
Delaware Register of Regulations

Issue Date: December 1, 2010

Volume 14 - Issue 6, Pages 500 - 591



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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, 2010.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

14 **DE Reg.** 24-47 (07/01/10)

Refers to Volume 14, pages 24-47 of the *Delaware Register* issued on July 1, 2010.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 15	4:30 p.m.
February 1	January 17	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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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** 235

PUBLIC NOTICE**235 Teacher of the Year Award****Education Impact Analysis Pursuant To 14 Del.C. Section 122(D)****A. Type of Regulatory Action Required**

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to reauthorize 14 **DE Admin. Code** 235 Teacher of the Year Award as part of the five-year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **January 6, 2011** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is readopted as part of the 5 year review cycle.
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is readopted as part of the 5 year review cycle.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is readopted as part of the 5 year review cycle.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is readopted as part of the 5 year review cycle.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is readopted as part of the 5 year review cycle.
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 readopted as part of the 5 year review cycle.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The entity for decision making and accountability will 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 readopted as part of the 5 year review cycle.
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.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the local school boards.

235 Teacher of the Year Award

This program shall be administered in accordance with 14 **De I.C.** Ch. 89, and the following rules and regulations.

1.0 Qualifications

To be considered for the Teacher of the Year award a person shall:

- 1.1 Have taught, continuously or intermittently, for an accumulative period of three years or more in a Delaware public school previous to the date of such person's nomination.
- 1.2 Have been formally nominated.
- 1.3 Be actively teaching in their district or charter school in this state at the time of their nomination.
- 1.4 Continue to actively teach in the nominating district or charter school for the duration of the school year of their nomination.
 - 1.4.1 If the nominee chooses to leave the district or charter school during the selection period the district or charter school shall submit another nominee.
- 1.5 Meet all the requirements for a Standard Certificate for the position held and hold a valid and current license, as approved by the Professional Standards Board, Department of Education and the State Board of Education.

7 DE Reg. 1178 (3/1/04)

9 DE Reg. 1182 (2/1/06)

2.0 Nominations

The following shall apply in preparing nominations in accordance with the requirements of the Act.

- 2.1 The Department of Education shall meet annually with the district coordinators of the Teacher of the Year Program and the representative for the charter schools for the purpose of providing them with detailed instructions and proper forms for the presentation of nominees. Each district is invited to nominate one teacher employed by the district and the charter schools are invited to select one nominee to represent all of the charter schools.
 - 2.1.1 Nominees shall be skillful and dedicated teachers, prekindergarten through grade 12. Administrative personnel such as principals and guidance counselors are not eligible to be considered for State Teacher of the Year. Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified.
- 2.2 Nominees shall submit a portfolio describing themselves and setting forth their positions on educational issues. Format will be based on the National Teacher of the Year program.

- 2.3 Following the submission of the portfolios, selected Department of Education staff members and selected former state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year Program Guide that is updated each year. Another group of Department of Education Staff members shall be assigned to read all of the portfolios and rate them based on forms found in the Teacher of the Year Program Guide. Based on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.
- 2.4 The panel of judges shall include: the current State Teacher of the Year; the President of the State Congress of Parents and Teachers; the President of the State Student Council Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.
- 2.5 The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.

3 DE Reg. 104 (7/1/99)

7 DE Reg. 1178 (3/1/04)

9 DE Reg. 1182 (2/1/06)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 710

PUBLIC NOTICE

710 Public School Employees Workday

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

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to reauthorize 14 DE Admin. Code 710 Public School Employees Workday as part of the five-year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **January 6, 2011** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is readopted as part of the 5 year review cycle.
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is readopted as part of the 5 year review cycle.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is readopted as part of the 5 year review cycle.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is readopted as part of the 5 year review cycle.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is readopted as part of the 5 year review cycle.

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 readopted as part of the 5 year review cycle.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The entity for decision making and accountability will 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 readopted as part of the 5 year review cycle.

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.

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

710 Public School Employees Workday

1.0 Required Work Hours

Absent an existing collective bargaining agreement to the contrary, district employees who work less than the specified time shall have their annual salary adjusted accordingly. Upon ratification of a new or extension of an existing collective bargaining agreement, the local district shall establish hours and days worked that are consistent with those specified below. Otherwise, effective July 1, 2001 a workday for public school employees shall be defined as follows:

- 1.1 Teacher, a minimum of 7 1/2 hours, inclusive of 1/2 hour for lunch, plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school. (14 **Del.C.** §1305 defines the number of teacher workdays per year and 14 **Del.C.** §1328 defines the duty free period.)
- 1.2 Aide and Paraprofessional, a minimum of 7 1/2 hours inclusive of 1/2 hour for lunch.
- 1.3 Custodian, a minimum of 8 hours inclusive of 1/2 hour for lunch.
- 1.4 Administrator, a minimum of 7 1/2 hours exclusive of lunch plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school.
- 1.5 Food Service Manager, a minimum of 7 hours exclusive of lunch.
- 1.6 Secretary, a minimum of 7 1/2 hours exclusive of lunch.

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

4 DE Reg. 1254 (2/1/01)

9 DE Reg. 1183 (2/1/06)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Medicaid Recovery Audit Contractor 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 5 12, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid

State Plan to comply with section 6411 of the Affordable Care Act regarding the Medicaid Recovery Audit Contractor Program.

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

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

SUMMARY OF PROPOSAL

The proposal amends the Title XIX Medicaid State Plan to comply with section 6411 of the Affordable Care Act which amends section 1902(a)(42) of the Social Security Act (the Act) requiring States to establish programs to contract with RACs to audit payments to Medicaid providers by December 31, 2010.

Statutory Authority

The Patient Protection and Affordable Care Act, Public Law 111-148, Section 6411, *Expansion of the Recovery Audit Contractor (RAC) program*.

Background

State Medicaid RACs

Under Section 1902(a)(42)(B)(i) of the Act, States and Territories are required to establish programs to contract with one or more Medicaid RACs for the purpose of identifying underpayments and overpayments and recouping overpayments under the State plan and under any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver. States must establish these programs in a manner consistent with State law, and generally in the same manner as the Secretary contracts with contingency fee contractors for the Medicare RAC program.

The Centers for Medicare and Medicaid Services (CMS) will allow States to maintain flexibility in the design of Medicaid RAC program requirements and the number of entities with which the States elect to contract within the parameters of the statutory requirements. There are a number of operational and policy considerations in State Medicaid RAC program design (some of which will be discussed in greater depth in future rulemaking) such as:

- a. Qualifications of Medicaid RACs;
- b. Required personnel - for example physicians and certified coders;
- c. Contract duration;
- d. RAC responsibilities;
- e. Timeframes for completion of audits/recoveries;
- f. Audit look-back periods;
- g. Coordination with other contractors and law enforcement;
- h. Appeals; and
- i. Contingency fee considerations.

Contingency Fees

Sections 1902(a)(42)(B)(ii)(I) and (II) of the Act provide that payments to Medicaid RACs are to be made only from amounts "recovered" on a contingent basis for collecting overpayments and in amounts specified by the State for identifying underpayments. CMS will not dictate contingency fee rates, but will establish a maximum contingency rate for which Federal Financial participation (FFP) will be available. This rate will be the highest contingency fee rate that is paid by CMS under the Medicare RAC program.

Appeals

Section 1902(a)(42)(B)(ii)(III) of the Act requires States to have an adequate process for entities to appeal any adverse decisions made by the Medicaid RACs. Each State has existing administrative appeals processes with respect to audits of Medicaid providers. So long as States are able to accommodate Medicaid RAC appeals within their existing Medicaid provider appeal structure, CMS is not requiring States to adopt a new administrative review infrastructure to conduct Medicaid RAC appeals.

Reporting

States will be required to report to CMS their contingency fee rates, along with other Medicaid RAC contract metrics such as the number of audits conducted, recovery amounts, number of cases referred for potential fraud, contract periods of performance, contractors' names, and other factors such as whether a State has implemented provider or service-specific Medicaid RACs. States will report certain elements of this information via the quarterly Form CMS-64, and other information via separate data reporting forms CMS will require.

Coordination

Section 1902(a)(42)(B)(ii)(IV)(cc) of the Act requires that CMS ensure that States and their Medicaid RACs coordinate their recovery audit efforts with other entities.

Summary of Proposal

In accordance with the statutory requirements of Section 6411 of the Affordable Care Act, the Division of Medicaid and Medical Assistance (DMA) intends to submit a State plan amendment (SPA) through which Delaware will attest that it will establish a compliant Medicaid RAC program by December 31, 2010.

State programs to contract with Medicaid RACs are not required to be fully operational by December 31, 2010. However, CMS expects States to fully implement their RAC programs by April 1, 2011.

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

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund; however, there is the potential for administrative and system change costs.

DMMA PROPOSED REGULATION #10-51**REVISION:**

Revision: **CMS**
OMB No.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory DELAWARE

SECTION 4 – GENERAL PROGRAM ADMINISTRATION**4.5 Medicaid Recovery Audit Contractor Program**

PROPOSED REGULATIONS

<u>Citation</u>	
Section 1902(a)(42)(B)(i) of the Social Security Act	<p><input checked="" type="checkbox"/> The State has established a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State plan and under any waiver of the State plan.</p> <p>_____ The State is seeking an exception to establishing such program for the following reasons:</p>
Section 1902(a)(42)(B)(ii)(I) of the Act	<p>_____ The State/Medicaid agency has contracts of the type(s) listed in section 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute.</p> <p>Place a check mark to provide assurance of the following:</p> <p><input checked="" type="checkbox"/> The State will make payments to the RAC(s) only from amounts recovered.</p> <p><input checked="" type="checkbox"/> The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.</p>
Section 1902 (a)(42)(B)(ii)(II)(aa) of the Act	<p>The following payment methodology shall be used to determine State payments to Medicaid RACs for identification and recovery of overpayments (e.g., the percentage of the contingency fee):</p> <p><input checked="" type="checkbox"/> The State attests that the contingency fee rate paid to the Medicaid RAC will not exceed the highest rate paid to Medicare RACs, as published in the Federal Register.</p> <p>_____ The State attests that the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will only submit for FFP up to the amount equivalent to that published rate.</p> <p>_____ The contingency fee rate paid to the Medicaid RAC that will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will submit a justification for that rate and will submit for FFP for the full amount of the contingency fee.</p>
Section 1902 (a)(42)(B)(ii)(II)(bb) of the Act	<p><input checked="" type="checkbox"/> The following payment methodology shall be used to determine State payments to Medicaid RACs for the identification of underpayments (e.g., amount of flat fee, the percentage of the contingency fee):</p> <p><i>The Medicaid RAC will be paid an equivalent percentage contingency fee for the identification of underpayments.</i></p>
Section 1902 (a)(42)(B)(ii)(III) of the Act	<p><input checked="" type="checkbox"/> The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).</p> <p><input checked="" type="checkbox"/> The State assures that the amounts expended by the State to carry out the program will be amounts expended as necessary for the proper and efficient administration of the State plan or a waiver of the plan.</p>
Section 1902 (a)(42)(B)(ii)(IV)(aa) of the Act	<p><input checked="" type="checkbox"/> The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.</p>
Section 1902(a)(42)(B)(ii)(IV)(bb) of the Act	<p><input checked="" type="checkbox"/> Efforts of the Medicaid RAC(s) will be coordinated with other contractors or entities performing audits of entities receiving payments under the State plan or waiver in the State, and/or State and Federal law enforcement entities and the CMS Medicaid Integrity Program.</p>
Section 1902 (a)(42)(B)(ii)(IV)(cc) of the Act	

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7906(e) (16 Del.C. §7906(e))
16 DE Admin. Code 4455

PUBLIC NOTICE

4455 Delaware Regulations Governing a Detailed Plumbing Code

The Department of Health and Social Services, Division of Public Health is proposing regulations which amend Title 16 of the Delaware Code relating to the adoption and enforcement of a Unified Plumbing Code. Title 16, Section 7906(e), created by House Bill 488 and signed into law on July 27, 2010, requires that the Division of Public Health shall issue plumbing permits and shall assess a \$100 fee for each permit, except that no permit shall be required or fee assessed for the replacement of an existing fixture, piece of equipment or related piping, including but not limited to hot water heaters and water conditioning systems. The Division of Public Health has proposed amended regulations governing a Detailed Plumbing Code to address this mandate. On December 1, 2010, the Division plans to publish proposed amendments to the Delaware Regulations Governing a Detailed Plumbing Code and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (D HSS), will hold a public hearing to discuss proposed amendments to the Delaware Regulations Governing a Detailed Plumbing Code. Title 16, Section 7906(e), created by House Bill 488 and signed into law on July 27, 2010, requires that the Division of Public Health shall issue plumbing permits and shall assess a \$100 fee for each permit, except that no permit shall be required or fee assessed for the replacement of an existing fixture, piece of equipment or related piping, including but not limited to hot water heaters and water conditioning systems. The Division of Public Health has proposed amended regulations governing a Detailed Plumbing Code to address this mandate.

The public hearing will be held on December 22, 2010 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 856-5496.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by December 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 31, 2010 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

4455 Delaware Regulations Governing a Detailed Plumbing Code

1.0 State of Delaware Plumbing Code

These Regulations shall hereby be known as the "State of Delaware Plumbing Code".

14 DE Reg. 37 (07/01/10)

2.0 Adoption of International Plumbing Code.

The State of Delaware Plumbing Code adopts, as if fully set forth herein, "The International Plumbing Code 2009" as amended herein:

- 2.1 Amend **Subsection 101.1** by deleting the subsection in its entirety.
- 2.2 Amend **Subsection 101.2** by deleting the subsection in its entirety and by inserting in lieu thereof the following: "The provisions of this Code shall apply to the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems within this jurisdiction."
- 2.3 Amend **Subsection 102.2** by deleting the subsection in its entirety and by inserting in lieu thereof the following: "The legal use and occupancy of any structure existing on the effective date of this Code, or for which it had been heretofore approved, may be continued without change except as may be specifically covered in this Code or deemed necessary by the Deputy Code Official(s) for the general safety and welfare of the occupants and the public.
- Exception:** Except that upon change of permit holder in facilities and operations regulated by the Delaware Division of Public Health such systems shall comply with the requirements of this Code and applicable regulations promulgated and standards established by the Delaware Division of Public Health."
- 2.4 Amend Subsection 102.4 by deleting the second paragraph in its entirety.
- 2.45 Amend **Subsection 102.10** by deleting the words "local, state or federal law" and inserting in lieu thereof the following: "the Delaware Code."
- 2.56 Amend **Subsection 104.1** by deleting the subsection in its entirety and by inserting in lieu thereof the following: "For the purpose of this document the term "Code Official" refers to the Secretary of the Delaware Department of Health and Social Services, or his/her designee. "Plumbing Inspectors" shall have such duties and powers as are enumerated in Title 16, Section 7907 of the **Delaware Code** and shall have the authority of a Deputy Code Official as referenced in Section 103.3 of this Code."
- 2.67 ~~Amend **Subsection 106.6.3** by adding thereto a new numbered paragraph following numbered paragraph "3" to read as follows: "4. The State of Delaware Plumbing Code Office does not refund plumbing permit fees."~~ Amend **Subsection 106.1** by adding a new sentence at the end of the subsection paragraph to read as follows: "The Division of Public Health shall issue plumbing permits and a \$100 fee shall be assessed for all plumbing permits issued by the Division of Public Health. All revenue generated shall be retained by the Division of Public Health in order to defray costs associated with the plumbing inspection program."
- 2.7.1 Amend **Subsection 106.2** by adding thereto a new numbered paragraph following numbered paragraph "2" to read as follows: "3. No permit or fee is required by the Division of Public Health for the replacement of an existing fixture, piece of equipment or related piping, including but not limited to hot water heaters and water conditioning systems."
- 2.7.2 Amend **Subsection 106.2** by adding thereto a new numbered paragraph following paragraph "3" to read as follows: "4. The relocation of any plumbing fixture and related pipe requires a permit."
- 2.7.3 Amend **Subsection 106.2** by adding thereto a new numbered paragraph following paragraph "4" to read as follows: "5. Any new non potable fixture, piece of equipment, or system that connects to the potable water supply shall require a permit and shall meet the provisions of this Code."
- 2.7.4 Amend **Subsection 106.6.3** by adding thereto a new numbered paragraph following paragraph "3" to read as follows: "4. The Division of Public Health does not refund plumbing permit fees."
- 2.78 Amend **Subsection 108.1** by deleting the subsection in its entirety and by inserting in lieu thereof the following: "It shall be unlawful for any person to work as a licensed plumber in the State of Delaware unless such person has received a license from the Delaware Department of Administrative Services, Division of Professional Regulation, showing that said person has been duly licensed as a plumber, except as provided by Title 24, Section 1807(c) of the **Delaware Code**, and has a permit issued by the Delaware Division of Public Health.
- Exception:** The homeowner of a single-family residence occupied, or to be occupied by the homeowner and not for sale, rent or lease, may perform plumbing work only on such residence

itself or auxiliary structures, and in compliance with a permit issued by the Delaware Division of Public Health, or applicable authority, and in compliance with all provisions of these regulations.”

- 2.89 Amend **Subsection 108.4** by deleting the subsection in its entirety and by inserting in lieu thereof the following: “Any person who shall violate any provisions of this Code, or shall fail to comply with the requirements thereof, or who shall install plumbing work in violation of an approved plan or directive of the Code Official or the Deputy Code Official(s), or of a permit or certificate issued under the provisions of this Code, shall be subject to penalties as provided by Title 16, Chapter 79 of the **Delaware Code.**”
- 2.910 Amend **Subsection 108.5** by deleting the words: “shall be liable to a fine of not less than [AMOUNT] dollars or more than [AMOUNT] dollars” as it appears therein and inserting in lieu thereof the following: “shall be subject to penalties as provided by Title 16, Chapters 1 and 79 of the **Delaware Code.**”
- 2.4011 **Section 202 General Definitions**
- 2.4011.1 Amend **Section 202** by adding thereto a new definition after the definition “**Leader**” and before the definition “**Local Vent Stack**” to read as follows: “**Licensed Plumber.** A person who has complied with the provisions of the Delaware Division of Professional Regulation and the Board of Plumbing Examiners, and has further met the certification, testing, bonding, and licensing requirements of the jurisdiction in which he/she plans to engage in the business of plumbing. A Licensed Plumber shall be recognized as being responsible for all work performed under a plumbing permit issued by the Delaware Division of Public Health.”
- 2.4011.2 Amend **Section 202** by adding thereto a new definition after the definition “**Soil Pipe**” and before the definition “**Spillproof Vacuum Breaker**” to read as follows: “**Solvent cement.** The sealant used to connect pipes and fittings. This Code prohibits the use of all purpose glue in any reference to solvent cement.”
- 2.4011.3 Amend **Section 202** by adding thereto a new definition after the definition “**Sump Vent**” and before the definition “**Supports**” to read as follows: “**Supervision of Work.** Work completed under the permit of a licensed plumber while employed by the licensed plumber, or the same firm, partnership, corporation, or owners of the company as the licensed plumber.”
- 2.11.4 Amend **Section 202** by amending the definition of “**Building Drain**” by deleting the reference “30” between the words “extends” and “inches” and replacing with the words “5 feet”.
- 2.4412 Amend **Subsection 305.6.1** by deleting the subsection in its entirety.
- 2.4213 Amend **Subsection 312.3** by adding thereto after the last sentence the following: “In lieu of the presence of the Deputy Code Official witnessing the test, the Licensed Plumber may certify in writing upon a prescribed form that the plumbing system piping is in accordance with Section 312 of these regulations. This shall be applicable between November 1 and April 1 of each calendar year.”
- 2.4314 Amend **Subsection 312.4** by deleting the subsection in its entirety.
- 2.4415 Amend **Subsection 404.1** by deleting the subsection in its entirety and by inserting in lieu thereof the following: “All regulations pertaining to handicapped facilities in the International Plumbing Code will be governed by the most recent edition of the “American National Standards Institute (ANSI).”
- 2.4516 Amend **Section 407** by adding thereto a new subsection after subsection 407.4 to read as follows: “**407.5 Overflow devices.** Overflow devices on all bathtubs shall be evaluated by the Division of Public Health on a case by case basis.”
- 2.4617 Amend **Subsection 502.1** by adding thereto after the last sentence the following: “The first 12 inches of both hot and cold water lines shall be thermally rated for maximum water temperature produced by the hot water heater.”
- 2.4718 Amend **Subsection 504.6** by adding thereto a new numbered paragraph after numbered paragraph “13” to read as follows: “14. The discharge valve shall be equipped with an approved heat transfer fitting or metallic pipe.”
- 2.4819 Amend **Table 604.3** by adding thereto in the second row, first column, after the words “Bathtub, balanced-pressure, thermostatic or combination balanced pressure/thermostatic mixing valve” the following: “for hand held shower fixtures.”
- 2.4920 Amend **Table 605.3** by deleting in the parenthetical in the seventh row, first column after the words “Copper or copper-alloy tubing” the letters “M” and “WM”.

- ~~2.2021~~ Amend **Table 605.4** by deleting in the parenthetical in the fifth row, first column after the words “Copper or copper-alloy tubing” the letters “M” and “WM”.
- ~~2.2422~~ Amend **Subsection 605.16.2** by adding thereto after the words “above or below ground” the following sentence: “The use of all purpose glue is prohibited.”
- ~~2.2223~~ Amend **Subsection 607.3** by adding thereto after the words “in accordance with Section 607.3.1 and 607.3.2” the following: “All public water installations shall be required to have an expansion tank installed.”
- ~~2.2324~~ Amend **Subsection 608.3** by adding thereto a new subsection after subsection 608.3.1 to read: “608.3.2 **Special equipment, water supply protection.** There shall be sufficient space around special equipment for accessibility.”
- ~~2.2425~~ Amend **Subsection 903.2** by adding thereto after the first sentence the following sentence: “The stack shall be no less than 2 inches in diameter.”
- ~~2.2526~~ Amend **Subsection 903.3** by deleting the words “or to a stack-type air admittance valve in accordance with Section 917.”
- ~~2.2627~~ Amend **Subsection 912.1** by deleting the last sentence in its entirety.
- ~~2.2728~~ Amend **Subsection 917.1** by adding thereto after the last sentence the following: “Air admittance valves shall be approved by the Deputy Code Official prior to use or installation.”
- ~~2.2829~~ Amend **Section 919** by deleting the section in its entirety.
- ~~2.2930~~ Amend **Subsection 1003.3.4** by adding thereto in the last sentence after the words “shall be installed in accordance with the manufacturer’s instructions” the following: “or be otherwise approved by the Code Official.”
- ~~2.3031~~ Amend **Chapter 12** by deleting the Chapter in its entirety.
- 14 DE Reg. 37 (07/01/10)**

3.0 Miscellaneous Provisions

- 3.1 **Procedures for License.** Every person desiring to register as a plumber engaged in the business of plumbing in the State of Delaware shall file an application with the Delaware Division of Professional Regulation.
- 3.2 **Variances**
- 3.2.1 **Permission for a variance.** Upon receipt of a written application for a variance, the Deputy Code Official may recommend granting written permission to vary from particular provisions set forth in these Regulations, when the extent of the variation is clearly specified and it is documented to the Secretary of the Delaware Department of Health and Social Services or his/her appointed designee’s satisfaction that:
- 3.2.1.1 Such variation is necessary to obtain a beneficial use of an existing facility;
- 3.2.1.2 The variation is necessary to prevent a practical difficulty or unnecessary hardship; and
- 3.2.1.3 Appropriate alternative measures have been taken to protect the health and safety of the public and assure that the purpose of the provisions from which the variation is sought will be observed.
- 3.2.2 **Time for recommendation.** Within thirty (30) business days of the receipt of a written application for a variance, the Deputy Code Official shall recommend either: granting the variance, denying the variance or requesting further information from the applicant.
- 3.2.3 **Appeal of denial.** If the applicant has been denied a variance upon the recommendation of the Deputy Code Official, the applicant may appeal the decision by filing a written Notice of Appeal to the Secretary of the Delaware Department of Health and Social Services, or his/her designee.

14 DE Reg. 37 (07/01/10)

4.0 Special Provisions Regarding Plumbing For Food Establishments

- 4.1 **Scope.** These Special Provisions shall be followed in addition to and shall not supersede the International Plumbing Code, the Delaware Food Code or these Regulations.

- 4.2 **Use of Licensed Plumber.** All plumbing shall be installed by a licensed plumber under a valid, current plumbing permit in accordance with these Regulations.
- 4.3 **Water Supply and Sewage Disposal**
- 4.3.1 **No further evaluation.** Water Supply and Sewage Disposal Facilities served by a public water supply and sewage system do not require further evaluation.
- 4.3.2 **Private wells.** Private wells must comply with chemical and bacteriological standards; a satisfactory analysis is required before an operating permit may be issued.
- 4.3.3 **Individual systems.** Individual sewage disposal systems require the approval of the Department of Natural Resources and Environmental Control prior to operating the food establishment.
- 4.4 **Backflow Prevention**
- 4.4.1 **Air gap, supply.** An air gap between the water supply and the flood rim level of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch). (See also DE Food Code, §5.202).
- 4.4.2 **Air gap, drainage.** A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed, except that this requirement does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building, and except that this requirement does not apply to a warewashing machine with a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap. Equipment and fixtures utilized for the storage, preparation and handling of food shall discharge through an indirect waste pipe by means of an air gap. (See also IPC2009 § 802.1.1).
- 4.4.3 **Floor drains.** Floor drains located within walk-in refrigerators or freezers in food establishments shall be indirectly connected to the sanitary drainage system by means of an air gap except as allowed in IPC2009 § 2.24.3.2. (See also IPC2009, § 802.1.2)
- 4.4.4 **Backflow prevention device.** A backflow or back siphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device. (See also DE Food Code, § 5-202.14).
- 4.4.5 **Plumbing fixtures.** The supply lines or fittings for every plumbing fixture shall be installed so as to prevent backflow. Plumbing fixture fittings shall provide backflow protection in accordance with ASSE A112.18.1. (See also IPC2009, § 608.2).
- 4.4.6 **Devices, appliances.** All devices that connect to the water supply shall be provided with protection against backflow. This includes devices used for food preparation and processing, steamers, the storage of ice or food, warewashing machines, and other food service equipment. (See also IPC2009, § 608.3)
- 4.4.7 **Hose connections.** Sillcocks, hose bibs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric-type or pressure-type vacuum breaker or a permanently attached hose connection vacuum breaker. This subsection does not apply to water heater drain valve or clothes washing machines. (See also IPC2009, § 608.15.4.2).
- 4.4.8 **Beverage dispensers.** The water supply connection to carbonated beverage dispensers shall be protected against backflow by a backflow preventer conforming to ASSE 1022 or by an air gap. The portion of the backflow preventer device downstream from the second check valve and the piping downstream therefrom shall not be affected by carbon dioxide gas. (See also IPC2009, § 608.16.1).
- 4.5 **Utility Service Installation**
- 4.5.1 **Installation location.** Utility lines including gas, plumbing and electrical shall be installed inside walls, above ceilings or below floors whenever structurally practical, and in accordance with applicable code requirements.

- 4.5.1.1 **Front of wall lines.** If lines are run in front of walls, lines shall be installed with stand-off brackets or other secure mounting method, such that a minimum clearance of one inch (1") exists between line and wall.
- 4.5.1.2 **No floor installation.** Exposed horizontal utility service, including water supply and drain lines, may not be installed on the floor.
- 4.6 **Joint Sealing**
- 4.6.1 **Joint sealing.** Joints formed by fixtures in contact with walls or floors shall be sealed with an approved sealant. Where installation does not allow access for cleaning, fixtures shall be sealed to walls or adjoining equipment. Where not structurally practical, a minimum gap of one inch (1") shall exist between the fixture and walls or adjoining equipment.
- 4.7 **Toilet Facilities**
- 4.7.1 **Number required.** At least one (1) toilet and not fewer than the toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified by law. (See also DE Food Code, § 5-203.12).
- 4.7.2 **Handwashing facility.** A handwashing facility shall be located in, or immediately adjacent to, toilet rooms. (See also DE Food Code, § 5-204.11).
- 4.7.3 **Toilet room.** A toilet room shall be completely enclosed and provided with a tight-fitting and self-closing door, except that this requirement does not apply where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall. (See also DE Food Code, § 6-202.14).
- 4.7.3.1 **Location.** Toilet rooms shall be conveniently located and accessible to employees during all hours of operation (See also DE Food Code, § 6-402-11).
- 4.8 **Sinks**
- 4.8.1 **Water supply.** All sinks shall be supplied with hot and cold running water under pressure.
- 4.8.2 **Splashguard Dividers.** Where less than 18 inches lateral separation exists between sinks and adjacent fixtures, food contact surfaces or open storage shelving, a splashguard divider constructed of a material which is durable, easily cleanable, non-toxic and impervious to moisture shall be installed; such divider may be wall-attached or fixture-attached, and shall extend outward to the leading edge of the sink and extend vertically a minimum of 18 inches above the level plane of the sink bowl.
- 4.8.3 **Handwashing sinks.** These fixtures, when located in food preparation, food dispensing, beverage dispensing (including bar service area), food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.
- 4.8.3.1 **Separate sink required.** A separate, single-compartment handwashing sink is REQUIRED in food preparation, food dispensing, and warewashing areas; and in, or immediately adjacent to, toilet rooms. Handsinks shall be installed within 25 travel feet within a direct line access of each primary work location.
- 4.8.3.2 **Temperature.** Tempered water temperature at a minimum of 100°F and a maximum of 110°F, delivered through a mixing valve or combination faucet, is REQUIRED.
- 4.8.3.3 **Faucets.** If installed, self-closing, slow-closing, or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.
- 4.8.3.4 **No other purpose.** A handwashing sink may not be used for any other purpose.
- 4.9 **Food Preparation Sinks**
- 4.9.1 **Food preparation sinks.** Any sink in which food is washed or thawed under running water as part of the food preparation process must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.
- 4.9.2 **No disposal.** A food preparation sink may not be used for disposal of mop water or liquid wastes.
- 4.9.3 **Required indirect drain line.** An indirect drain line connection through an air-gap is REQUIRED.

- 4.9.4 **Grease trap connection.** Connection to a properly sized grease trap is REQUIRED.
- 4.9.5 **Multiple compartments.** If a food preparation sink has two or more compartments, a separate wasteline connection from each sink compartment through an air gap into a floor sink is REQUIRED.
- 4.10 **Warewashing Sinks**
- 4.10.1 **Industry standard.** Warewashing sinks must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.
- 4.10.2 **Three compartments.** A sink of at least three separate compartments with covered corners and integral drainboards at each end shall be provided for manually washing, rinsing and sanitizing equipment and utensils. Each sink compartment shall be large enough to accommodate the immersion of the largest equipment item or utensil. **A chemical test kit that matches the type of sanitizing agent in use is required in the warewashing area.**
- 4.10.3 **No handwashing or disposal.** A warewashing sink may not be used for handwashing or disposal of liquid wastes.
- 4.10.4 **Grease trap connection.** Connection to a properly sized grease trap is REQUIRED.
- 4.10.5 **Alternative use provision for warewashing sink.** If the warewashing sink will be used for washing or thawing food, a separate wasteline connection from each sink compartment through an air-gap into a floor sink is REQUIRED. The installation of a properly sized grease trap downstream of the floor sink is REQUIRED. Alternative use of a warewashing sink for food preparation requires prior approval from the Delaware Division of Public Health.
- 4.11 **Service Sinks** (for use as a janitorial sink, utility sink or mop sink)
- 4.11.1 **Installation location.** Wherever practical, fixture service sink must be installed outside of the food preparation, food dispensing, food storage and warewashing areas.
- 4.11.2 **Industry standard.** Service sinks, when located in food preparation, food dispensing, food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.
- 4.11.3 **Minimum number required.** A minimum of one service sink or receptor is REQUIRED on each floor level of food operations. This fixture may be a sink or a curbed receptor.
- 4.11.4 **Dual use.** The dual use of a utility sink as a handwashing sink is not approved in new construction, conversion of a structure to a food establishment, nor remodeling of an existing facility.
- 4.11.5 **Grease trap connection.** Connection to a grease trap is not required.
- 4.12 **Prewash Sinks.**
- 4.12.1 **Industry standard.** Prewash sinks must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.
- 4.12.2 **Grease trap connection.** Connection to a properly sized grease trap is REQUIRED.
- 4.12.3 **Food waste grinder.** If a food waste grinder is installed on fixture prewash sink, the grease trap must be designed and rated for such application, or a solids interceptor is required upstream of the grease trap.
- 4.13 **Mechanical Warewasher**
- 4.13.1 **Industry standard.** Mechanical warewashers must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, or equivalent.
- 4.13.2 **Warewashing machine.** A warewashing machine, using hot water or a chemical rinse to sanitize, may be installed. Large cookware which does not fit into the machine must be sanitized in a three compartment sink. Facilities without a three compartment sink whose warewashers are found functioning improperly may be directed to temporarily close until the machine is repaired. **If a**

chemical sanitizing agent is used, a test kit that matches the chemical sanitizing agent is required.

- 4.13.3 **Grease trap connection.** Connection to a grease trap is NOT APPROVED due to high temperature, pressure and detergents.
- 4.13.4 **Indirect drainline connection.** An indirect drainline connection through an air-gap is REQUIRED. (See paragraph below for alternative installation provision.)
- 4.14 **Alternative Installation Provision**
- 4.14.1 **Alternative installation provision for mechanical warewasher.** If approved by the Delaware Division of Public Health, a direct drainline connection may be installed if the machine wastewater outlet is located within five feet of a properly trapped vented floor drain and the machine outlet is connected to the inlet side of the same properly vented floor drain trap.
- 4.15 **Water Heater**
- 4.15.1 **Hot water supply.** The water heater shall be sized to provide hot water as required to supply both the continuous requirements and the hourly peak demands of the facility. The continuous and hourly demands are based on the type of equipment and number of fixtures consuming hot water as required for food operations.
- 4.15.2 **Total availability.** The total hot water availability in gallons per hour (gph) from a water heater is the sum of the unit storage capacity plus the recovery rate at a 100°F rise.
- 4.15.3 **Minimum storage capacity.** A fuel-fired (gas or oil) water heater in a food establishment shall have a minimum storage capacity of thirty (30) gallons; an electric water heater shall have a minimum storage capacity of forty (40) gallons. Storage capacities larger than the minimum shall be required, based on the type of equipment and number of fixtures consuming hot water.
- 4.16 **Grease Trap**
- 4.16.1 **Sizing.** The grease trap must be sized in accordance with PDI standard G101.
- 4.16.2 **Grease trap connection.** Connection to a properly sized grease trap is REQUIRED for all fixtures that discharge grease-laden waste, e.g. warewashing sinks, food prep sinks, pre-wash sinks for warewashers, woks, and other cooking equipment.
- 4.16.3 **Sizing procedures.** Follow these procedures for sizing a grease trap to a specific fixture:
- 4.16.3.1 Determine the liquid volume of the fixture in cubic inches (cu in) draining to the grease trap.
 - 4.16.3.2 Determine the liquid capacity of the fixture in gallons (gal).
 - 4.16.3.3 Determine the actual drainage load (75% of fixture capacity).
 - 4.16.3.4 Determine the unit flow rate minimum for drainage period of 2 minutes.
 - 4.16.3.5 Determine the unit liquid holding capacity minimum (40% of fixture capacity).
 - 4.16.3.6 Select a unit corresponding to minimum unit flow rate and liquid holding capacity.

Table 4.16.3a
EXAMPLE OF SIZING FOR GREASE TRAP SELECTION

Select a grease trap for a three compartment warewashing sink with bowl dimensions of 18" W x 24" L x 12" D

1. Volume = (18in x 24in x 12in) x 3 cmpts = (5,184 cu in) x 3 = 15,552 cubic inches
2. Capacity = Volume (cu in) / 231 (cu in/gal) = 15,552 / 231 = 67.3 gallons
3. Drainage load = 67.3 gal x 0.75 = 50.4, or approx. 50 gallons
4. Unit flow rate minimum = 50 gallons / 2 minutes = 25 gallons per minute (gpm)
Unit liquid holding capacity minimum = 67.3 x 0.40 = 26.9 gallons
5. Select a grease trap with a minimum flow rate equal to or greater than **25 gpm**
The selected trap also must have a minimum liquid holding capacity of 26.9 gal.

**Table 4.16.3b
GREASE TRAP SIZING FOR TYPICAL SINK INSTALLATIONS**

Bold column at far right applies PDI G101 formula to calculate minimum required grease trap flow rate in gallons per minute (gpm).

Width (in)	Length (in)	Depth (in)	Volume (cuin)	Volume (gal)	No o cmpts	Total vol (gal)	Working vol (75%)	Min F low Rate (gpm)
W	L	D	W x L x D = Vc	Vc / 231 = Vg	#C	Vg x #C = Vtg	Vtg x 0.75 = Vw	Vw / 2min = MFR
16.0	19.0	10.5	3192	13.8	1	13.8	10	5
					2	27.6	21	10
					3	41.5	31	16
16.0	19.0	13.5	4104	17.8	1	17.8	13	7
					2	35.5	27	13
					3	53.3	40	20
16.0	20.0	14.0	4480	19.4	1	19.4	15	7
					2	38.8	29	15
					3	58.2	44	22
18.0	20.0	14.0	5040	21.8	1	21.8	16	8
					2	43.6	33	16
					3	65.5	49	25
18.0	24.0	12.0	5184	22.4	1	22.4	17	8
					2	44.9	34	17
					3	67.3	50	25
20.0	20.0	16.0	6400	27.7	1	27.7	21	10
					2	55.4	42	21
					3	83.1	62	31
22.0	24.0	16.0	8448	36.6	1	36.6	27	14
					2	73.1	55	27
					3	109.7	82	41
24.0	24.0	16.0	9216	39.9	1	39.9	30	15
					2	79.8	60	30
					3	119.7	90	45"

9 DE Reg. 786 (11/01/05)
14 DE Reg. 37 (07/01/10)

PROPOSED REGULATIONS

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 Del.C. §122(3)u.1)

PUBLIC NOTICE

4458 State of Delaware Food Code Regulations (2011)

The Department of Health and Social Services, Division of Public Health is proposing regulations which amend Title 16 of the Delaware Code relating to the State of Delaware Food Code. The Division of Public Health proposes to repeal the current 1999 State of Delaware Food Code in its entirety and in its place adopt with amendments the United States Public Health Service 2009 Food Code to be known as the 2011 State of Delaware Food Code. On December 1, 2010, the Division plans to publish the proposed 2011 State of Delaware Food Code and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed 2011 State of Delaware Food Code. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. The Division of Public Health proposes to repeal the current 1999 State of Delaware Food Code in its entirety and in its place adopt with amendments the United States Public Health Service 2009 Food Code to be known as the 2011 State of Delaware Food Code.

The public hearing will be held on December 21, 2010 at 9:30 a.m. in the Felton-Farmington Room, located in the Delaware Department of Transportation Building, 800 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review in the December 1, 2010 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by December 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 31, 2010 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

4458 State of Delaware Food Code Regulations (2011)

1.0 State of Delaware Food Code

- 1.1 **Name.** These Regulations shall hereby be known as the "State of Delaware Food Code".
- 1.2 **Effective Date.** The State of Delaware Food Code shall be effective (to be determined).
- 1.3 **Prior Regulations Repealed.** All current or previous regulations or parts of regulations in conflict with this State of Delaware Food Code are hereby repealed.
- 1.4 **Location.** A copy of the complete State of Delaware Food Code is available for public view at the following locations:
 - 1.4.1 Jesse S. Cooper Building, 417 Federal St, Dover DE 19901
 - 1.4.2 <http://dhss.delaware.gov/dhss/dph/hsp/files/99fdcodetoc.pdf>

1.5 Severability. Should any part, sub-part, section, paragraph, sentence or phrase of this State of Delaware Food Code be declared unconstitutional or invalid by any competent authority, the remainder of this Code shall not be affected in anyway.

2.0 Adoption of United States Public Health Service 2009 Food Code

2.1 The State of Delaware Food Code adopts, as if fully set forth herein, the "United States Public Health Service 2009 Food Code" excluding Annex 1 through Annex 7, as amended herein:

2.1.1 Amend **Subpart 1-101.10** by inserting the words "State of Delaware" before the words "Food Code" and after the words "as the".

2.1.2 Amend **Subpart 1-102.10** by deleting the subpart in its entirety and by inserting in lieu thereof the following, "The purpose of this Code is to safeguard public health, reduce the risk of foodborne illness and provide to consumers food that is safe, unadulterated and honestly presented. The purpose is also to regulate, within the State of Delaware, the production, transportation, storage, processing, handling, preparation and consumer service of human food; the inspections of food establishments; the issuing and revocation of permits to food establishments; and the application of compliance and enforcement procedures.

2.1.3 **Subpart 1-201.10(B) Terms Defined**

2.1.3.1 Amend **Subpart 1-201.10(B)** by adding thereto a new defined term after the defined term "Prior Foundation Item" and before the defined term "Public water system" to read as follows: "**Private**" means a use or function that is intended for a particular individual or group, such as a celebration of a birthday, wedding, anniversary or funeral, and that is not intended for consumers as members of the general public.

2.1.3.2 Amend **Subpart 1-201.10(B)** by deleting the definition of "Regulatory authority" and inserting in lieu thereof the following: "**Regulatory authority**" means the Secretary, Delaware Health and Social Services, or his/her authorized representative.

2.1.4 Amend **Subpart 8-405.11(B)** by deleting the number "10" as it appears therein and inserting in lieu thereof the following number: "7".

2.1.5 Amend **Chapter 8** by adding thereto a new part "8-6" to read as follows:

"8-6 Enforcement Procedures

8-601 Re-inspection Fee

8-601.10 Fee Assessment and Failure to Pay

- (A) A re-inspection fee shall be assessed under one or more of the following circumstances:
- (1) Priority (P) or Priority Foundation (Pf) violations are shown to exist during a follow-up inspection.
 - (2) Core (c) violations are shown to exist on successive routine inspections.
 - (3) A complaint inspection requires a follow-up inspection to confirm compliance.
 - (4) An inspection is required to determine compliance with the terms of a corrective action plan or an administrative hearing.
 - (5) An inspection to determine the proper posting of a valid permit.
 - (6) Any other follow-up inspection deemed necessary by the Regulatory Authority to determine compliance with this Code.
- (B) The fee shall be that required by Chapter 1, Section 134 of Title 16 of the Delaware Code.
- (C) Failure to pay the re-inspection fee, as specified, shall result in the automatic suspension of the permit to operate a food establishment. The permit shall remain suspended until the Regulatory Authority receives full payment of all fees.

8-602 Administrative Action

8-602.10 General

PROPOSED REGULATIONS

If the Regulatory Authority determines that a food establishment is operating without a valid permit; that one or more conditions exist which represent an Imminent Health Hazard; or that serious violations, repeat violations, or general unsanitary conditions are found to exist, administrative action may occur. Administrative action will be conducted in accordance with the law.

- (A) Operation without a Permit
- (1) Immediate Closure Order. If a food establishment is found operating without a valid permit as required by subpart 8-301.11 of this Code, the Regulatory Authority shall order the facility immediately closed.
 - (2) Notice of Closure. The closure shall be effective upon receipt of a written notice by the person in charge of the food establishment or an employee of the food establishment. A closure notice statement recorded on the inspection report by the representative of the Regulatory Authority constitutes a written notice.
 - (3) Duration of Closure. The food establishment shall remain closed until a permit application, applicable fees and any required plans have been received and approved by the Regulatory Authority.
- (B) Imminent Health Hazard(s)
- (1) Permit Suspension without Hearing. If some condition is determined to exist in a food establishment which presents an imminent health hazard to the public, the Regulatory Authority may suspend the operating permit of the food establishment without a prior hearing. The suspension shall be effective upon receipt of written notice by the person in charge of the food establishment or an employee of the food establishment. A suspension statement recorded on the inspection report by the Regulatory Authority constitutes a written notice.
 - (2) A permit issued pursuant to subpart (1) shall not be suspended for a period longer than ten (10) government business days without a hearing. Failure to hold a hearing within the ten (10) government business day period shall automatically terminate the suspension.
 - (3) Hearing Request. The permit holder of the food establishment may request, in writing, a hearing before the Regulatory Authority at any time during the period of suspension, for the purpose of demonstrating that the imminent health hazard(s) no longer exist. The request for hearing shall not stay the suspension.
- (C) Serious Violations, Repeat Violations and General Unsanitary Conditions. When conditions exist in a food establishment that represent serious violations, repeat violations or general unsanitary conditions, the Regulatory Authority may initiate a corrective action plan or schedule a hearing.

8-603 Agency Emergency Actions

8-603.10 Examination of Food.

Food may be examined or sampled by the Regulatory Authority as often as necessary for enforcement of this Code.

8-603.20 Wholesome and Free from Spoilage.

All food shall be wholesome and free from spoilage. Food that is spoiled or unfit for human consumption shall not be kept on the premises. The established administrative procedures for the implementation and enforcement of the provisions of Chapter 33 of Title 16 of the Delaware Code, relating to the embargo of misbranded or adulterated food, and penalties shall be applicable to this subpart.

8-604 Penalties

8-604.10 Operation in Violation of Code.

Any person (or responsible officer of that person) who violates a provision of this Code, and any person (or responsible officer of that person) who is the holder of a

permit or who otherwise operates a food establishment that does not comply with the requirements of this Code shall be subject to the provisions of Section 107 of Title 16 of the Delaware Code.

8-604.20 Refusal, Failure or Neglect to Comply with Order of the Regulatory Authority.

Any person (or responsible officer of that person) who violates a provision of this Code, and any person (or responsible officer of that person) who is the holder of a permit or who otherwise operates a food establishment that refuses, fails or neglects to comply with an order of the Regulatory Authority shall be subject to an administrative penalty of not less than \$100 and not more than \$1,000, together with costs.

8-604.30 Injunction.

The Regulatory Authority may seek to enjoin violations of this Code.

8-604.40 Public Notification.

A placard, as provided by the Division, shall be prominently displayed at all entrances of food establishments that have failed to obtain a valid permit or have a permit that is suspended, revoked, or expired.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Chapter 5, §512
(31 Del.C., Ch. 5, §512)

PUBLIC NOTICE

Delaware Temporary Assistance for Needy Families (TANF) Employment and Training 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 Delaware TANF Employment and Training Program policies in the Division of Social Services Manual (DSSM) regarding *Mandatory Participants*.

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, 2010.

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

SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Delaware's Temporary Assistance for Needy Families (TANF) Employment and Training (E & T) Program policies in the Division of Social Services Manual (DSSM) regarding Mandatory Participants. This change clarifies the rules for parents accessing the right to be exempted from TANF E & T requirements when the parent is caring for their child who is less than 12 months old and the parent is a single custodian parent. The Code of Federal Regulations (CFR) at 45 CFR §261.2 (n)(2)(i) gives States the option to exempt parents caring for a child under 12 months of age for up to 12 months in the lifetime of the parent. The policy change eliminates the opportunity for parents with this exemption to volunteer to participate in E&T but maintains access to the E&T programs through mandatory participation.

Statutory Authority

45 CFR §261.2(n)(2)(i), *What definitions apply to this part?*

45 CFR §§261.22(c)(1) and (c)(2), *How will we determine a State's overall work rate?*

Summary of Proposed Change

Current policy allows a single custodial parent caring for a child less than 12 months of age to be exempted from employment and training for up to a lifetime limit of 12 months. Single custodian parents are automatically granted an exemption from employment and training if months within their lifetime limit are available. This rule change allows a parent to request not to be exempted and to be mandatory for employment and training activities. Once a parent is mandatory she or he may not return to exempted status. A parent who is mandatory for employment and training will become exempted from E&T activities if a new biological/step/or adoptive child under 12 months of age enters the home. This policy becomes effective February 1, 2011.

The proposed changes affect the following policy sections:

DSSM 3006.1, *Mandatory Participants*

DSSM 3006.2, *TANF Employment and Training Participation and Participation Rates*

DSSM 300 6.2.1, *TANF Employment and Training Participants Who Count for TANF Participation According to the Provisions of Delaware's Temporary Assistance for Needy Families.*

DSS PROPOSED REGULATIONS #10-48

REVISIONS:

3006.1 Mandatory Participants

~~45 CFR §261.2 (n)(2)(i)~~

All adult caretakers and other adults in the assistance unit who are not exempt must participate in Employment and Training related activities. The four possible exemptions are:

~~A. A single custodial parent caring for a child under 12 months of age. This exemption has a lifetime limit of 12 months.~~

A. A single custodial parent caring for a child less than 12 months of age may be exempted from employment and training activities for up to 12 months in the lifetime of the parent.

Single custodial parents who are caring for a child less than 12 months of age and who have not reached their 12 month limit will be exempted from employment and training activities unless they waive their employment and training exemption.

Parents who waive their employment and training exemption are subject to all the conditions and rules of the employment and training program. Parents who waive their employment and training exemption cannot be exempted for caring for a child less than 12 months of age again unless a new biological, step, or adopted child less than 12 months of age is added to the TANF case.

Parents who waive their employment and training exemption must meet the required employment training hours based on their family composition within 14 calendar days of waiving their exemption. Cases which fail to meet the employment and training requirement are subject to a full family sanction.

B. An individual determined unemployable by a health care professional.

C. On a case-by-case basis, clients who are victims of Domestic Violence. (see DSSM 3010.2.1 through DSSM 3010.2.5)

D. A parent caring for a disabled family member* who lives in the home.

* A parent or spouse can be excluded to care for a child or a spouse as long as the following conditions apply:

1. The parent is biological, adoptive or step.
2. The parent or spouse lives in the home with the child.
3. The need for such care is supported by medical documentation.
4. The spouse of a parent can use the caring for exemption even though the marriage is terminated by death or divorce.

Children age 16 or older who are not attending school must participate in work or other alternative activities, e.g., GED.

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access, supports and opportunities, including reasonable accommodations, to participate in the Employment and Training programs.

3006.2 TANF Employment and Training Participation and Participation Rates

Under the Temporary Assistance ~~For~~ for Needy Families Block Grant, DSS is required to meet the following work participation rates with respect to all families that include an adult or minor child head of household receiving assistance:

ALL FAMILIES

Fiscal Year	Minimum Participation Rate	Required weekly hours of participation
2002 and after	50%	30 hours

TWO PARENT FAMILIES

Fiscal Year	Minimum Participation Rate	Required weekly hours of participation
1999 and after	90%	35 hours
		55 hrs a week if receiving Federal Child Care Subsidy

DSS may face a lower work participation rate if it experiences a net caseload reduction compared to FY 2005. Example: If it is determined that DSS' average monthly caseload in FY 2006 was 4 percentage points lower than average monthly caseloads in FY 2005, then, rather than having to meet a 50% work participation rate requirement in FY 2006, the rate would be lowered by 4 percentage points to 46%.

To be counted toward meeting the work participation rate, each individual must meet the required number of hours each week.

Single parents who are not working 30 hours a week or making earning an equivalent of 30 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal at least a minimum average of 30 hours a week; and, at least 20 of the hours per week must come from participation in federally defined core activities.

Single parent/caretaker TANF recipients with a child in the TANF household under six are deemed to be engaged in work for a month if the recipient is engaged in federally defined core work activities for an average of at least 20 hours per week during the month.

Two-parent families where one parent is not working at least 35 hours a week or making earning the equivalent of 35 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal an average of at least 35 hours a week; and, at least 30 of the hours per week must come from participation in federally defined core activities.

Two-parent families who receive federally funded Purchase of Care services who are not working at least 55 hours a week or making earning the equivalent of 55 hours times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities for one parent must equal 35 hours a week. Combined hours of participation in work and work related activities must equal an average of at least 55 hours a week. Of the average 55 hours a week the participants must average at least 50 hours a week of federally defined core activities.

Teen parents are required to attend school, work, or participate in the employment and training activities. Secondary, post-secondary, vocational, training school, and participation in a GED program meets participation requirements for the month and is the equivalent to work. If they are not attending one of the above types of school or working for 30 hours a week they must participate in employment and training activities for 20 or 30 hours a week.

Single custodial parents with a child under 12 months of age are able to receive an exemption from Employment and Training requirements for a total of 12 months in their lifetime. ~~These 12 months can be used any time the parent has a child less than 12 months of age. Once the youngest child reaches 12 months of age, the parents are required to participate in Employment and Training. If they are already working the equivalent of their~~

PROPOSED REGULATIONS

required Employment and Training hours (20, 30, 35, 55), the DCIS II system will code them as volunteers for Employment and Training.

REQUIRED EMPLOYMENT AND TRAINING HOURS

The monthly participation rate is calculated as follows:

Family Composition	Required Hours Per Week	Minimum #Required Core Hours
Single Parent Family		
A. With child under 12 months*	0	0
B. A. With a child under 6 years old	20	20
C. B. No children under 6 years old	30	20
Two Parent Family		
A. Not receiving subsidized child care	35	30
B. Receiving subsidized child care	55	50
* subject to 12 month lifetime limit		

Numerator: # of TANF families with a work-eligible individual who meet the participation requirement for the month
divided by

Denominator: # of TANF families that include a work-eligible individual, less # of families sanctioned in that month for failure to participate in work (for up to 3 months in preceding 12 month period), less the number of non-needy caretaker households, less the number of single custodial parents opting to use one of the 12 months allowable exemptions for caring for a child under one year of age. A parent can only use this exemption for a total of 12 months in their his/her lifetime.

See 3006.2 TANF Employment and Training Participation and Participation Rates - History

3006.2.1 TANF Employment and Training Participants Who Count for TANF Participation

According to provisions of Delaware's Temporary Assistance for Needy Families, the following individuals must participate in work related activities and are included in the denominator for calculating the Federal participation rates.

- Work-eligible individuals as defined in DSS TANF policy;
- Work-eligible adults in the Time-Limited Temporary program;
- Work-eligible adults for whom the Contract of Mutual Responsibilities specifies the employment-related activities that will be required;
- Work-eligible adults who are not exempt because they are medically unable to participate; and
- ~~Work-eligible adults who are not exempt because they used their 12-month limit of child care for a child under one year of age.~~
- Single custodial parents caring for a child less than 12 months of age who have waived their employment and training exemption or are no longer eligible for an exemption.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

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 Determination of the Child Care Parent Fee and Fee Waiving Situations.

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, 2010.

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

SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding Determination of the Child Care Parent Fee and Fee Waiving Situations. The purpose of this revision is to reduce the number of situations in which a family does not have a parent fee.

Statutory Authority

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

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

Summary of Proposed Change

DSSM 11004.7, *Determination of the Child Care Parent Fee and Fee Waiving Situations* is updated to eliminate specific situations which allow the child care parent fee to be waived. This change is necessary to continue providing services to each family that is eligible for a child care subsidy.

DMMA PROPOSED REGULATION #10-47

REVISION:

11004.7 Determination ~~Of The~~ of the Child Care Parent Fee and Fee Waiving Situations

45 CFR §§98.20 and 98.42

~~Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.~~

~~Child care fees may be waived if the family meets one of the five (5) conditions below.~~

~~On a case by case basis, families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.~~

~~Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.~~

~~Caretakers in Category 3-1 caring for a child/children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles,~~

etc.);

When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below 40% of the federal poverty level. Deductions are limited to:

- rent, mortgage, lot rent;
- any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);
- actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fees and past due amounts are not included.
- telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;
- un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)

EXAMPLE:

A family of three has gross monthly income of \$1,300.00. The parent fee for this family would be 16% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals: \$1,300.00

Total expenses are: \$ 85.00

After deductions: \$515.00

\$515.00 is less than \$553.00, 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.

EXAMPLE:

A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals: \$2,203.00

Total expenses are: \$785.00

After deductions: \$1,418.00

\$1,418.00 is more than \$666.00, 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.

Teen parents 18 years old or younger attending high school or a high school equivalent.

All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

See Administrative Notice: A-08-2004 Waiving Child Care Fee

A-13-99 Child Care Fees/ Waiving Fees For Caretakers of ABC or GA Children

Families are required to contribute to the cost of child care services. All families receiving subsidized child care will have a parent fee except:

1. Families active with and referred by the Division of Family Services (DFS) including foster care families.
2. Teen parents 18 years old or younger attending high school or a high school equivalent.

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

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

IN THE MATTER OF THE ADOPTION OF RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT, 26 DEL. C. §§ 351-363, AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS (OPENED AUGUST 23, 2005; REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; AND SEPTEMBER 22, 2009; September 7, 2010)

PSC REGULATION DOCKET NO. 56

ORDER NO. 7862

AND NOW, this 10th day of November, 2010:

WHEREAS, on September 7, 2010, the Commission entered PSC Order 7834, which, among other things, required publication of proposed changes to the Commission's "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules") or originally promulgated pursuant to the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-364 (2006 Supp.) (the "RPS Act"); and

WHEREAS, Order No. 7834 also required publication of a notice regarding the proposed changes to the RPS Rules, which notice included a deadline for comments to the proposed changes to be filed by October 31, 2010 and set a hearing date of November 18, 2010; and

WHEREAS, Order No. 7834 was published in the October 2010 edition of the *Register of Regulations*; however, due to a clerical error, the proposed changes to the RPS rules published in the Register did not accurately capture the changes that the Commission approved pursuant to Order No. 7834; and

WHEREAS, accordingly, the Commission determines that the proposed changes to the RPS Rules, as approved by Order No. 7834, must be re-published in the Register of Regulations, and a corresponding new deadline for comments and a date for a public hearing must be re-set.

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

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §362 and 29 **Del.C.** §10115, the Commission proposes to revise its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," originally adopted by PSC Order No. 6931 (June 6, 2006) and published at 10 DE Reg. 151-57 (the "RPS Rules"). A copy of the proposed revised RPS Rules, approved to be published by PSC Order No. 7834, is attached to this Order as Exhibit "A".

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Acting Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order, along with copies of the proposed revised RPS Rules (Exhibit "A") and the Notice of Proposed Rule-Making, attached as Exhibit "B." The Secretary shall also cause such Notice of Proposed Rule-Making to be published in The News Journal and the Delaware State News newspapers on or before December 1, 2010. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers and rural electric cooperatives; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

3. 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 to the RPS Rules on February 22, 2011 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. 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 Regulations, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

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

6. 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:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

Notice of Proposed Rule-Making Amending “Rules and Procedures to Implement the Renewable Energy Portfolio Standard”

To: All Electric Suppliers, Electric Utilities, Electric Generators using Renewable Resources, and other Interested Persons

Under the “Renewable Energy Portfolio Standards Act,” 26 **Del.C.** §§ 351-364 (2006 Supp.) (the “RPS Act”), each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of “renewable energy credits” equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Public Service Commission (“PSC”) adopted “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (the “RPS Rules”). See 10 DE Reg. 151-157 (July 1, 2006). The RPS Rules have been amended twice in the interim to conform to subsequent amendments to the RPS Act.

On July 28, 2010, Senate Substitute No. 1 for Senate Bill No. 119 (77 **Del. Laws** ch. 451) (July 28, 2009) was signed into law, which adds several new sections to the RPS Act and amends numerous other sections. More specifically, the recently enacted law, among other things:

- Modifies the minimum percentages of sales that must be from eligible energy resources and solar photovoltaics and extends the period for the minimum standard from 2019 to 2025.
- Establishes a mechanism for a freeze of the minimum requirements under certain circumstances.
- Provides for credits toward the minimum requirements where solar and wind installations are sited in Delaware, as long as a certain percentage of the equipment used in the installation is manufactured in Delaware, and where facilities are constructed or installed with a certain percentage of Delaware workers.
- Increases the amount of solar alternative compliance payments.
- Provides the State Energy Coordinator with the authority to review the reasonableness of alternative compliance payments and solar alternative compliance payments.
- Establishes a Renewable Energy Taskforce to review trading mechanisms and other structures to support growth of renewable trading markets in Delaware.
- Explicitly provides the Commission with the authority to promulgate rules and regulations with respect to certain of the above-noted amendments to the RPS Act.

The PSC now proposes to revise the RPS Rules to incorporate, and assure consistency with, the statutory changes made by the recently enacted law.

You can review PSC Order No. 7862 (November 10, 2010) (the "Order") and the proposed revised RPS Rules in the December 2010 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised RPS Rules at the PSC's Internet website located at <http://dep.sc.delaware.gov>. If you wish to obtain written copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before December 31, 2010. You should file such materials with the PSC at the following address:

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

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to Pamela.Knotts@state.de.us.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on February 22, 2011 at 1:00 P.M. at the PSC's office at the address set forth above. Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard

1.0 Definitions

- 1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar Photovoltaic Energy Resources means solar photovoltaic or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or the thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from a single generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-WA-002735);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-WA-002735);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM -Environmental Information Services, Inc. (PJM-EIS).

"Generation At tribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"PJM" or "PJM Interconnection" means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Renewable Energy Credit" or ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" and or "Renewable Energy Portfolio Standard" means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation or organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Solar Alternative Compliance Payment" or "SACP" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under Section 3.3.4 of this Regulation.

"Sustainable Energy Utility" or ("SEU") is the nonprofit entity according to the provisions of 29 Del.C. §8059 that develops and coordinates programs for energy end-users in Delaware for the purpose of promoting the sustainable use of energy in Delaware.

"Solar Renewable Energy Credit" or "SREC" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"Total Retail Sales" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

11 DE Reg. 1670 (06/01/08)

13 DE Reg. 952 (01/01/10)

2.0 Purpose and Scope

- 2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 Del.C. ~~§351—363~~ Subchapter III-A, is to set forth the rules for governing the RPS.
- 2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.
 - 2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:
 - 2.2.1.1 submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account;

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- 2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;
- 2.2.1.1.2 submit the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.
- 2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.
- 2.3 Any Rural Electric Cooperative that is ~~has~~ opted-out of Commission regulation by its membership pursuant to 26 **Del.C.** §223 of the **Delaware Code** shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.
- 2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation ~~provided that, on or before June 1, 2006, they:~~ if it develops and implements a program for its ratepayers that is comparable to the RPS beginning in 2013. A Rural Electric Cooperative electing to be exempt from this Regulation must notify the Commission of such election and shall be subject to the requirements set forth in 26 **Del.C.** §363. A Rural Electric Cooperative not electing to be exempt from this Regulation shall be subject to this Regulation and the applicable provisions of 26 **Del.C.** §363.
- ~~2.4.1 submit a written notice to the Delaware General Assembly;~~
- ~~2.4.2 submit a written notice to the Commission;~~
- ~~2.4.3 alert their End Use Customers with notices inserted in two (2) consecutive electricity bills;~~
- ~~2.4.4 offer their End Use Customers a voluntary program for purchasing renewable energy under competitive rates; and~~
- ~~2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$ 0.178 for each megawatt hour they sell, transmit, or distribute in the State.~~

11 DE Reg. 1670 (06/01/08)

3.0 Administration of RPS

- 3.1 Certifying Eligible Energy Resources:
- 3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.
- 3.1.2 Any Generation Units seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.
- 3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.
- 3.1.4 If Commission Staff finds the Generation Unit to be in compliance with ~~Sections 1.0 and 3.0 of this Regulation, as well as any~~ this Regulation and other applicable Delaware statute law, Commission Staff will issue a State of Delaware Certification Number.
- 3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.
- 3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) ~~Renewable Energy Credit~~ REC for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an

Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) ~~Solar Renewable Energy Credit~~ SREC for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.

3.1.6.1 ~~However, if in the future, The Commission may establish or participate in another renewable energy tracking system, if the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS. the Commission may establish or participate in another renewable energy tracking system.~~

3.1.7 ~~RECs or SRECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.~~

3.1.7.4 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, ~~but no earlier than June 1, 2006.~~

3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to ~~the process laid out in~~ review and re-certification pursuant to Section 3.1 of this Regulation.

3.1.9 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

3.2 Compliance with RPS

3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1. ~~Any portion of a Retail Electric Supplier's renewable energy supply portfolio for 2007, 2008 and 2009 Compliance Years that is acquired under wholesale renewable energy supply entered into pursuant to the 2005 or 2006 Delaware Standard Offer Services ("SOS") auctions shall be subject to the provisions of this Regulation as shown in Schedule 2 below that were in effect on the date of the 2005 or 2006 SOS auction.~~

SCHEDULE 1		
Compliance Year (beginning June 1st)	Cumulative Minimum Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources
2007		2.0%
2008	0.011%	3.0%
2009	0.014%	4.0%
2010	0.018%	5.50%
2011	0.04820%	7.0%
2012	0.09940%	8.5%
2013	0.20460%	10.0%
2014	0.35480%	11.5%
2015	0.55910%	13.0%

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2016	0.803 <u>1.25%</u>	14.5%
2017	1.112 <u>50%</u>	16.0%
2018	1.547 <u>75%</u>	18.0 <u>17.5%</u>
2019	2.005%	20 <u>19.0%</u>
<u>2020</u>	<u>2.25%</u>	<u>20.00%</u>
<u>2021</u>	<u>2.50%</u>	<u>21.00%</u>
<u>2022</u>	<u>2.75%</u>	<u>22.00%</u>
<u>2023</u>	<u>3.00%</u>	<u>23.00%</u>
<u>2024</u>	<u>3.25%</u>	<u>24.00%</u>
<u>2025</u>	<u>3.50%</u>	<u>25.00%</u>

SCHEDULE 2

Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources
2007		1.00%
2008	0.011%	1.50%
2009	0.014%	2.00%
2010	0.018%	5.00%
2011	0.048%	7.00%
2012	0.099%	8.50%
2013	0.201%	10.00%
2014	0.354%	11.50%
2015	0.559%	13.0%
2016	0.803%	14.5%
2017	1.112%	16.00%
2018	1.547%	18.00%
2019	2.005%	20.00%

Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

- 3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs and SRECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations.¹ Such RECs and SREC's shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.
- 3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 20206 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the

1. The Commission understands the legislation to mean that the Total Retail Sales of *each* Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of SRECs and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1 ~~or Schedule 2~~. The Commission shall, in another proceeding, further define how SRECs and RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

- cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.
- 3.2.4 A Retail Electricity Supplier shall not use RECs or SRECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs or SRECs not required to meet this Regulation.
- 3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs or SRECs for the purposes of calculating compliance with the RPS.
- 3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1, ~~or Schedule 2~~ provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.
- 3.2.7 A Retail Electricity Supplier or Rural Electric Cooperative shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Schedule 1 ~~or Schedule 2~~ of the RPS for energy derived from the following sources installed on or before December 31, 2014:
- 3.2.7.1 Customer-Sited solar photovoltaic physically located in Delaware; or
- 3.2.7.2 A fuel cell powered by Renewable Fuels, for Retail Electricity Suppliers, and a fuel cell sited in Delaware for Rural Electric Cooperatives.
- 3.2.8 A Retail Electricity Supplier or Rural Electric Cooperative shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.
- 3.2.9 A Commission regulated electric company shall receive 350% credit toward meeting the Renewable Energy Portfolio Standards established for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017.
- 3.2.9.1 To be entitled to 350% credit, contracts for energy and renewable energy credits from such off-shore wind energy installations must be executed by Commission regulated electric companies prior to commencement of construction of such installations.
- 3.2.9.2 Commission regulated electric companies shall be entitled to such multiple credits for the life of contracts for renewable energy credits from off-shore wind installations executed pursuant to section 3.2.9.
- 3.2.10 A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware provided that a minimum of 50% of the cost of the renewable energy equipment, inclusive of mounting components, are manufactured in Delaware.
- 3.2.11 A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware provided that the facility is constructed and/or installed with a minimum of 75% in-state workforce.
- 3.2.10~~2~~A Retail Electricity Supplier or a Rural Electric Cooperative shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels (for a Rural Electric Cooperative the Eligible Energy Resource must be sited in Delaware).
- 3.2.14~~3~~ Cumulative minimum percentage requirements of Eligible Energy Resources and Solar Photovoltaic Resources shall be established by Commission rules for Compliance Year 2020~~6~~ and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2014~~25~~ in Schedule 1 ~~or Schedule 2~~. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.
- 3.2.14~~4~~ Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 ~~and Schedule 2~~ and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 20~~5~~%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

PROPOSED REGULATIONS

- 3.2.13~~5~~ Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 20~~5~~%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP or SACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs and SRECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.
- 3.2.16 The minimum percentages from Eligible Energy Resources and Solar Photovoltaic Energy Resources as shown in Schedule 1 may be frozen for Commission-regulated electric companies as authorized by, and pursuant to, 26 Del.C. § 354(i)-(j). For a freeze to occur, the Delaware Energy Office must determine that the cost of complying with the requirements of this Regulation exceeds, for Solar Photovoltaic Energy Resources, 1%, and for Eligible Energy Resources, 3%, of the total retail cost of electricity for retail electricity suppliers during the same compliance year. The total cost of compliance shall include the costs associated with any ratepayer funded state renewable energy rebate program, REC and SREC purchases, and ACPs and SACPs/alternative compliance payments.
- 3.2.16.1 Once frozen, the minimum cumulative requirements shall remain at the percentage for the compliance year in which the freeze was instituted.
- 3.2.16.2 The freeze may be lifted only upon a finding by the State Energy Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 1% or 3% threshold, as applicable.
- 3.2.17 The Renewable Energy Taskforce shall be formed for the purpose of making recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware according to 26 Del.C. §360(d).
- 3.3 Verification of Compliance with the RPS
- 3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 ~~or Schedule 2~~ and the Total Retail Sales of each Retail Electricity Product.
- 3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.
- 3.3.3 SRECs or RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.
- 3.3.4 The three (3) year period referred to in 3.3.3 shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in 29 Del.C. §8059.
- 3.3.5 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund a SACP or ACP pursuant to ~~the provisions of~~, and in such amounts as stated in, 26 Del.C. §358, or in such other amounts as may be determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 Del.C. §354(a)(d)-(e).
- 3.3.6 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP or SACP, according to Section 3.3.4 of this Regulation. All such

payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

- 3.3.7 All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

13 DE Reg. 952 (01/01/10)

4.0 Recovery of Costs

- 4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.
- 4.2 A Retail Electricity Supplier may recover any ACP or SACP if the payment of an ACP or SACP is the least cost measure to ratepayers as compared to the purchase of RECs and SRECs to comply with the RPS; or if there are insufficient RECs and SRECs available for the Retail Electricity Supplier to comply with the RPS.
- 4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.
- 4.4 Special provisions for customers of Public Service Commission regulated electric companies. All costs arising out of contracts entered into by a Commission regulated electric company pursuant to 26 Del.C. §1007 (d) shall be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge which shall be established by the Commission. Such costs shall be recovered if incurred as a result of such contracts unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

5.0 Other General Rules

- 5.1 Under Delaware's Freedom of Information Act, 29 Del.C. ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del.C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.
- 5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.
- 5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 Del.C., §205(a), §217, and §1019.

10 DE Reg. 151 (07/01/06)

11 DE Reg. 1670 (06/01/08)

PROPOSED REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Section 141; 29 Delaware Code, Section 8404(8)
17 Del.C. §141; 29 Del.C. §8404(8)

PUBLIC NOTICE

2403 Special Events Policies and Procedures—Traffic Management

Under Title 17 of the Delaware Code, Section 141, as well as 29 **Delaware Code** Section 8404(8), the Traffic Section of the Delaware Department of Transportation (DelDOT), has the authority to regulate the traffic impacts of special events that affect the safe movement of traffic on the State's transportation network. The Department has now drafted regulations for this purpose, and this draft accompanies this notice.

The Department will take written comments on the draft Special Event Policies and Procedures regulations from December 1, 2010 through December 31, 2010. Copies of the draft Regulations can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Adam Weiser, P.E., Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4073 (telephone) (302) 653-2859 (fax), or email to: adam.weiser@state.de.us

2403 Special Events Policies and Procedures—Traffic Management

1.0 Introduction

- 1.1 Planned special events include, but are not limited to, sporting events, concerts, festivals and conventions occurring at permanent multi-use venues. They also include less frequent public events such as parades, fireworks displays, bicycle races, sporting games, motorcycle rallies, marathons, seasonal festivals and block parties which may occur at temporary venues. A planned special event often creates the need to establish altered traffic patterns to handle the increased traffic volumes generated by the event and traffic diverted due to the event. The size of the temporary traffic control (TTC) zone associated with a planned special event can be small, such as closing a street for a festival, or can extend throughout a municipality for larger events.
- 1.2 Planned special events can have direct and indirect impacts on the transportation system. Events that have direct impacts to the transportation system are those that require full roadway or lane closures to accommodate the needs of the event. Events having indirect impacts to the transportation system are those types of events that attract large crowds affecting normal traffic flow on Delaware's roadways.
- 1.3 The purpose of this Special Events Policy is to outline the requirements for obtaining a permit to conduct a special event that will impact roadways in the State of Delaware and to describe the temporary traffic control that may be required to ensure the least impact to the traveling public and to provide a reasonably safe venue for the event. In addition, the policy identifies the requirements for developing necessary temporary traffic control plans as well as identifying the parties responsible for providing temporary traffic control and determining who pays the costs of such temporary traffic control.

2.0 Legal Authority

- 2.1 Title 17, Chapter 1, Subchapter III, Section 141 of the Delaware Code gives the Delaware Department of Transportation jurisdiction and control over all state highways outside the limits of incorporated cities and towns for the purpose of regulating traffic and for the use and operation of all vehicles thereover, and gives the Department the authority to adopt any and all rules and regulations respecting the use of such highways and the operation of all vehicles upon the same.

2.2 For state maintained roadways within the corporate limits of municipalities, the local government is responsible for approving the special event after consultation with the Department of Transportation. All temporary traffic control for special events inside the limits of municipalities shall comply with the requirements of the Delaware Manual on Uniform Traffic Control Devices (DE MUTCD). For those events occurring on state maintained roadways within the corporate limits of municipalities, the temporary traffic control shall be reviewed and approved by DeIDOT. DeIDOT shall also be consulted for those events that occur on non state maintained roadways, but divert traffic to state maintained roadways.

3.0 Special Event Permit Application

3.1 The Delaware Department of Transportation (DeIDOT) requires the organizer of a planned special event that impacts the transportation system to get approval from the Department to hold such events and to review any temporary traffic control that is necessary for the event to occur. Event organizers are required to fill out DeIDOT's *Special Event Permit Application* and submit the completed application to the Special Events Coordinator in the Traffic Safety Section. This form can be emailed by clicking the appropriate button at the top of the application. The Department's Special Events Coordinator will review the application and the location of the event and determine if temporary traffic control measures or other requirements are needed to safely conduct the event and to minimize the impacts to the transportation system. If additional information is needed, the Special Events Coordinator will coordinate that information with the event organizer. Once all requirements are satisfied, an approved copy of the *Special Event Permit Application* will be provided to the event organizer. An approved copy will be held by the Traffic Safety Section.

3.1.1 The following types of Planned Special Events require a Special Events Permit from the DeIDOT:

3.1.1.1 Events with a direct impact on the transportation system. These events typically require lane and/or complete road closures.

3.1.1.2 Events with an indirect impact on the transportation system. These events typically occur off of the roadway but attract large crowds which could affect normal traffic flow on Delaware's roadways

3.2 Special Event Permit Application Procedures

3.2.1 The *Special Event Permit Application* shall be filled out by the event organizer and submitted to the Department no fewer than 90 days prior to the beginning of the event. The Special Event Permit Application can be found at:

http://www.deldot.gov/information/community_programs_and_services/planned_spec_events/index.shtml

3.2.2 The following information is required to be shown on the permit application:

3.2.2.1 Event Organizer Information

3.2.2.1.1 Applicant's name, address, phone number and e-mail address

3.2.2.1.2 Organization name, address and phone number, if applicable

3.2.2.2 Event Information

3.2.2.2.1 Name and location of event

3.2.2.2.2 Type of event

3.2.2.2.3 Date of event (start and end dates)

3.2.2.2.4 Time of event (start and end times)

3.2.2.2.5 Name of a contact person that will be the Department's direct contact during the planning stages of the event. A phone number and email address should also be provided.

3.2.2.2.6 Name of a contact person including address and a phone number at which that person can be reached during the day(s) of the event.

3.2.2.2.7 Proposed routing for the event, if the event is a bike race, marathon or other on-roadway event.

3.2.2.3 Temporary Traffic Control Plan

PROPOSED REGULATIONS

- 3.2.2.3.1 Identify if the event will require the closure of any State maintained roadways or intersections. If yes, list the roads or intersections that will be closed.
- 3.2.2.3.2 Identify if the event will require the closure of any lanes on State maintained roadways. If yes, list the lanes to be closed on each roadway.
- 3.2.2.3.3 A temporary traffic control plan, if lanes or entire roadways will be closed. Information regarding temporary traffic control plans can be found in Section III and IV of this policy.
- 3.2.2.3.4 Detailed temporary traffic control plans shall be submitted to the Department's Special Events Coordinator no less than six (6) weeks prior to the start of the event.
- 3.2.2.4 Additional Information
 - 3.2.2.4.1 Identify provisions for medical treatment during the event
 - 3.2.2.4.2 Identify provisions for sanitary facilities during the event
 - 3.2.2.4.3 Identify provisions for police or fire police assistance during the event. If a signed agreement exists between the police agency and the event organizer, a copy of the agreement should be included with the application.
- 3.2.3 The completed application can be electronically submitted to the Special Events Coordinator by clicking on the email button at the top of the application. If the applicant desires to mail a printed version of the application, it can be sent to the following address:
 - Delaware Department of Transportation
 - Traffic Safety Section
 - Special Events Coordinator
 - 169 Brickstore Landing Road
 - Smyrna, DE 19977

4.0 Event Traffic Control

- 4.1 Planned special events typically have impacts on the transportation system and these impacts can be classified as either direct or indirect. Some events have both types of impacts. This section describes the necessary temporary traffic control that is required for those events that have direct impacts on the transportation system. In addition, it describes how the event organizer works with DeIDOT on the development of a Transportation Operations Plan for those events with an indirect impact on the transportation system. Guidelines for the use of law enforcement and the use of Portable Changeable Message Signs (PCMS) are also provided.
- 4.2 Events with Direct Impacts on the Transportation System:
 - 4.2.1 Planned special events with direct impacts on the transportation system are those events that require a lane or roadway closure in order for the event to take place. These types of events may include but are not limited to bike races/tours, marathons, block parties, parades and festivals. In order to safely and efficiently move traffic around the event area, temporary traffic control is required and shall comply with the provisions of Part 6 of the Delaware Manual on Uniform Traffic Control Devices (DE MUTCD). This information can be found at:
http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/index.shtml
 - 4.2.2 For events that have direct impacts on the transportation system, the event organizer shall submit a temporary traffic control plan to DeIDOT for review and approval.
 - 4.2.3 Special Events Requiring Lane or Shoulder Closures:
 - 4.2.3.1 Planned special events with direct impacts on the transportation system may require the closure of one or more travel lanes or a shoulder on a two-lane roadway or multi-lane highway. In order to move traffic safely around the event area, temporary traffic control is required. In most situations, typical temporary traffic control cases from the DE MUTCD should be used and the applicable cases are listed below:
 - 4.2.3.1.1 Two-Lane, Two-Way Traffic Shoulder Closure
 - 4.2.3.1.2 Multilane, Divided, Non-Access Controlled Highways – Shoulder Closure

4.2.3.1.3 Two-Lane, Two-Way Traffic Lane Closure

4.2.3.1.4 Multilane, Divided Highways and Interstates – Lane Closure

4.2.3.2 In most situations a copy of the standard temporary traffic control case and the accompanying standard notes can be submitted for review by DeIDOT. There are some instances that may require additional temporary traffic control devices and this will be determined by DeIDOT through consultation with the applicant. Temporary traffic control plans must be submitted no fewer than six (6) weeks prior to the event.

4.2.3.3 Several of the standard temporary traffic control cases noted above allow the use of flaggers or require the use of flaggers to move traffic through the affected area. Due to the dangers associated with directing traffic, the only people allowed to perform flagging operations on Delaware's roadways are the following:

4.2.3.3.1 A person with a valid flagger registration card from the American Traffic Safety Services Association (ATSSA). That person shall have their flagger card in their possession while performing flagging duties.

4.2.3.3.2 Uniformed Fire Police

4.2.3.3.3 Uniformed Local Police

4.2.3.3.4 Uniformed State Police

4.2.3.4 All personnel performing flagging duties shall wear a safety vest in accordance with the Delaware MUTCD. All temporary traffic control devices shall conform to the requirements of the Delaware MUTCD.

4.2.4 Special Events Requiring Roadway Closures

4.2.4.1 Planned special events with direct impacts on the transportation system may require the full closure of one or more roadways. In order to move traffic safely around the event area, temporary traffic control and a signed detour route is required. Detour routes shall be determined by DeIDOT and an official detour plan with the proper approval signatures will be developed by DeIDOT for the applicant. Requests for detour plans shall be submitted to DeIDOT no less than six (6) weeks prior to the event. Depending upon the duration of the closure, law enforcement personnel may be used to direct traffic around the closure area, in lieu of providing a signed detour route. The use of law enforcement officers in lieu of a signed detour will be determined by DeIDOT in consultation with the applicant.

4.3 Events with Indirect Impacts on the Transportation System

4.3.1 Planned Special Events may have an indirect impact on the transportation system based on the number of event participants or attendees. Events that have indirect impacts on the transportation system include concerts, sporting events, fairs/carnivals and other events that attract large crowds of people. While these events may not require the closure of roads or lanes, they do create an impact to existing traffic due to the increased traffic volumes (vehicular and/or pedestrian volumes) that are experienced, sometimes on roadways that are not designed for the increased traffic or pedestrians. To mitigate these impacts, it is necessary to develop a Transportation Operations Plan to determine how traffic will be managed when patrons are arriving at or leaving the event and how the event traffic will interact with existing traffic. In addition, to having indirect impacts on the transportation system, the event requires the closure of roadways or lanes, please refer to the previous section for additional information.

4.3.2 The development of the Transportation Operations Plan will typically be completed by DeIDOT's Traffic Section with input provided by Safety and Transportation Management Center staff and the event organizer. DeIDOT and the event organizer will also meet with the state police to discuss the plan. If the event is within the limits of a municipality, DeIDOT and the event organizer will also meet with the local police and other local authorities having jurisdiction. The following items are typically reviewed and determined during the plan development:

4.3.2.1 Location of event, event parking and entrances/exits to/from the event area.

4.3.2.2 Roadways surrounding the event area and expected road closures

4.3.2.3 Locations for traffic control points during entry and exit

4.3.2.4 Locations for parking payment, credential checks, etc.

4.3.2.5 Lane closures to accommodate entry and exit maneuvers from the event area to minimize impacts to existing traffic and to allow for free flow movements.

4.3.2.6 Pedestrian movements around the event area to provide reasonably safe pedestrian passage

4.3.2.7 Locations for portable changeable message signs to direct road users to and around the event.

4.3.2.8 Locations for traffic management devices such as portable traffic cameras, portable detection units, etc.

4.3.3 The planning process for these types of events needs to start early in order to ensure a smooth event. The event organizer shall submit the Special Event Permit Application to DeIDOT no fewer than 90 days prior to the beginning of the event. Once the permit is received by DeIDOT, a meeting will be scheduled with the event organizer and other applicable parties to discuss the event and any operational concerns. This meeting will be scheduled eight (8) weeks prior to the event date. The final transportation operations plan, with approved permit, will be completed four (4) weeks prior to the event date. The Transportation Operations Plan will include locations of all devices necessary to carry out the plan, including locations of all lane or roadway closures that may be necessary to facilitate event traffic around the event area.

4.4 Use of Law Enforcement for Planned Special Events

4.4.1 Law enforcement officers (State Police, Local Police and/or Fire Police) may be needed to assist with traffic control during a planned special event. Law enforcement may also be needed to provide escorts for certain types of events such as foot races, bike races or parades. It is the responsibility of the event organizer to secure the appropriate number of law enforcement officers that are needed for the event and the costs of using law enforcement officers, if applicable, are the responsibility of the event organizer.

4.5 Use of Portable Changeable Message Signs

4.5.1 Portable Changeable Message Signs (PCMS) are portable devices that can display a variety of transportation related messages. These devices may be useful for a planned special event to direct attendees to parking areas and to direct other road users around the event to avoid traffic delays. The use of PCMS is governed by the Delaware MUTCD and these devices may only display transportation related messages. They cannot be used to advertise the event or provide other non-transportation related messages to the traveling public as the device themselves can present a distraction to motorists if not used properly.

4.5.2 DeIDOT has developed an approval form that must be submitted to receive approval to use PCMS in DeIDOT's right-of-way. This form can be found at:

http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/pdf/PCMS_Approval_Form.doc

4.5.3 Additional information regarding the use of PCMS can be found in Part 6 of the Delaware MUTCD and in the memorandum titled "Portable Changeable Message Signs," which can be found at:

http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/pdf/Portable_Changeable_Message_Signs.pdf

5.0 Event Organizer Responsibilities

5.1 The event organizer must ensure that the following pre-event and event day activities have been conducted:

5.1.1 Pre-Event Activities

5.1.1.1 Submit the Special Events Application to the Traffic Safety Section no fewer than 90 days prior to the event.

5.1.1.2 Meet with representatives from DeIDOT, no fewer than eight weeks prior to the event, to discuss and develop a transportation operations plan, if one is required for the event.

5.1.1.3 Submit the Temporary Traffic Control Plan to the Traffic Safety Section no fewer than six weeks prior to the event.

5.1.1.4 Notify the local or state police and fire companies no fewer than 60 days prior to the event regarding the proposed lane closures and event location.

5.1.1.5 Notify DeIDOT's Public Relations Section no fewer than 10 days prior to the event to have a press release issued notifying the public that lanes or roads will be closed within the event area. The Public Relations Section can be reached at (302) 760-2080

5.1.2 Event Day Activities

5.1.2.1 Contact the DeIDOT Transportation Management Center no fewer than one hour prior to the event to notify of the impending lane closures. The Transportation Management Center can be reached at (302) 659-4600.

5.1.2.2 Place all temporary traffic control devices in accordance with the approved temporary traffic control plan and the Transportation Operations Plan, if an operations plan was developed.

5.1.2.3 A designated person must monitor the temporary traffic control devices and adjust as needed.

5.1.2.4 At the conclusion of the event, all temporary traffic control devices must immediately be removed from the roadway and the roadway restored to its normal conditions.

5.1.2.5 Contact the DeIDOT Transportation Management Center upon restoring the roadway to normal conditions to notify of the completed event and removal of traffic restrictions.

5.2 In the event of an emergency, the event organizer may be required to immediately reopen the roadway. Upon notification by a DeIDOT official or law enforcement personnel, the event organizer shall immediately restore the roadway to normal operations.

5.3 The event organizer or event participants shall not erect any advertising signs or other non-traffic control signs within DeIDOT's right-of-way. The event organizer or event participants shall not paint any markings on the roadway(s) within the event location.

6.0 Costs

6.1 As of this time, there are no permit fees for the Special Events Permit Application. In addition, there are no fees charged by DeIDOT to develop temporary traffic control plans, detour plans or transportation operations plans.

6.2 The event organizer is responsible for the costs associated with temporary traffic control for a particular planned special event. These costs may include, but will not be limited to, the procurement of the required compliant temporary traffic control devices, the use of portable changeable message signs and labor associated with the installation and removal of temporary traffic control devices. The event organizer may request DeIDOT's assistance with the deployment of the temporary traffic control plan and/or the transportation operations plan, however, the Department must be reimbursed for all equipment and labor costs associated with the event. If the event organizer requests DeIDOT assistance, the Department will generate a cost estimate and will send the cost estimate and a concurrence letter to the event organizer for review. If the event organizer concurs with the cost estimate, the event organizer shall sign the concurrence letter and send it back to DeIDOT. No charges will be incurred until after the event is completed. Upon completion of the event, the Department will contact the event organizer, review all costs incurred and then the Department will send the event organizer a bill for services rendered.

6.3 If the event organizer does not utilize DeIDOT forces for the deployment of the temporary traffic control plan or transportation operations plan, the event organizer shall procure the necessary devices and labor from entities that have experience with temporary traffic control. Failure to have the necessary provisions in place for the day of the event will result in the revocation of the Special Events Permit and will result in the removal of all event participants from DeIDOT's right-of-way.

7.0 Coordination of Special Events

There may be instances where two or more planned special events occurring in close proximity to each other will be scheduled for the same day(s). If this is the case, the Special Events Manager for DeIDOT will meet with the event organizers from each event and determine how best to manage potential conflicts between events. This may require modifications to event routes, event traffic control

plans and event schedules. DeIDOT reserves the right to direct these changes to prevent event traffic control and event routes from overlapping. Failure to comply with DeIDOT's changes will result in revocation of the Special Events Permit.

8.0 Revocation of Permit by DeIDOT

- 8.1 Failure to comply with the approved temporary traffic control plan, the provisions of the approved Special Events Permit or failure to complete the pre-event and/or event day activities will result in revocation of the approved Special Events Permit. DeIDOT reserves the right to stop the event activities and restore the roadway to normal conditions if the approved temporary traffic control is conducted in an unsafe manner or if there are unforeseen traffic delays experienced as a result of the special event.
- 8.2 The event organizer or event participants shall not erect any advertising signs or other non-traffic control signs within DeIDOT's right-of-way. The event organizer or event participants shall not paint any markings on the roadway(s) within the event location. Failure to comply will result in the revocation of the Special Events Permit, immediate removal of all participants from DeIDOT's right-of-way.
-

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.

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)
3 DE Admin. Code 501

ORDER**501 Harness Racing Rules and Regulations**

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 October 12, 2010, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 7.6.6.7 in the September 1, 2010 *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 7.6.6.7 in its entirety after Rules Committee review.

2. The Commission received no written comments. The Commission held a public hearing on October 12, 2010, 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, 2010.

IT IS SO ORDERED this 1st of November, 2010.

Beverly H. Steele, Chairman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

Patt Wagner, Commissioner

501 Harness Racing Rules and Regulations

***Please note that no changes were made to the regulation as originally proposed and published in the September 2010 issue of the *Register* at page 134 (14 DE Reg. 134). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[501 Harness Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 225

ORDER

225 Prohibition of Discrimination

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 225 Prohibition of Discrimination. This regulation was reviewed pursuant to the five year review cycle. The amendment includes the addition of language to be consistent with Executive Order 8. The Executive Order continues the Governor's Council on Equal Employment Opportunity, directs state agencies to pursue equal employment and promotional opportunity for all state employees and applicants, and includes a strong recruitment and retention component.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 4, 2010, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and from the State Council for Persons with Disabilities endorsing the amendment.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 225 Prohibition of Discrimination in order to include language consistent with the Governor's Executive Order 8.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 225 Prohibition of Discrimination. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 225 Prohibition of Discrimination attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 225 Prohibition of Discrimination 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** 225 Prohibition of Discrimination amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 225 Prohibition of Discrimination 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 SBE date. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED the 18th day of November 2010.

Department of Education

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

Approved this 18th day of November 2010

225 Prohibition of Discrimination

1.0 Prohibition of Discrimination

No person in the State of Delaware shall on the basis of race, color, religion, national origin, sex, sexual orientation, genetic information, marital status, disability, age or Vietnam Era veteran's status be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the Delaware Department of Education.

2 DE Reg. 1246 (01/01/99)

7 DE Reg. 1177 (03/01/04)

9 DE Reg. 1069 (01/01/06)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C. §122(b)**)
14 **DE Admin. Code** 505

ORDER

505 High School Graduation Requirements and Diplomas

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** 505 High School Graduation Requirements and Diplomas to provide additional information related to the World Languages credit requirement that goes into effect for the Class of 2015 (freshmen 2011-2012). The regulation requiring the 2 credits in World languages was originally scheduled to go into effect for the Class of 2013. This was revised in January 2009 making the requirement effective for the Class of 2015. The recommendations of the Task Force on World Languages were taken into consideration in the proposed amendments. The definition of World Language includes American Sign Language. This was a recommendation of the Task Force and is also required by legislation, pursuant to HB 345 of the 145th General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, October 4, 2010, in the form hereto attached as *Exhibit "A"*. The Department received comments from both the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The comments were similar. One comment was in regard to a *News Journal* article from 2006 referencing state

teachers' union concerns that students with disabilities or those not college-bound "might benefit more from an extra year of science, social studies, or career preparation." The Department did not receive comments from other entities related to this issue during this amendment period. Additionally, the Department would like to provide research that suggests that students with disabilities do gain valuable work-place and life skills from world language instruction; for example, *Students With Disabilities: Yes, Foreign Language Instruction Is Important!* (Kleinart, Harold L, et al, *Teaching Exceptional Children*, 39 no 3, 24-9, Jan/Feb 2007).

Another comment related to the definition of "World Languages" and specifically substituting the word "people" for "peoples". The definition proposed was established by members of the World Languages Task Force. Members included K-12 world language teachers, university professors, district and state administrators who represented all levels of education, elementary to post-secondary. The term "peoples" was used to be inclusive as a single world language may be spoken by more than one single community, tribe, nation or race. The Task Force also partially based its definition on Jensen and Sandrock's (2007) work about the importance of using the term "world languages" instead of "foreign languages" as it reflects an understanding of "a world where *peoples* and cultures are in a constant state of movement and interaction ..."

The last comment related to students who are deaf and the proficiency standards. Currently, the regulation provides options for fulfilling the world language graduation requirement. Students may complete a minimum of two world language credits in the same language or demonstrate a novice-high or higher level of proficiency. Proficiency may be demonstrated in the areas of speaking, reading and writing using the levels of proficiency as identified by ACTFL **OR** as approved for use by the Delaware Department of Education. Since ASL is not a spoken language, a test demonstrating approximate skills such as receptive skills, interactive and expressive skills would be considered by the Department as an appropriate ASL equivalent. For classical languages such as Greek or Latin, the skills of listening and speaking may not be as appropriate and the Department could consider equivalent skills of reading and translation. Proficiency in modern alphabetic and logographic languages, classical languages or visual languages can still be measured using the levels of the ACTFL Proficiency Guidelines.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to provide additional information related to the World Languages credit requirement that goes into effect for the Class of 2015 (freshmen 2011-2012).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas 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** 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas 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 18, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of November 2010.

Department of Education

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

Approved this 18th day of November 2010

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

505 High School Graduation Requirements and Diplomas

*Please note that no changes were made to the regulation as originally proposed and published in the October 2010 issue of the *Register* at page 222 (14 DE Reg. 222). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[505 High School Graduation Requirements and Diplomas](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 746

ORDER

746 Criminal Background Check 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 Check for Student Teaching for implementation of the process.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 4, 2010, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 746 Criminal Background Check for Student Teaching in order to provide additional information on the implementation process.

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 Check for Student Teaching. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 746 Criminal Background Check 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 Check 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 Check 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 Check 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 18, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of November 2010.

Department of Education

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

Approved this 18th day of November 2010.

746 Criminal Background Check for Student Teaching

***Please note that no changes were made to the regulation as originally proposed and published in the October 2010 issue of the *Register* at page 227 (14 DE Reg. 227). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[746 Criminal Background Check for Student Teaching](#)

OFFICE OF THE SECRETARY

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

ORDER

930 Supportive Instruction (Homebound)

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) for formatting purposes as well as clarification. The regulation was reviewed pursuant to the five year cycle.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 4, 2010 in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. As always, the Department appreciates the thoughtful comments provided. A comment was received related to changing language from "physician" to "physician or advanced practice nurse". Advanced practice nurses have varying levels of authority and the Department believes changing this may cause confusion at the school level. A comment was received related to adding charter schools. This regulation is designed to address students who are not eligible to receive homebound as a result of a right created under disability laws. Such students (not eligible under the disability laws) would have no right to homebound without this regulation, and it does not appear that there is statutory authority to extend the regulation to include charter schools. Additional comments were related to language usage and whether it was "affirmative" or "non affirmative". The Department considered the comments; however, it believes rephrasing is not needed at this time. Grammatical changes were made.

II. Findings of Facts

The Secretary of Education intends to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) for formatting purposes as well as clarification. The regulation was reviewed pursuant to the five year cycle.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 18, 2010 date. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of November 2010.

Department of Education

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

Approved this 18th day of November 2010

930 Supportive Instruction (Homebound)**1.0 Definition**

"Supportive Instruction" is an alternative educational program provided at home, in a hospital or at a related site for a students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

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

2.0 Eligibility

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

9 DE Reg. 402 (9/1/05)

3.0 Implementation

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

4 DE Reg. 344 (8/1/00)

4 DE Reg. 497 (9/1/00)

9 DE Reg. 402 (9/1/05)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1517

REGULATORY IMPLEMENTING ORDER

1517 Paraeducator Permits

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1517 Permits Paraeducator. It is necessary to amend this regulation in order to facilitate proper and current formatting trends, and to update renewal options. This regulation sets forth the requirements for a Paraeducator Permit.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1517 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4TH DAY OF NOVEMBER, 2010

Kathleen Thomas, Chair	Lori Hudson
Michael Casson	Chris Kenton
Joanne Christian	David Kohan
Samtra Devard	Jill Lewandowski
Stephanie DeWitt	Wendy Murray
Marilyn Dollard	Whitney Price
Karen Gordon	Shelley Rouser
Cristy Greaves	Jacque Wisnauskas

IT IS SO ORDERED the 18th day of November, 2010.

Department of Education

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

Approved this 18th day of November, 2010

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.

G. Patrick Heffernan
Barbara B. Rutt

James L. Wilson, Ed.D.

1517 Permits Paraeducators Permit

*Please note that no changes were made to the regulation as originally proposed and published in the October 2010 issue of the *Register* at page 233 (14 DE Reg. 233). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1517 Paraeducator Permit](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1583

REGULATORY IMPLEMENTING ORDER

1583 School Psychologist

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1583 School Psychologist. Amendments include limiting issuance of the Standard Certificate to applicants who have completed an organized graduate level program of study approved by the NASP or APA, a valid NCSP Certificate from the NASP or a valid and current license or certificate from another state in school psychology. This regulation sets forth the requirements for a School Psychologist.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1583 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4TH DAY OF NOVEMBER, 2010

Kathleen Thomas, Chair

Lori Hudson

Michael Casson

Chris Kenton

Joanne Christian

David Kohan

Samtra Devard

Jill Lewandowski

Stephanie DeWitt

Wendy Murray

Marilyn Dollard

Whitney Price

Karen Gordon

Shelley Rouser

Cristy Greaves

Jacque Wisnauskas

IT IS SO ORDERED the 18th day of November, 2010.

Department of Education

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

Approved this 18th day of November, 2010

State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

James L. Wilson, Ed.D.

Barbara B. Rutt

1583 School Psychologist

*Please note that no changes were made to the regulation as originally proposed and published in the October 2010 issue of the *Register* at page 238 (14 DE Reg. 238). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1583 School Psychologist](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

School-Based Wellness Center Clinic Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan. The Department's proceedings to amend the Title XIX Medicaid State Plan to update the reimbursement methodology language for *School-Based Wellness Center Clinic Services* 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 September 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2010 at which time the

Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to update the reimbursement methodology for *School-Based Wellness Center Clinic Services*.

Statutory Authority

- 42 CFR 440.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*;
- 42 CFR §440.90, *Clinic Services*; and,
- State Medicaid Manual, Section 4320, *Clinic Services*.

Summary of Proposed Amendment

School-Based Wellness Center Clinics (SBWCCs), operated by the Division of Public Health in Delaware schools, provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

The Title XIX Medicaid State Plan is being revised to update the reimbursement methodology for School-Based Wellness Center Clinic Services, as the current rate methodology expires on September 30, 2010.

Effective for dates of service on October 1, 2010 and after, claims for School Based Wellness Center Clinic Services will no longer be reimbursed at a single encounter rate per child per year but will be paid based on billed procedure codes for individual services delivered by the SBWCCs at the Delaware Medicaid Physician Fee Schedule rates.

No change will be made to the services provided under the school-based wellness center clinic services benefit.

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

Fiscal Impact Statement

The proposal imposes no increase in cost on the General Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

As background, the current system reimburses centers based on a single rate at each benefit year for any client served in a clinic. DMMA is proposing to abandon this simple reimbursement system in favor of centers billing for each discrete service based on "the DMAP physician fee schedule" which DMMA notes is published on its Website. Finally, DMMA recites that the proposal imposes no increase in cost on the General Fund. At 143. The GACEC and the SCPD have the following observations.

First, we were unable to locate a document titled "DMAP physician fee schedule" at the Web address provided in the regulation. Instead, the site publishes the attached "HCPCS" and "ASC" Schedules. Assuming DMMA intends to cross reference one of these schedules, it would be preferable to adopt consistent terminology.

Second, the regulation notes that the centers provide services which are not provided by physicians (e.g. "counseling and other supportive services"). At 142. It is unclear whether adopting a "physician fee schedule" would preclude billing by non-physicians (e.g. psychologist; social worker) and would include codes covering health care services typically provided by non-physicians. If not, centers will be prompted to abandon non-physician support services to the detriment of students.

Agency Response: DMMA apologizes for the confusion regarding the proposed fee schedule. The proposed fee schedule is published on the DMMA website as the "HCPCS Schedule". Even though this fee schedule is commonly referred to as the "physician" fee schedule, it does include payment for other practitioner types.

Consequently, there would be no impact on the scope of services offered at the centers.

Recent discussions with CMS that occurred after the proposed regulation was published have led to consideration of an alternative payment methodology that achieves the Social Security Act requirement for efficiency and economy but is less administratively burdensome to administer. Under this methodology, a visit rate will be computed based on the state's costs for the SBWCs. This rate will be billed and paid for each day on which a client receives an SBWC service throughout the year. This differs from the old methodology where a visit rate was computed based on unduplicated clients and was billed only once in a calendar year. This final regulation reflects the new visit rate methodology indicated by **[bracketed bold type]** on Attachment 4.19-B, Page 2 and additionally, on Attachment 3.1-A, Page 4 Addendum.

FINDINGS OF FACT

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

THEREFORE, IT IS ORDERED, that the proposed regulation to update the reimbursement methodology for *School-Based Wellness Center Clinic Services* is adopted and shall be final effective December 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #10-49a REVISION:

ATTACHMENT 3.1-A
Page 4 Addendum

State: DELAWARE

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

9. Clinic Services

Clinic services are provided consistent with the provisions of 42 CFR 440.90, including the requirement that they be operated under the direction of a physician as described in the State Medicaid Manual Section 4320, and include the following:

- Medical or rehabilitation clinics (including Mental Health clinics which require certification by the Division of Substance Abuse and Mental Health (DSAMH) as part of the Single State Agency for Medicaid) and
- State Licensed Free Standing Surgical Centers (FSSCs) which equate to federally defined Ambulatory Surgical Centers (ASCs) using related policies for ASCs described in Sections 2265 and 2266 of the Medicare Carriers Manual.
- ~~[School-Based Wellness Center Clinic Services that are provided consistent with the provisions of 42 CFR 440.90 and are operated under the direction of a physician to provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school and educational settings.~~
- **School-Based Wellness Center Clinics provide primary prevention, early intervention and treatment services, including physical examinations, treatment of acute medical conditions, community referrals, counseling and other supportive services to children in school settings. Medicaid services provided by the School-Based Wellness Centers include but are not limited to:**
 - **other laboratory and X-ray services (1905(a)(3), 42 CFR 440.30)**
 - **physicians' services (1905(a)(5), 42 CFR 440.50)**
 - **medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners with the scope of their practice as defined by State law (1905(a)(6), 42 CFR 440.170)**

- other diagnostic screening, preventive and rehabilitative services (1905(a)(13), 42 CFR 440.130)
- primary care case management services (1905(a)(19), 42 CFR 440.168).

Health care professionals that provide the above services at the SBWCs include: physicians, nurse practitioners, licensed clinical social workers, certified and licensed drug and alcohol counselors, certified sexual assault counselors and registered dietitians. Licensure requirements for each practitioner type are specified in the Title 24 of the Delaware Code, Professions and Occupations and in the Delaware Administrative Code.

Payments to School-Based Wellness Centers shall be considered "preventive pediatric services" as per 42 CFR 433.139(b)(3)(i) for the purpose of applying third party billing requirements.]

DMMA FINAL ORDER REGULATION #10-49b
REVISION:

ATTACHMENT 4.19-B
Page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

~~[School-Based Wellness Center Clinic Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. This rate methodology will sunset on September 30, 2010 using the DMAP physician fee schedule effective for dates of service on or after October 1, 2010. Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both governmental and private providers of this service and the DMAP physician fee schedule is available on the DMAP website. (<http://www.dmap.state.de.us/downloads/hcpcs.html>)~~

~~Payments for clinic services will not exceed the upper payment limits set forth in 42 CFR 447.321. (1) For services covered by Medicare, payments are not to exceed the Medicare rates or the Medicare aggregate payment amount for those services; and (2) For services not covered by Medicare, aggregate payments are not to exceed an amount that could reasonably be estimated would have been paid under Medicare payment principles. Since the School-Based Wellness Centers will be paid at the DMAP physician fee schedule rates, which is paid as a percentage of the Medicare physician fee schedule, not to exceed 100%, the payments will not exceed what Medicare would have paid.~~

~~Payments to School-Based Wellness Centers shall be considered "preventive pediatric services" as per 42 CFR 433.139(b)(3)(i) for the purpose of applying third party billing requirements.]~~

[School-Based Wellness Center (SBWC) Clinic Services:

1. Payment Methodology: SBWC Clinic Services are reimbursed based on a prospective single visit per day for each day on which a medical service is provided effective for dates of service on or after October 1, 2010. The visit rate shall be calculated by dividing provider costs for the prior year by actual visits for the prior year submitted in a format specified by the Medicaid agency. The State-developed prospective visit rates for this service are the same for both governmental and private providers of this service.

2. UPL Calculation: Payments for clinic services will not exceed the upper payment limits set forth in 42 CFR 447.321. Providers will complete the Delaware Medicaid SBWC Cost Report annually within four months after the close of each fiscal year. The Medicaid SBWC Cost Report is based on the Medicare FQHC Cost Report (CMS 222) adjusted to account for the difference in the operating period for the SBWCs from a full year clinic. The actual annual visits as reported on the Cost Report shall be used as the

denominator to calculate a visit rate that approximates a Medicare rate. The Medicare rate will be multiplied by the annual aggregate Medicaid visits for dates of service in the applicable state fiscal year to approximate the Medicare payment which will be compared to the actual payments for the fiscal year to determine whether the upper payment limit test is met.]

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Durable Medical Equipment (DME) Provider Specific Policy Manual

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the existing rules in the Delaware Medical Assistance Program (DMAP) Provider Manuals regarding *Durable Medical Equipment - Ownership of Equipment*. 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 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposal is to amend the Delaware Medical Assistance Provider (DMAP) Manuals regarding the ownership of certain *Durable Medical Equipment (DME)*.

Statutory Authority

42 CFR §414.202, *Definitions (DME)*

42 CFR §440.70(b)(3), *Home Health services*

42 CFR §440.230, *Sufficiency of amount, duration, and scope*

Background

The Delaware Medical Assistance Program (DMAP) covers medically necessary durable medical supplies and equipment, under the Durable Medical Equipment (DME) program, which meet program guidelines when prescribed by a physician.

The Division of Medicaid and Medical Assistance (DMMA), in collaboration with the University of Delaware, Center for Disabilities Studies (CDS), is interested in developing a durable medical equipment retrieval program. Such a program would enable high-quality products such as wheelchairs, scooters, and communication devices to be refurbished and made available to a new customer when no longer needed by the original beneficiary. Similar programs have been implemented in other states, demonstrating both fiscal and environmental advantages.

Current DMMA policy assigns ownership of equipment purchased by DMMA to the client. The proposed revision would assign ownership of certain specified DME to DMMA. When the equipment is no longer needed, it will be recovered by CDS. CDS will assess and refurbish, if appropriate. A new customer service component will also be established to periodically evaluate the effectiveness of equipment in meeting the needs of the beneficiary. DMMA customers will also have the option of accepting refurbished equipment, when available, at a reduced cost to the state.

Summary of Proposal

The DME provider manual is revised to establish a policy of ownership for certain purchased durable medical equipment. This rule revision will allow certain durable medical equipment purchased by DMMA to remain the

property of the DMMA to be used by for the benefit of the Medicaid recipient until it is no longer medically necessary. At such time as the item is no longer medically necessary, DMMA may retrieve the durable medical equipment product if it is determined to be administratively and fiscally prudent.

This rule will allow DMMA to establish a durable medical equipment retrieval program and meet the needs of Delawareans who do not have access to durable medical equipment and ultimately reducing the amount of uncompensated care provided by DMAP healthcare providers. This rule promulgation is the first step in establishing procedures necessary to implement a durable medical equipment retrieval program.

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

As background, other states have implemented assistive technology/durable medical equipment "reuse" programs. Attached please find a PowerPoint outline describing the Kansas program. It notes that there is a high national rate of abandonment of AT/DME. In addition, legislators were concerned that Medicaid-purchased AT/DME was being sold at yard sales, and considerable cost savings resulted from adopting a system of recycling Medicaid-supplied AT/DME.

Delaware's Center for Disabilities Studies (CDS) and DMMA are now developing a similar system in Delaware. The regulation provides the following information:

Current DMMA policy assigns ownership of equipment purchased by DMMA to the client. The proposed revision would assign ownership of certain specified DME to DMMA. When the equipment is no longer needed, it will be recovered by CDS. CDS will assess and refurbish, if appropriate. A new customer service component will also be established to periodically evaluate the effectiveness of equipment in meeting the needs of the beneficiary. DMMA customers will also have the option of accepting refurbished equipment, when available, at a reduced cost to the state.

At 244.

CDS is soliciting providers to support this new initiative.

In response to my inquiry, CDS informally shared supplemental information on September 30. The following is a summary of the supplemental information:

A. The CDS/DMMA project is supported by an RSA model demonstration project grant. A stakeholder group comprised of state agencies, DME vendors, service providers and individuals with disabilities has been meeting for a few years to reach consensus on the model. The plan is to contract with one or more qualified vendors to conduct the reclamation, sanitization, refurbishment, and repair.

B. Health and safety is a key concern. Individuals could be hurt by "mismatched" DME or malfunctioning DME. Therefore, if a prescription is generally needed to obtain a particular piece of equipment, a prescription will be required to obtain equipment through this project to ensure the features match the individual's needs. Only lightly-used equipment will be processed and restored to "like-new" condition. Some types of equipment will not be processed due to hygiene issues.

C. DMMA is not restricting access to reclaimed equipment to Medicaid beneficiaries, but Medicaid will have the option of procuring equipment at costs far less than retail from the reuse inventory. CDS plans, under DMMA contract, to adopt a customer-service role in which Medicaid beneficiaries provided with DME will be contacted to assess whether the equipment is meeting their needs. If the equipment is no longer needed, or the beneficiary has passed away, the equipment will be retrieved and, if appropriate, refurbished for use by others.

D. The program is viewed as a means of leveraging resources. The CDS is aware of Medicaid beneficiaries or their families selling DMMA-purchased DME on Craig's List or DATI's AT Exchange soon after delivery. This project should reduce the incidence of such sales and facilitate access to DME by uninsured and underinsured persons.

E. As part of the project, Paul Solano, a University of Delaware economist, will conduct a cost/benefit analysis

to provide comprehensive data about the return on the reuse investment. This analysis would be of use both locally and nationally.

The proposed regulation represents a “first step” towards DMMA implementation of the reuse program. The current regulation grants ownership of DME purchased through Medicaid to the beneficiary. The new regulation “carves out” certain forms of Medicaid-purchased DME which will be “owned” by DMMA. It would then be subject to retrieval and recycling when the beneficiary no longer needs the device.

From a consumer perspective, there are pros and cons to the initiative.

On the negative side, query whether beneficiaries will be subject to State claims if State-owned equipment is lost or damaged, even through no fault of the beneficiary. Some of the listed DME is also so inexpensive and/or subject to wear and tear (e.g. car seats) that sanitizing and refurbishing may be of questionable cost effectiveness.

On the positive side, the reuse program should ultimately save DHSS money, promote recycling, and facilitate trial access to equipment. The Kansas model included receiving donations of equipment from the public with positive results.

Balancing the competing interests, the Councils endorse the proposed regulation subject to DMMA considering the following.

First, since Medicaid is the payor of last resort, the Councils assume there are situations in which a third party (e.g. insurer) has partially paid (e.g. 80%) for equipment and DMMA has paid a remaining balance (e.g. 20%). Under those circumstances, we query whether it is equitable for DMMA to assume full ownership of the equipment.

Agency Response: DMMA’s intent is to only recover certain pieces of equipment no longer needed by Medicaid clients. Doing so will potentially enable other Medicaid clients or the general public to benefit since the recovered items will become part of the recycling effort’s larger inventory of equipment. Since the program is designed to acquire used equipment from the general public in addition to Medicaid, we believe equity will be achieved through the recycling of equipment for everyone, including non-Medicaid individuals with third party coverage who may benefit from the acquisition of a refurbished piece of equipment that may have originally been paid in full by Medicaid.

No change to the regulation was made as a result of this comment.

Second, DMMA should consider the extent of the beneficiary’s liability for lost or damaged equipment owned by the State. If the beneficiary exercises reasonable care, it would be inappropriate to penalize the beneficiary for loss or damage. The beneficiary should not be treated as an “insurer” of the equipment.

Agency Response: Damage or loss of equipment can happen under current policy where a client retains ownership. In those instances, DMMA does not penalize clients when a replacement is needed. Under the proposed ownership change, DMMA would impose no new policy penalizing a client for damage or loss which occurred through no fault of the client. Retention of ownership by the State is solely for the purpose of assuring that equipment may be reused as part of the recycling program. We intend no new level of liability on the part of the client.

No change to the regulation was made as a result of this comment.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the existing rules in the Delaware Medical Assistance Program (DMAP) Provider Manuals regarding *Durable Medical Equipment – Ownership of Equipment* is adopted and shall be final effective December 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #10-50

REVISION:

DELAWARE MEDICAL ASSISTANCE PROGRAM**Durable Medical Equipment (DME) Provider Specific Policy Manual**

3.5 Purchase Versus Rental

3.5.4 ~~If purchase is the only option (such as for a custom-made wheelchair), or is determined to be the most cost effective method of providing the equipment, the equipment will become the property of the client after the DMAP reimbursement is made.~~ Items specified below, purchased by DMMA shall be the property of DMMA. Other equipment purchased by DMMA will become the property of the client after the DMAP reimbursement is made.

- Augmentative Communication Devices
- Bath Benches
- Bi-Paps
- C-Paps
- Car Seats
- Commodes
- Feeder Seats
- Feeding Pumps
- Gait Trainers
- Hospital Beds and Hospital Bed Accessories
- Nebulizers
- Oxygen Concentrators
- Patient Lifts
- Quad Canes
- Scooters
- Shower Chairs
- Standers
- Strollers
- Walkers
- Wheelchairs and Wheelchair Accessories

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2602 (16 **Del.C.**, §2602)

ORDER**4459A Regulations for the Childhood Lead Poisoning Prevention Act****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months. The DHSS proceedings to adopt the regulations were initiated pursuant to 29 Del.C., Ch. 101 and authority as prescribed by 16 **Del.C.**, Ch. 26.

On October 1, 2010 (Volume 14, Issue 4), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 1, 2010, or be presented at a public hearing on October 22, 2010, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No oral comments were made at the public hearing and no written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying “Summary of Evidence.” Two letters of endorsement were received from the Governor’s Advisory Council for

Exceptional Citizens and the State Council for Persons with Disabilities, respectively.

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. No oral comments were received at the October 22, 2010 public hearing and no written comments were received on the proposed regulations during the public comment period (October 1, 2010 through November 1, 2010).

Only minor grammatical corrections were made to further clarify the proposed regulations.

The public comment period was open from October 1- November 1, 2010.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

There were no public comments received and only minor non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months are adopted and shall become effective December 11, 2010, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Langraf, Secretary

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months [ef Age]

1.0 General Provisions.

1.1 Preamble.

1.1.1 These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to 16 Del.C., §122(3)(t) and § 2602. These regulations establish standards for blood lead testing of children between 22 and 26 months of age who are at high risk of lead poisoning. These regulations also establish a record retention policy, enforcement modalities and penalties for violators.

2.0 Definitions.

For purposes of this chapter, the following definitions shall apply:

"Blood lead registry" means the database maintained by the Department that includes the results of all blood lead testing reported to the Department.

"Blood lead testing" means taking a capillary or venous sample of blood for point of care testing using a Clinical Laboratory Improvement Act of 1988 (CLIA) licensed or waived test or sending it to a laboratory to determine the level of lead in the blood.

"Capillary" means a blood sample taken from the finger or heel for lead analysis.

"Division" means the Delaware Division of Public Health.

"Department" means the Delaware Department of Health and Social Services.

"Health care provider" means the individual that generally provides medical care to a child including, but not limited to, a physician, a physician's assistant or a nurse.

"High risk" means a child between the ages of 22 and 26 months who meets any of the following conditions:

- Is suspected by a parent or a health care provider to be at risk for lead exposure or to exhibit the symptoms of lead poisoning.
- Has a sibling or frequent playmate with lead poisoning.
- Is a recent immigrant, refugee, or foreign adoptee.
- Has a household member who uses traditional, folk, or ethnic remedies or cosmetics or who routinely eats food imported informally (e.g., by a family member) from abroad.
- Lives in or regularly visits a house or day care center (including out buildings) built before 1978.
- Lives with an adult whose job or hobby involves exposure to lead (e.g. construction, welding, pottery, mechanic, jeweler, plumber, renovator, firing range enthusiast, stained glass maker).
- Lives near an active lead smelter, battery recycling plant, or other industry likely to release lead.
- Lives in, attends day care in, or visits any of the following zip code areas at least 6 hours a week or 60 hours a year:
 - 197XX: 01, 02, 03, 06, 09, 11, 13, 20, 33
 - 198XX: 01, 02, 03, 04, 05, 06, 08, 09, 10
 - 199XX: 01, 04, 33, 34, 38, 39, 40, 41, 43, 45, 46, 47, 50, 52, 53, 56, 58, 60, 62, 63, 66, 68, 71, 73, 75, 77.

“Laboratory” means a laboratory certified to perform either waived or non-waived blood lead analysis according to the federal Clinical Laboratory Improvement Act of 1988 (CLIA).

“Low Risk” means a child between the ages of 22 and 26 months who does not meet any of the conditions listed in the definition for **“High Risk”**.

“Venous” means a blood sample taken from a vein in the arm for lead analysis.

3.0 Requirement.

The health care provider of a child between the ages of 22 and 26 months shall determine if said child is at high risk of lead poisoning. If the child is determined to be at high risk, the health care provider shall perform or cause to be performed a blood lead test.

4.0 Applicability.

- 4.1 The blood lead testing requirement specified in these regulations applies to all children 22 to 26 months of age except those determined not to be at high risk.
- 4.2 Blood lead testing is not required on a child between the ages of 22 and 26 months when said child is determined by the health care provider to be at low risk for elevated blood lead levels. If a health care provider determines that a child is low risk, the health care provider will keep the completed risk assessment questionnaire (with all “NO” responses) in the child’s chart for at least three years.

5.0 Religious exemption.

A religious exemption may be granted to a child if the blood lead testing conflicts with a genuine and sincere religious belief and not a belief based merely on philosophical, scientific, moral, personal, or medical opposition to blood lead testing. A certificate of blood lead testing exemption for religious reasons shall be signed and dated by the child’s parent or guardian, notarized, and kept in the child’s medical chart.

6.0 Time line for valid blood lead testing.

To be valid, a blood lead test shall be performed, as required by these regulations, on a child after completion of a risk assessment questionnaire when the child is between the ages of 22 and 26 months. Children that test with blood lead levels above the level of concern established by the Centers for Disease Control (“CDC”), which is currently 10 µg/dl, will have venous confirmation by a laboratory prior to intervention.

7.0 Documentation.

- 7.1 A health care provider and a laboratory performing a blood lead test required by these regulations shall ensure that the results of the blood lead test are reported to the Division.
- 7.2 Proof of blood lead testing will be verified through the Blood Lead Registry and by auditing a child's medical charts.

8.0 Records.

A completed risk assessment questionnaire, including the determination of the child's risk of lead poisoning, shall be maintained in a child's medical chart for at least three years. The Division will conduct scheduled and impromptu chart audits to monitor compliance.

9.0 Severability.

If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect the validity of other provisions or applications of these regulations.

10.0 Penalty.

Violators are subject to sanctions pursuant to 16 Del.C., §107 for each violation of the requirements established in these regulations.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§313, 1111)

ORDER

506 Crop Insurance Adjusters and Producers

Proposed Regulation 506 relating to Crop Insurance Adjusters and Producers was published in the Delaware Register of Regulations on October 1, 2010. The comment period remained open until November 1, 2010. There was no public hearing on proposed Regulation 506. Public notice of the proposed Regulation 506 in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comment was received from Property Casualty Insurers Association of America (PCIAA). PCIAA believes the definition of Crop Adjuster is too vague and is additionally concerned that the requirements of this "new license" will negatively affect existing licensed adjusters. As noted below, the proposed regulation does not create a new adjuster license, but a new "line" within the casualty adjuster licensing realm.

FINDINGS OF FACT

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

The requirements of the proposed Regulation 506 best serve the interests of the public and of insurers and comply with Delaware law. The creation of a separate line of Crop Insurance Producers and of Crop Insurance Adjusters, within existing Property Insurance Producer and Adjuster licensing keeps the public better informed of who is licensed in the important Crop Insurance producing and adjusting fields.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 Del.C. §§314, 1111 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt amended Regulation 506 as may more fully and at large appear in the version attached hereto to be

effective on January 3, 2011.

TEXT AND CITATION

The text of the proposed Regulation 506 last appeared in the *Register of Regulations* Vol. 14, Issue 4, pages 249-250.

IT IS SO ORDERED this 5th day of November, 2010.
Karen Weldin Stewart, CIR-ML
Insurance Commissioner

506 Crop Insurance Adjusters and Producers

1.0 Purpose

- 1.1 The purpose of this Chapter is to provide rules to assist the Commissioner in administering the laws relating to the licensure and regulation of crop insurance producers and adjusters, as provided for in 18 Del.C. Chapter 17 et. seq.
- 1.2 This regulation should not be viewed as replacing any other or additional statutory requirements not explicitly included in this regulation.

2.0 Scope

This regulation applies to all persons acting as crop insurance adjusters or producers in this state. The crop insurance producer and adjuster licenses to be issued by the Commissioner.

3.0 Definitions

"Commissioner" means the Commissioner of the Delaware Insurance Department.

"Crop" means and includes any agricultural product, including livestock, nursery product, tree and product from a tree, as well as anything insured by the Federal Crop Insurance Corporation under a crop insurance program.

"Crop insurance adjuster" means any person, who, for compensation or any other thing of value, does any of the following:

- Acts or aids in investigating, verifying, substantiating, estimating, appraising, determining, presenting, and discussing the value of the claim, and/or effectuating the resolution of a claim for loss or damage covered by an insurance contract that insures crops;
- Advertises for employment as an adjuster of claims arising under insurance contracts that insure crops or solicits business or represents to the public to be a crop insurance adjuster of insurance claims, for losses or damages arising out of policies of insurance that insure crops; or
- Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about claims for losses or damages arising out of policies of insurance that insure crops, when doing any of the foregoing for or on behalf of another person engaged in the business of adjusting losses or damages covered by an insurance policy that insures crops, for the insured.

"Department" means the Department of Insurance;

"NAIC" means the National Association of Insurance Commissioners;

"Person" means a natural person;

"Producer" means any person required to be licensed under the laws of this State to sell, solicit, or negotiate contracts of insurance authorized within the scope of said license.

"Risk Management Agency" means that agency of the United States Department of Agriculture acting on behalf of the Federal Crop Insurance Corporation to administer federal crop insurance programs.

4.0 Qualification for the Issuance of a License

A person shall apply for and receive from the Commissioner a multi-peril crop insurance adjuster and/or producer license to operate as a multi-peril crop insurance producer or adjuster in this State. All applications for licensure shall be in accordance with the requirements of 18 Del.C., §§1706 and 1707 (1).

5.0 Examination Requirements

- 5.1 All individuals applying for a multi-peril crop insurance adjuster license are required to pass the Risk Management Agency-approved Proficiency test for multi-peril crop insurance adjusters.
- 5.2 All individuals applying for a multi-crop insurance producer license shall be required pass a written examination as required by 18 Del.C., §1705.
- 5.3 The Commissioner may enter into a contract with a testing organization for the examination of applicants for a license as a multi-peril crop insurance producer or adjuster. Such contract may provide that the testing organization shall:
- 5.3.1 Assume responsibility for the administration and grading of the examination; and
- 5.3.2 Charge and collect from each applicant the fee for administering the examination.

6.0 Continuing Education Requirement

- 6.1 An individual, who holds a multi-peril crop insurance license shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education credits. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under Chapter 17 of the Delaware Code.
- 6.2 Only continuing education courses approved by the Commissioner shall be used to satisfy the continuing education requirement of Paragraph 6.1.

7.0 Effective Date

This Regulation shall take effect 10 days after execution of an Order by the Commissioner and its publication in the Register of Regulations or January 1, 2011, whichever shall occur last.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§313, 1111)

ORDER**507 Workers' Compensation Insurance Adjusters**

Proposed Regulation 507 relating to Workers' Compensation Insurance Adjusters was published in the *Delaware Register of Regulations* on October 1, 2010. The comment period remained open until November 1, 2010. There was no public hearing on proposed Regulation 507. Public notice of the proposed Regulation 507 in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comment was received from the American Insurance Association (AIA). AIA was concerned that the proposed regulation would impose additional requirements on currently licensed casualty adjusters, adjusters currently licensed to adjust workers' compensation in other states, and those employed as such adjusters and certified by CPCU or AIC. AIA expressed concern that these adjusters would not be "waived in". Comment along the same line was also received from Property Casualty Insurers Association of America (PCIAA). In addition, PCIAA believes the proposed regulation is vague as it defines who may need a license.

FINDINGS OF FACT

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

The requirements of the proposed Regulation 507 best serve the interests of the public and of insurers and comply with Delaware law. The concerns expressed by AIA are valid. However, the proposed regulation does not establish a new license requirement, but establishes a new line for currently-licensed casualty adjusters, licensed either in Delaware or another jurisdiction. Currently-licensed casualty adjusters who adjust workers' compensation claims will merely add this new line to their licensing information after the effective date of the regulation.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§314, 1111 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt amended Regulation 507 as may more fully and at large appear in the version attached hereto to be effective on January 3, 2011.

TEXT AND CITATION

The text of the proposed Regulation 507 last appeared in the *Register of Regulations* Vol. 14, Issue 4, pages 251-252.

IT IS SO ORDERED this 5th day of November 2010.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

507 Workers' Compensation Insurance Adjusters**1.0 Purpose**

- 1.1 The purpose of this Chapter is to provide rules to assist the Commissioner in administering the laws relating to the licensure and regulation of Workers' Compensation insurance adjusters, as provided for in 18 **Del.C.** Chapter 17 et. seq.
- 1.2 This regulation should not be viewed as replacing any other or additional statutory requirements not explicitly included in this regulation.

2.0 Scope

This regulation applies to all persons acting as Workers' Compensation insurance adjusters in this state. The Workers' Compensation Insurance adjuster license is to be issued by the Commissioner.

3.0 Definitions.

"Commissioner" means the Commissioner of the Delaware Insurance Department.

"Department" means the Department of Insurance;

"NAIC" means the National Association of Insurance Commissioners;

"Person" means a natural person;

"Workers Compensation insurance adjuster" means any person, who, as an independent contractor, or on behalf of an independent contractor, insurer or self-insurer, producer or managing general agent, investigates and/or negotiates settlement of workers' compensation claims arising under insurance contracts.

4.0 Qualification for the Issuance of a License.

A person shall apply for and receive from the Commissioner a Workers Compensation insurance adjuster license to operate as a workers compensation adjuster in this State. All applications for licensure shall be in accordance with the requirements of 18 Del.C. §§1706 and 1707(1).

5.0 Examination Requirements.

- 5.1 All individuals applying for a workers compensation insurance adjuster license are required to pass the approved proficiency test for workers compensation insurance adjusters.
- 5.2 The Commissioner may enter into a contract with a testing organization for the examination of applicants for a license as a workers compensation insurance adjuster. Such contract may provide that the testing organization shall:
- 5.2.1 Assume responsibility for the administration and grading of the examination; and
- 5.2.2 Charge and collect from each applicant the fee for administering the examination.

6.0 Continuing Education Requirement.

- 6.1 An individual, who holds a workers compensation insurance adjuster license shall satisfactorily complete a minimum of twelve (12) hours of continuing education credits, three (3) of which shall be in ethics subjects, during each biennium reporting period. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under Chapter 17 of the Delaware Code.
- 6.2 Only continuing education courses approved by the Commissioner shall be used to satisfy the continuing education requirement of Paragraph 6.1.

7.0 Effective Date

This Regulation shall take effect 10 days after execution of an Order by the Commissioner and its publication in the *Register of Regulations* or January 1, 2011, whichever shall occur last.

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION CONSUMER PROTECTION UNIT

Statutory Authority: 29 Delaware Code, Section 2521 (29 Del.C. §2521)

ORDER

103 Consumer Protection Unit Administrative Enforcement Proceedings

A public hearing was held to receive comments related to the proposed rules relating to the enforcement of consumer protection laws. Notice was provided as required under the Administrative Proceedings Act 29 Del.C. §10115 in the *Register of Regulations* at 14 DE Reg. 252 (10/01/10) as well as in the *News Journal* and *Delaware State News* on October 14, 2010.

The Director of Consumer Protection conducted the public hearing which was held at 10 a.m. on November 3, 2010 in the Attorney General's Conference Room at the Carvel State Office Building, 6th floor, 820 N. French St., Wilmington, DE 19801.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Written Comments received: None

Oral Comments received:

1. Andrew P. Taylor, Esquire, of Cooch and Taylor, representing the Delaware Association of Realtors, provided comments about specific proposed rules as follows:

Proposed Rule 4.1: No notice of the reason for disqualification should be required. A statement by a Deputy Attorney General that he or she is withdrawing is sufficient.

Proposed Rule 4.2: Mr. Taylor inquired about whether there is an opportunity to appeal a decision by a hearing officer to proceed with a hearing after a motion has been made for his or her disqualification.

Proposed Rule 7.1: The most important comment relates to the notice initiating a proceeding. Given the importance of the proceedings, it should not be sufficient to simply have an unsigned return receipt after notice by first class mail though that is sufficient in some landlord tenant matters in the Justice of the Peace Court.

Proposed Rule 12.1: The title "Director" should be defined.

Proposed Rule 18.0: Although there is no discovery in these administrative proceedings, the parties would benefit from a fact-finding opportunity in advance of the hearing in order to explore the allegations much like an investigator does in fair housing investigations by the Division of Human Relations.

Proposed Rule 25.1.2: Mr. Taylor inquired about the use of the word "finding" and whether it implies a hearing has been held.

FINDINGS OF FACT BASED ON THE EVIDENCE AND INFORMATION SUBMITTED

The change to proposed Rule 4.1 will be considered in connection with any future amendment of these Rules. It is important to publish final rules without substantive change to implement the statute expeditiously. This change is non-substantive.

There is no interlocutory appeal from a decision by a hearing officer to continue after a motion for withdrawal pursuant to proposed Rule 4.2. The issue can be raised on the appeal of a final order.

The flexible service provided in proposed Rule 7.1 is necessary for the enforcement of consumer fraud violations because the actors are frequently out of state and on the internet, making personal service practically difficult.

I agree that the "Director" would be better identified as the "Director of Consumer Protection" in proposed Rule 12.1.

The change recommended to proposed Rule 18.0 would encumber the process, which is intended to be informal and expeditious.

The term "finding" of a violation in proposed Rule 25.1.2 means after a hearing.

DECISION AND ORDER

After considering the relevant statutes and the comments received and pursuant to the authority in 29 **Del.C.** §2520, I hereby adopt the proposed regulations as published in 14 DE Reg 252 (10/1/10) with one exception:

In proposed Rule 12.1 the words "Director of Consumer Protection" shall be substituted for the word "Director" in the final rule.

Comments on proposed Rule 4.1 will be reconsidered at a later date after a new notice and opportunity for comment.

EFFECTIVE DATE

The effective date shall be ten days following publication in the *Register of Regulations*.

SO ORDERED THIS 10th day of November, 2010.

DEPARTMENT OF JUSTICE

Ian R. McConnel, Director of Consumer Protection

103 Consumer Protection Unit Administrative Enforcement Proceedings

(Break in Continuity of Sections)

12.0 Complaints: general and summary proceedings.

- 12.1 General. If the Director [of Consumer Protection] or a Deputy Attorney General acting under his or her authority believes that any person is violating or has violated any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the CPU may issue a complaint as provided herein. The service and filing of the complaint constitutes the commencement of the administrative proceeding. If no hearing officer has been generally designated, the Director [of Consumer Protection] or the Deputy Attorney General filing the complaint shall give notice to the Attorney General, Chief Deputy Attorney General, or the State Solicitor requesting the appointment of a hearing officer for the proceeding.
- 12.2 Summary proceedings. See Rule 25.1.3 for procedure in summary proceedings.

(Break in Continuity of Sections)

*Please note the only amendment to the proposed regulation was to the above section. As the balance of the regulation was not amended since it was proposed, it is not being republished. A copy of the final regulation is available at:

[103 Consumer Protection Unit Administrative Enforcement Proceedings](#)

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 1125, 1130

**1125 Requirements for Preconstruction Review
1130 Title V State Operating Permit Program**

Secretary's Order No.: 2010-A-0040

Date of Issuance: November 17, 2010

Effective Date of the Amendment: December 11, 2010

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

Background and Procedural History

This Order considers proposed regulatory amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review, Section 3.0, "Prevention of Significant Deterioration of Air Quality" and 7 DE Admin. Code 1130, Title V State Operating Permit Program, Section 2.0, "Definitions": **Greenhouse Gas (GHG) Emissions**, to enable Delaware to conform to the requirements of a recent federal rule, 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010), providing for the regulation of certain greenhouse gases, which are considered pollutants under existing Delaware air quality regulations.

The Department is proposing to amend existing Regulations 1125 and 1130 by adding definitions which describe greenhouse gases (GHG) as composed of the aggregate group of six greenhouse gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆), as well as for carbon dioxide equivalent emissions (CO₂e). These regulations also will be amended to require consideration for permitting of certain GHG emitting sources, under Title V (Reg. 1130) and new source review (Reg. 1125), beginning January 2, 2011, that emit or have the potential to emit, 75,000 tons per year, or, 100,000 tons per year of CO₂e. The Department is proposing to make these revisions now to add the new threshold limits for regulating these emissions in these regulations as shown in the recently issued federal rule 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule", as noted above.

On August 31, 2010, the Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notice 2010-19. The Department published the proposed regulatory amendments in the October 1, 2010 *Delaware Register of Regulations* and held a public hearing on November 10, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 12, 2010 (Report). The Report recommends certain findings and the adoption of the proposed regulatory amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. The Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's experts in the Division of DAQ fully developed the record to support adoption of this Amendment. With the adoption of the regulatory amendments to 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review, Section 3.0, "Prevention of Significant Deterioration of Air Quality" and 7 DE Admin. Code 1130, Title V State Operating Permit Program, Section 2.0, "Definitions": **Greenhouse Gas (GHG) Emissions**, Delaware will be enabled to conform to the requirements of a recent federal rule, 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010), providing for the regulation of certain greenhouse gases, which are considered pollutants under existing Delaware air quality regulations. Additionally, these regulations are being amended at this time to require consideration for permitting of certain GHG emitting sources, under Title V (Reg. 1130) and new source review (Reg. 1125), beginning January 2, 2011, that emit or have the potential to emit, 75,000 tons per year, or, 100,000 tons per year of CO₂e.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
- 3.) The Department held a public hearing on November 10, 2010 on the proposed Amendments in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the October 1, 2010, *Delaware Register of Regulations*;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to conform to the requirements of a recent federal rule, 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010), providing for the regulation of certain greenhouse gases, which are considered pollutants under existing Delaware air quality regulations; (2) consideration will now be required for permitting of certain GHG emitting sources, under Title V (Reg. 1130) and new source review (Reg. 1125), beginning January 2, 2011, that emit or have the potential to emit, 75,000 tons per year, or, 100,000 tons per year of CO₂e; and (3) the regulation amendments are well supported by documents in the record; and that
- 7.) The Department shall submit this Order approving the final regulations 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.

David S. Small (for) Collin P. O'Mara, Secretary

**1125 Requirements for Preconstruction Review
1130 Title V State Operating Permit Program**

*Please note that no changes were made to the regulations as originally proposed and published in the October 2010 issue of the *Register* at page 263 (14 DE Reg. 263). Therefore, the final regulations are not being republished. A copy of the final regulations are available at:

[1125 Requirements for Preconstruction Review & 1130 Title V State Operating Permit Program](#)

DIVISION OF AIR AND WASTE MANAGEMENT

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

Secretary's Order No.: 2010-A-0038

Date of Issuance: November 10, 2010

Effective Date of the Amendment: December 11, 2010

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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 the proposed regulatory amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 16.0, "Area Source Asphalt Processing and Asphalt Roofing Products Manufacturing Operations". This proposed new Section 16.0 is based upon a federal rule that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart AAAAAAA, and is applicable to new and existing asphalt processing operations and asphalt roofing manufacturing operations located at area sources.

This area source standard addresses the emissions of polycyclic aromatic hydrocarbons ("PAHs"), which represent a broad class of aromatic compounds. EPA has classified seven PAHs (benzo[a]pyrene, benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, dibenz[a,h]anthracene, and indeno[1,2,3-cd]pyrene) as probable human carcinogens. The major non-cancerous effects from chronic inhalation exposure are diseases associated with the respiratory tract. The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against the aforementioned potential adverse health effects linked to the aforementioned PAHs.

Facilities that will be subject to Section 16 include facilities that conduct asphalt processing operations, as well as facilities that manufacture roofing products, such as roofing shingles, rolled roofing and tar paper. Roofing companies that install built-up roofing systems on buildings are exempt from this proposed regulation, even if one of the layers is asphalt. Hot mix asphalt cement plants are also exempt from this regulation (asphalt cement is used in road construction, parking lots, and storage pads).

The proposed Section 16 specifies emissions limitations from the asphalt process operations and asphalt roofing products manufacturing operations. Asphalt roofing products manufacturing operations must also limit their emissions to either a particulate matter or polycyclic aromatic hydrocarbon level. Facilities have some freedom in choosing the control technology they wish to use to maintain their emissions below said limitations. Based on the already demonstrated use in the industry, the EPA has already approved the use of thermal oxidizers, high efficiency air filter, fiber bed filters, and electrostatic precipitators to control the emissions from asphalt processing operations and asphalt roofing products manufacturing operations. Should a facility wish to use a different control technology, the proposed regulation provides the procedure to follow to request the EPA's approval of alternative controls.

In addition to the above compliance requirements for facilities subject to Section 16.0, each such facility must be found compliant with the following four requirements as well:

- The development and implementation of a startup, shutdown, and malfunction plan, which shall provide appropriate operation instructions, proper corrective actions during malfunctions, required maintenance and inspection schedules, and proper maintenance procedures;

- The development and implementation of a site specific monitoring plan, which shall identify the appropriate monitoring locations, define the proper performance and equipment specification for the monitoring system, and document the various procedure needed to insure the quality of the data collected by the monitoring system;
- The demonstration of its initial compliance with the emission limitation for each operation, which is done by conducting a performance test and comparing the emission results of the performance test with the applicable emission limitation and
- The demonstration of its ongoing compliance with the emission limitation for each operation.

The Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notice 2009-17. The Department published the proposed regulatory amendment in the September 1, 2010 *Delaware Register of Regulation* and held a public hearing on September 22, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 1, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment.

I find that the Department's DAQ expert fully developed the record to support adoption of this Amendment. With the adoption of the regulation amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 16.0, "Area Source Asphalt Processing and Asphalt Roofing Products Manufacturing Operations", Delaware will be able to mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart AAAAAAA and provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to the aforementioned PAHs, which are (1) known probable human carcinogens; and (2) have additional non-cancerous effects from chronic inhalation exposure, including diseases associated with the respiratory tract.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed Amendment as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on September 22, 2010 on the proposed Amendment in order to any consider public comments before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any substantive change from the proposed regulation Amendment as published in the September 1, 2010, *Delaware Register of Regulations*;
- 6.) The recommended Amendment should be adopted as final regulation Amendment because Delaware will then be enabled to (1) mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart AAAAAAA; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to the aforementioned PAHs, which are known probable human carcinogens, and have additional non-cancerous effects from chronic inhalation exposure, including diseases associated with the respiratory. Moreover, the regulation amendment is well supported by documents in the record; and
- 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.

David S. Small, Acting Sec. (for) Collin P. O'Mara, Secretary

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

***Please Note:** Due to the size of the final 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](#)

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1140

Secretary's Order No.: 2010-A-0039

Date of Issuance: November 9, 2010

Effective Date of the Amendment: December 11, 2010

1140 Delaware's National Low Emission Vehicle (NLEV) Regulation

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 the proposed regulatory amendment to 7 **DE Admin. Code** 1140, Delaware Low Emission Vehicle Program. The primary purpose of this promulgation is to reduce vehicle emissions from new vehicles in Delaware, beginning with model year 2014. Considerable benefits to human health and the environment will be realized under this program in the long term by the adoption of California's emissions standards, which are more stringent than the current federal standards. The Low Emission Vehicle ("LEV") Program reduces emissions of ozone precursors, particulates, toxic air pollutants, and greenhouse gases.

The Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notice 2009-33. The Department published the proposed regulatory amendment in the October 1, 2010 *Delaware Register of Regulation* and held a public hearing on October 22, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 5, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment. Throughout the entire regulatory development process regarding this promulgation, the Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's DAQ expert fully developed the record to support adoption of this Amendment. The adoption of the regulation amendment to 7 **DE Admin. Code** 1140, Delaware Low Emission Vehicle Program, will formally establish the Delaware Low Emission Vehicle Program (DEL LEV). The inclusion of Delaware into California's Low Emission Vehicle Program (CAL LEV) will allow additional reductions of motor vehicle emissions from new vehicles (less than 7,500 miles) transferred (i.e., sold, delivered, purchased, leased, rented, acquired, received, and/or registered) into Delaware, beginning with model year 2014, as the proposed program is more stringent than the current federal rule.

The amendments to 7 **DE Admin. Code** 1140 will also provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to long-term exposure to particulate matter (PM), volatile organic compounds (VOCs), nitrogen oxide (NOx), and greenhouse gases (GHGs). This implementation proposes

to adopt requirements that are at least as health protective as requirements of the existing Federal Tier 2 standards.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed Amendment as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on October 22, 2010 on the proposed Amendment in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any substantive change to either the intent or content of the proposed regulation Amendment as published in the October 1, 2010, *Delaware Register of Regulations*;
- 6.) The recommended Amendment should be adopted as final regulation Amendment because Delaware will then be enabled to (1) provide for additional reductions of motor vehicle emissions from new vehicles (less than 7,500 miles) transferred (i.e., sold, delivered, purchased, leased, rented, acquired, received, and/or registered) into Delaware, beginning with model year 2014, as the proposed program is more stringent than the current federal rule; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to particulate matter (PM), volatile organic compounds (VOCs), nitrogen oxide (NOx), and greenhouse gases (GHGs). This implementation proposes to adopt requirements that are at least as health protective as requirements of the existing Federal Tier 2 standards. Moreover, the regulation amendment is well supported by documents in the record; and
- 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

1140 Delaware's National Low Emission Vehicle (NLEV) Regulation

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

[1140 Delaware's National Low Emission Vehicle \(NLEV\) Regulation](#)

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 29 Delaware Code, Sections 1133 and 10115(a)
(29 Del.C., §§1133 & 10115(a))

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS GOVERNING THE
PROCEDURE FOR INSPECTION AND COPYING
OF PUBLIC RECORDS UNDER THE FREEDOM
OF INFORMATION ACT, 29 DEL.C. §§10001-10006
(OPENED AUGUST 17, 2010)

PSC REGULATION DOCKET NO. 62

ORDER NO. 7868

AND NOW, this 18th day of November, 2010:

WHEREAS, from time to time, the Delaware Public Service Commission (the "Commission") receives requests for documents pursuant to the Freedom of Information Act, 29 **Del.C.** §§10001-10006 ("FOIA"); and

WHEREAS, section 10003 of FOIA states that it is the responsibility of public bodies to establish rules and procedures regarding access to public records as well as fees charged for copying such records; and

WHEREAS, on August 17, 2010, the Commission entered PSC Order No. 7820, which opened this docket and required that notice of proposed FOIA rules, entitled the *Delaware Public Service Commission Freedom of Information Act Regulations Governing the Procedure for Inspection and Copying of Public Records* ("FOIA Rules"), with a deadline to provide comments, be published in the *Delaware Register of Regulations* and The News Journal and the Delaware State News newspapers; and

WHEREAS, said notice was published as ordered; and

WHEREAS, the Commission received no comments or objections to the proposed FOIA Rules; and

WHEREAS, the Commission considered the proposed FOIA Rules at its meeting on November 18, 2010.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, pursuant to 26 **Del.C.** §§209(a) and 821, and 29 **Del.C.** §§10111 *et seq.*, the Commission hereby promulgates the *Delaware Public Service Commission Freedom of Information Act Regulations Governing the Procedure for Inspection and Copying of Public Records* (the "FOIA Rules"), a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 **Del.C.** §1132.
2. That, pursuant to 26 **Del.C.** §§10113 and 10118, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order (with the attached FOIA Rules). An exact copy of the FOIA Rules attached hereto shall be published as final, official regulations in the *Delaware Register*.
3. That 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:

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Dallas Winslow, Commissioner

ATTEST: Alisa Carrow Bentley, Secretary**1008 Regulations Governing Requests Made Pursuant to the Freedom of Information Act**

*Please note that no changes were made to the regulation as originally proposed and published in the September 2010 issue of the *Register* at page 164 (14 DE Reg. 164). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1008 Regulations Governing Requests Made Pursuant to the Freedom of Information Act](#)

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER TWENTY-ONE**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: REAUTHORIZING THE DELAWARE HOMELAND SECURITY ADVISORY COUNCIL WITH AN "ALL HAZARDS, ALL PERSONS" APPROACH

WHEREAS, on September 11, 2001, the United States was attacked by a foreign enemy intent on weakening its national infrastructure, institutions, and resolve through the application of terrorism; and

WHEREAS, the magnitude and nature of the September 11, 2001 terrorist attacks, the anthrax crisis, and the resulting national alerts led governors to initiate unprecedented efforts to implement comprehensive state-based strategies to prevent, prepare for, respond to, and recover from terrorist attacks; and

WHEREAS, since September 11, 2001, our nation and our state have learned valuable lessons from major catastrophic events such as Hurricanes Katrina and Rita, and the state continues to improve its overall preparedness for emergency events, including Nor'easters and heavy rain and snowfall; and

WHEREAS, the variety of threats to our state requires recognition that homeland security is interested in not only acts of terrorism, but all events that may cause disruption to society, be they man made or natural; and

WHEREAS, the State of Delaware, through the efforts of numerous persons representing the private sector, municipalities, counties, and state and federal agencies, has revised and upgraded the Delaware Emergency Operations Plan; and

WHEREAS, the Delaware Homeland Security Advisory Council has taken a leadership role in incorporating advice and input from its members in the development of appropriate strategies to address risks from terrorism and other threats to the security of Delaware's citizens; and

WHEREAS, it is appropriate to broaden the focus of the Delaware Homeland Security Advisory Council to include an "All Hazards, All Persons" approach to promoting and protecting the citizens, visitors, and infrastructure of the State of Delaware.

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 Homeland Security Advisory Council (hereinafter, the "Council") is continued to preserve and protect the citizens, visitors, and infrastructure of the State of Delaware utilizing an "All Hazards, All Persons" approach.

2. The Council shall be comprised of the following members:

(a) The Secretary of the Department of Safety and Homeland Security, who shall serve as chair;

(b) The Homeland Security Advisor for the Department of Safety and Homeland Security;

(c) The Adjutant General of the Delaware National Guard, or a designee appointed by the Adjutant General;

(d) The Chief Information Officer of the State of Delaware, or a designee appointed by the CIO;

(e) The Secretary of the Department of Natural Resources and Environmental Control, or a designee appointed by the Secretary;

(f) The Secretary of the Delaware Department of Transportation, or a designee appointed by the Secretary;

(g) The Secretary of the Delaware Department of Education, or a designee appointed by the Secretary;

(h) The Secretary of the Delaware Department of Agriculture, or a designee appointed by the Secretary;

(i) The Commissioner of the Department of Correction, or a designee appointed by the Commissioner;

(j) The Superintendent of the Delaware State Police, or a designee appointed by the Superintendent;

(k) The Director of the Division of Public Health, or a designee appointed by the Director;

(l) The Director of the Delaware Emergency Management Agency, or a designee appointed by the Director;

(m) The Director of the Division of Motor Vehicles, or a designee appointed by the Director;

(n) The Executive Secretary of the Delaware Volunteer Firefighters' Association, or a designee appointed by the Executive Secretary;

(o) The Chair of the Delaware Police Chiefs' Council, or a designee appointed by the Chair;

(p) The President of the League of Local Governments, or a designee appointed by the League's President; and

(q) Other representatives from federal, state, and local governments, private sector partners, academia, and emergency service organizations, as recommended by the Secretary of Safety and Homeland Security and appointed by the Governor.

3. The purpose of the Council shall be to provide advice, counsel and assistance to the Secretary of Safety and Homeland Security and the Homeland Security Advisor concerning:

(a) The prevention, detection, preparation for, protection against, response to, and recovery from terrorist threats, attacks, man-made or natural catastrophic incidents and events that may cause disruption to citizens, visitors and infrastructure of the State of Delaware using an "All Hazards, All Persons" approach;

(b) Providing advice and counsel to the state-designated fusion center, as required under U.S. Department of Homeland Security "Fusion Center Baseline Capabilities;"

(c) The exchange of intelligence, information and analysis concerning homeland security and the events listed in subsection (a) above;

(d) Interoperability of equipment, technologies, and partnering agencies as they pertain to subsection (a) above;

(e) The integration and maximization of federal grant funding relating to homeland security, including compliance with U.S. Department of Homeland Security Grant Program requirements;

(f) The dissemination of information to the citizens of Delaware, the private sector and other partnering agencies as they pertain to subsection (a) above;

(g) Interaction and coordination between the Secretary of Safety and Homeland Security and other executive agencies;

(h) Homeland security planning, except as specifically assigned to another entity by statutory or executive order; and

(i) Other matters of homeland security, as determined by the Secretary of Safety and Homeland Security or the Homeland Security Advisor.

4. The Council shall meet at the direction of the Secretary of Safety and Homeland Security. The Secretary of Safety and Homeland Security, in concert with the Homeland Security Advisor, shall be responsible for determining the agenda of the Council meetings. For administrative purposes, the Council will be located within the Department of Safety and Homeland Security, which shall provide staff support to the Council.

5. Executive Order Number Forty-Six, issued by Governor Ruth Ann Minner, is hereby rescinded.

APPROVED this 12th day of October, 2010

Jack A. Markell,
Governor

14 DE Reg. 586 (12/01/10)

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, December 8, 2010 beginning at 10:30 a.m. The meeting location could not be confirmed as of the deadline for this notice. For more information, visit the DRBC website at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, November 18, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****Medicaid Recovery Audit Contractor Program****NOTICE OF PUBLIC COMMENT PERIOD**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan to comply with section 6411 of the Affordable Care Act regarding the Medicaid Recovery Audit Contractor Program.

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

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

DIVISION OF PUBLIC HEALTH**4455 Delaware Regulations Governing a Detailed Plumbing Code****NOTICE OF PUBLIC HEARING**

The Department of Health and Social Services, Division of Public Health is proposing regulations which amend Title 16 of the Delaware Code relating to the adoption and enforcement of a Unified Plumbing Code. Title 16, Section 7906(e), created by House Bill 488 and signed into law on July 27, 2010, requires that the Division of Public Health shall issue plumbing permits and shall assess a \$100 fee for each permit, except that no permit shall be required or fee assessed for the replacement of an existing fixture, piece of equipment or related piping, including but not limited to hot water heaters and water conditioning systems. The Division of Public Health has proposed amended regulations governing a Detailed Plumbing Code to address this mandate. On December 1, 2010, the Division plans to publish proposed amendments to the Delaware Regulations Governing a Detailed Plumbing Code and hold them out for public comment per Delaware law.

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed amendments to the Delaware Regulations

Governing a Detailed Plumbing Code. Title 16, Section 7906(e), created by House Bill 488 and signed into law on July 27, 2010, requires that the Division of Public Health shall issue plumbing permits and shall assess a \$100 fee for each permit, except that no permit shall be required or fee assessed for the replacement of an existing fixture, piece of equipment or related piping, including but not limited to hot water heaters and water conditioning systems. The Division of Public Health has proposed amended regulations governing a Detailed Plumbing Code to address this mandate.

The public hearing will be held on December 22, 2010 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 856-5496.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by December 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 31, 2010 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4458 State of Delaware Food Code Regulations (2011)

The Department of Health and Social Services, Division of Public Health is proposing regulations which amend Title 16 of the Delaware Code relating to the State of Delaware Food Code. The Division of Public Health proposes to repeal the current 1999 State of Delaware Food Code in its entirety and in its place adopt with amendments the United States Public Health Service 2009 Food Code to be known as the 2011 State of Delaware Food Code. On December 1, 2010, the Division plans to publish the proposed 2011 State of Delaware Food Code and hold them out for public comment per Delaware law.

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed 2011 State of Delaware Food Code. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. The Division of Public Health proposes to repeal the current 1999 State of Delaware Food Code in its entirety and in its place adopt with amendments the United States Public Health Service 2009 Food Code to be known as the 2011 State of Delaware Food Code.

The public hearing will be held on December 21, 2010 at 9:30 a.m. in the Felton-Farmington Room, located in the Delaware Department of Transportation Building, 800 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review in the December 1, 2010 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by December 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 31, 2010 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

DIVISION OF SOCIAL SERVICES**Delaware Temporary Assistance for Needy Families (TANF) Employment and Training Program
NOTICE OF PUBLIC COMMENT PERIOD**

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 Delaware TANF Employment and Training Program policies in the Division of Social Services Manual (DSSM) regarding *Mandatory Participants*.

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, 2010.

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

DIVISION OF SOCIAL SERVICES**Child Care Subsidy Program
NOTICE OF PUBLIC COMMENT PERIOD**

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 Determination of the Child Care Parent Fee and Fee Waiving Situations.

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, 2010.

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

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION****3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard
NOTICE OF PUBLIC COMMENT PERIOD**

Under the "Renewable Energy Portfolio Standards Act," 26 Del.C. §§ 351-364 (2006 Supp.) (the "RPS Act"), each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Public Service Commission ("PSC") adopted "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"). See 10 DE Reg. 151-157 (July 1, 2006). The RPS Rules have been amended twice in the interim to conform to subsequent amendments to the RPS Act.

The PSC now proposes to revise the RPS Rules to incorporate, and assure consistency with, the statutory changes made by the recently enacted law.

You can review PSC Order No. 7862 (November 10, 2010) (the "Order") and the proposed revised RPS Rules in the December 2010 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised RPS Rules at the PSC's Internet website located at <http://depsec.delaware.gov>. If you wish to

obtain written copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before December 31, 2010. You should file such materials with the PSC at the following address:

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

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to Pamela.Knotts@state.de.us.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on February 22, 2011 at 1:00 P.M. at the PSC's office at the address set forth above. Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS
2403 Special Events Policies and Procedures—Traffic Management
PUBLIC NOTICE

Under Title 17 of the Delaware Code, Section 141, as well as 29 **Delaware Code** Section 8404(8), the Traffic Section of the Delaware Department of Transportation (DelDOT), has the authority to regulate the traffic impacts of special events that affect the safe movement of traffic on the State's transportation network. The Department has now drafted regulations for this purpose, and this draft accompanies this notice.

The Department will take written comments on the draft Special Event Policies and Procedures regulations from December 1, 2010 through December 31, 2010. Copies of the draft Regulations can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Adam Weiser, P.E., Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4073 (telephone) (302) 653-2859 (fax), or email to: adam.weiser@state.de.us