, in writing, on the proposed amendment. The written comments received are described in paragraph 1.
4. The Secretary finds that the adoption of this rule will allow the Director of SBI to issue a revocation or emergency suspension to pawnbrokers, secondhand dealers and scrap metal processors.
5. The Secretary finds that the adoption will have no adverse impact on the public.
6. The Secretary finds that the amendment is well written and describes its intent to issue a revocation or emergency suspension of pawnbrokers, secondhand dealers and scrap metal processors.

**Conclusion**

7. The proposed rule adoption was promulgated by the Secretary in accord with the statutory duties and authority as set forth in 24 **Del.C.** Chapter 23 et seq. and, in particular, 24 **Del.C.** §2311.
8. The Secretary deems this adoption necessary and expedient to the full and official performance of his duties under 24 **Del.C.** Ch. 23 et. seq.
9. The Secretary concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Secretary therefore adopts the amendment pursuant to 24 **Del.C.** §2311 and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, *Strauss v. Silverman*, Del. Supr., 399 A.2d 192 (1979).
11. The adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Secretary.
12. The effective date of this Order shall be December 11, 2009.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 11th day of December, 2009.

Secretary Lewis D. Schiliro  
APPROVED AS TO FORM:

Michael Tupman, Esquire  
Deputy Attorney General

November 2, 2009

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2009 issue of the *Register* at page 462 (13 DE Reg. 462). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

**2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors**

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**DIVISION OF STATE POLICE**

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

**2400 Board of Examiners of Constables**

**ORDER**

Pursuant to the Guidelines in 29 Del.C. § 10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 1.0 Experience, rule 3.0 - Revocations and Emergency Suspensions and the Board makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to allow the Board the authority to oversee all training for constables.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will allow the Board the authority to oversee all training for constables.
5. The Board find that the adoption will have no adverse impact on the public.
6. The Board find that the amendment is well written and describes its intent to adopt the rule to allow the Board the authority to oversee all training for constables.

**Conclusion**

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 Del.C. §2701 et seq. and, in particular, 10 Del.C. §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 Del.C. Section 2701 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Secretary and Board therefore adopt this amendment pursuant to 10 **Del.C.** §2702(b) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, *Strauss v. Silverman*, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be December 11, 2009.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 11th day of December, 2009.

Colonel Robert Coupe, Chairman

APPROVED AS TO FORM:

Michael Tupman, Esquire

Deputy Attorney General

November 2, 2009

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 388 (13 DE Reg. 388). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[2400 Board of Examiners of Constables](#)

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 16 Delaware Code, Section 1796 (16 **Del.C.** §1796)

#### 1790 Acupuncture Advisory Council

### ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 17, 2009 before the Acupuncture Advisory Council ("Council") which functions under the auspices of the Delaware Board of Medical Practice ("Board") to consider a doption of rules and regulations governing the practice of acupuncture in the State of Delaware. Pursuant to 24 **Del.C.** §1796(c), the Council proposed rules and regulations to clarify provisions of the recently enacted law regulating the practice of acupuncture and to implement provisions of Subchapter X of the Medical Practice Act governing acupuncture practitioners. See HB 377, as amended by HA 1 and SA 1, enacted in the 144th General Assembly.

As required by the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed rules and regulations was published on August 1, 2009 in the Delaware Register of Regulations, Volume 13, Issue 2 at 13 **DE Reg.** 237.

#### Summary of the Evidence and Information Submitted

The Council received written and verbal comments at the public hearing. The following notices, written comments and documents were admitted as exhibits and made a part of the record:

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

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

**Council Exhibit 3:** A copy of an e-mail to Council Chair Lorna Lee from Brian C. Allen commenting generally on the continuing education regulations and suggesting that the Council consider accepting evidence of current NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) certification to satisfy the Council's proposed continuing education requirements since NCCAOM certification requires 60 credits every 4 years whereas the Board requires 30 every 2 years.

**Council Exhibit 4:** Letter dated September 17, 2009 from Cheyenne Luzader, MS, ADS, and Steven Berlin, MD, ADS, stating that the acupuncture law as written proposes problems for Acupuncture Detoxification Specialists in Delaware. Ms. Luzader and Dr. Berlin stated that there are currently 16 Acupuncture Detoxification Specialists (ADS) in Delaware credentialed by the National Acupuncture Detoxification Association (NADA), one of whom is a medical doctor. There are 3 additional trainees, 2 of whom are medical doctors. Ms. Luzader and Dr. Berlin stated that Acupuncture Detoxification (Acudetox) has been practiced in Delaware since 1993 under the auspices of the Medical Board. Ms. Luzader and Dr. Berlin request that the Council: 1) allow NADA certified Acupuncture Detoxification Specialists to use the 5 acupuncture points for detoxification protocol, 2) exempt Acudetox practitioners from licensing, as general acupuncturists, since they practice a specific 5 point protocol for a specific population and do not diagnose, and 3) allow NADA requirements to be the standard for the practice of detoxification in the State of Delaware.

Ms. Luzader and Dr. Berlin added that the Beebe Medical Center's Integrative Health Department was developing a program for addictive behavior that included Acupuncture Detoxification when they learned that the law had passed.

**Council Exhibit 5:** Letter dated September 15, 2009 from Felicitas "Tita" Gontang, LCSW, ICADC, ADS. Ms. Gontang worked at the Kent/Sussex Detoxification Center from 1995 until it closed in July 2009. She noted that auricular acupuncture was used at the facility since 1993 under a waiver from the Board of Medical Practice in a pilot study to determine if the treatment would be an effective and efficient treatment option, reduce client anxiety and stress relative to withdrawal, increase retention and completion, and reduce recidivism. Ms. Gontang stated that the pilot study goals were met. Ms. Gontang added that Treatment Protocol # 45, a publication of the Center for Substance Abuse Treatment, supports auricular acupuncture detoxification as an evidenced based practice. She noted that the practice of acupuncture detoxification specialists does not involve diagnosis. The 5 point NADA protocol is an adjunctive therapy that helps people modulate their stress response, it is not used for healing or curing any conditions. Ms. Gontang noted the effectiveness of the protocol after the tragedies of 9/11 and hurricane Katrina.

Ms. Gontang urged the Council to 1) allow individuals holding NADA certification as an ADS to practice the 5 point protocol, 2) exempt individuals with ADS certification from licensing as acupuncturists, and 3) recommend the procedure for use as a substance abuse support as the protocol developed by NADA. Ms. Gontang submitted that other states, including Virginia, Maryland, New York, Texas, Michigan, Louisiana, Connecticut and Vermont, have done so.

Attached to Ms. Gontang's letter is a 9 page review titled "Acu detox: Beneficial Effects beyond Detox" written by Laura Cooley, L.Ac., discussing studies and articles about the effectiveness and benefits of acupuncture, Acu detox, and the NADA 5 point protocol as an adjunct treatment for substance use disorder and other disorders.

**Council Exhibit 6:** Letter from Michael O. Smith, M.D, Director, Lincoln Recovery Center, Founder, National Acupuncture Detoxification Association dated September 14, 2009 supporting an exemption for acudetox in the acupuncture licensing law. Dr. Smith consulted with the Delaware Board of Medical Practice with regard to the acudetox program that led to an impressive reduction in recidivism at Kent/Sussex. He noted that Delaware led the way in acupuncture supported treatment that was later followed by Virginia and Maryland. He submitted that having a specific acudetox exemption is critical for the use of acupuncture in this field. He noted some of the states that do and do not have programs. Dr. Smith stated that Yale University addiction fellows and residents are required to take acudetox certification training from a nurse who is an acudetox specialist. Statistics show that there are over 900 licensed programs that use acupuncture, it is recommended in the TIPS 45 manual for detox treatment and a leading malpractice insurance agency reported no claims related to auricular acupuncture. He described the treatment as safe and popular and urged the Council to continue providing the service to the citizens of Delaware by approving the acudetox exemption.

**Council Exhibit 7:** Letter dated September 7, 2009 from Irene Rust, MCC, NCACII, CADC, ADS, F.T. (Tita) Gontang, LCSW, ICADC, ADS, Michael Betts, MS, LPMCH, ICCDPD, ADS, Cheyenne Luzader, MS, DCEP, CT, CCH-PS, ADS, writing on behalf of the 19 Acupuncture Detoxification Specialists and Trainees in Delaware

requesting recognition of the NADA ADA credential to use the 5 needle protocol. The writers note that they are in a separate diverse, challenging, and sometimes dangerous profession that shares a technique with the field of acupuncture but state that they have a different mission. The technique they use was developed for addictions. Auricular detoxification is a tool that helps clients withdraw from substances and ease into a healthy lifestyle. The writers ask for the Council's and Board's support as they work with NADA to continue to practice. They stated their regret that they were not informed about the law and asked to be informed of any future circumstances that might affect them.

**Council Exhibit 8:** Copies of the Michigan Department of Community Health Office of Drug Control Policy, Treatment Policy-02, establishing standards for the use of acupuncture as an adjunctive therapy in substance abuse treatment, and copies of the Michigan and Virginia laws exempting NADA certified acupuncture detoxification specialists from licensure in those states.

**Council Exhibit 9:** Letter dated September 16, 2009 from Jeffrey M. Fried, FACHE, President and CEO, Beebe Medical Center, discussing the low cost program for patients with addictive behavior being proposed by the Integrative Health Department at Beebe Medical Center that includes the use of auricular acupuncture detoxification. Dr. Fried stated that an adjustment is needed to the law to allow them to proceed with the program and asked the Board and Council to support an amendment to the law or other action to allow NADA credentialed acupuncture detoxification specialists to practice in Delaware.

**Council Exhibit 10:** Letter from Michael Betts, Psychologist III, LPCMH, CCDP, NCC, ADS, ICCDP, asking for an exemption for Acupuncture Detoxification Specialists to be written into the rules and regulations. Mr. Betts stated that he believed section 1797(b) of the Code allows for the exemption. Mr. Betts noted his long-term observation of an increased participation in the use of the ADS technique. He described his 24 year tenure as a psychologist at KSMHC where he saw the training of the nurses in the use of the technique. Their detox center was involved in the early research in the value of the procedure in treating the restlessness that comes with addiction. Tens of thousands of people have received the treatment as a powerful adjunctive therapy in their detox center and with the population he serves. He noted his experience on the Board of Mental Health Counselors and stated that he appreciated the difficulty of finding agreement and creating appropriate language in rules and regulations to implement legislation without exceeding the legislative authority. He commented that clarification now would likely avoid future problems.

**Council Exhibit 11:** A copy of the "Proposal for the Implementation of Acupuncture Detoxification at Kent-Sussex Detox and an Outpatient Facility" dated August 6, 1992 submitted to the Delaware Board of Medical Practice for the Kent-Sussex pilot program.

The following individuals provided verbal comment at the public hearing:

1. Felicitas "Tita" Gontang, LCSW, ICADC, ADS, provided verbal comments consistent with her written comments and introduced additional exhibits in support of her request for an exemption for Acupuncture Detoxification Specialists. In addition, she responded to a Council question clarifying that Acupuncture Detoxification Specialists are required by NADA to take a clean needle technique course every year.

2. Irene Rust, MC C, NCAC II, CADC, ADS, provided verbal comments consistent with her written comments and introduced additional exhibits in support of her request for an exemption for Acupuncture Detoxification Specialists.

3. Cheyenne Luzader, MS, DCEP, CT, CCH-PS, ADS, provided verbal comments consistent with her written comments and introduced the letter from Jeffrey M. Fried, FACHE, President and CEO, Beebe Medical Center in support of their request for an exemption for Acupuncture Detoxification Specialists.

4. Michael Betts, Psychologist III, LPCMH, CCDP, NCC, ADS, ICCDP, provided verbal comments consistent with his written comment. Mr. Betts also noted, as further support of his request for an exemption for Acupuncture Detoxification Specialists by regulation, that the regulations for Professional Counselors of Mental Health provide for the use of acupuncture as an adjunctive therapy.

### Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed amendments to the Council's Rules and Regulations.

2. The Council received written and public comment as reflected in the summary of evidence.

3. There was only one public comment on the specifics of the regulations as proposed. Brian C. Allen commented on the regulations governing continuing education and suggested that the Council consider accepting evidence of current NCCAOM certification to satisfy the Council's proposed continuing education requirements since NCCAOM certification requires 60 credits every 4 years whereas the Board requires 30 every 2 years.

The Council discussed accepting evidence of NCCAOM certification during the drafting of the regulations but voted not to accept the certification because of the different reporting periods. The law governing acupuncture practitioners requires continuing education to be completed in every renewal period; accepting NCCAOM certification would not satisfy that objective because a licensee could wait until the end of the NCCAOM certification 4 year period to complete their continuing education, effectively not having done any continuing education during the required 2 year renewal period to maintain Delaware licensure. Having already given this suggestion full consideration, the Council does not believe that a change to the regulations should be made and rejects the suggestion at this time. This is an issue that the Council may revisit in the future after it goes through a renewal cycle, but the Council is satisfied that the rule as drafted is necessary to meet the statutory objectives and does not place an undue burden on the licensee.

4. All of the additional public comment focused on providing an exemption in the law or regulations for Acupuncture Detoxification Specialists certified by the National Acupuncture Detoxification Association (NADA) to practice acudetox. The Council is sympathetic to the issue and recognizes the value of the 5 point protocol for dealing with substance abuse and other issues. However, the law as drafted does not provide an exemption for Acupuncture Detoxification Specialists and the Council cannot recommend to the Board regulations that exceed the enabling statute.

Although Mr. Betts cited 24 Del.C. §1797(b) for the proposition that NADA certified Acupuncture Detoxification Specialists could be exempted by regulation, the Council does not agree. The exemption in 24 Del.C. §1797(b) allows individuals who are already authorized by their practice acts to perform acupuncture to continue to do so without obtaining licensure as an acupuncture practitioner. These exempted professionals include chiropractic, medical and osteopathic physicians. The exemption does not allow the Council or the Board to create an exemption for individuals not covered by another practice act. Mr. Betts also raised the issue of the mental health regulations. The Council is not persuaded that those regulations provide any precedent for action by the Council and cannot say whether those regulations are in conflict with the new acupuncture licensure law. The Council, therefore, finds that it cannot recommend to the Board that an exemption be created by regulation and rejects the request to do so.

As requested the Council will offer its support with regard to legislative initiatives to allow NADA certified Acupuncture Detoxification Specialists to continue to perform acudetox in Delaware under the regulation of the Council and the Board of Medical Practice.

5. Pursuant to 24 Del.C. §1796(c), the Council has statutory authority to promulgate regulations governing the practice of acupuncture, after a public hearing and subject to the approval of the Board of Medical Practice.

6. The Council finds that the proposed amendments to the rules and regulations are necessary to meet the Council's statutory mandate to promulgate rules and regulations governing the practice of acupuncture in the State of Delaware. There were no modifications to the rules and regulations as a result of the public hearing and they are recommended for approval as originally published in the *Register of Regulations* on August 1, 2009.

7. The Council finds, and recommends to the Board of Medical Practice, that it approve the Regulations attached hereto as Exhibit "A" to govern the practice of acupuncture by licensed acupuncture practitioners in the State of Delaware.

#### **Recommendation to the Board of Medical Practice**

NOW, THEREFORE, the Acupuncture Advisory Council, by the unanimous affirmative vote of the undersigned members, hereby adopts the Rules and Regulations attached hereto as Exhibit "A" and recommends approval of such Rules and Regulations to the Board of Medical Practice.

These Rules and Regulations will be published in the *Delaware Register of Regulations* after approval by the Board of Medical Practice to be effective ten (10) days after such publication.

# FINAL REGULATIONS

**APPROVED AND RECOMMENDED BY THE UNANIMOUS VOTE OF THE ACUPUNCTURE ADVISORY COUNCIL ON THIS 15th DAY OF October, 2009**

Lorna Lee, L.Ac., Chairperson  
Jennifer Baust, R.N., L.Ac.  
James Frisa, L.Ac.

Vincent Lobo, D.O., Physician Member  
Alan Keith Tillotson, L.Ac.

## ORDER

AND NOW, this 3rd day of November, 2009, the Board of Medical Practice having considered the attached Recommendation of the Acupuncture Advisory Council for approval of Rules and Regulations;

AND, the Board of Medical Practice after consideration having determined to approve the aforesaid Rules and Regulations as proposed by the Acupuncture Advisory Council;

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

1. That the Rules and Regulations recommended by the Acupuncture Advisory Council to govern the practice of acupuncture by licensed acupuncture practitioners in the State of Delaware are hereby approved by the Board of Medical Practice.

2. That such Rules and Regulations attached hereto as Exhibit "A" to the Recommendation of the Council shall be published in the Delaware Register of Regulations and shall be deemed to be effective ten (10) days after such publication.

**BOARD OF MEDICAL PRACTICE**

Anthony M. Policastro, M.D., President  
Raymond L. Moore, Sr., Public Member, Vice President  
Gregory Adams, M.D.  
John Banks, Public Member  
George Brown, Public Member  
Stephen Cooper, M.D.  
Vance Daniels, Public Member

Thomas Desperito, M.D.  
Galicano Inguito, M.D.  
Sophia Kotliar, M.D.  
Karl McIntosh, M.D.  
Oluseyi Senu-Oke, M.D., Secretary  
Daryl Sharman, M.D.

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2009 issue of the Register at page 237 (13 DE Reg. 237). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[1790 Acupuncture Advisory Council](#)

**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b), 2112 & 2417;  
(5 Del.C. §§121(b), 2112 & 2417)  
5 DE Admin. Code 2101, 2201 and 2401

**Order Adopting Regulations 2101, 2201 And 2401**

**IT IS HEREBY ORDERED**, this 10<sup>th</sup> day of November, 2009 that amended Regulations 2101, 2201, and 2401 are adopted as regulations of the State Bank Commissioner. Copies of each amended regulation as adopted are attached hereto and incorporated herein by reference. Amended Regulations 2101, 2201, and 2401 supercede previous Regulations 2101, 2201, and 2401. The effective date of each amended regulation is December 11, 2009. Each amended regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. A notice of the proposed amended Regulations 2101, 2201, and 2401 and their text was published in the October 1, 2009 issue of the Delaware Register of Regulations. Notices were also published in the October 1, 2009 editions of The News Journal, and The Delaware State News, and mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notices, among other things, summarized the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner at, or before, the hearing on the proposed amended regulations, and indicated that the proposed amended regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on November 3, 2009 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, Delaware.

2. A public hearing was held before the State Bank Commissioner on November 3, 2009 at 10:00 a.m. regarding proposed amended Regulations 2101, 2201, and 2401, and the proposed amendments were summarized on the record. Four members of the public attended the hearing, three of whom commented on the record. In addition, three written comments were received before the hearing and these also were discussed during the hearing. All of the comments were about proposed amended Regulation 2401. The comments were about licensing fees and supervisory assessments charged to licensed mortgage loan originators, the use of credit reports and credit scores to evaluate applicants for mortgage loan originator licenses, and the procedure for reviewing challenges by mortgage loan originators to information entered by the Commissioner into the Nationwide Mortgage Licensing System and Registry (NMLSR).

3. After review and consideration, the State Bank Commissioner finds that no changes should be made to proposed amended Regulations 2101, 2201 and 2401. With regard to proposed amended Regulation 2401, this implements a new Chapter 24 of Title 5 of the Delaware Code, which replaces the previous Chapter 24 in its entirety. The licensing fees and supervisory assessments for mortgage loan originators provided in proposed amended Regulation 2401 are those provided by the new statute. In particular, the supervisory assessment due from a licensed mortgage loan originator may not be allowed as a credit against the supervisory assessment due from that person's employer. Section 127(b) of Title 5 only provides for such a credit for a supervisory assessment otherwise due from a subsidiary of an institution subject to a supervisory assessment. The term "subsidiary" is defined in Section 101(20) of Title 5, and does not include a natural person, such as a mortgage loan originator. With regard to the use of credit reports and credit scores to evaluate applicants, new Chapter 24 of Title 5 requires that a license applicant must submit an authorization allowing the Commissioner and the NMLSR to obtain an independent credit report from a consumer reporting agency. This is also required by the United States Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act of 2008, Title V of U.S. Public Law 110-289. Both the state and federal statutes require that a license applicant must demonstrate sufficient financial responsibility, but do not establish any minimum credit score. Accordingly, no minimum credit score is required pursuant to proposed amended Regulation 2401. Finally, the procedure for reviewing challenges by mortgage loan originators to information entered by the Commissioner into the NMLSR conforms to the requirements of the Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code.

4. Therefore, the State Bank Commissioner hereby adopts amended Regulations 2101, 2201, and 2401 as proposed.

November 10, 2009

Robert A. Glen, State Bank Commissioner

**2101 Mortgage Loan Brokers Operating Regulations**  
5 Del.C. §2102(b) and §2112

Formerly Regulation No.: 5.2112.0001

Effective Date: ~~November 12, 1999~~ **December 11, 2009**

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2009 issue of the Register at page 468 (13 DE Reg. 468). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[Order Adopting Regulations 2101, 2201 And 2401](#)**

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER THIRTEEN**

**TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES**

**RE: PROMULGATION OF THE DELAWARE EMERGENCY OPERATIONS PLAN**

**WHEREAS**, the State of Delaware is vulnerable to a wide range of emergencies, including natural and technological disasters and disasters caused by weapons of mass destruction, all of which threaten the life, health, and safety of its people; damage and destroy property; disrupt services and everyday business and recreational activities; and impede economic growth and development; and

**WHEREAS**, this vulnerability is exacerbated by the State's growing population, especially the number of persons residing in coastal areas, in the elderly and at-risk populations, and in the number of seasonal vacationers; and

**WHEREAS**, the State must take all prudent actions to reduce the vulnerability of the people and property of this State; to prepare for the efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the restoration of services and property; and to provide for the coordination of activities related to emergency preparedness, response, recovery, and mitigation among agencies and officials of this State, with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with the private sector; and

**WHEREAS**, the Governor is responsible for addressing the dangers to life, health, environment, property or public peace within the State presented by emergencies or disasters, and the Department of Safety and Homeland Security, through the Delaware Emergency Management Agency, has principal responsibility for coordinating responses to such dangers by preparing and maintaining a comprehensive plan pursuant to the Delaware Code, Title 20, Chapter 31; and,

**WHEREAS**, pursuant to 20 Del. C. § 3106, the Director of the Delaware Emergency Management Agency (the "Director") shall be subject to the direction and control of the Governor and responsible to the Secretary of the Department of Safety and Homeland Security (the "Secretary") for carrying out the program for emergency management of this State; and,

**WHEREAS**, during an emergency or disaster, the Governor may delegate such powers as the Governor may see fit to the Secretary or to the Director to coordinate the activities of the State that serve to prevent or alleviate the ill effects of an imminent or actual emergency or disaster and to maintain liaison with emergency support agencies and organizations of other states and of the federal government; and,

**WHEREAS**, the Delaware Emergency Operations Plan, developed pursuant to the requirements of 20 Del. C. § 3107, has been reviewed by the various departments and agencies tasked therein as establishing the policies and procedures to be followed by the State of Delaware in executing all emergency or disaster operations;

**NOW, THEREFORE, I, JACK A. MARKELL**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The Delaware Emergency Operations Plan (the "Plan") is hereby adopted and shall be considered the "comprehensive plan and program for the emergency management of the State," as required in 20 Del. C. § 3107(1).

2. That each executive department or agency of the State shall be responsible for emergency services as assigned in the Delaware Emergency Operations Plan.

3. That each executive department or agency assigned a responsibility in the Plan shall maintain, as directed by the Delaware Emergency Management Agency, in consultation with the Secretary, comprehensive standard operating procedures for executing its assigned emergency responsibilities

4. That each executive department or agency assigned a lead or support role in the Plan shall name a primary and alternate Emergency Services Coordinator ("ESC") to coordinate the department's or agency's emergency functions, to include planning, response and mitigation activities, with the Delaware Emergency Management Agency.

5. That each executive department or agency shall execute, without delay, the emergency functions so designated in the Plan or further ordered by the Governor or the Director, in consultation with, and under the direction of, the Secretary, in preparation for or during response to and recovery from any emergency or disaster through the initial use of existing agency appropriations and all necessary agency personnel, regardless of normal duty assignment.

6. That each executive department or agency shall develop plans to ensure continuity of operations during times of emergency, consistent with the requirements in the Plan or as may be promulgated by the Secretary through the Delaware Emergency Management Agency, to ensure its ability to carry out essential government functions in the aftermath of a disaster or emergency.

7. That all other executive boards, departments, agencies, associations, institutions, and authorities not assigned a specific role in the Delaware Emergency Operations Plan will, in an emergency, carry out whatever duties or services as may be specified or directed by the Governor or the Director, in consultation with and under the direction of the Secretary, consistent with their capabilities and limitations.

8. That the Director or his or her designee, in consultation with and under the direction of the Secretary, is hereby authorized to implement the Delaware Emergency Operations Plan and activate the State Emergency Operations Center in order to provide necessary State government services in the event of a declared emergency. Activation of the State Emergency Operations Center shall constitute implementation of this Plan.

9. That the Director of the Delaware Emergency Management Agency, in consultation with and under the direction of the Secretary, is authorized to amend the Plan as necessary in order to achieve preparedness goals and objectives of the nation and the State of Delaware in accordance with state or federal law. The Director is further responsible for maintaining and updating this plan, as required, in coordination with the appropriate agencies. This Plan supersedes the Delaware Emergency Operations Plan, dated December 1, 2006, in its entirety.

**APPROVED** this 2nd day of November, 2009

Jack A. Markell,  
Governor

**DELAWARE RIVER BASIN COMMISSION**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, December 9, 2009 beginning at 10:30 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, December 17, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES****Food Supplement Program - Certification Periods Reporting Changes****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 Food Supplement Program policies in the Division of Social Services Manual (DSSM) related to *Certification Periods* and *Reporting Changes*.

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 December 31, 2009.

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.

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**DIVISION OF SOCIAL SERVICES****DSSM 11000 Child Care Subsidy Program****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 Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding Definition and Explanation of Terms, Income Eligible/Loss of Employment or Job Transition, Income Eligible/Training, Explanation of Certificates and Loss of Need Transition.

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 December 31, 2009.

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

The Department proposes to revise Sections 2.0, 12.0, 19.0, 20.0 and 22.0 of 7 DE Admin. Code 1124 to conform to Control Techniques Guidelines (CTG) documents issued by EPA. Section 182(b)(2) of the Clean Air Act (CAA) requires all ozone non-attainment areas, including Delaware, to update relevant regulations for Reasonably Available Control Technology (RACT) controls for emission sources covered in an EPA CTG and to submit the regulations to EPA as State Implementation Plan (SIP) revisions. These sections of 1124 were based upon CTG and ACT information developed in 1977, 1978 and 1994. The proposed revisions regulate the volatile organic compound (VOC) contents of additional products, require the use coating application equipment that provides for high transfer efficiency, and include clean-up solvent emissions in the applicability determinations.

A hearing on these proposed amendments will be held on Tuesday, January 5, 2010 beginning at 6pm in the Department's Priscilla Building conference room, 156 South State Street, Dover, DE 19901. Interested parties may submit comments in writing to David F. Fees, Air Quality Management Section, 156 South State Street, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

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**DIVISION OF AIR AND WASTE MANAGEMENT****1125 Requirements for Preconstruction Review****NOTICE OF PUBLIC HEARING**

7 DE Admin Code 1125 regulates emissions of pollutants from new and modified facilities, and is organized by attainment status of pollutants emitted relative to federal national ambient air quality standards (NAAQS); 2.0 covers non-attainment and 3.0 covers attainment areas.

This action is to amend 3.0 of 7 DE Admin. Code 1125 to cite explicitly that nitrogen oxides (NOx) is a precursor to the formation of ground-level ozone. EPA requires this revision (see 73 FR 16205, March 27, 2008) because they have determined the regulatory language is not clear that nitrogen oxides (NOx), in addition to volatile organic compounds, is a ground-level ozone precursor.

There will be a hearing on this proposed amendment on January 5, 2010 beginning at 6 pm in DNR EC's Priscilla Building Conference Room, 156 South State Street, Dover, DE 19901. Interested parties may submit comments in writing to Ronald Amirikian, Air Quality Management Section, 156 South State Street, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

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

Delaware is proposing to amend Regulation 1138 by adding a new Section 14 that covers miscellaneous parts or products surface coating operations. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to cadmium, chromium, lead, manganese, or nickel compounds. In addition, some of these compounds, except the manganese compounds, are classified as known or probable human carcinogens by the EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for these types of operations and the recently promulgated federal standard (40 CFR Part 63 Subpart H HHHHH) on which this proposed amendment is heavily based. In addition, this amendment proposes to include more health protective requirements that currently exist in similar area source air toxics standards found in Regulation 1138 and other Delaware air regulations.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, January 5, 2010 beginning at 6:00 PM in the DNREC's Priscilla Building Conference Room, 156 S. State Street, Dover, DE. Interested parties may submit comments in writing to: Jim Snedden, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

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**DIVISION OF AIR AND WASTE MANAGEMENT****1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products  
NOTICE OF PUBLIC HEARING**

7 DE Admin. Code 1125 regulates emissions of pollutants from new and modified facilities, and is organized by attainment status of pollutants emitted relative to federal national ambient air quality standards (NAAQS); 2.0 covers non-attainment and 3.0 covers attainment areas.

This action is to amend 3.0 of 7 DE Admin. Code 1125 to cite explicitly that nitrogen oxides (NOx) is a precursor to the formation of ground-level ozone. EPA requires this revision (see 73 FR 16205, March 27, 2008) because they have determined the regulatory language is not clear that nitrogen oxides (NOx), in addition to volatile organic compounds, is a ground-level ozone precursor.

This action has no immediate impact because all of Delaware is classified as non-attainment of the ground-level ozone national ambient air quality standard (NAAQS), and regulated under 2.0 of 7 DE Admin. Code 1125. 2.0 clearly states that NOx is a precursor to the formation of ground-level ozone.

There will be a hearing on this proposed amendment on January 5, 2010 beginning at 6 pm in DNREC's Priscilla Building Conference Room, 156 South State Street, Dover, DE 19901. Interested parties may submit comments in writing to Ronald Amirikian, Air Quality Management Section, 156 South State Street, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

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**DIVISION OF FISH AND WILDLIFE****3304 Creel Limits and Seasons  
NOTICE OF PUBLIC HEARING**

The Department promulgated these specialized largemouth bass size regulations in May 1990 to address an unbalanced bass population within three state-managed impoundments. The specialized regulations were designed to allow harvest of smaller bass in order to allow better growth of the remaining larger fish. However, the high incidence of catch and release fishing by Delaware anglers did not affect the hoped-for result. The regulations have occasionally had a negative effect on scheduled fishing to tournaments in these ponds by not allowing the weigh-in of bass within the protected slot-size. Recent surveys of the bass populations have shown a more normal size distribution and the special regulations are no longer necessary. Therefore the Division has no reason to maintain these specialized size regulations.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 5:00 PM on Tuesday, December 29, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us. The hearing record will remain open for written or email comments until 4:30 PM December 31, 2009.

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION  
1770 Respiratory Care Practice Advisory Council  
NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 Delaware Code Chapter 101 and 24 Delaware Code Section 1775 (c),

the Respiratory Care Advisory Council of the Delaware Board of Medical Practice has developed and proposes to modify Regulation 8.0 Continuing Education to require that at least 10 of the required 20 hours of continuing education be obtained from traditional programs attended remotely or with the use of interactive technology that allows the attendee to ask questions of the presenter during the presentation. The regulations are also being amended to provide for the licensee to attest to the completion of continuing education online.

The amendments also add a new rule 12 that clarifies that unlicensed personnel engaged in home medical equipment set up are prohibited from performing patient assessments.

Finally, several minor technical changes have been made to the regulations.

A public hearing will be held on the proposed Rules and Regulations on January 12, 2010 at 3:15 p.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Council will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Council in care of Gayle MacAfee, Executive Director, at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Gayle MacAfee at the above address or by calling (302) 739-4520.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of hearing.

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**DIVISION OF PROFESSIONAL REGULATION****1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners****NOTICE OF PUBLIC HEARING**

Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration in accordance with 24 Del.C. §1806 has proposed amendments to rule 1.0 General Provisions of its rules and regulations. The proposed amendments define the term "full-time employee" as it relates to supervision, and allows for the definitions to be applicable to the statute as well as the regulations. The Board had received a number of requests from applicants and licensees for a definition of the term "full-time employee", which appears in 24 Del.C. §1802 (18). The Board determined that the requirement that the supervision be provided by a master licensee who was a full-time employee needed clarification to assist licensees and applicants in the determination and selection of acceptable supervision. The Board modeled its proposed definition on the definition of full-time employee in the Delaware State Fire Prevention Regulations.

A public hearing will be held on January 12, 2010 at 8:45 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 the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration, 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 at the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION****3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers****PUBLIC NOTICE**

Pursuant to 24 Del.C. §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers has proposed revisions to its rules and regulations.

A public hearing will be held on January 13, 2010 at 2:15 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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## CALENDAR OF EVENTS/HEARING NOTICES

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**DIVISION OF PROFESSIONAL REGULATION**  
**4400 Delaware Manufactured Home Installation Board**  
**PUBLIC NOTICE**

Pursuant to 24 Del.C. §4416(b)(1), the Manufactured Home Installation Board has proposed revisions to its rules and regulations.

A public hearing will be held on January 11, 2010 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Manufactured Home Installation Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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**PUBLIC SERVICE COMMISSION**  
**3007 Electric Service Reliability and Quality Standards**  
**NOTICE OF PUBLIC HEARING**

By Order No. 7002 dated August 8, 2006, the Delaware Public Service Commission (the "Commission") approved proposed revisions to the Rules Governing Electric Service Reliability and Quality Standards (the "Rules") for electric distribution companies subject to the Commission's jurisdiction; and

That, pursuant to 29 Del.C. §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before **December 31, 2010**. Pursuant to 29 Del.C. §10117, the Commission will conduct a public hearing on the proposed revisions and resulting new "Electric Service Reliability and Quality Standards" on **January 7, 2010** beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

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