
Delaware Register of Regulations

Issue Date: December 1, 2011

Volume 15 - Issue 6, Pages 708 - 944



IN THIS ISSUE:

Regulations:
Proposed
Final

Governor:
Appointments

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, 2011.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 24-47 (07/01/11)

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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 16	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 525

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

525 Requirements for Career and Technical Education Programs

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs. The amendments add the Health Occupations Students of America (HOSA) as a recognized student career and technical student organization and delete the ability for the local school district or charter school to have programs that are not based on the content standards of the state.

The student organizations provide hands on and practical experience and are helpful in improving student achievement as measured against the state achievement standards. The elimination of the local standard language reflects the development and existence of the state standards, national CTE standards, the national CTSO standards and DPAS II component 5 elements.

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

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment adds the Health Occupations Students of America (HOSA) as a recognized student career and technical student organization. The student organizations provide hands on and practical experience

and are helpful in improving student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is not related to students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is not related to students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does eliminate local policy; however, this is needed because of both federal and state standards.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The authority and accountability for career technical programs is somewhat impacted by the amendment.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing career and technical education programs.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not added cost to the State or local school boards for compliance with this regulation. Student organizations are funded by the state legislature, Federal Perkins funds and local chapter fund raising.

525 Requirements for Career and Technical Education Programs

1.0 Career and Technical Education Programs

All Career and Technical Education Programs (CTE) shall meet the provisions of Delaware's State Plan for Career and Technical Education and meet the provisions of the content standards approved by the Department of Education ~~or, if there are no approved state content standards, meet local program standards approved by the Department of Education.~~

6 DE Reg. 955 (2/1/03)

12 DE Reg. 936 (01/01/09)

2.0 All Local School Districts and Charter Schools that Offer State Approved Career and Technical Education Programs Shall:

- 2.1 Meet the requirements within the state plan for the Carl D. Perkins Career and Technical Education Act of 2006.
- 2.2 Have the approval of the Department of Education before implementing new CTE courses and or pathways.
 - 2.2.1 The determination for the minimum number of credits for a pathway shall be based on the content standards as approved under 14 **DE Admin. Code** 501.
- 2.3 Adequately fund, support and sustain the instructional program.
- 2.4 Ensure all teachers are certified in the Career and Technical Education Program areas in which they teach.
- 2.5 Ensure that all teachers meet the Delaware Department of Education (DE DOE) Skilled and Technical Science Standards for the specific career area in which they teach.
 - 2.5.1 Such standards may include, but are not limited to, holding a state professional license in the area to be taught; holding an industry recognized certification of technical competence or journeyman status in the specific career area; or additional work experience.

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- 2.6 Where appropriate and applicable, ensure that all teachers meet certification requirements for administering the end of Pathway Assessment in the specific career area in which they teach.
 - 2.7 Make provisions for meeting the unique needs of all students.
 - 2.8 Establish and maintain an active CTE advisory committee which includes labor and management personnel to assist in the development and operation of the program.
 - 2.9 Use Department of Labor market projections to determine the need for new and continuing Career and Technical Education Programs.
 - 2.10 Assess occupational needs and the availability of placement and employment opportunities for program completers with input from the local CTE advisory committee.
 - 2.11 Use the information derived from the Student Success Plan (SSP) portfolio to determine student occupational interests, needs and educational program.
 - 2.12 Organize and financially support Career and Technical Student Organizations as integral components of Career and Technical Education Programs in public schools that complement and enrich instruction. The following career and technical student organizations are affiliated in Delaware:
 - 2.12.1 Business Professionals of America (BPA)
 - 2.12.2 Technology Student Association (TSA)
 - 2.12.3 DECA, an association of marketing students
 - 2.12.4 Family, Career and Community Leaders of America (FCCLA)
 - 2.12.5 The National FFA Organization
 - 2.12.6 Skills USA
 - 2.12.7 The Delaware Career Association (DCA)
 - 2.12.8 Health Occupations Students of America (HOSA)
 - 2.13 Integrate related academic content into individual career and technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals as documented in the student's SSP.
 - 2.14 For an approved skilled and technical sciences education pathway, beginning with the 2011-12 school year, courses shall be scheduled for a minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled, according to the following schedule:
 - 2.14.1 Nine (9) Credit Pathway – a minimum of six (6) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled.
 - 2.14.2 Six (6) Credit Pathway – a minimum of four (4) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled; or
 - 2.14.3 Four (4) Credit Pathway – a minimum of two (2) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled; or
 - 2.14.4 Three (3) Credit Pathway – a minimum of two (2) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled.
 - 2.15 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career and Technical Education Program in a career and technical school district.
 - 2.16 Use equipment and facilities comparable to that used by local business and industry for which the Career and Technical Education Program is preparing students.
 - 2.17 Schedule Department of Education and Delaware Advisory Council on Career and Technical Education Program review and monitoring visits upon request.
 - 2.18 Report CTE program data as required by the Delaware Department of Education.
- 1 DE Reg. 1196 (2/1/98)**

6 DE Reg. 955 (2/1/03)
8 DE Reg. 1603 (5/1/05)
9 DE Reg. 1070 (01/01/06)
12 DE Reg. 439 (10/01/08)
12 DE Reg. 936 (01/01/09)
15 DE Reg. 188 (08/01/11)

3.0 Cooperative Education Programs

- 3.1 Cooperative Education Programs provide senior Career and Technical Education Program students with coordinated on the job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on the job training in occupations directly related to the Career and Technical Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.
- 3.2 In order to qualify for Career and Technical Education funding units the Career and Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make at least quarterly visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 3.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 3.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Cooperative Education programs without senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 3.5 In order to qualify for career and technical education funding units the students shall:
- 3.5.1 Possess minimum occupational competencies specified by the Career and Technical Education Teacher Coordinator before being placed in cooperative employment;
 - 3.5.2 Be in their senior year or otherwise approved pursuant to 3.4;
 - 3.5.3 Be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed Career and Technical Education pathway;
 - 3.5.4 Meet the requirements of 3.1 through 3.4; and
 - 3.5.5 Be supervised through on site visits by an assigned Career and Technical Education Program Teacher Coordinator or Career Guidance Counselor.

2 DE Reg. 111 (07/01/98)
6 DE Reg. 955 (02/01/03)
9 DE Reg. 1070 (01/01/06)
12 DE Reg. 439 (10/01/08)
12 DE Reg. 936 (01/01/09)

4.0 Diversified Occupations Programs

- 4.1 Diversified Occupations Programs provide students with coordinated on the job training not ordinarily available in the classroom. During the student's junior or senior year or under unique circumstances as approved by the Department of Education, employers provide this on the job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified

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Occupations Work Experience Program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

- 4.2 In order to qualify for career and technical education funding units a Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make at least quarterly on site visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 4.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 4.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Diversified Occupations programs without junior or senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 4.5 In order to qualify for career and technical education funding units the students shall possess minimum readiness competencies as specified by the Career Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, meet the requirements of 4.1 through 4.4 and be actively enrolled in a Diversified Occupations Work Experience Program that meets for at least one class period per week.

2 DE Reg. 111 (07/01/98)

6 DE Reg. 955 (02/01/03)

9 DE Reg. 1070 (01/01/06)

12 DE Reg. 439 (10/01/08)

12 DE Reg. 936 (01/01/09)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1505

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

1505 Standard Certificate

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1505 Standard Certificate. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). Amendments include several additions to definitions and affording the Department of Education the final approval of requisite coursework or professional development, as mandated for specific Standard Certificates or for individuals working toward their first Standard Certificate who have not graduated from an educator preparation program. Some reformatting was also done to allow for easier understanding. This regulation sets forth the general requirements for specific grade level, content area, specialist and administrative Standard Certificates.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, January 2, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the

above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

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

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

1505 Standard Certificate**1.0 Content**

This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a).

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

2.0 Definitions

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

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Department" means the Delaware Department of Education.

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

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

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

“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the ~~employing school district or charter school~~ Department.

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

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Major or its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.

“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all fifty (50) states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

“Professional Development” means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

“Second Certificate” or **“Second Standard Certificate”** means any Standard Certificate issue after the first Standard Certificate including any second or subsequent Standard Certificate.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

“Standards Board” means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

“State Board” means the State Board of Education of the State of Delaware pursuant to 14 **Del.C.** §104.

“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance under a State credential in any PreK to 12 public school setting or an equivalent setting as approved by the Department.

“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state.

- 7 DE Reg. 161 (8/1/03)
- 7 DE Reg. 629 (11/1/03)
- 7 DE Reg. 1742 (6/1/04)
- 10 DE Reg. 98 (07/01/06)
- 11 DE Reg. 1375 (04/01/08)

3.0 Standard Certificate

The Department shall issue a Standard Certificate to an educator who holds a valid Delaware Initial, Continuing or Advanced License; or ~~Limited Standard~~, Standard or Professional Status Certificate issued prior to August 31, 2003, who has met the following requirements:

- 3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
 - 3.1.1 Completing an Approved Educator Preparation Program or Advanced Certification
 - 3.1.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or
 - 3.1.1.23 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, offered by a regionally accredited college or university with a major or its equivalent in the area of the Standard Certificate requested. where For both programs, the state approval body shall employed the appropriate NASDTEC or NCATE specialty organization standards; , offered by a regionally accredited college or university, with a major or its equivalent in the area of the Standard Certificate requested; or
 - 3.1.1.34 Satisfactorily completing ~~the an~~ Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other ~~alternative~~ educator preparation programs as the Secretary or the Standards Board with the consent of the State Board, may approve; or
 - 3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a Standard Certificate in the area for which a Standard Certificate is sought; or
 - 3.1.53 Holding a bachelor's degree from a regionally accredited college or university in any content area and
 - 3.1.53.1 for applicants applying after ~~June 30, 2006~~ for their first standard certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) or their equivalent credits must focus on pedagogy, ~~selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~
 - 3.1.3.1.1 The Fifteen (15) credits or their equivalent in professional development are selected by the applicant in consultation with the employing school district or charter school.
 - 3.1.3.1.2 The Fifteen (15) credits or their equivalent in professional development is subject to Department approval.
 - 3.1.3.1.3 In the case where there is no employing authority or the new Standard Certificate requested is outside the applicant's current spectrum of employment, the proposed fifteen (15) credits or their equivalent in professional development is selected by the applicant in consultation with the Department. The final selection is subject to Department approval; or
- 3.2 For applicants applying after December 31, 2005, where an examination of content knowledge such as a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available; achieved a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

- 3.32 Met the requirements for licensure and holding a valid and current license or certificate from another state in the area for which a Standard Certificate is requested; or
- 3.43 Met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C §1203.
- 3.54 If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirement(s) must also be met.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1004 (2/1/04)

7 DE Reg. 1742 (6/1/04)

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

10 DE Reg. 1593 (04/01/07)

11 DE Reg. 1375 (04/01/08)

4.0 Testing Requirements

Pursuant to 14 Del.C. §1220, where an examination of content knowledge such as a Praxis™ II examination is applicable and available in the area of the Standard Certificate sought, the applicant shall achieve a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.

45.0 Multiple Standard Certificates

- 45.1 Educators may hold a Standard Certificates in more than one area.
- 45.2 Educators applying for their second or subsequent Standard Certificate(s) must meet the qualifications in section 3.0 for each additional Standard Certificate.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

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

11 DE Reg. 1375 (04/01/08)

56.0 Application Requirements

- 5.1 Official transcripts; and
- 5.2 Official scores on the Praxis II examination if applicable and available; or
- 5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate; if applicable; or
- 5.4 An official copy of the out of state license or certification, if applicable.
- 5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.
- 6.1 The following documents are required in the application for a Standard Certificate:
- 6.1.1 Official transcripts from a regionally accredited college or university.
- 6.1.1.1 Electronic transcripts may be submitted by the employing authority or by the regionally accredited college or university; or
- 6.1.1.2 Sealed paper transcripts may be submitted.
- 6.2 If applicable, documents verifying successful completion of professional development; and
- 6.3 Official scores on an examination of content knowledge such as the Praxis II examination if applicable and available; or
- 6.4 Evidence of passage of the National Board for Professional Teaching Standards Certificate; if applicable; or
- 6.5 An official copy of the valid and current license or certificate from another state.

6.6 If applying for an initial license, a Standard Certificate must be applied for simultaneously with application for a License, and the applicant shall also provide all required documentation for the license.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1004 (2/1/04)

7 DE Reg. 1742 (6/1/04)

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

67.0 Application Procedures for License Holders

67.1 If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

67.2 Notwithstanding any provision to the contrary herein, or in any Department or Standards Board content area, subject or category Standard Certificate regulation (including 14 **DE Admin. Code**, 1500, et. seq.), the Department shall not act on an application for certification if the applicant is under official investigation by any national, state or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1742 (6/1/04)

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

10 DE Reg. 1593 (04/01/07)

11 DE Reg. 1375 (04/01/08)

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2009.~~

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1742 (6/1/04)

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

8.0 Validity of a Standard Certificate

8.1 A Standard Certificate is valid regardless of the assignment or employment status of the holder of a Standard Certificate or Standard Certificates. ~~and~~

8.1.1 A Standard Certificate is not subject to renewal.

PROPOSED REGULATIONS

- 8.2 ~~† An educator's Standard Certificate(s)~~ shall be revoked in the event the educator's Initial, Continuing, or Advanced License or ~~Limited Standard~~, Standard, or Professional Status Certificate is revoked in accordance with 14 **DE Admin Code** 1514.
- 8.3 An educator whose License or Standard Certificate is revoked is entitled to a full and fair hearing before the ~~Professional~~ Standards Board.
- 8.3.1 Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.
- 7 DE Reg. 161 (8/1/03)**
7 DE Reg. 629 (11/1/03)
7 DE Reg. 1004 (2/1/04)
7 DE Reg. 1742 (6/1/04)
10 DE Reg. 97 (7/1/06)

9.0 Secretary of Education Review

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

- 7 DE Reg. 161 (8/1/03)**
7 DE Reg. 629 (11/1/03)
10 DE Reg. 1593 (04/01/07)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 DE Admin. Code 1506

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

1506 Emergency Certificate

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1506 Emergency Certificate. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a) who have otherwise obtained employment or an offer of employment with an employing district and hold a valid Delaware Initial, Continuing, or Advanced License, but lack necessary skills and knowledge to immediately meet certification requirements in a specific content area. It is necessary to amend this regulation in order to reduce the period of time an Emergency Certificate is valid and to now require due diligence on the part of the individual to make progress toward the specific Standard Certificate for which the Emergency Certificate was issued in order to be eligible for a maximum of a one year extension. This regulation sets forth the requirements for an Emergency Certificate.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, January 2, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The

Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

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

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

1506 Emergency Certificate

1.0 Content

This regulation shall apply to the issuance of an Emergency Certificate, pursuant to 14 **Del.C.** §1221.

7 DE Reg. 161 (8/1/03)

2.0 Definitions

2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

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

"Certified" means holding a certificate in a specific content area at designated grade levels.

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

“Emergency Certificate” means a temporary credential issued to an individual who has obtained employment or an offer of employment with an employing district and holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to immediately meet certification requirements in a specific content area. The temporary credential provides the individual with a limited time to meet the requirements for certification in the specific content area.

“Employing District” means a school district, charter school, or other employing authority that proposes to supervise and employ an individual under an Emergency Certificate. ~~and~~ The employing district has reviewed the individual's credentials and established that the individual is competent. ~~and that~~ The employing district is committed required to support and assist the individual in achieving the skills and knowledge necessary to meet the certification requirements.

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

“Satisfactory Evaluation” means ~~an overall rating of "basic" or higher on an annual DPAS summative evaluation or "effective" on an annual DPAS II summative evaluation~~ the overall rating of "Highly Effective" or "Effective" on the DPAS Summative Evaluation.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 555 (10/1/05)

12 DE Reg. 1412 (05/01/09)

3.0 Issuance of Emergency Certificate

3.1 Upon request receipt of a completed application from the employing district, the Department may issue an Emergency Certificate, ~~valid for up to three years,~~ to an individual who holds a valid Delaware Initial, Continuing, or Advanced License, ~~or a valid Standard or Professional Status Certificate,~~ but who is not eligible for certification in the area of need.

~~An Emergency Certificate is only valid for the individual during their tenure with the employing district requesting the Certificate. Provided, however, upon application by a new employing district, the Department may approve the transfer as specified in this section. The new employing district that hires an individual with a valid pre-existing Emergency Certificate may request the continued approval of the Emergency Certificate through the remainder of the original three year term. The new employing district shall assume the commitments and responsibilities of the employing district within this regulation, review and amend as necessary the individual's Emergency Certificate written plan, and submit the revised written plan and transfer request for Department approval. An Emergency Certificate may not be renewed or extended for a leave of absence or an exigent circumstance other than specified in Section 3.3.1. Notwithstanding the foregoing, an Emergency Certificate issued to an individual in a Skilled and Technical Sciences specific career area is valid for up to six (6) years to provide time for completion of specified college level course work or professional development required for certification.~~

3.1 In its request for the issuance of an Emergency Certificate, the employing district shall:

3.1.1 ~~Submit to the Department in writing the need for this individual to receive an Emergency Certificate.~~

3.1.2 ~~Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the individual's license and other considerations, which may include, but is not limited to, evidence of course work or work experience in the area for which the Emergency Certificate is requested, which the employing district applied in determining the proposed recipient's competence.~~

3.1.3 ~~Apply for the Emergency Certificate within sixty (60) calendar days of the individual's hire or new job assignment.~~

3.1.4 ~~Set forth a written plan with the application of the Emergency Certificate, verified by the individual and the employing district designed to support and assist the individual in achieving the skills and~~

knowledge necessary to meet the applicable certification requirements. The written plan shall contain at a minimum the following:

- 3.1.4.1 A listing of all the outstanding certification requirements necessary to obtain the standard certificate in the area for which the Emergency Certificate is requested including but not limited to the specific examination of content knowledge such as Praxis II and any required course work, professional development, education or experience; and
 - 3.1.4.2 The specific course work or professional development including the educational institution or provider the individual intends to use to fulfill the requirements; and
 - 3.1.4.3 The anticipated time frame for the completion of the requirements; and
 - 3.1.4.4 A specific listing of how the employing district shall assist the individual in completing the requirements.
- 3.2 Failure by the employing district to fulfill the conditions set forth in 3.1 above shall result in denial of the Emergency Certificate.
- 3.3 The Emergency Certificate may be valid for up to three (3) years from the month in which the individual is employed until the last day of the month of issuance three (3) years later, except in the case of an Emergency Certificate issued to a Skilled and Technical Sciences teacher, which shall expire on the last day of the month of issuance six (6) years later.
- 3.3.1 A certificate holder whose Emergency Certificate expires during the school year may have the Emergency Certificate extended until the last day of the current fiscal year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.
- 3.1.1 An emergency certificate is valid for one school year subject to a limited extension as indicated herein.
 - 3.1.2 The emergency certificate is issued for a particular school year and expires on June thirty (30) unless a limited extension is granted.
 - 3.1.3 The Department may grant a limited extension if the individual has met the requirements for an extension.
- 3.2 An Emergency Certificate is only valid for the individual during their tenure with the employing district requesting the Certificate unless a transfer is approved as specified in 3.7.
- 3.3 An Emergency Certificate may not be renewed or extended for a leave of absence.
- 3.4 An Emergency Certificate may be extended for an exigent circumstances. Extensions for exigent circumstances shall not exceed one (1) year in length.
- 3.5 Notwithstanding the foregoing, an Emergency Certificate issued to an individual in a Skilled and Technical Sciences specific career area is valid for up to six (6) years to provide time for completion of specified college level course work or professional development required for certification.
- 3.6 Notwithstanding the foregoing, an Emergency Certificate issued to an individual in an alternative routes for teacher licensure and certification program shall be valid for the time specified in 14 **Del.C.** §1260 and 14 **DE Admin. Code** 1507 Alternative Routes to Teacher Licensure and Certification.
- 3.7 Transfer of Emergency Certificates to a New Employing District
- 3.7.1 Upon application by a new employing district, the Department may approve the transfer of the emergency certificate if the following requirements are met:
 - 3.7.1.1 The new employing district that hires an individual with a valid Emergency Certificate requests prior to the expiration of the original emergency certificate, the continued approval of the Emergency Certificate through the remainder of the original term or requests an extension.
 - 3.7.1.2 The new employing district must conduct an independent review of the individual's competency and assume the commitments and responsibilities of an employing district within this regulation.
 - 3.7.1.3 The new employing district shall also review the individual's Emergency Certificate written plan and amend as necessary and submit the revised written plan and transfer request for Department approval.

PROPOSED REGULATIONS

3.8 Extension of Emergency Certificates

- 3.8.1 The Emergency Certificate may be valid for up to two (2) consecutive school years. An employing District must request an extension of the Emergency certificate prior to June 30th.
- 3.8.2 Emergency Certificates granted an extension shall expire on June 30th of the consecutive school year.
- 3.8.3 Prior to June 30th, the employing district shall review the Emergency Certificate and if considered necessary, the employing district may apply to the Department for an extension for an additional school year.
- 3.8.4 The Department may grant an extension of the Emergency Certificate if the following requirements are met:
 - 3.8.4.1 The employing district submits a complete request and report prior to June 30th.
 - 3.8.4.2 The District has established that the individual has made documented progress toward earning the Standard Certificate and has demonstrated continued competence through receiving a satisfactory summative evaluation on the annual DPAS.
 - 3.8.4.2.1 Documented progress toward the Standard Certificate would include but is not limited to evidence of the educator having:
 - 3.8.4.2.1.1 taken the necessary examination of content knowledge, such as the Praxis II test, or
 - 3.8.4.2.1.2 completed requisite coursework or professional development, or
 - 3.8.4.2.1.3 made significant growth toward the necessary degree or certificate.
 - 3.8.4.3 Notwithstanding the above requirements in 3.8.4.2.1, the Department may grant an extension upon a showing of exigent circumstances.

3.9 Notification to Parents

- 3.9.1 As a condition of the individual receiving an emergency certificate, an employing district shall within sixty (60) days of the assignment notify the parents of the students within the educator's responsibility of the emergency certification.
 - 3.9.2 The notification may be included in an already established form of communication to parents including but not limited to Highly Qualified Teacher status.
 - 3.9.3 A copy of the district letter shall be on file with the Department.
- 3.10 An Emergency Certificate shall not be issued more than once to an individual for a specific Standard Certificate.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 544 (10/1/05)

12 DE Reg. 1412 (05/01/09)

4.0 Application Procedures

4.1 The employing district shall:

- 4.1.1 Submit to the Department in its request for the issuance of an Emergency Certificate the need for the individual to receive an Emergency Certificate and certify that the employing district has conducted a meaningful review of the applicant's credentials and found that the individual is competent.
- 4.1.2 Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the individual's license and other considerations. The evidence must establish that the employing district conducted a meaningful review of the individual's competence and may include, but is not limited to, evidence of course work or work experience in the area for which the Emergency Certificate is requested.
- 4.1.3 Apply for the Emergency Certificate within sixty (60) calendar days of the individual's hire or new job assignment.

4.1.4 Set forth a written plan with the application of the Emergency Certificate, verified by the individual and the employing district. The plan must be designed to support and assist the individual in achieving the skills and knowledge necessary to meet the applicable certification requirements. The written plan is subject to Department approval. The written plan shall contain at a minimum the following:

4.1.4.1 A listing of all the outstanding certification requirements necessary to obtain the standard certificate in the area for which the Emergency Certificate is requested including but not limited to the specific examination of content knowledge such as Praxis II and any required course work, professional development, education or experience; and

4.1.4.2 The specific course work or professional development including the educational institution or provider the individual intends to use to fulfill the requirements; and

4.1.4.3 The anticipated time frame for the completion of the requirements; and

4.1.4.4 A specific listing of how the employing district shall support and assist the individual in achieving the skills and knowledge necessary and completing the requirements.

4.2 Failure by the employing district to fulfill the conditions set forth shall result in denial of the Emergency Certificate.

45.0 Employing District Report

5.1 At the end of each school year the validity period during which an Emergency Certificate is in effect, if the employing district intends to request an extension for an additional school year, the employing district shall file a written status report with the Department detailing the individual's progress completing the written plan with the Department, which shall:

45.1.1 Establish that the recipient of the Emergency Certificate has demonstrated continued competence through receiving a satisfactory summative evaluation on the annual Delaware Performance Appraisal System DPAS.

45.1.2 Document the progress made by the recipient of the Emergency Certificate toward fulfilling the written plan established by the employing district and approved by the Department to meet the applicable certification requirements and any amendments to the written plan including but not limited to change in courses, providers, or time frames.

45.3 Failure by the employing district to fulfill the conditions set forth in 4.1 and 4.2 above 5.1 prior to June 30th shall result in suspension the expiration of the Emergency Certificate. A suspension may be lifted upon fulfillment by the employing district of the conditions set forth in 4.1 and 4.2 above.

7 DE Reg. 161 (8/1/03)

12 DE Reg. 1412 (05/01/09)

56.0 Expiration of Emergency Certificate

6.1 Prior to the expiration of an Emergency Certificate, the individual shall meet the requirements for issuance of a Standard Certificate (See 14 Del.C. §1505).

6.2 If no action is taken by the employing district prior to the deadline, an Emergency Certificate automatically expires on June thirty (30).

6.3 Emergency Certificates that have expired may not be extended.

7 DE Reg. 161 (8/1/03)

12 DE Reg. 1412 (05/01/09)

6.0 Secretary of Education Review

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for an Emergency Certificate on an individual basis and grant an Emergency Certificate to an individual who otherwise does not meet the requirements for an Emergency Certificate, but whose~~

PROPOSED REGULATIONS

~~effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

7 DE Reg. 161 (8/1/03)

12 DE Reg. 1412 (05/01/09)

7.0 Revocation of Emergency Certificate

7.1 An Emergency Certificate shall be revoked in the event the educator's Initial, Continuing, or Advanced License or ~~Limited Standard, Standard, or Professional Status Certificate~~ is revoked in accordance with **14 DE Admin. Code 150514**.

7.1.1 An educator is entitled to a full and fair hearing before the ~~Professional~~ Standards Board.

7.1.2 Hearings shall be conducted in accordance with the Standards Board's Hearings Procedures and Rules.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 555 (10/1/05)

Renumbered effective 6/1/07 - see Conversion Table

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

Reimbursement Methodology for Certain Medicaid Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for certain Medicaid services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, 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, 2011.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan to clarify the reimbursement methodology for certain Medicaid services.

Statutory Authority

- 42 CFR §440, Subpart A, Definitions; and,
- 42 CFR §447.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates; and,
- 42 CFR §447, Payments for Services.

Background

In accordance with 42 CFR §447.205 and Section 1902(a)(13)(A) of the Social Security Act, Delaware Health and Social Services (DHSS), Division of Medicaid and Medicaid Assistance (DMMA) is required to give public notice of any significant proposed change in its methods and standards for setting payment rates for services.

Summary of Proposal

The Centers for Medicare and Medical Assistance (CMS) requires that reimbursement methods for setting payment rates for services be consistent with the statutory and regulatory requirements of Section 1902(a) of the Social Security Act, Section 1902(a)(30)(A) of the Act and 42 CFR §430.10.

To more clearly define the comprehensive payment methodology used to base individual practitioner rates, the following significant changes are proposed.

Effective for dates of service provided on or after January 1, 2012:

1) Reimbursement Methodology for Medical Free-Standing and Dental Free-Standing Clinics: Licensed free-standing emergency room are paid a negotiated flat rate per encounter. Dialysis clinics are paid 100% of the applicable Medicare rate. Dental free-standing clinics are paid the same as non-clinic dentists per EPSDT Dental Treatment. All other medical clinics are paid as physicians are paid as described in Attachment 4.19-B, Other Types of Care, Physician, Podiatry and Independent Radiology Services.

2) Reimbursement Methodology for Extended Services for Pregnant Women: Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMMA Nursing Wage Survey. The agency's fee schedule rate was set as of June 1, 2002 and is effective for services on or after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

3) Reimbursement Methodology for Optometrists and Opticians: Optometrists and Opticians are reimbursed for examinations as physicians and are paid as described in Attachment 4.19-B, Other Types of Care, Physician, Podiatry and Independent Radiology Services.

4) Reimbursement Methodology for Emergency Transportation: Emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:

- Ground Mileage, per Statute Mile will be 22%
- Advanced Life Support, Emergency Transport will be 13%
- Basic Life Support, Emergency Transport will be 17%
- Conventional Air Services, Transport One Way (Rotary Wing) will be 39%
- Rotary Wing Air Mileage, per Statute Mile will be 38%.

The provisions of this state plan amendment are subject to approval by the CMS.

Fiscal Impact Statement

The proposed revision imposes no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #11-61**REVISION:**

ATTACHMENT 4.19-B
Page 2

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE****METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE**

Medical/Dental free-Standing Clinics are paid either a negotiated flat rate or as physicians are paid (see above) that are licensed as a free standing emergency room under section 4404 of Title 16 of the Delaware Administrative Code are paid a negotiated flat rate per encounter. Dialysis clinics are paid 100% of the applicable Medicare rate. All other medical clinics are paid as physicians are paid as described in Attachment 4.19-B Other Types of Care, Physician, Podiatry and Independent Radiology Services.

The agency's fee schedule for free standing emergency rooms was set as of April 1, 2005 and is effective for services provided on or after that date. The fee schedule and any periodic adjustments are published on the Delaware Medical Assistance Program (DMAP) DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

Dental free-standing Clinics are paid the same as non-clinic dentists per EPSDT Dental Treatment, Attachment 4.19-B page 19.

ATTACHMENT 4.19-B

Page 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE

Transportation Services are reimbursed as follows:

1. Emergency Transportation: is reimbursed a flat rate for any trip up to the first 10 miles and an additional amount for each additional mile. Effective for dates of service on or after January 1, 2012, emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:

- Ground Mileage, per Statute Mile will be 22%
- Advanced Life Support, Emergency Transport will be 13%
- Basic Life Support, Emergency Transport will be 17%
- Conventional Air Services, Transport One Way (Rotary Wing) will be 39%
- Rotary Wing Air Mileage, per Statute Mile will be 38%.

2. Non-emergency Transportation: The broker is reimbursed a monthly capitated rate for each Medicaid client residing in the State.

Optometrists and Opticians are reimbursed a set fee for examinations and another set fee for stock lenses. The reimbursement for non stock lenses is made by prior approval by the Medicaid agency's Optometric Consultant. The agency's rates were set as of March 1 of each year and are effective for services on or after that date are reimbursed for examinations as physicians and are paid as described in Attachment 4.19-B Other Types of Care, Physician, Podiatry and Independent Radiology Services.

Except as otherwise noted in the Plan, State-developed fee schedule rates are the same for both governmental and private providers of optometrist and optician services individual practitioners, and the. The fee schedule and any annual/periodic adjustments to the fee schedule are available to providers upon request published and found at: <http://www.dmap.state.de.us/downloads/hcpcs.html>.

Rates for eye glass frames and lenses are contained in the National Heritage Insurance Corporation (NHIC) CMS Contractor file for Durable Medical Equipment (DME). Their website is located at: <http://www.medicarenhic.com/dme/dmfees.shtml>.

Extended Services to Pregnant Women: will be reimbursed at a unit rate for individual services: Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMAP Nursing Wage Survey. The agency's fee schedule rate was set as of June 1, 2002 and is effective for services on or after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 1008A (16 Del.C. §1008A)
16 DE Admin. Code 4202

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

The Health Promotion and Disease Prevention Section, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations for the Control of Communicable and Other Disease Conditions related to the Reporting of Hospital Acquired Infections (HAIs). The purpose of the amendments is to update the Hospital Acquired Infections regulations to clarify that HAIs required to be reported to the Department of Health and Social Services shall consist of the same HAIs required to be reported to the Centers for Medicare and Medicaid Services (CMS). This will increase the number of reportable conditions to the Division of Public Health without placing additional burden on the hospitals. It also coordinates reporting requirements between the state and CMS. On December 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the December 1, 2011 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Promotion and Disease Prevention Section at (302) 744-1000.

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

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

4202 Control of Communicable and Other Disease Conditions

(Break in Continuity of Sections)

7.0 Control of Specific Contagious Diseases

(Break in Continuity within Section)

7.6 Hospital Acquired Infections

By January 1, 2008, hospital acquired infections shall be reported to the Centers for Disease Control and Prevention (CDC) through the National Healthcare Safety Network (NHSN) in accordance with the NHSN and the Department of Health and Social Service requirements and procedures as cited in 16 Del.C. Ch. 10A.

7.6.1 Definitions

For the purpose of this section, the following definitions shall apply.

“Centers for Disease Control and Prevention (CDC)” An agency of the United States Department of Health and Human Services which works to protect public health and safety by providing information to enhance health decisions, and promoting health through partnerships with state health departments and other organizations. The CDC focuses national attention on developing and applying disease prevention and control (especially infectious diseases), environmental health, occupational safety and health, health promotion, prevention and education activities designed to improve the health of the people of the United States.

“Correctional Facility” Any health care facility operated at any Department of Correction facility in this State.

PROPOSED REGULATIONS

“Department” The Department of Health and Social Services

“Hospital Acquired Infection (HAI)” A localized or systemic condition that results from adverse reaction to the presence of an infectious agent(s) or its toxin(s); and that was not present or incubating at the time of admission to the hospital or the correctional facility.

“Hospital Acquired Infection Advisory Committee” A group that is appointed by the Secretary of the Department that includes one (1) infection control professional who has responsibility for infection control programs from each hospital or health care system in Delaware, four (4) infectious disease physicians with expertise in infection control, and one (1) representative from the State Division of Public Health, and the Public Health Hospital Infections Specialist responsible for collating and reporting data. The Secretary shall also appoint seven (7) other members of the Committee including representatives from direct care nursing staff, academic researchers, consumer organizations, health insurers, health maintenance organizations, organized labor and purchasers of health insurance, such as employers.

“Infection Control Practitioner (ICP)” A registered nurse, physician, epidemiologist, or medical technologist who helps to prevent healthcare-acquired infections by isolating sources of infections and limiting their spread. The ICP systematically collects, analyzes and interprets health data in order to plan, implement, evaluate and disseminate appropriate public health practices. The ICP also trains healthcare staff through instruction and dissemination of information on infection control practices.

“National Healthcare Safety Network (NHSN)” An internet-based surveillance system that is confidential. It is managed by the Division of Healthcare Quality Promotion at the CDC and used for the monitoring events associated with health care. It provides risk adjusted data to the participating facilities to analyze in order to recognize trends. Its initial focus is on infections in patients and healthcare personnel. There are plans to expand NHSN to include noninfectious events (such as process measures).

“Public Report” the report provided to the hospitals, correctional facilities and the public by the Department as set forth in 16 **Del.C.** §1003A(b).

“Secretary” The Secretary of the Department of Health and Social Services

7.6.2 Membership in NHSN

- 7.6.2.1 All hospitals in the State shall join the CDC’s NHSN. If the NHSN is not open for enrollment to all hospitals by this date, all hospitals shall join the NHSN within 180 days after the CDC permits such enrollment.
- 7.6.2.2 Hospitals shall confer rights to the Department to have access to hospital-specific data contained in the NHSN database consistent with the requirements of 16 **Del.C.** Ch. 10A.
- 7.6.2.3 Hospital staff assigned to fulfill the obligations of reporting under these regulations shall be trained and shall follow the methods and procedures required by the NHSN as a condition of participation.

7.6.3 Persons and Institutions Required to Report

- 7.6.3.1 Physicians, who perform a clinical procedure, shall report to the ICP of the hospital where the clinical procedure was performed any hospital-acquired infection that the physician diagnosed at a follow-up appointment with the patient.
- 7.6.3.2 The hospital's reporting officer or his or her designee shall submit monthly data on his or her hospital acquired infection rates to the Department through the NHSN, using the accepted CDC’s NHSN definitions.
- 7.6.3.3 Correctional facilities shall collect data on hospital acquired infections and infections in the correctional health care facilities as determined by the Hospital Acquired Infection Advisory Committee and promulgated by the Department. They shall report this data to the Department on a monthly basis.
- 7.6.3.4 If the hospital is a division or subsidiary of another entity that owns or operates other hospitals or related organizations, the quarterly report shall be for the specific division of subsidiary and not for the other entity.

7.6.4 Reporting of Data

- 7.6.4.1 ~~Hospitals shall collect data on hospital-acquired infection rates related to central line-related bloodstream infections (CLBSI) in an intensive care unit (ICU) on a monthly basis. Hospital-acquired infections required to be reported to the Department shall consist of the same HAIs required to be reported to the Centers for Medicare and Medicaid Services (CMS). In carrying out this requirement hospitals shall comply with the Hospital Inpatient Prospective Payment System final rule as published by CMS in the Federal Register.~~
- 7.6.4.2 Other hospital-acquired infection rates shall be updated by the order of the Department per determination by the Hospital Acquired Infection Advisory Committee.
- 7.6.4.3 Hospitals shall report hospital acquired infections pursuant to 7.6.4.1 and 7.6.4.2 to the NHSN. In making such reports, hospitals shall abide by the reporting procedures required for NHSN participation, including the frequency of reports, the information to be reported, and other standards required by the NHSN.

7.6.5 Quarterly Reports

- 7.6.5.1 In addition to reports of data required by 7.6.4, hospitals, including the Department of Correction, shall report the following information to be included in the quarterly report issued by the Department. This background information shall be included in the Public Report.
- 7.6.5.1.1 For each hospital, adult and pediatric populations of each hospital, whether the hospital provides tertiary care, bed size, and specialty divisions of each hospital and whether a hospital is a teaching or a non-teaching institution shall be provided to the Department.
- 7.6.5.1.2 All physicians who perform clinical procedures and the hospital at which the clinical procedures were performed when a hospital-acquired infection was diagnosed at a follow-up appointment with the patient shall be included in the report. The infection control department of each hospital shall only be required to report those physician-reported infections that meet the accepted NHSN definitions. This information shall be included in the hospital reports to the Department.
- 7.6.5.1.3 For Department of Correction, the population census of each infirmary facility, the type of facility, the number of beds in correctional health facilities, and the types of medical care that are provided to the inmates shall be reported to the Department.
- 7.6.5.2 Quarterly reports shall be available to each hospital 45 days after submittal to the Department for review by the hospitals and correctional facilities. The hospitals and correctional facilities shall have 7 days to review the quarterly reports and report any changes or provide additional summary information to the Department. Following the 7-day review period, such quarterly reports shall be made available to the public at each hospital, each correctional facility, and through the Department (the "Public Report").
- 7.6.5.3 In addition to reports of data required by 7.6.4, hospitals, including the Department of Correction, shall report the following information. Each hospital and correctional facility shall provide a brief summary report to comment on performance improvement, changes in patient population, and risk factors. The information contained in this report shall be considered proprietary information and shall be utilized by the Department. Such information shall not be included in the quarterly report issued by the Department and shall not otherwise be disclosed to the public.

- 7.6.6 No hospital report or Department disclosure may contain information identifying a patient, employee or licensed health care professional in connection with a specific infection incident. 16 Del.C. Ch. 10A.

9 DE Reg. 1188 (2/1/06)

12 DE Reg. 1418 (05/01/09)

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

4202 Control of Communicable and Other Disease Conditions

DEPARTMENT OF INSURANCE

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

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1314 relating to Health Premium Consumer Comparisons. The docket number for this proposed regulation is 1530.

The proposed regulation would require health insurance companies to provide survey data to the Department of Insurance for the purposes of allowing consumers of health insurance the opportunity to compare rates from different companies. The survey data would have to be filed with the Department on an annual basis. The regulation would also require the insurers to provide direct email responses to the consumer. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 2501 et seq.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, December 30, 2011. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

1314 Health Premium Consumer Comparison

1.0 Authority

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

2.0 Definitions

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

"**Insurer**" means every insurer, health services corporation, and managed care organization licensed to offer and sell health insurance in the state of Delaware (and does not include limited benefit plans, vision only, dental, Medicare supplement, or long term care).

"**Rate estimates**" means the estimated annual insurance premiums produced for the Department's rate survey.

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

3.0 Scope

- 3.1 Insurers that market health insurance shall be required to complete the full rate survey required by this regulation.
- 3.2 The provisions of this regulation shall not apply to policies of insurance that only cover specified diseases or are limited health benefit plan dental plans and limited benefit plans.

4.0 Insurer Information

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

5.0 Survey Completion Deadline

- 5.1 In 2012, all required rate survey data from insurers must be submitted to the Department on or before March 15th. In all subsequent years (and again in 2012), all required rate survey data from insurers must be submitted to the Department on or before September 1st of each year.
- 5.2 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, and other information necessary for calculating rate estimates on the Department's website no later than September 15th of each year (and on March 30, 2012).
- 5.3 Rate survey data that is incomplete or not reported according to the Department's instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

6.0 Survey Format

- 6.1 Insurers shall provide rate estimates based on rates in effect as of August 31st of the year when the rate survey is being completed (and as of March 1, 2012, to comply with section 5.1 above).
- 6.2 All rate estimates shall be rounded to the nearest dollar.
- 6.3 Insurers shall submit rate data utilizing an electronic spreadsheet provided by the Department or by other means specified by the Department. Insurers shall be required to upload the data to the Department via the Internet.

7.0 Responsibility for Information and Data

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

8.0 Consumer Quote Requests

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

9.0 Penalties

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

10.0 Severability

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

11.0 Effective Date

This regulation shall become effective on February 15, 2012.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Section 901(b) and 903(e)(2)a (7 Del.C. §901(b) §903(e)(2)a)
7 DE Admin. Code 3553

REGISTER NOTICE**SAN # 2011-16****1. TITLE OF THE REGULATIONS:**

Proposed Amendment to the April, 2008 Delaware State Implementation Plan For Attainment of the PM_{2.5} Annual National Ambient Air Quality Standard

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

On March 2, 2010 the USEPA published a notice in the Federal Register of the approval of using the Motor Vehicle Emissions Simulator (MOVES) model as a tool for calculating on-road mobile emissions. The agency also stated in the notice that "today's approval also starts a two-year transportation conformity grace period which ends on March 2, 2012, after which MOVES 2010 is required to be used for new regional emissions analyses for transportation conformity". In consideration of the MOVES requirement for regional emissions analysis and that the MOVES model predicts more accurate mobile emissions; the Department is proposing to amend its currently adopted State Implementation Plan with a revised on-road mobile emissions budget using the MOVES model. This action will more accurately calculate the on-road sector's portion of particulate matter and oxides of nitrogen emissions in New Castle County. The action will also address the compatibility issue with future regional emissions analyses for transportation conformity for the annual PM 2.5 standard.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

This action is not a regulation and does not have a sunset date.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C., Chapter 60, Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on December, 28, 2011 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Interested parties may submit comments in writing to: Philip Wheeler, DNREC Division of Air Quality, 655 South Bay Road, Dover Delaware, 19901.

7. PREPARED BY:

Philip Wheeler (302) 739-9402 November 8, 2011
Email address: philip.wheeler@state.de.us

Proposed Revision to Delaware's 2008 State Implementation Plan For Attainment of the PM_{2.5} Annual National Ambient Air Quality Standard - Attainment Demonstration

October 2011

Section 1. Introduction

In April, 2008 Delaware submitted to the EPA its "State Implementation Plan for Attainment of the PM_{2.5} Annual National Ambient Air Quality Standard - Attainment Demonstration" (the "2008 PM_{2.5} SIP").¹ The 2008 PM_{2.5} SIP set out to accomplish four primary goals:

- Demonstrate that with all existing and proposed controls, all of Delaware's PM_{2.5} monitors will show attainment in 2009.
- Demonstrate that the entire Philadelphia-Wilmington, PA-NJ-DE non-attainment area will attain the annual PM_{2.5} NAAQS in 2009.
- Establish Delaware's 2009 mobile source budgets for transportation conformity determinations under Regulation No. 1132, Transportation Conformity.
- Treat emission reduction credits (ERCs) banked under 7 DE Admin. Code 1134, Emissions Banking and Trading Program, as "emitted." As such, the future use of these credits is consistent with, and will not interfere with any calculation or provision of this SIP.

This SIP revision is related to the PM_{2.5} and NO_x on-road mobile source budgets that were established in the 2008 PM_{2.5} SIP. Those SIP budgets were established using EPA's MOBILE6.2 model.² However, effective March 2012³ a new on-road mobile emissions model – Motor Vehicle Emissions Simulator (MOVES) – is required to be used in all planning and transportation conformity determinations.

The purpose of this SIP revision is to 1) replace the on-road mobile emissions budget in the 2008 PM_{2.5} SIP with a budget that is based on the MOVES model, 2) demonstrate that the MOVES based mobile source budget is consistent with attainment of the PM_{2.5} NAAQS by 2010, and 3) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met. No other changes or revisions to the 2008 PM_{2.5} SIP are proposed.

Note that this SIP revision impacts only PM_{2.5} and NO_x emissions and calculations. While sulfur dioxide (SO₂) is a pollutant of concern relative to PM_{2.5} it is not a pollutant of concern for mobile budgets, and therefore no SO₂ changes are proposed as part of this SIP revision. The treatment of SO₂ emissions in the 2008 PM_{2.5} SIP is unchanged.

Questions or comments regarding this SIP revision should be addressed to Phil Wheeler, M.S. Project Leader for Transportation Conformity, Planning Branch, Division of Air Quality, Delaware Department of Natural Resources and Environmental Control, at philip.wheeler@state.de.us.

Section 2. Revised On-Road Mobile Source Budgets

This SIP revision establishes on-road mobile emissions budget for New Castle County for PM_{2.5} and NO_x. When approved by the EPA, all subsequent PM_{2.5} conformity analyses will test future on-road mobile emissions calculated for transportation plans in New Castle County with this new budget.

1. http://www.awm.delaware.gov/Info/Regs/Documents/DE_PM25_SIP_AD_fnl.pdf

2. Details of the MOBILE6 budget calculations are included in Section 8.2 of the 2008 PM_{2.5} SIP.

3. EPA has proposed to extend this date by one year; to March 2013.

PROPOSED REGULATIONS

- 2.1 EPA's MOVES model was used to quantify PM_{2.5} and NO_x emission from on-road mobile sources. These emissions are shown in Table 2-1 below. The associated 2012 MOVES input and output files are included in Appendix A of this SIP revision.

Table 2-1 On-Road Mobile Emission Budget (Tons per Year (tpy))

County	Emissions Budget	
	NO _x	PM _{2.5}
New Castle	6,273	199

- 2.2 This SIP revision establishes the emission levels identified in Table 2-1 as the on-road mobile emissions budget for New Castle County for PM_{2.5} and NO_x.

Section 3. Demonstration that 2009 MOVES based On-Road Mobile Source Emissions are Consistent with Attainment of the PM_{2.5} NAAQS by 2010

Delaware demonstrated attainment of the annual PM_{2.5} NAAQS in its 2008 PM_{2.5} SIP by showing that Projected 2009 Emissions (i.e., the 2009 emission levels after the implementation of all state and federal control requirements) were less than the Attainment Targets (i.e., the emission levels needed for attainment based on modeling). This same methodology is used below to demonstrate that the MOVES based mobile budgets presented in Section 2 above are consistent with attainment of the PM_{2.5} NAAQS.

- 3.1 Community Multi-scale Air Quality Model (CMAQ) modeling was conducted in the 2008 PM_{2.5} SIP to demonstrate that Delaware and the entire Philadelphia based non-attainment area would attain the PM_{2.5} NAAQS in 2010¹. CMAQ modeling demonstrated that the Delaware emission levels shown in Table 3-1 are the levels that are necessary for, and consistent with attainment of the annual PM_{2.5} NAAQS. These emission levels reflect the level of emissions needed for attainment, and are therefore referred to as the "2009 Attainment Target."^{2, 3}

Table 3-1 2009 Attainment Target (tpy)

County	NO _x	PM _{2.5}
Kent	8,554	1,185
New Castle	23,048	3,249
Sussex	18,001	3,581
Statewide Total	49,603	8,015

- 3.2 Attainment year (i.e., 2009) emission levels were projected in the 2008 PM_{2.5} SIP based on final and enforceable State and Federal emission control requirements.⁴ These projected 2009 emission levels, which are referred to as the "Delaware Projected 2009 Emissions," are shown in Table 3-2.

1. A detailed discussion of the CMAQ modeling and modeling results can be found in Section 6 of the 2008 PM_{2.5} SIP.
2. Although New Castle County is the only nonattainment county, emission levels of all three counties are used in the attainment demonstration. This is discussed in Sections 3 and 4 of this SIP revision.
3. A detailed discussion of the emission inventories associated with the Attainment Target can be found in Section 5 of the 2008 PM_{2.5} SIP.
4. A detailed discussion of Delaware's projected 2009 emission levels can be found in Section 4 of the 2008 PM_{2.5} SIP.

Table 3-2 Delaware Projected 2009 Emissions (tpy)

County	NOx	PM _{2.5}
Kent	7,799	989
New Castle	21,807	3,015
Sussex	11,591	2,571
Statewide Total	41,197	6,575

3.3 Table 3-3 compares the 2009 mobile emissions calculated using MOBILE6 and MOVES. The associated 2009 MOBILE6 and MOVES input and output files are included in Appendix B of this SIP revision.

Table 3-3 2009 MOBILE6, MOVES and Increase due to MOVES (tpy)

County	2009 Mobile6		2009 MOVES		MOVES Increase	
	NOx	PM _{2.5}	NOx	PM _{2.5}	NOx	PM _{2.5}
Kent	1,922	32	3,488	109	1,566	77
New Castle	4,904	87	8,448	257	3,544	170
Sussex	2,707	41	4,764	147	2,057	106
Totals	9,533	160	16,700	513	7,167	353

3.4 Adding the “MOVES Increase” emissions from Table 3-3 to the “Delaware Projected 2009 Emissions” from Table 3-2 yields a projected Delaware 2009 Emission level that reflects the use of the MOVES model instead of the MOBILE6 model. This revised emissions projection is shown in Table 3-4, and is referred to as the “Revised Delaware Projected 2009 Emissions.”

Table 3-4 Revised Delaware Projected 2009 Emissions (tpy)

County	NOx	PM _{2.5}
Kent	9,365	1,066
New Castle	25,351	3,185
Sussex	13,648	2,677
Statewide Total	48,364	6,928

3.5 The “Revised Delaware Projected 2009 Emissions” (i.e., Table 3-4) are demonstrated to be consistent with attainment if they are equal to or lower than the “2009 Attainment Target” (i.e., Table 3-1). The “Revised Delaware Projected 2009 emissions” are compared to the “Attainment Target” in Table 3-5 below.

Table 3-5 Shortfall and Surplus by County and Statewide (tpy)

County	Attainment Target		Revised Delaware Projected 2009 Emissions		Surplus/Shortfall	
	NOx	PM _{2.5}	NOx	PM _{2.5}	NOx	PM _{2.5}
Kent	8,554	1,185	9,365	1,066	-811	119

PROPOSED REGULATIONS

New Castle	23,048	3,249	25,351	3,185	-2,303	64
Sussex	18,001	3,581	13,648	2,677	4,353	904
Statewide	49,603	8,015	48,364	6,928	1,239	1,087

This comparison shows that there is a 64 tpy PM_{2.5} surplus in New Castle County, and a 2,303 tpy NO_x shortfall for New Castle County. This demonstrates that, relative to direct PM_{2.5}, the MOVES based mobile budgets are consistent with attainment. These results also indicate that NO_x requires further analysis.

3.6 Because of the regional nature of secondarily-formed sulfate and nitrate, and the broad modeling domain of the CMAQ modeling, which included all of Delaware, emission reductions from Kent and Sussex counties will contribute to attainment within New Castle County and the Philadelphia based non-attainment area. Kent and Sussex counties are within the State of Delaware, contiguous to New Castle County, and are less than 200 kilometers away. EPA's PM_{2.5} Implementation Rule specifically provides for the consideration of in-state NO_x and SO₂ reductions in their SIPs from sources up to 200 kilometers away from the non-attainment area boundaries.¹

Consistent with this EPA rule, emissions from Kent and Sussex Counties were analyzed. Using the same methodology as above, statewide emissions are calculated and presented in Table 3-5. These results indicate that while there is a 2009 NO_x shortfall of 2,303 tpy in New Castle County, there is a statewide NO_x surplus of 1,239 tpy. The analysis demonstrates that the 2009 MOVES based emission shown in Table 3-3 do not impair Delaware's ability to meet its SIP emissions targets or meeting EPA's National Ambient Air Quality Standards for particulate matter.²

Section 4. Demonstration that the Contingency Measure Requirements of the CAA are Met

Contingency measures are additional control measures to be implemented in the event that an area fails to either meet "reasonable further progress" or attain the standards by its attainment date. The quantity of emission reductions needed to satisfy contingency requirements is an amount equal to one year's worth of required reductions.

Delaware demonstrated that the contingency requirements of the CAA were met in Section 9 of its 2008 PM_{2.5} SIP by showing that the Delaware control measures have reduced NO_x and primary PM_{2.5} by more than is necessary to attain compliance with the PM_{2.5} NAAQS. This same methodology is used below to demonstrate that the "Revised Delaware Projected 2009 Emissions" in Table 3-4 are low enough to satisfy contingency requirements.

4.1 Quantification of the contingency requirement is discussed in detail in Section 9.1 of the 2008 PM_{2.5} SIP. The contingency requirement for NO_x and PM_{2.5} is presented in Table 9-3 of the 2008 PM_{2.5} SIP, and shown below in Table 4-1.

Table 4-1 Contingency Requirement (tpy)

County	NO _x	PM _{2.5}
New Castle	1,100	26

4.2 Demonstration that contingency requirement is met is shown if the "Revised Delaware Projected 2009 Emissions" shown in Table 3-4 are lower than the "Attainment Target" shown in Table 3-1 by at least

1. PM_{2.5} Implementation Rule, April 25, 2007 (72 FR 20586 at 20636)
2. Note that this is similar to the approach used in the 2008 PM_{2.5} SIP to address SO₂ emissions. See Section 5 (page 65) of the 2008 PM_{2.5} SIP.

the amount of the amount of the contingency requirement shown in Table 4-1. Table 3-5 shows this calculation.

Table 3-5 shows that a 64 tpy reduction of PM_{2.5} emissions are above and beyond that necessary for attainment. Since 64 tpy is greater than the contingency requirement of 26 tpy PM_{2.5}, the contingency requirement is demonstrated relative to the pollutant primary PM_{2.5}. Table 3-5 also indicates that NO_x requires further analysis.

- 4.3 Because of the regional nature of secondarily-formed sulfate and nitrate, and the broad modeling domain of the CMAQ modeling, which included all of Delaware, emission reductions from Kent and Sussex counties will contribute to attainment within New Castle County and the Philadelphia based non-attainment area. Kent and Sussex counties are within the State of Delaware, contiguous to New Castle County, and are less than 200 kilometers away. EPA's PM_{2.5} Implementation Rule specifically provides for the consideration of in-state NO_x and SO₂ reductions in their SIPs from sources up to 200 kilometers away from the non-attainment area boundaries.

Consistent with this EPA rule, emissions from Kent and Sussex Counties were analyzed. Using the same methodology as above, statewide emissions are calculated and presented in Table 3-5. This indicates that while there is a 2009 NO_x shortfall of 2,303 tpy in New Castle County, there is a statewide NO_x surplus of 1,239 tpy. Since 1,239 tpy is greater than the contingency requirement of 1,100 tpy NO_x, the contingency requirement is demonstrated as met relative to the pollutant NO_x.

Section 5. Summary

The analysis in Section 3 and Section 4 above demonstrates that 2009 MOVES based emission levels in table 3-3 are consistent with attainment and the contingency requirements of the CAA. This SIP revision is anticipated to be approved by the EPA in 2012. Because the 2012 based mobile budgets established in Section 2 of this SIP revision are less than the 2009 MOVES based emission levels shown in Table 3-3, Section 3 and Section 4 above also demonstrate that mobile budgets established in Section 2 are consistent with attainment and contingency requirements of the CAA.

Appendix A. 2012 MOVES input and output files

Appendix B. 2009 MOVES and 2009 MOBILE6 Input and Output Files

Appendices A and B may be viewed by request to Philip Wheeler, Division of Air Quality during normal business hours at the Division's office at 655 South Bay Road, Suite 5N, Dover, Delaware, Delaware, 19901. Appointments can be made by calling 302/739-9402.

They also can be viewed on the Division of Air Quality website at:

<http://www.dnrec.delaware.gov/whs/awm/Info/Regs/Pages/AQMPlansRegs.aspx>.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(b) and 903(e)(2)a (7 Del.C. §901(b)
§903(e)(2)a)
7 DE Admin. Code 3900

REGISTER NOTICE

SAN #2011-14

1. TITLE OF THE REGULATIONS:

3900 Wildlife

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

1.0 Definitions. This action will correct a typographical error

2.0 Method of Take. This action will 1- Allow red fox to be hunted with revolvers and single shot pistols which is a liberalization of the current regulation. 2. Revise snapping turtle regulations to require that traps be set allowing for breathing space, require traps be marked with the trapper's name and address, require that traps be checked and emptied at least every 35 hours and require that a free permit to trap snapping turtles be obtained prior to trapping.

3.0 Federal Laws. This action will allow for an increase in the number of special youth waterfowl days from 1 to 2 days.

4.0 Seasons. This action will 1- Reduce the length of the quail hunting season by 1 month. 2. Increase the size of a legal snapping turtle from 8 inches to 11 inches. 3. Allow for the muskrat trapping season to be extended if certain weather conditions exist.

5.0 Wild Turkeys. This action will 1- Clarify parts of existing regulations related to the hunter education requirement for turkey hunting. 2. Allow for 7 and 7 ½ shot size to be used for turkey hunting if this shot is part of a multiple shot size load that also contains 4, 5 or 6 shot. 3. Clarify what constitutes the written authorization from the Division to turkey hunt. 4. Establishes a youth turkey hunting day on selected public lands.

7.0 Deer. This action will 1- Correct typographical errors. 2. Allow the Division to target more specific geographical locations from which to ban importation of deer carcasses that have documented cases of Chronic Wasting Disease.

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division. This action will 1- Prohibit the general collection of wildlife species from Division lands without the authorization of the Division Director. 2. Clarify that it is unlawful to fish in Division ponds except in accordance with conditions set forth on area maps and/or signs. 3. Make it illegal to hunt or be in possession of firearms on Division lands while consuming , possessing, or under the influence alcohol or drugs.

15.0 Collection or Sale of native Wildlife. This action will strike a regulation related to snapping turtles and moves the elements to other regulations.

22.0 Hunter and Trapper Identification Number. This action will change the name of the Hunter and Trapper Identification Number to the Hunter and Trapper License Exempt Number.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for these regulations.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 1, Sections 102 and 103.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The changes to regulation 3900 Wildlife will be presented in a public hearing on January 25, 2012 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for the proposed regulatory changes will remain open until 4:30 p.m. January 31, 2012. The hearing order is as follows:

3900.1 - Definitions

3900.2 - Method of Take

3900.3 - Federal Laws

3900.4 - Seasons

3900.5 - Wild Turkeys

3900.7 - Deer

3900.8 - General Rules and Regulations Governing Land and Waters Administered by the Division

3900.15 - Collection or Sale of native Wildlife

3900.22 - Hunter and Trapper Identification Number

7. PREPARED BY:

Kenneth M. Reynolds (302) 735-3600 October 27, 2011

Email address: Kenneth.Reynolds@state.de.us

3900 Wildlife

1.0 Definitions

For purposes of Regulations 1.0 through ~~46-0~~ 22.0, the following words and phrases shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

“**Administered by the Division**” shall mean owned, leased or licensed by the Division.

“**Antlered Deer**” shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler.

“**Antlerless Deer**” shall mean any deer that has no antlers or antlers less than three inches in length.

“**Bait**” shall mean any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

“**Baited Field**” shall include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

“**Black Powder**” shall mean a manufacturer’s approved muzzleloading propellant.

“**Deer**” shall mean white-tailed deer (*Odocoileus virginianus*) and/or Sika deer (*Cervus nippon*).

“**Director**” shall mean the Director or Acting Director of the Division.

“**Division**” shall mean the Division of Fish and Wildlife of the Department.

“**Established Blind**” shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner’s duly authorized agent.

“**Established Road**” shall mean a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

“**Liberated Game**” shall mean cottontail rabbits and game birds, including bobwhite quail, mallard duck, chukar and pheasant released pursuant to §568 of Title 7.

“**Loaded Muzzle-Loading Rifle**” shall mean the powder and ball, bullet or shot is loaded in the bore. A muzzle-loading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and:

The striking mechanism used to ignite the cap, primer or priming powder is removed or rendered inoperable; or

The rifle is enclosed in a case.

“**Lure**” shall mean any mixture of ingredients, element or compound that attract wildlife, but the wildlife is unlikely to consume.

“**Longbow**” shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.

“**Nongame Wildlife**” shall mean any native wildlife, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

“**Possession**” shall mean either actual or constructive possession of or any control over the object referred to.

“**Quality Buck**” shall mean an antlered deer with an outside antler spread of at least 15 inches. This measurement is taken across the outside of the main beams at their widest point; this

measurement's path must be perpendicular to the center line of the skull and parallel to the top of the skull plate.

"Refuge" shall mean an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

"Roadway" shall mean any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

"Season" shall mean that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

"Vehicle" shall include any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

"Wildlife" shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

11 DE Reg. 334 (09/01/07)

14 DE Reg. 52 (07/01/10)

2.0 Method of Take

(Penalty Section 7 **Del.C.** §103(d))

2.1 General.

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

2.1.1 Crossbows may be used during all deer seasons;

2.1.2 A muzzle-loading rifle with a barrel length of at least twenty inches and loaded with black powder may be used to hunt deer during muzzleloader and shotgun deer seasons;

2.1.3 A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;

2.1.4 A hook, spear or gig may be used to take frogs; and

2.1.5 ~~A spear, gig, trap or fyke net may be used to take s~~Snapping turtles may be taken by hand or turtle trap.

2.1.6 A single shot an antique or authentic reproduction black powder Sharps rifle of 45 to 60 caliber shall be lawful for use during shotgun deer seasons using paper patched bullets.

2.1.7 No person shall place in the field any set or unset equipment associated with the trapping of game animals until the opening day of any state approved trapping season.

2.1.8 Any person who sets or makes use of any trap, snare or other approved wildlife capture device during any lawful trapping season, shall remove all trapping equipment by the last day of the approved trapping season.

2.2 Archery and Crossbow.

2.2.1 General. No person shall use or have in his or her possession, while hunting, any: poison arrow, arrow with and explosive tip, or any longbow with a minimum pull less than 35 pounds.

2.2.2 Crossbows used for deer hunting must have a minimum pull weight of 125 pounds, be manufactured after 1980, and have a mechanical safety. Crossbows may be equipped with a scope.

2.2.2.1 It shall be unlawful to transport a crossbow on or within any vehicle while the crossbow is in the cocked position.

- 2.3 Hunting from Boats.
- 2.3.1 Distance from Blinds. During the season for the hunting of migratory waterfowl, it shall be unlawful for any person to hunt from a boat of any kind that is within 1500 feet of an established blind, except that:
- 2.3.1.1 Any person may use a boat to tend lawfully set traps for fur-bearing wildlife;
- 2.3.1.2 Any person may retrieve crippled waterfowl by the use of a boat in accordance with federal regulations;
- 2.3.1.3 Any person may use a boat for transportation to and from an established blind lawfully used by such person;
- 2.3.1.4 Any person may hunt from a boat that is firmly secured and enclosed in an established blind.
- 2.3.2 Notwithstanding the provisions of subsection 2.2.1 of this section, any person may hunt migratory waterfowl within 1500 feet of an established blind, from a boat, with permission of the blind owner.
- 2.3.3 Gunning Rigs.
- 2.3.3.1 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 900 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Appoquinimink River and the Smyrna River, without written permission of the closest adjoining landowner(s).
- 2.3.3.2 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 1500 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Smyrna River and the Murderkill River, without written permission of the closest adjoining landowner(s).
- 2.3.4 Tender Boats. It shall be unlawful for tender boats servicing gunning (layout) rigs to be further than 1500 feet from the rig or to conduct any activity, except to pick up downed birds or service the rig.
- 2.3.5 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt from a boat, or a floating or fixed blind in the Little River in areas bounded on both sides by land administered by the Division, except as permitted in writing by the Director.
- 2.4 Leghold Traps.
- 2.4.1 It shall be unlawful for any person to set a leghold trap at any time in this State, except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties.
- 2.4.2 Notwithstanding subsection 2.4.1 of this section, it shall be lawful to trap raccoons with leghold traps in New Castle County or Kent County from the southerly boundary of New Castle County Route 380 and east and southeast of the center line of U.S. Route No. 13, thence following said center line of U.S. Route No. 13 to the point where U.S. Route No. 13 forms a junction with U.S. Route No. 113 and thence along the center line of U.S. Route No. 113 to a line dividing Kent County from Sussex County during any time of the year, except on Sundays. Notwithstanding the foregoing, this subsection shall not apply to lands in Kent County lying east of the center line of Rt. 113, north of the Sussex County line and south of the St. Jones River.
- 2.4.3 It shall be unlawful for any person to set long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 in any location, except:
- 2.4.3.1 In any marsh ordinarily subject to the rise and fall of the tide;
- 2.4.3.2 In a diked marsh that was formerly tidal;
- 2.4.3.3 Below the mean high tide line in a river ordinarily subject to the rise and fall of the tide;
- 2.4.3.4 On an island surrounded by tidal marsh or diked marsh that was formerly tidal; or
- 2.3.4.5 In the areas described in subsection 2.4.2 of this section.
- The term "diked marsh" shall not include millponds or any stream running into a millpond.
- 2.4.4 In addition to the areas listed in subsection 2.4.3 of this section, traps described in said subsection may be set for river otter and/or beavers in tax ditches, millponds and streams leading into such ponds only by underwater sets.

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- 2.4.5 It shall be unlawful for any person to set or make use of long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 without first permanently attaching a metallic tag on each trap, bearing:
- 2.4.5.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or
 - 2.4.5.2 The owner's name and address.
- 2.4.6 It shall be unlawful for any person to set a long-spring trap, "Stop-Loss" trap, jump trap No. 1½ or smaller or a coil-spring trap No. 1 or smaller in any location in this State, except in the areas described in subsections 2.4.3 and 2.4.4 of this section and in the following locations:
- 2.4.6.1 A ditch;
 - 2.4.6.2 A stream; or
 - 2.4.6.3 On land not subject to cultivation of crops due to a normally marshy condition.
- 2.4.7 For the purposes of subsection 2.4.6 of this section, the term "ditch" shall mean a long, narrow channel dug into the earth as a trough for drainage or irrigation of the soil that normally contains flowing water.
- 2.4.8 For the purposes of subsection 2.4.6 of this section, the term "normally marshy condition" shall mean land with one or more of the following associated plant groupings growing upon it: cordgrass, sedges, rushes, cattails, threesquare or phragmites.
- 2.4.9 When information is furnished to a Fish and Wildlife Agent from the owner, tenant or sharecropper of any land that any species of wildlife is detrimental to crops, property or other interests on land on which he or she resides or controls, upon investigation, that Fish and Wildlife Agent may issue a permit to such person or his or her agent for the use of leghold traps to control said species of wildlife. Said permit may be issued at any time of the year.
- 2.4.10 The setting of each trap in violation of this section shall be a separate offense.
- 2.5 Gray Squirrel.
Hunting gray squirrels with a .17 through .22 caliber rimfire or pellet firearm with a rifled barrel, or muzzle-loading rifle not larger than .36 caliber is permitted south of the Chesapeake and Delaware Canal.
- 2.6 Muskrats.
It shall be unlawful for any person to shoot muskrats at any time, except with written permission of the Director.
- 2.7 Otters.
Each otter trapped in Delaware must be tagged by an authorized representative of the Division. Each otter sold in Delaware or shipped out of the State must be tagged in accordance with the requirements of the Convention on International Trade in Endangered Species.
- 2.8 Red Fox.
- 2.8.1 Red foxes may be killed in accordance with §788 of Title 7 with the following: longbow and crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, revolvers and single shot pistols or a muzzle-loading rifle.
 - 2.8.2 Notwithstanding subsection 2.8.1 of this section, during any deer firearms season, it shall be unlawful to hunt red fox with any firearm that is not also legal for deer hunting.
 - 2.8.3 Notwithstanding subsection 2.8.1 of this section, it shall be unlawful to kill a red fox that is being pursued by dogs.
- 2.9 Snapping Turtles
- 2.9.1 Snapping turtles can only be taken by hand or turtle trap. Turtle traps can have only one throat or funneling device.
 - 2.9.2 Turtle traps must have either an escape hole below water measuring a minimum of 7.5" in all directions or floats inserted inside the trap or attached to the trap or be set in such a way so that the trap provides sufficient breathing space for all captured turtles at all times.

- 2.9.3 Each trap shall be marked with a metallic tag bearing the trapper's name and address. The tag shall be attached to the trap in a manner that allows it to remain visible, at all times.
- 2.9.4 All turtle traps must be lifted and emptied of catch at least once every 36 hours.
- 2.9.5 An annual permit must be obtained from the Division in order to trap snapping turtles. This permit is free.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

11 DE Reg. 334 (09/01/07)

14 DE Reg. 52 (07/01/10)

3.0 Federal Laws and Regulations Adopted

(Penalty Section 7 **Del.C.** §103(d))

3.1 Federal Laws.

It shall be unlawful for any person to hunt, buy, sell or possess any protected wildlife or part thereof, except in such manner and numbers as may be prescribed by the following federal laws and regulations promulgated thereunder: Airborne Hunting Act (16 USC § 742j-l et seq.), Eagle Act (16 USC § 668 et seq.), Endangered Species Act (16 USC 1531 et seq.), Lacey Act (16 USC § 3371 et seq.), Marine Mammal Protection Act (16 USC § 1361 et seq.), and the Migratory Bird Treaty Act (16 USC § 703 et seq.). Notwithstanding the foregoing, the federal laws and regulations shall be superseded by more stringent restrictions prescribed by State law or regulation of the Department.

3.2 Sea Ducks.

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

3.3 Non-toxic Shot.

3.3.1 **Required Usage.** Non-toxic shot, as defined by federal regulations, shall be required for hunting waterfowl, rails, snipe, and moorhens in Delaware. It shall be unlawful for any person to possess shells loaded with lead shot while hunting waterfowl, rails, snipe, and moorhens.

3.3.2 **Maximum Shot Size.** It shall be unlawful for any person to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

3.4 Special Mallard Release Areas.

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits shall only be issued to persons who: control at least 100 acres of land on which there is suitable waterfowl habitat; agree to follow a management plan and federal regulations; and maintain a log of guests and birds harvested. Failure to follow the management plan or a violation of State or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

3.5 Mute Swans (*Cygnus olor*)

3.5.1 Mute swans shall be considered an exotic, invasive species that is not subject to state protection. Mute swans may only be taken during legal waterfowl hunting seasons and shooting hours. The method of take for mute swans is restricted to shotguns no larger than 10 gauge and with non-toxic ammunition no larger than size T.

3.5.2 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live mute swan or their eggs to or from another person unless permitted by the Director of the Division of Fish and Wildlife.

3.5.3 It shall be unlawful to release any mute swan into the wild.

3.6 Special Shotgun Season for Young and Disabled Hunters

3.6.1 Waterfowl may be hunted on a special days established annually by the Division for disabled (non-ambulatory) hunters using a wheelchair for mobility and hunters 10 years of age or older but less

than 16 years of age (10-15 years inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

12 DE Reg. 496 (10/01/08)

14 DE Reg. 52 (07/01/10)

4.0 Seasons

(Penalty Section 7 **Del.C.** §103(d))

4.1 Season Dates.

Hunting and trapping season dates will be published each year in an annual publication entitled "Delaware Hunting and Trapping Guide."

4.2 General.

It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

4.3 Protected Wildlife.

4.3.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

4.3.2 It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

4.3.2.1 Otherwise provided by law or regulation of the Department; or

4.3.2.2 The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

4.4.2 Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

4.5 Bullfrogs.

4.5.1 Season. Bullfrogs may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

4.5.2 Limit. It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

4.5.3 License. A hunting or fishing license is required to take bullfrogs.

4.6 Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of common crows is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in February. Squirrel hunting shall be

unlawful during the November deer firearms season. When squirrel season overlaps with a firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with § 718 of Title 7.

4.7.2 Limit. It shall be unlawful for any person to take more than six gray squirrels in any one day.

4.8 Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, provided that during a deer firearms season hunter orange is displayed in accordance with §718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.

4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of ~~February~~ January, provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the last day of February or the last Saturday of February if February ends on a Sunday provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

4.13.1 Harvest Season. Red fox may be killed in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from November 1 through the last day of February, excluding Sundays. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.14 Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a straight-line carapace (top shell) length of less than eight inches eleven inches, measured on the curvature. This straight-line measurement is taken from the nuchal scute directly behind the turtle's head to the base of the notch where the two most posterior scutes meet over the tail.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

4.17 Muskrats

4.17.1 7 Day Season Extension. The Department may extend the muskrat trapping season 7 days if the Department determines that the statewide muskrat population can sustain additional harvest and the average mean temperature for February was below 32⁰F and the total February snowfall exceeded 12 inches as determined by the National Weather Service station at Wilmington, Delaware.

4.17.2 14 Day Season Extension. The Department may extend the muskrat trapping season 14 days if the Department determines that the statewide muskrat population can sustain additional harvest and the average mean temperature for February was below 28⁰F and the total February snowfall exceeded 24 inches as determined by the National Weather Service station at Wilmington, Delaware.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

11 DE Reg. 334 (09/01/07)

13 DE Reg. 941 (01/01/10)

14 DE Reg. 52 (07/01/10)

5.0 Wild Turkeys

(Penalty Section 7 **Del.C.** §103(d))

5.1 Possession of Wild Turkey Prohibited; Exceptions.

It shall be unlawful for any person, other than authorized representatives of the Division, to release or possess *Meleagris gallopavo* (wild turkey) in Delaware without a permit from the Division. The prohibition to possess and/or release *Meleagris gallopavo* shall include both birds taken from the wild and birds bred in captivity.

5.2 Instruction Requirement.

It shall be unlawful for any person to hunt wild turkeys in Delaware before ~~that same person attends and passes~~ passing a Division approved course of instruction in turkey hunting. In addition to official Delaware Division of Fish and Wildlife sponsored courses, official NRA Wild Turkey Hunting Clinics, official NWF Turkey Hunting Courses and out-of-state Turkey Hunting Courses (minimum of 4 hours)

officially sponsored and sanctioned by other state or provincial Hunter Education Programs shall be recognized as being Division approved courses of instruction in turkey hunting. This includes Division approved internet courses.

5.3 Method of Take.

- 5.3.1 It shall be unlawful for any person to use any firearm to hunt wild turkeys, except a 10, 12, 16, or 20 gauge shotgun loaded with size 4, 5, or 6 shot or a longbow, compound bow or crossbow with a broadhead arrow, 7/8 inches in minimum width. Notwithstanding the foregoing, 7 or 7 1/2 shot may be used in shotguns if it is part of a duplex or triplex load that also contains 4, 5 or 6 shot.
- 5.3.2 It shall be unlawful for any person to use bait or dogs to hunt wild turkeys.
- 5.3.3 It shall be unlawful for any person to “drive” wild turkeys.
- 5.3.4 It shall be unlawful for any person to shoot any wild turkey that is in a roost tree.
- 5.3.5 It shall be unlawful for any person to hunt wild turkeys unless said person is wearing camouflage clothing.
- 5.3.6 It shall be unlawful for any person to hunt wild turkeys if said person is wearing any garment with the colors white, red, or blue.
- 5.3.7 It shall be unlawful for any person to hunt wild turkeys and use artificial turkey decoys of either sex that are wholly or partially made from any part of a turkey that was formerly alive.
- 5.3.8 It shall be unlawful for any person to hunt wild turkeys using an electronic calling device.

5.4 Season and Limit.

- 5.4.1 The Division may establish a season for hunting bearded wild turkeys ~~by permit~~. The Division will determine the ~~terms and conditions of the issuance of permits~~ season length and bag limit. It shall be unlawful for any person to hunt wild turkey, except as permitted by the written authorization of the Division. Proof of course completion referenced in 5.2 of this section shall serve as written authorization for private land hunters. Public land hunters must have an annual permit from the Division.
- 5.4.2 It shall be unlawful for any person to hunt wild turkeys, except from one-half hour before sunrise to 1:00 p.m.
- 5.4.3 It shall be unlawful for any person to not check a wild turkey at an authorized checking station by 2:30 p.m. on the day of kill.
- 5.4.4 It shall be unlawful for any person to take or attempt to take more than one bearded wild turkey per season.

5.5 Special Season for Young and Disabled Hunters

- 5.5.1 Turkeys may be hunted on private land ~~only~~ and selected public land on the Saturday prior to the opening of the regular spring turkey hunting season by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 10 years of age or older but less than 16 years of age (10-15 years inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training as well as a Division approved turkey hunter safety class and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older who has also completed a Delaware approved turkey hunter safety class. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

3 DE Reg. 289 (8/1/99)

11 DE Reg. 334 (09/01/07)

12 DE Reg. 496 (10/01/08)

6.0 Game Preserves

(Penalty Section 7 Del.C. §103(d))

- 6.1 It shall be unlawful for any person to hunt liberated game on licensed game preserves from April 1 through October 14.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)**7.0 Deer**

(Penalty Section 7 **Del.C.** §103(d))

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than four antlerless deer in any license year;

7.1.1.2 Kill or take four antlerless deer in any license year without at least two of the four deer being female deer; or

7.1.1.3 Possess or transport an antlered deer that was unlawfully killed.

7.1.1.4 Possess or transport an antlerless deer that was unlawfully killed.

7.1.1.5 Kill any antlered deer without first purchasing a Delaware Resident Combination Hunter's Choice Deer tag and Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, or a Non-Resident Quality Buck Deer Tag except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.1.6 No hunter may harvest more than two antlered deer during a license year between July 1st and June 30th of the next calendar year.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1.1 of this section, a person may purchase Antlerless Deer Tags for \$10 each to kill or take additional antlerless deer during the open season. Hunters may take additional antlerless deer on Antlerless Deer Damage Tags ~~at~~ at no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

7.2 Tagging and Designated Checking Stations.

7.2.1 Attaching Tags. Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer and record in ink the date of harvest on the tag. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, or an Antlerless Tag purchased in addition to the hunting license tags. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

7.2.2 Retention of Tag. The tag required by subsection ~~7.1.4~~ 7.2.1 of this section shall remain attached to the deer until the deer is processed for consumption.

7.2.3 Registering Deer. Each person who hunts and kills a deer shall, within 24 hours of killing said deer, register their deer by phone or over the internet through systems authorized by the Division. After registering a deer, hunters will be given a deer registration number. This number must be recorded in ink on the approved tags listed in subsection 7.2.1 of this section. It shall be unlawful to knowingly enter incorrect information when registering a deer.

- 7.2.4 Dressing. It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been registered using the phone or internet system authorized by the Division.
- 7.2.5 Deer Registration Number. The Deer Registration number provided by the automated phone/internet system must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.
- 7.3 Method of Take.
- 7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."
- 7.3.2 Archery and Crossbow Seasons. It shall be unlawful for any person to hunt deer during the archery season or crossbow season and have in his or her possession any weapon or firearm other than a knife, a longbow or crossbow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.
- 7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.
- 7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through the waters of any stream, pond, lake or tidal waters.
- 7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.
- 7.4 Illegal Hunting Methods; Baiting.
It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.
- 7.5 Seasons.
- 7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.
- 7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with §718 of Title 7 when it also lawful to hunt deer with a gun.
- 7.5.3 Muzzleloader Seasons. Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday that precedes the second Monday in October through the second Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.
- 7.5.4 Special Antlerless Season. Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.

PROPOSED REGULATIONS

- 7.5.5 Crossbow Seasons. Deer may be hunted with crossbows in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with 718 of Title 7 when it also lawful to hunt deer with a gun.
- 7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 10 years of age or older but less than 16 years of age (42 10 to 15 inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

7.6 Carcass Importation Ban.

- 7.6.1 Importation. It shall be unlawful to import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state or Canadian province, country or any portion of the aforementioned jurisdictions thereof as determined by the Division, in which Chronic Wasting Disease has been found in free-ranging or captive ~~deer~~. Cervids. Notwithstanding the foregoing, the following parts may be imported into the state:

- 7.6.1.1 Boned-out meat that is cut and wrapped;
- 7.6.1.2 Quarters or other portions of meat with no part of the spinal column or skull attached;
- 7.6.1.3 Hides or capes with no skull attached;
- 7.6.1.4 Clean (no meat or tissue attached) skull plates with antlers attached;
- 7.6.1.5 Antlers (with no meat or tissue attached);
- 7.6.1.6 Upper canine teeth (buglers, whistlers, or ivories); and
- 7.6.1.7 Finished taxidermy products.

- 7.6.2 Carcass Notification. Any person who imports into Delaware any deer carcass or parts described in subsection 7.6.1 of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

11 DE Reg. 334 (09/01/07)

12 DE Reg. 496 (10/01/08)

14 DE Reg. 52 (07/01/10)

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division

8.1 Motorized Vehicles.

- 8.1.1 General. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, except on established roads or as otherwise authorized by the Director.
- 8.1.2 Noise. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, unless such vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.
- 8.1.3 Speed Limit. It shall be unlawful for any person to drive or operate a vehicle in excess of twenty (20) miles per hour when on lands administered by the Division, unless otherwise authorized by the Director.
- 8.1.4 Unlicensed Vehicles. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the Division, unless said vehicle is licensed for use upon public

highways and roadways or the driver or operator of said vehicle has been issued a permit from the Division.

8.1.5 Parking.

8.1.5.1 It shall be unlawful for any person to park any vehicle on lands administered by the Division in such a manner as to obstruct the use of a boat ramp, roadway or trail. Any vehicle parked in such manner shall be subject to removal, and the owner of said vehicle shall bear all costs involved with such removal.

8.1.5.2 Unless otherwise authorized by the Director, it shall be unlawful for any person to park and leave unattended any vehicle or trailer in any Division parking lot, unless said lot is lawfully being used for direct access to lands or waters administered by the Division.

8.1.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to leave any vehicle on lands administered by the Division for a period exceeding 24 hours.

8.2 Conditions of Use.

8.2.1 Trespass. It shall be unlawful for any person to enter upon lands or waters administered by the Division when those lands or waters have been closed by the Division to: protect public safety; protect Department property; or manage wildlife. Persons shall adhere to special entry restrictions as listed on official area maps signed by the Division Director.

8.2.2 Hours of Entry. It shall be unlawful for any person to be present upon lands or waters administered by the Division between sunset and sunrise, unless such person is lawfully hunting or fishing or has been authorized by written permission of the Director.

8.2.3 Camping. It shall be unlawful for any person to camp on lands administered by the Division, except conservation oriented groups may, with written permission of the Director, camp in areas specified in such permit.

8.2.4 Swimming. It shall be unlawful for any person to swim in waters administered by the Division, except by written permission of the Director.

8.2.5 Dumping.

8.2.5.1 It shall be unlawful for any person to place, dump, deposit, throw or leave any garbage, refuse or similar debris within or upon any lands or waters administered by the Division, except in receptacles provided for such purpose;

8.2.5.2 It shall be unlawful for any person to bring any trash, refuse or similar material onto lands administered by the Division for the purpose of disposing such in Division receptacles.

8.2.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to deposit any material, structure, debris or other objects on lands or waters administered by the Division.

8.2.6 Destruction of State Property.

8.2.6.1 It shall be unlawful for any person to deface, damage, remove or alter any structures, buildings, natural-land features, or other property or equipment belonging to the Division.

8.2.6.2 Unless authorized by the Division for management, research or educational purposes, it shall be unlawful for any person to cut, injure or remove trees, shrubs, wildflowers, ferns, mosses or other plants from lands administered by the Division.

8.2.6.3 It shall be unlawful for any person to erect or use any portable or permanent deer stand that involves the use of nails or screws placed in a tree.

8.2.6.4 Unless otherwise authorized by the Director, it shall be unlawful for any person to kindle, build, maintain or use a fire on lands administered by the Division.

8.2.7 Collection of Wildlife.

8.2.7.1 Collection and removal of any wildlife species from a State Wildlife Area is prohibited unless otherwise provided by statute, regulation or authorized by the Division Director.

8.2.8 Fishing.

8.2.8.1 It shall be unlawful to fish in any Division managed ponds except in accordance with conditions set forth on area maps and/or signs.

PROPOSED REGULATIONS

8.3 Hunting and Firearms.

8.3.1 Hunting.

8.3.1.1 It shall be unlawful for any person to hunt on lands administered by the Division, except as permitted by the Director in writing and specified on current wildlife area maps distributed by the Division.

8.3.1.2 A daily permit must be obtained before hunting waterfowl at Augustine, Cedar Swamp, Little Creek, Woodland Beach, Ted Harvey, Prime Hook and Assawoman wildlife areas. Permits may be obtained on-site from an authorized agent of the Division and must be returned upon leaving the area. The Director may specify the hours of a permit's effectiveness and determine the conditions of its issuance.

8.3.2 Waterfowl.

8.3.2.1 It shall be unlawful for any person to hunt waterfowl on areas administered by the Division, except from State built blinds, or other blinds authorized by the Division, or by written permission of the Director.

8.3.2.2 It shall be unlawful for any person to enter tidal and/or impounded areas administered by the Division during the waterfowl season, except for access as authorized by paragraph (1) of this subsection.

8.3.3 Trapping. It shall be unlawful for any person to trap or attempt to trap on areas administered by the Division, except for: persons holding a valid contract with the Division to do so; authorized agents of the Division who are conducting authorized wildlife management practices; or scientific purposes as specifically authorized in writing by the Director.

8.3.4 Firearms on Division Areas.

8.3.4.1 It shall be unlawful for any person to possess a firearm on lands or waters administered by the Division from March 1 through August 31, except as authorized by the Director in writing.

8.3.4.2 It shall be unlawful for any person to possess a rifled firearm of any description at any time on those lands bordering the Chesapeake and Delaware Canal and licensed to the Department by the Government of the United States for wildlife management purposes, except that muzzleloaders and shotguns with rifle barrels may be used during deer seasons when it is lawful to use those firearms.

8.3.4.3 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division on Sunday, except in areas designated by the Director or with a permit from the Director.

8.3.4.4 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division for any purpose, including target shooting, other than to hunt during an open season, under conditions approved by the Director and specified on the current wildlife area map.

8.3.4.5 It shall be unlawful to possess, consume or be under the influence of alcoholic beverages, liquors or drugs while hunting or in the possession of firearms when on lands administered by the Division.

8.3.5 Dikes. It shall be unlawful for any person to be in possession of any firearm on any dike administered by the Division, unless such person is temporarily crossing a dike at a ninety degree angle or traversing a dike to reach a Division authorized deer stand location during a deer firearms hunting season.

8.3.6 Deer Hunting By Driving. It shall be unlawful for residents to participate in deer drives, except where authorized on current wildlife area maps between the hours of 9:00 a.m. and 3:00 p.m. No more than six (6) resident hunters may participate in driving deer at any one time. Nonresidents may not participate in deer drives at any time. Nonresidents are restricted to hunting deer from stationary locations. Nonresidents may not possess a loaded firearm during the deer season, except to hunt from a stationary location or to retrieve a deer that they wound.

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- 8.4 Horses and Bicycles. It shall be unlawful to ride horses or bicycles on, or allow horses to use, any lands or waters administered by the Division, except on established roads or trails that have been designated by the Division for such purposes on current wildlife area maps.
- 8.5 Concessions, Posters and Solicitations.
- 8.5.1 It shall be unlawful for any person to erect, post or distribute any placard, sign, notice, poster, billboard or handbill on lands or waters administered by the Division without written authorization of the Director.
- 8.5.2 It shall be unlawful for any person to engage in the vending of merchandise, food or services on lands or waters administered by the Division without written authorization of the Director.
- 8.5.3 It shall be unlawful for any person to do any form of solicitation for money or goods on any lands or waters administered by the Division without written authorization of the Director.
- 8.6 Firewood. It shall be unlawful for any person to remove firewood from lands administered by the Division without a permit from the Division, except when special firewood areas are designated by the Director in writing.
- 8.7 Dog Training.
- 8.7.1 General. It shall be unlawful for any person to train a dog on lands or waters administered by the Division, except:
- 8.7.1.1 During open hunting seasons for the game that the dog is being trained to hunt;
- 8.7.1.2 Within a dog training area established by the Division; and
- 8.7.1.3 As permitted by the Director in writing on current wildlife area maps.
- 8.7.2 C&D Canal Summit Area. It shall be unlawful for any person to enter the dog training area west of the Summit Bridge (Rt. 896), designated on the current wildlife area map of the C&D Canal Wildlife Area, for any purpose other than to train dogs or hunt for deer during the shotgun deer seasons. It shall be unlawful for any person to fish, operate a model or full size boat, ride horses or bicycles, or conduct any other activity on the area.
- 8.8 Geocaching
- 8.8.1 It shall be unlawful to place caches or letterboxes on Division of Fish and Wildlife property without a permit from the Division. Permits may be obtained by submitting a completed permit application to the appropriate Fish and Wildlife Regional Office. The proposed caching location will be specified in the application. The Regional Fish and Wildlife Manager will review and approve or deny the permit request. A permit will be valid for a maximum of one year from the date of issue at which time the geocache or letterbox must be removed or re-permitted. The permitted time frame will be determined by the area manager and be based on the local wildlife species present and the management activities planned for the area. The area manager will be provided the location of the cache or letterbox and may remove it at his or her discretion, with notice to the permit holder, should circumstances warrant. Online geocache and letterbox descriptions, such as those on geocaching.com or letterboxing.org must include information about access during hunting seasons and provide a link to Delaware Division of Fish and Wildlife Hunting Information. Geocache and letterbox contents must be suitable for all ages. Food, alcohol, tobacco, weapons or other dangerous items, prescription or illegal drugs and adult items are prohibited. From September 1st. through February 15th. of each year and during the spring turkey hunting season, the placement of or searching for geocaches and letterboxes may only occur on Sundays from sunrise to sunset. During the remainder of the year, geocaching and letterbox activities may occur 7 days per week from sunrise to sunset.

3 DE Reg. 289 (8/1/99)

11 DE Reg. 334 (09/01/07)

12 DE Reg. 496 (10/01/08)

(Break in Continuity of Sections)

15.0 Collection or Sale of Native Wildlife

PROPOSED REGULATIONS

(Penalty Section 7 **Del.C.** §103(d))

15.1 Commercial Collection.

15.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to collect, possess, import, cause to be imported, export, cause to be exported, buy, sell or offer for sale any native wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit shall limit the terms and conditions for collecting or possessing said wildlife within the State.

15.1.2 Notwithstanding subsection 15.1.1 of this section, native wildlife species may be possessed, imported, sold or offered for sale for commercial purposes without a permit from the Director if there is written documentation to confirm that said wildlife was legally taken in and transported from another state.

15.2 Collection and Possession of Reptiles and Amphibians.

15.2.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to remove from the wild or possess any native reptile or amphibian species, their eggs or parts without a permit from the Director.

15.2.2 Notwithstanding subsection 15.1.1 of this section, one individual of each of the following species or subspecies of reptiles and amphibians, may be collected and possessed without a permit.

Reptiles

Lizard, Northern Fence (*Sceloporus undulatus hyacinthinus*)

Racer, Northern Black (*Coluber constrictor constrictor*)

Skink, Five-lined (*Eumeces fasciatus*)

Snake, Black Rat (*Elaphe obsoleta obsoleta*)

Snake, Eastern Garter

(*Thamnophis sirtalis sirtalis*)

Snake, Eastern Hognose (*Heterodon*

platirhinus)

Snake, Eastern Worm (*Carphophis*

amoenus amoenus)

Snake, Northern Water (*Nerodia sipedon*

sipedon)

Snake, Ringneck (*Diadophis punctatus*)

Terrapin, Diamondback (*Malaclemys*

terrapin)

Turtle, Common Musk (*Sternotherus*

odoratus)

Turtle, Eastern Box (*Terrapene carolina*

carolina)

Turtle, Eastern Mud (*Kinosternon subrubrum*

subrubrum)

Turtle, Painted (*Chrysemys picta*)

Turtle, Redbelly (*Pseudemys rubriventris*)

Turtle, Snapping (*Chelydra serpentina*)

Amphibians

Bullfrog (*Rana catesbeiana*)

Frog, Green (*Rana clamitans melanota*)

Frog, New Jersey Chorus (*Pseudacris*

triseriata kalmi)

Frog, Northern Cricket (*Acris crepitans*

crepitans)

Frog, Pickerel (*Rana palustris*)

Frog, Southern Leopard (*Rana utricularia*)

Frog, Wood (*Rana sylvatica*)

Newt, Red-spotted (*Notophthalmus*

viridescens viridescens)
Peeper, Northern Spring (*Pseudacris crucifer crucifer*)
Salamander, Northern Dusky (*Desmognathus fuscus fuscus*)
Salamander, Northern Two-lined (*Eurycea bislineata*)
Salamander, Redback (*Plethodon cinereus*)
Spadefoot, Eastern (*Scaphiopus holbrookii holbrookii*)
Toad, American (*Bufo americanus*)
Treefrog, Gray (*Hyla versicolor and Hyla chrysoscelis*)

15.2.3 It shall be unlawful to remove any reptile or amphibian from the wild and later release said reptile or amphibian back to the wild if it has been held in captivity for more than thirty (30) days.

15.2.4 Notwithstanding subsection 15.1.1 of this section, native reptiles and amphibians taken from the wild and lawfully possessed prior to August 15, 1999, may continue to be held in captivity, provided that written notification of the numbers and species being held is given to the Division prior to December 15, 1999.

15.3 Captive Breeding.

15.3.1 It shall be unlawful for any person to breed in captivity any native wildlife species without a permit from the Director. Said permit shall limit the terms and conditions for captive breeding of said wildlife.

15.3.2 It shall be unlawful for any person to release captive-bred species into the wild. A signed bill of sale shall accompany any captive-bred species that are sold.

15.3.3 This section shall not apply to accredited zoos or to raptors regulated by federal and State falconry or raptor propagation regulations.

15.4 Sale or Possession of CITES Listed Species.

It shall be unlawful for any person to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on International Trade in Endangered Species (CITES). The possession of any part of a bear must be in conformance with CITES.

15.5 ~~Take of Turtles~~

~~15.5.1 Turtles can only be taken by hand, turtle trap or dowl and line. Turtle traps can have only one throat or funneling device. Turtle traps must have an escape hole provided below the water surface and the hole must measure a minimum of seven and one half inches in all directions. Hoop type turtle traps must have the area from the last hoop to the tail line covered by nylon web having a mesh size of three and one half inches square measure or greater. All turtle traps must be lifted and emptied of catch at least once every 48 hours.~~

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

(Break in Continuity of Sections)

22.0 ~~Hunter and Trapper Identification License Exempt Number~~

(Penalty Section 7 **Del.C.** §103(d))

Hunters and trappers who are exempt from purchasing a license to hunt or trap in Delaware are required to obtain an annual ~~Hunting and Trapping Identification~~ Hunter and Trapper License Exempt Number from the Division, ~~at no cost~~. This number must be ~~present on~~ carried by the hunter or trappers ~~person~~ while engaged in hunting and trapping activities.

12 DE Reg. 496 (10/01/08)

14 DE Reg. 52 (07/01/10)

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

3900 Wildlife

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)
24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 3.0 - Nightstick, PR 24, Mace, Peppergas and Handcuffs, Adopted Rule 5.0 - Use of Animals, Adopted Rule 7.0 - Employment Notification, and Adopted Rule 12.0 - Record Book: Right of Inspection. The amendment to Rule 3.0 changes who the training records are sent to. The amendment to Rule 5.0 expands the rule to cover any regulated by this chapter. The amendment to Rule 7.0 omits the first paragraph and will be placed in another rule at a later date. The amendment to Rule 12.0 adds the requirement to keep a copy of the 16 hours mandatory security guard training. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by December 31, 2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Friday, January 27, 2012, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

1300 Board of Examiners of Private Investigators & Private Security Agencies

(Break in Continuity of Sections)

3.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the ~~Board of Examiners~~ Professional Licensing Section.

Adopted 11/04/1994

13 DE Reg. 502 (10/01/09)

4.0 Training Requirements

- 4.1 Each person licensed as a security guard under Title 24 Chapter 13 shall undertake a total of sixteen (16) hours of training through a program approved by the Board, and any such additional training as the Board deems appropriate.
- 4.2 The required training shall include instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.
- 4.3 The Detective Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this regulation.

11 DE Reg. 810 (12/01/07)

5.0 Use Of Animals

The use of animals is prohibited in the performance of private security activities.

Adopted 04/23/1998

3 DE Reg. 960 (1/1/00)

(Break in Continuity of Sections)

7.0 Employment Notification

~~7.1 Under no circumstances will a security guard be permitted to be employed by more than **two** agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact.)~~

7.21 Anyone applying for licensure under this chapter may be rejected without refund, or have their license revoked, for knowingly omitting any criminal history, other material information or to make a false statement on their application.

7.32 Employers Responsibility

7.32.1 A licensed private security agency, after investigation, shall notify the Professional Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

7.32.2 A licensed private security agency shall report to the Professional Licensing Office, in writing, the following:

7.32.2.1 The name of any employee arrested;

7.32.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

7.32.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

Adopted 11/04/1994

4 DE Reg. 361 (8/1/00)

13 DE Reg. 502 (10/01/09)

14 DE Reg. 1395 (06/01/11)

(Break in Continuity of Sections)

12.0 Record Book; Right of Inspection

All persons licensed under 24 **Del.C.** Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable, and a current copy of the mandatory 16 hours security guard training.

Adopted 11/04/1994

3 DE Reg. 960 (1/1/00)

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

1300 Board of Examiners of Private Investigators & Private Security Agencies

PROPOSED REGULATIONS

DIVISION OF STATE POLICE

5500 Bail Enforcement Agents

Statutory Authority: 24 Delaware Code, Section 5504(a) (24 Del.C. §5504(a))

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with Del. Code Title 24 Chapter 55 proposes to adopt/amend the Rules & Regulations. These adoptions/amendments will improve the safety of the public and the bail enforcement agents and professionalize the industry. If you wish to view the complete Rules & Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by December 31, 2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, February 16, 2012, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

5500 Bail Enforcement Agents

Preamble

~~These Rules & Regulations are promulgated pursuant to 24 Del.C. §5504(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 55 to the Division of State Police.~~

4.0 Licensing

- 1.1 ~~Any individual applying for a bail enforcement agent ID card under 24 Del.C. Ch. 55 must meet and maintain the following qualifications:~~
 - 1.1.1 ~~Must not be convicted of any felony; and~~
 - 1.1.2 ~~Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: theft, drug offenses, offensive touching, or assault III; and~~
 - 1.1.3 ~~Must not have been convicted of any charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Detective Licensing Section and~~
 - 1.1.4 ~~Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.~~
- 1.2 ~~An individual bail enforcement agent ID card will not be issued if there is a pending charge as listed in Section 1.1.1 or a pending charge as listed in Section 1.1.2 for an applicant with one (1) conviction of specified misdemeanor listed in Section 1.1.2.~~
- 1.3 ~~The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must also meet the following qualifications:~~
 - 1.3.1 ~~Must be at least 21 years of age; and~~
 - 1.3.2 ~~Must complete the training qualifications set forth in Section 6.0; and~~
 - 1.3.3 ~~If carrying a weapon, must meet and maintain the qualifications set forth in Section 4.0.~~
- 1.4 ~~The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must submit the following for approval:~~
 - 1.4.1 ~~A fee of \$75 for a four (4) year ID card which shall expire and be renewable on the 4th anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every 4th year; and~~
 - 1.4.2 ~~Any and all applications required by the Detective Licensing Section; and~~
 - 1.4.3 ~~Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process. This subsection 1.4.3 does not apply to the renewal of ID cards, unless required by the Director of Detective Licensing.~~

- ~~1.5 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon expiration of the ID card or at the request of the Detective Licensing Section.~~
- ~~1.6 A bail enforcement agent that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.~~
- ~~1.7 A bail enforcement agent must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.~~
- ~~1.8 There will be no reciprocity with any other state regarding the issuing of an ID card to a bail enforcement agent.~~
- ~~1.9 A fee of \$50 shall be for the renewal of the ID card and license, which shall be valid for another four (4) years.~~

~~7-DE Reg. 1782 (06/01/04)~~

~~8-DE Reg. 1316 (03/01/05)~~

~~8-DE Reg. 1626 (05/01/05)~~

2.0 Badges, Patches, Advertisements

- ~~2.1 No individual licensed under 24 Del.C. Ch. 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.~~
- ~~2.2 All advertisements or other forms of publication, subsequent to their use, are subject to review by the Detective Licensing Section for potential misrepresentation. If the Detective Licensing Section does not approve the advertisement or publication, it will forward its concerns to the licensee. Failure to correct the advertisement or publication will be considered a violation of these Rules & Regulations.~~
- ~~2.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.~~

3.0 Use of Animals

~~The use of animals is prohibited in the performance of any bail enforcement agent activity.~~

4.0 Firearms Policy

- ~~4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40 hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.~~
- ~~4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 80%.~~
 - ~~4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.~~
- ~~4.3 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:~~
 - ~~4.3.1 9mm~~
 - ~~4.3.2 .357~~
 - ~~4.3.3 .38~~
 - ~~4.3.4 .40~~
 - ~~4.4.5 .45~~

- 4.4 All ammunition will be factory fresh (no re-loads).
- 4.5 Any person requesting to carry any shotgun, rifle, any type of weapon or apprehension device must first provide proof of training to the Detective Licensing Section for approval.

5.0 ~~Nightstick, PR24, Mace, Peppergas, Chemical Spray, and Handcuffs~~

~~To carry the above weapons/items a bail enforcement agent must have completed training by a Detective Licensing Section approved instructor, on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.~~

~~7-DE Reg. 1782 (06/01/04)~~

6.0 ~~Training~~

- 6.1 ~~All bail enforcement agents licensed under Title 24 Chapter 55 must complete training in the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents.~~
- 6.2 ~~The training must be completed prior to obtaining a license.~~

~~7-DE Reg. 1782 (06/01/04)~~

7.0 ~~Notification of Apprehensions~~

~~All bail enforcement agents licensed under 24 **Del.C.** Ch. 55 are required to notify the police emergency 911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.~~

8.0 ~~Notification of Arrest~~

~~Anyone licensed under 24 **Del.C.** Ch. 55 shall, excluding weekends and State holidays, notify the Detective Licensing Section within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any individual.~~

9.0 ~~Suspensions and Revocations~~

- 9.1 ~~The Detective Licensing Section shall have the power to suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that violates the Chapter or the promulgated Rules & Regulations.~~
- 9.2 ~~The Detective Licensing Section may suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Section 1.0.~~
- 9.3 ~~Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of Safety and Homeland Security.~~
- 9.3.1 ~~Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within 30 days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.~~

~~5-DE Reg. 1523 (01/01/02)~~

~~7-DE Reg. 1782 (06/01/04)~~

1.0 ~~Licensing~~

- 1.1 A bail enforcement agent ID card, license and badge shall not be issued if the applicant has not complied with the provisions set forth in Title 24, Chapter 55 of the **Delaware Code** and the regulations set forth herein. Moreover, no license shall be issued if charges are pending under Title 24 Section 5507 of the **Delaware Code**.

- 1.2 The individual bail enforcement agent applying for an ID card, license and badge under Title 24 Chapter 55 must also meet the following qualifications:
 - 1.2.1 Must complete the training qualifications set forth in Section 6.0; and
 - 1.2.2 If carrying a weapon, must meet and maintain the qualifications set forth in Sections 4.0 and 5.0.
- 1.3 The individual bail enforcement agent applying for licensure under Title 24 Chapter 55 must submit the following for approval:
 - 1.3.1 A fee of \$75 for a four (4) year ID card license and badge; and
 - 1.3.2 Any and all applications required by the Professional Licensing Section.
- 1.4 The ID cards and badges are the property of the Delaware State Police.
- 1.5 There shall be no reciprocity with any other state regarding the issuing of an ID card, license and badge to a bail enforcement agent.
- 1.6 A fee of \$50 shall be for the re-application of the ID card, license and badge, which shall be valid for another four (4) years.
- 1.7 Any person wishing to be licensed as a bail enforcement agent must show proof of current and valid sponsorship from a licensed bail enforcement agent that has been licensed, thru Title 24 Chapter 55, for at least five (5) consecutive years.

2.0 Badges, Patches, Advertisements

- 2.1 No individual licensed under Title 24 Chapter 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Board of Examiners. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.
 - 2.1.1 All bail enforcement agents shall display their badge at all times during the lawful performance of their duties pursuant to Title 24, Chapter 55 and the regulations set forth herein.
- 2.2 All advertisements, including vehicle markings, or other forms of publication, subsequent to their use, are subject to review by the Board of Examiners for potential misrepresentation. If the Board of Examiners does not approve the advertisement or publication, the concerns shall be forwarded to the licensee. Failure to correct the advertisement or publication shall be considered a violation of these Rules & Regulations.
- 2.3 The use of auxiliary lights or sirens on vehicles is prohibited.

3.0 Use Of Animals

The use of animals is prohibited in the performance of any bail enforcement agent activity.

4.0 Firearms Policy

- 4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Professional Licensing Section. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year.
- 4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of the three (3) shoots, there shall be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. The minimum passing score is 80%.
 - 4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.
 - 4.2.2 Any person not meeting the minimum qualifications set forth in 4.2 may have their firearms certification suspended until such time that they meet the minimum three (3) qualifying shoots within the calendar year.

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- 4.3 The only approved firearms that may be carried shall be either a revolver or semi-automatic handgun and be maintained to factory specifications. Only the handguns with the following calibers are permitted:
- 4.3.1 9mm
 - 4.3.2 .357
 - 4.3.3 .38
 - 4.3.4 .40
 - 4.3.5 .45
- 4.4 All ammunition will be factory fresh (no re-loads).
- 4.5 All persons must carry the same firearm that they qualify with (this will be noted by the serial number of each firearm on the shoot sheets).
- 4.6 All persons must undergo a drug screening for certification and re-certification. The screening results shall be submitted with the firearms certification/re-certification forms to the Professional Licensing Section. A copy of any drugs prescribed by a medical doctor shall be provided, if necessary.

5.0 Nightstick, Pr24, Mace, Peppergas, Chemical Spray, And Handcuffs

To carry the above weapons/items, a bail enforcement agent must have completed training, by a Professional Licensing Section approved instructor on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Professional Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.

6.0 Training Requirements For Issuance Of A License

- 6.1 All individuals applying for licensure under Title 24 Chapter 55 must complete training in the following prior to the issuance of a license:
- 6.1.1 Courses in Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bail Enforcement Agents; and
 - 6.1.2 Mandatory training in the field by a bail enforcement instructor approved by the Board.
 - 6.1.3 A bail enforcement agent shall go through a minimum one year internship with an approved licensed bail enforcement agent.

7.0 Continuing Education And Training

Continuing education/training shall be 32 hours every four (4) years with the breakdown being eight (8) hours per year, which must include at least two (2) hours a (per) year in training on the use of deadly force. Failure to have the eight hours of training every year shall be grounds for suspension, revocation or rejection of renewal.

8.0 Apprehension Procedures

- 8.1 All bail enforcement agents licensed under Title 24 Chapter 55 are required to notify the police emergency 911 dispatch center for the appropriate jurisdiction prior to making any attempt at an apprehension. This notification must occur prior to responding to the address of the attempt.
- 8.1.1 Notification shall be made to one of the following 911 dispatch centers as appropriate: Recom - DSP, New Castle County PD, Newark PD, Wilmington PD, University of Delaware PD, Kentcom - DSP, Smyrna PD, Dover PD, Milford PD, Suscom - DSP, Seaford PD, Rehoboth Beach PD, Dewey Beach PD, Bethany PD, and South Bethany PD.
- 8.2 Upon successful apprehension, if the bail enforcement agent transports the subject to the law enforcement agency in the jurisdiction in which the apprehension occurred, transfer of custody to the law enforcement agency shall take place at that time.

8.2.1 A failure of a police agency to accept custody of the fugitive shall be immediately documented by the bail enforcement agent and reported to the Board.

8.3 Failure to follow the procedures as described in this section could result in the suspension or revocation of the bail enforcement agent license, badge and ID card.

9.0 Notification Of Arrest

Pursuant to 24 Del.C. §5511, anyone licensed under this chapter shall, excluding weekends and state holidays, notify the Director within 5 days of any arrest which could result in a misdemeanor or felony conviction. Failure to do so may result in the suspension or revocation of a license.

10.0 Suspensions And Revocations

10.1 The Professional Licensing Section shall have the power to suspend or revoke any individual, licensed under Title 24 Chapter 55 that violates the Chapter or the promulgated Rules & Regulations.

10.2 The Professional Licensing Section may suspend or revoke any individual, licensed under Title 24 Chapter 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony.

10.3 Any person whose license has been suspended, revoked, rejected, or denied shall be granted a full hearing, by the Board at their next quarterly meeting, provided that the violating party requests such a hearing, in writing, to the Professional Licensing Section within 30 days of the suspension. Such person shall be entitled to an appeal of the Board's decision to the Department of Safety and Homeland Security if a written appeal is filed within ten (10) days from the date of the Board's decision.

11.0 Criminal Offenses

11.1 For the purposes of Chapter 55 of Title 24 of the Delaware Code, the Board may deny an application for a license or suspend or revoke a license if the applicant or licensee has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):

11.1.1 §763 Sexual harassment;

11.1.2 §764 Indecent exposure in the second degree;

11.1.3 §765 Indecent exposure in the first degree;

11.1.4 §766 Incest;

11.1.5 §767 Unlawful sexual contact in the third degree;

11.1.6 §781 Unlawful imprisonment in the second degree;

11.1.7 §840 Shoplifting;

11.1.8 §861 Forgery;

11.1.9 §871 Falsifying Business Records

11.1.10 §881 Bribery

11.1.11 §907 Criminal Impersonation

11.1.12 §1101 Abandonment of a Child;

11.1.13 §1102 Endangering the Welfare of a Child;

11.1.14 §1105 Endangering the Welfare of an Incompetent Person;

11.1.15 §1106 Unlawfully Dealing with a Child;

11.1.16 §1107 Endangering Children;

11.1.17 §1245 Falsely Reporting an Incident;

11.1.18 §1341 Lewdness;

11.1.19 §1342 Prostitution;

11.1.20 §1343 Patronizing a Prostitute; and

11.1.21 §1355 Permitting Prostitution

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11.2 Title 16

11.2.1 §1166 Patient Neglect or Abuse

11.3 Title 31

11.3.1 §3913 Abuse/Neglect/Exploitation/Mistreatment of an Infirm Adult.

12.0 Prohibited Acts

No one licensed under this chapter shall be impaired, by drugs or alcohol, while performing the duties of a bail enforcement agent.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION Board of Landscape Architecture

Statutory Authority: 24 Delaware Code, Section 205 (24 **Del.C.** §205)
24 **DE. Admin. Code** 200

PUBLIC NOTICE

The Delaware Board of Landscape Architects in accordance with 24 **Del.C.** §205 has proposed amendments to Rule 4.0 Licenses. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing Landscape Architects in the State of Delaware.

A public hearing will be held on February 9, 2012, at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jessica Williams, Administrative Assistant for the Delaware Board of Landscape Architects, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

200 Board of Landscape Architecture

(Break in Continuity of Sections)

4.0 Issuance of Licenses; Proof of Professional Experience

4.1 An applicant who has taken and passed the written examination must still demonstrate that he or she has met the professional experience requirements set forth in 24 **Del.C.** §206 and 24 **Del.C.** §210 before a license will be issued.

4.1.1 An applicant who does not have a degree but has 2 years of courses in landscape architecture, successfully completed, acceptable to the Board in accordance with 24 **Del.C.** §206(2) must demonstrate at least 4 years of professional experience in the practice of landscape architecture acceptable to the Board under the direct supervision of a licensed landscape architect.

4.1.2 An applicant with a degree from a school or college of landscape architecture accredited by the National Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects must demonstrate at least 2 years of professional experience in the practice of landscape architecture acceptable to the Board under the direct supervision of a licensed landscape architect.

4.2 Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

(Break in Continuity of Sections)

7.0 Continuing Education as a Condition of Biennial Renewal

- 7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.
- 7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.
- 7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.
- 7.1.2 All courses, seminars, sessions and programs are acceptable for continuing education credit if sponsored by organizations listed in Rule 7.1.3. All other continuing education credits will be reviewed at the time of renewal. All self-directed activities for continuing education credit allowed by rule 7.6 must be pre-approved and submitted by the licensee ~~60 days~~ 6 months prior to license renewal prior to the activity on the form provided in 7.3 and 7.4.
- 7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the **Delaware Code** and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

5 DE Reg. 446 (08/01/01)

- 7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:
- 7.1.3.1 LA CES™ - Landscape Architecture Continuing Education System™
 - 7.1.3.2 American Society of Landscape Architects (National and local/chapter levels)
 - 7.1.3.3 Council of Landscape Architectural Registration Boards
 - 7.1.3.4 American Planning Association
 - 7.1.3.5 American Institute of Certified Planners
 - 7.1.3.6 Delaware Department of Natural Resources (DNREC) Division of Soil and Water Conservation, seminars or educational programs dealing with sediment erosion and control
- 7.1.4 ~~Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.~~ Self-directed Activities: The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.
- 7.1.4.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously

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approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

- 7.2 ~~Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).~~
- 7.32 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 67.0.
- 7.32.1 ~~Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
- 7.32.2 Licensees selected for random post renewal audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3 7.6.
- 7.3.3 ~~The continuing education period will be from October 31st to November 1st of each biennial licensing period.~~
- 7.3.4.3 ~~Each licensed landscape architect shall complete, biennially, 20 units of continuing education as a condition of license renewal.~~
- 7.4 ~~Documentation: Each licensee must retain copies of all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.~~
- 7.53 ~~Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.~~
- 7.6 ~~Self directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self directed activity shall apply. The Board will have the authority to allow self directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.~~
- 7.6.1 ~~The Board may, upon request, review and approve credit for self directed activities in a given biennial licensing period. A licensee must obtain pre approval of the Board prior to undertaking the self directed activity in order to assure continuing education credit for the activity. Any self directed activity submitted for approval must include a written proposal outlining the scope of the activity; the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.~~
- 7.74 ~~Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.
Statutory Authority: 24 Del.C. §205(12).~~
- 7.5 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage, determined by the Board, of the licensees to be audited. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.

- 7.6 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves the right to request additional information and/or documentation to verify continuing education compliance.
The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 7.7 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for disciplinary action pursuant to 24 Del.C. §231(a)(6). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 fine.
- 7.8 Non-compliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.
- 7.9 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

5 DE Reg. 446 (08/01/01)

8 DE Reg. 1431 (04/01/05)

11 DE Reg. 347 (09/01/07)

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

200 Board of Landscape Architecture

DIVISION OF PROFESSIONAL REGULATION

1100 Board of Dental Examiners

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))

24 DE. Admin. Code 1100

PUBLIC NOTICE

The Board of Dentistry and Dental Hygiene ("the Board") in accordance with 24 Del.C. §1106(a)(1) has

proposed amendments to Rule 7.0 Anesthesia Regulations. The proposed amendments clarify and distinguish the requirements for a dentist seeking an "Unrestricted Permit" to administer anesthesia in his or her individual capacity and the requirements for an "Unrestricted Facility Permit" that would enable an anesthesiologist to be utilized at a dental facility to provide the anesthesia. A public hearing will be held on January 12, 2012 at 3:15 p.m. in the Public Service Commission Hearing Room on the first floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Dentistry and Dental Hygiene, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

1100 Board of Dentistry and Dental Hygiene

(Break in Continuity of Sections)

7.0 Anesthesia Regulations:

7.1 Definitions:

The following definitions are taken from the **Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry**, American Dental Association, Council on Dental Education (July 1993). These terms refer to the extent of a drug's depressant effect upon the central nervous system and should not be confused with the route by which the drug is administered.

- 7.1.1 Analgesia -- the diminution or elimination of pain in the conscious patient.
- 7.1.2 Local Anesthesia -- the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.
- 7.1.3 Conscious Sedation -- a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command and that is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

In accord with this definition, the conscious patient is also defined as "one who has intact protective reflexes, including the ability to maintain an airway, and who is capable of rational response to question or command." The drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

For purposes of these regulations, Conscious Sedation Permits shall be divided into two classifications:

- Restricted Permit I -- Conscious Sedation induced by parenteral or enteral or rectal routes. This is not to include the usual and customary pre-operative oral sedation.
- Restricted Permit II -- Conscious Sedation induced by nitrous oxide inhalation.

- 7.1.4 Deep Sedation -- is a controlled state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command, and is produced by a pharmacologic or non-pharmacologic method or combination thereof.
- 7.1.5 General Anesthesia -- is a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

The same level of advanced training is necessary for the administration of both Deep Sedation and General Anesthesia.

- 7.1.6 Adverse Occurrences -- any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization

of said patient during, or as a direct result of, the conscious sedation, or deep sedation, or general anesthesia related thereto.

7.2 Conscious Sedation:

7.2.1 No dentist shall employ or use Conscious Sedation, Restricted Permit I or Restricted Permit II, for dental patients unless such dentist possesses a permit of authorization issued by the Delaware State Board of Dentistry and Dental Hygiene. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

7.2.2 In order to receive such a permit, the dentist shall produce evidence showing that he or she:

7.2.2.1 For Restricted Permit I Conscious Sedation:

7.2.2.1.1 Has completed a minimum of 60 hours of instruction, including management of at least 20 patients per participant (to achieve competency in this technique).

7.2.2.1.2 Must be certified in CPR as documented by the American Heart Association or the American Red Cross. Advanced Cardiac Life Support Certification is encouraged.

7.2.2.1.3 Must also have a properly equipped facility for the administration of Restricted Permit I Conscious Sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the team is to be determined by the Anesthesia Advisory Consultants appointed by the Board. A certified registered nurse anesthetist may be utilized for Restricted Permit I Conscious Sedation only if the dentist also possesses such a permit.

7.2.3 A list of emergency drugs and equipment that should be on hand would consist of the following:

7.2.3.1 Agents capable of treating:

7.2.3.1.1 hypotension and bradycardia

7.2.3.1.2 allergy/bronchospasm

7.2.3.1.3 seizures

7.2.3.1.4 narcotic-induced respiratory depression (e.g., narcotic antagonists)

7.2.3.1.5 angina pectoris

7.2.3.1.6 adrenal insufficiency (e.g., steroids)

7.2.3.1.7 nausea

7.2.3.2 Equipment necessary to provide artificial respiration and assist in airway maintenance.

7.2.3.3 Equipment necessary to establish an intravenous infusion and to inject medications.

7.2.4 For Restricted Permit II Conscious Sedation:

7.2.4.1 Has completed a minimum of 14 instructional hours including supervised clinical experience in managing patients (in a course required to achieve competency in nitrous oxide inhalation sedation).

7.2.4.2 Must also show certification in cardio-pulmonary resuscitation as certified by the American Heart Association or the American Red Cross.

7.3 Deep Sedation and General Anesthesia (Unrestricted Permit- Individual):

7.3.1 No dentist shall ~~employ or use~~ administer deep sedation or general anesthesia for his/her dental patients unless such dentist possesses a permit of authorization issued from the Delaware State Board of Dentistry and Dental Hygiene. This permit also includes all Conscious Sedation techniques. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

7.3.2 In order to receive such a permit, the dentist must produce evidence showing that he/she:

7.3.2.1 Has completed a minimum of two years of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry or, is a Diplomat of the American Board of Oral and Maxillofacial Surgeons, or has satisfactorily completed a residency in Oral and Maxillofacial Surgery at an institution approved by the Council of Dental

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Education, American Dental Association, or is a fellow of the American Dental Society of Anesthesiology, ~~or employs or works in conjunction with a trained M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic or deep sedation regains consciousness.~~ A certified registered nurse anesthetist may be utilized for deep sedation or general anesthesia only if the dentist also possesses an Unrestricted Permit.

7.3.2.2 Has a properly equipped facility for the administration of deep sedation and general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team is determined by the Anesthesia Advisory Committee Consultants appointed by Delaware State Board of Dentistry and Dental Hygiene.

7.3.2.3 And is certified in Advanced Cardiac Life Support by the American Heart Association.

7.4 ~~Facility and Staff Requirements~~ Deep Sedation and General Anesthesia (Unrestricted Facility Permit):

7.4.1 General anesthesia, deep sedation, conscious sedation by means other than nitrous oxide, may be administered in a dental office that has these services provided by an individual meeting the requirements of 7.3.2.1 and 7.3.2.2 or employs or works in conjunction with a trained M.D. or D.O. who is a member of the anesthesiology staff of a JCAHO (Joint Commission Administration of Hospital Organizations) accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic or deep sedation regains consciousness. The requirements of regulations 7.4, 7.5 and 7.6 shall apply to the facility.

7.4.42 Inspections: Prior to the issuance of a permit for Restricted Permit I (parenteral, enteral, or rectal Conscious Sedation) or an Unrestricted Permit (Deep Sedation or General Anesthesia), the Board shall require an on site inspection of the facility, equipment and personnel to determine if, in fact, the aforementioned requirements have been met. The evaluation shall be carried out in a manner described by the Board. The evaluation shall be carried out by the Anesthesia Advisory Consultants appointed by the Board. Each office that the dentist utilizes for Restricted Permit I Conscious Sedation or Deep Sedation or General Anesthesia requires individual inspection and must meet the requirements of that permit for which the dentist is applying.

7.4.23 Anesthesia Advisory Consultants:

7.4.23.1 The Board of Dentistry and Dental Hygiene shall appoint a team of Advisory Consultants and alternates who will visit the facility concurrently to conduct the on-site inspection and evaluation of the facilities, equipment and personnel of a licensed dentist applying for written authorization to administer or to employ another to administer Restricted Permit I Conscious Sedation, or Deep Sedation or General Anesthesia (Unrestricted Permit). The Advisory Consultants shall also aid the Board in the adoption of criteria and standards relative to the regulation and control of Conscious Sedation, Deep Sedation and General Anesthesia. The Anesthesia Advisory Consultants shall utilize the "Guidelines for the use of conscious sedation, deep sedation and general anesthesia for Dentist", as approved by the American Dental Association in October 1996, or any current update thereof. If the applicant has been satisfactorily evaluated by another similar organization (e.g., the Delaware Society of Oral and Maxillofacial Surgeons which uses the AAOMS Office Anesthesia Evaluation Manual Standards), then the Board may accept this evaluation and not require additional on-site evaluation.

7.4.23.2 If the results of the initial evaluation of an applicant are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a different team of consultants.

7.4.34 Re-evaluation: The Board may at any time re-evaluate credentials, facilities, equipment, personnel and procedures of a licensed dentist who has previously received a written authorization or permit from the Board to determine if he/she is still qualified to have such written authorization. If the Board determines that the licensed dentist is no longer qualified to have such written authorization,

it may revoke or refuse to renew such authorization, after an opportunity for a hearing is given to the licensed dentist.

7.5 Report of Adverse Occurrences:

- 7.5.1 All licensed dentists engaged in the practice of dentistry in the State of Delaware must submit a complete report within a period of thirty (30) days to the Delaware State Board of Dentistry and Dental Hygiene of any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the Conscious Sedation or Deep Sedation or General Anesthesia related thereto.
- 7.5.2 Failure to comply with this rule when said occurrence is related to the use of Conscious Sedation or Deep Sedation or General Anesthesia may result in the loss of such permit described above, and will be considered unprofessional conduct.

7.6 Applications and Reapplications:

- 7.6.1 A dentist who desires to obtain a permit to administer Conscious Sedation, Deep Sedation, or General Anesthesia or to maintain a facility where such services are provided shall submit an application on the form provided by the Board, pay the permit fee, and meet the requirements for the permit described herein.
- 7.6.2 A dentist who desires to renew a permit shall submit a renewal application on the form provided by the Board and pay the permit renewal fee. Re-inspection of the facility, equipment, and staff shall not be necessary unless new techniques or criteria arise, as determined by the Board with the aid of the Anesthesia Advisory Committee.
- 7.6.3 A permit issued by the Board under these regulations will expire at the same time as the permit holder's dental license and may be renewed biennially at the same time as the dental license is renewed.

1 DE Reg. 852

14 DE Reg. 1239 (05/01/11)

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

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a) (24 Del.C. §2706(a))

24 DE. Admin. Code 2700

PUBLIC NOTICE

The Delaware Board of Professional Land Surveyors, pursuant to 24 Del.C. §2706(a), proposes to revise regulation 12.0 *et seq.* The proposed revisions to this regulation requires ALTA/ACSM be titled according to current published standards, requires subdivision surveys be titled according to the governing regulatory agency, and clarifies boundary survey plans as the only acceptable plat title; clarifies that when no recorded rights-of-way are provided, it is to be noted on the plan; requires written property descriptions accompany boundary survey, ALTA/ACSM land title Surveys and Subdivision Surveys except in certain circumstances; details the setting of boundary corners for major and minor subdivision surveys; renames MIP to MSP; details the necessary language for ultimate user waiver and disclosure forms; and requires licensees to maintain waivers on file for three years. The requirement of two corner markers to be included with every MSP has been deleted.

The Board will hold a public hearing on the proposed regulation change on January 19, 2012 at 9:00 a. m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sandy Wagner, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd.,

Dover, DE 19904.

2700 Board of Registration for Professional Land Surveyors*(Break in Continuity of Sections)***12.0 Minimum Technical Standards for Licences**

- 12.1 The Board is required under Sections 2701 and 2112(a)(9) to establish minimum technical standards for licensees. The purpose of these standards is to establish minimum technical criteria to govern the performance of surveys when more stringent specifications are not required by other agencies or by contract. Further, the purpose is to protect the inhabitants of this state and generally to promote the public welfare. The Board also established minimum standards for Mortgage ~~Inspection~~ Survey Plans (MIPs) (MSPs), and other types of work, frequently performed by licensees in portions of the state.
- 12.2 Procedure and Standards. Whenever a surveyor conducts a boundary survey, ~~or an improvement location survey of properties,~~ or an ALTA/ACSM Land Title Survey, or Subdivision Survey, a plat showing the results shall be prepared. An ALTA/ACSM Land Title Survey shall be titled in accordance to the current published ALTA/ACSM standard. A Subdivision Survey shall be titled as required by the governing regulatory agency. The plat of a boundary survey shall be titled "Boundary Survey Plan"; no other plat title is acceptable. A copy of the survey shall be furnished to the client unless deemed unnecessary by the client. The plat shall conform to the following requirements and shall include the following information:
- 12.2.1 The plat shall be drawn on any reasonably stable and durable drawing paper, vellum or film of reproducible quality. No plat or map shall have dimensions of less than 8 ½ x 11 inches.
- 12.2.2 The plat shall indicate the Source of Title, (Deed Record and/or Will Record Number), Hundred, County, State, Tax Parcel Number and, when applicable, the Postal Address of the subject property. The plat shall show the written scale, area and classifications of the survey. These classifications (suburban, urban, rural, and marshland) are based upon both the purposes for which the property is being used at the time the survey is performed and any proposed developments, which are disclosed by the client, in writing. This classification must be based on the criteria in Section 12.4 and the survey must meet the minimum specifications set forth in Attachment A. The scale shall be sufficient to show detail for the appropriate classification.
- 12.2.3 The horizontal direction of all boundary lines shall be shown in relationship to grid north, magnetic, or in lieu thereof, to true north or to such other established line or lines to which the survey is referenced. The horizontal direction of the boundary lines shall be by direct angles or bearings. A prominent north arrow shall be drawn on every sheet. The description of the bearing reference system shall be stated on the plat. Bearings shall be written in a clockwise direction unless impractical.
- 12.2.4 All monuments, natural and artificial (man-made), found or set, used in the survey, shall be shown and described on the survey plat. The monuments shall be noted as found or set. All monuments set shall be ferrous metal, or contain ferrous metal, not less than ½ inch in diameter and not less than 18 inches in length, except however, a corner which falls upon solid rock, concrete, or other like materials shall be marked in a permanent manner and clearly identified on the plat. Monuments shall be set at all corners of all surveys as required by these standards, with the exception of meanders such as meanders of streams, tidelands, wetlands, lakes, swamps and prescriptive road rights-of-way. Witness monuments shall be set or referenced whenever a corner monument cannot be set or is likely to be disturbed. Such witness monument shall be set as close as practical to the true corner. If only one (1) witness monument is set, it must be set on the actual boundary line or prolongation thereof. Otherwise, at least two (2) witness monuments shall be set and so noted on the plat of the survey. Monuments shall be identified, where possible, with a durable marker bearing the firm name or the surveyor's registration number and/or name.
- 12.2.5 The plat of a metes and boundary survey must clearly describe the commencing point and label the point of beginning for the survey.

- 12.2.6 Notable discrepancies between the survey and the recorded description shall be noted. The source of title used in making the survey shall be indicated. When an inconsistency is found, including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, the nature of the inconsistency shall be indicated on the drawing.
- 12.2.7 In the judgment of the surveyor, the description and location of any physical evidence found along a boundary line, including but not limited to fences, walls, buildings or monuments, shall be shown on the drawing.
- 12.2.8 The horizontal length (distance) and direction (bearing) of each line as determined in an actual survey process shall be shown on the drawing and indicated in a clockwise direction unless impractical.
- 12.2.9 The radius, arc length, chord bearing and chord distance of all circular curves, shall be shown.
- 12.2.10 Information used by the surveyor in the property description shall be clearly shown on the plat, including but not limited to, the point of beginning, course bearing, distance, monuments, etc.
- 12.2.11 The lot and block or tract number or other recorded subdivision designation, of the subject property and adjoining properties shall be shown. If the adjoining properties are not within a recorded subdivision, then the name and deed record of all adjoining owners shall be shown.
- 12.2.12 Recorded public and private rights-of-way or easements which are discovered during the title search performed by others and supplied to the surveyor or graphically shown on the recorded plat, which includes the property, or which are known or observed adjoining or crossing the land surveyed, shall be shown. When no recorded rights-of-way or easements are provided, it shall be so noted on the plan.
- 12.2.13 Location of all permanent improvements pertinent to the survey, referenced radially and perpendicular to the nearest boundary, shall be shown.
- 12.2.14 Visible or suspected encroachments onto or from adjoining property or abutting streets, with the extent of such encroachments, shall be shown.
- 12.2.15 A plat or survey shall clearly bear the Firm Name and licensee's name, license number, title, "Professional Land Surveyor", contact address, and date of survey and original signature and board-approved seal of the licensed surveyor in responsible charge. This signature and seal is certification that the survey meets minimum requirements of the Standards for Land Surveyors as adopted by the Delaware Board.
- 12.2.16 A written property description shall accompany the preparation of a boundary survey, ALTA/ACSM Land Title Survey, and Subdivision Survey. A written property description is not required when there are no changes to the property description used as a basis for said surveys. When preparing a property description in conjunction with a Mortgage Survey Plan, said description shall be based upon and refer to the record plat and not the Mortgage Survey Plan. The following information shown on the plat must be included in a written description, ~~if one is provided~~:
- 12.2.16.1 The commencing point and point of beginning.
 - 12.2.16.2 Sufficient caption to connect the plat and description.
 - 12.2.16.3 Length and direction of all lines in a clockwise direction unless impractical.
 - 12.2.16.4 Curve information as described in paragraph 12.2.9.
 - 12.2.16.5 Type of monuments noted as found or set.
 - 12.2.16.6 The area of the parcel.
 - 12.2.16.7 Adjoining owners, subdivision name, etc.
- 12.2.17 For a Major Subdivision Survey, the boundary corners of the "Parent" property that is the subject of the subdivision shall be set and/or identified in accordance to Section 12.2.4. For a Minor Subdivision Survey, a minimum of two boundary corners of the property that is the subject of the subdivision shall be set and/or identified and their interconnection duly noted. Additionally, for a Minor Subdivision Survey, the connection between said boundary corners and the boundary of the "carved-out" property shall be noted; and, the boundary corners of said "carved-out" property shall be set and/or identified in accordance with Section 12.2.4. For an ALTA/ACSM Land Title Survey,

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all boundary corners of the subject property shall be set and/or identified in accordance to Section 12.2.4.

12.3 Standards for Horizontal Control.

12.3.1 Definitions for specific types of horizontal control surveys, along with standards and procedures, may be found in National Geodetic Survey (NGS) or successor publications. All geodetic surveys, including determination and publication of horizontal and vertical values utilizing Global Positioning Systems, Ground Control Systems or any other system which relates to the practice and profession of Land Surveying, shall be performed under the direct control and personal supervision of a licensed Professional Land Surveyor licensed in the State of Delaware.

12.3.2 Control Surveys that are used to determine boundary lines, including developing coordinates for existing boundary corners, shall meet the Standards contained herein.

12.3.3 Land Information Systems/Geographic Information Systems (LIS/GIS) maps should be built on a foundation of coordinates obtained by an accurate survey. Creation of LIS/GIS maps and services should include a Professional Land Surveyor licensed in the State of Delaware for coordination and input of their knowledge in these fields.

12.4 Classification of Surveys. (See Attachment A)

12.4.1 Urban Surveys - Surveys of land lying within or adjoining a city or town. This would also include the surveys of commercial and industrial properties, condominiums, townhouses, apartments and other high-density developments regardless of geographic location.

12.4.2 Suburban Surveys - Surveys of land lying outside urban areas. This land is used almost exclusively for single family residential use or residential subdivisions.

12.4.3 Rural Surveys - Surveys of land such as farms and other undeveloped land outside the suburban areas which may have a potential for future development.

12.4.4 Marshland Surveys - Surveys of land which normally lie in remote areas with difficult terrain and usually have limited potential for development and cannot be classified as urban, suburban or rural surveys. This includes, but is not limited to, surveys of farmlands and rural areas.

12.5 ALTA/ACSM Land Title Survey. The current published standard as amended from time to time.

12.6 Mortgage Inspection Survey Plan (MIP) (MSP)

12.6.1 Purpose. The purpose of ~~an MIP~~ an MSP is to locate, describe and represent the positions of buildings ~~or~~ and other pertinent visible improvements, ~~or both,~~ affecting the property being ~~inspected~~ surveyed in connection with a conveyance or a mortgage.

12.6.2 Product. The results of the ~~MIP~~ MSP shall be stated on a plat showing the property ~~inspected~~ surveyed and the location of the buildings ~~or~~ and other pertinent visible improvements affecting the ~~inspected~~ surveyed property. The plat shall be titled "Mortgage Survey Plan"; no other plan title is acceptable.

12.7 The ~~Approval Waiver~~ by the ~~Consumer~~ Ultimate User and Disclosures.

12.7.1 The surveyor shall not ~~begin work for compensation~~ prepare a MSP pursuant to this regulation until the surveyor receives a signed ~~approval form~~ waiver more particularly described below.

12.7.2 For purposes of this section, "ultimate user" means the contract purchaser of the property. If no purchaser exists, the ultimate user is the owner of the property. The approval form or its equivalent waiver shall be sufficient if signed by one consumer ultimate user, whether or not there are multiple consumers, or, if a consumer is not an individual, the consumer's duly authorized agent, with respect to the property for which services pursuant to this regulation are sought ultimate users. The approval form waiver shall at a minimum contain:

12.7.2.1 An approval by the ~~signer of the requested services~~ ultimate user to perform a MSP and to wave the right to have corner markers set; and

12.7.2.2 An explanation of the ~~differences between an MIP and a boundary survey which includes an improvement location drawing~~ impact of signing the waiver advising the ultimate user of the possible need for a future survey as a result of physical improvements of the property and the potential inability of the ultimate user to identify the boundary of the surveyed property.

12.7.2.3 The waiver shall be in the following approval form or its equivalent shall suffice for the purpose of complying with this regulation:

"Waiver Not to Set Corner Markers and Approval Form (on company letterhead, with name, address and telephone number) to Perform a MSP Survey"

To: _____

(Name, address, and telephone number of Land Surveyor)

From: _____

(Name, address, and telephone number of Ultimate User)

Re: _____

Property (Appropriate Identifier; i.e. address, tax parcel number)

In connection with the purchase or ~~refinancing~~ survey of the property located at _____, ~~we I have waived having [all] the corner markers set and have been requested to prepare an MIP the preparation of a Mortgage Survey Plan (MSP).~~

~~Since I have been made aware that an MIP Mortgage Survey Plan (MSP) is not a boundary survey and does not identify property boundary lines. State regulations require us to have your approval. Therefore, please sign and return the original of this form promptly, by fax or mail, so that there will be no delay in settlement I am also aware that there may be a cost difference between the MSO and boundary survey. Additionally, I have been advised of the impact of signing the waiver regarding the possible need for a future survey as a result of physical improvements of the property and my inability to identify the boundary of the surveyed property. Furthermore, I am aware that the inability to identify the boundary of the property may result in a boundary dispute with an adjoining property owner and/or property improvements not accurately situated on my property.~~

~~If you wish, we can perform a boundary survey, which includes an Improvement Location Drawing (ILD). This survey will identify property boundary lines and will mark property boundary corners.~~

~~An MIP will cost approximately \$ _____. A boundary survey which includes an ILD will cost (approximately \$ _____) (between \$ _____ and \$ _____).~~

Very truly yours,

Check appropriate lines:

_____ ~~We approve the preparation of an MIP. We have read and understand that, in the absence of any problem revealed by or during the preparation of this drawing, it may be all that is required of the land surveyor.~~

_____ ~~We request a boundary survey that will include an ILD, and will identify property boundary lines and mark property boundary corners.~~

_____ (Signature of Ultimate User)

_____ (Signature of Witness)

I hereby certify that by virtue of the signature of the ultimate user on this waiver that the ultimate user is aware of the potential impact of not having corner markers set, and that I have prepared a Mortgage Survey Plan (MSP) in compliance with Section 12.0 Minimum Technical Standards for Licensees as set forth by the Delaware Board of Professional Land Surveyors

Delaware Professional Land Surveyor

License Number: _____

Date: _____

12.7.2.4 The following notation shall be noted on a MSP when a written waiver is obtained: "In accordance to the Delaware Board of Professional Land Surveyors' Regulation 12.7, a waiver not to set corner markers has been obtained".

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- 12.7.2.5 The licensee shall maintain the signed corner marker waiver or a retrievable scanned copy of said waiver for a minimum of three years from date of ultimate user's signature.
- 12.7.2.6 The licensee shall submit to the Board documentation of a waiver of a specified property upon the Board's request in connection with a complaint involving said property.
- 12.7.2.7 Failure to comply with the provision of this section shall be deemed professional misconduct subject to an appropriate penalty.
- ~~12.7.3~~ Upon receipt of an approval form, which complies with this section, the surveyor shall perform the services approved by the consumer. If the consumer requests a boundary survey which includes an ILD, then the survey shall be consistent with the provisions set forth in The Minimum Model Standards adopted by the Board.
- 12.8 Minimum Procedures for Performing a MSP. If the consumer approves ultimate user waives setting corner markers and agrees to the preparation of an MIP MSP, the surveyor shall perform at least the following procedures:
- 12.8.1 ~~Examine the current deed and/or plat~~ appropriate documents of record for the subject parcel and review the most current tax assessment map for inconsistencies with ~~deed or plat~~ said documents. The surveyor is required to check for mathematical closure of said documents. If said documents do not close mathematically, the surveyor will determine, based upon his professional judgement, if a boundary survey is warranted.
- 12.8.2 Take sufficient on-site measurements to enable the surveyor to perform the tasks called for by this regulation with regard to the:
- 12.8.2.1 Locations relative to the property lines being surveyed of buildings and ~~these other~~ pertinent improvements pertinent to the MIP;
- 12.8.2.2 Locations of possible encroachments relative to the property lines being surveyed reasonably determined ~~based on a~~ by visual inspection;
- 12.8.2.3 Easements; and
- 12.8.2.4 Rights-of-way.
- 12.8.3 If the ~~consumer~~ ultimate user has approved an ~~MIP~~ MSP, then the following elements shall be shown:
- 12.8.3.1 Significant buildings, structures and other pertinent improvements, and their relationship to the ~~apparent~~ property lines referenced radially and/or perpendicular to the nearest boundary, based on the field measurements taken by the surveyor, and any other boundary evidence considered by the surveyor;
- 12.8.3.2 Statement with regard to the ~~level of accuracy and accuracy of apparent setback distances~~ Classification of Survey; (REFER TO ATTACHMENT A)
- 12.8.3.3 Possible encroachments on the subject property and from the subject property onto adjoining property located relative to the property lines being surveyed to the extent reasonably determined by a visual inspection of the ~~propertyies either way across~~ property lines; and
- 12.8.3.4 Minimum setback lines, as shown on plats,
- 12.8.3.5 ~~A minimum of two described boundary corners of the subject property, either found or set, and their relationship denoted by appropriate courses and distances to each other. and the subject property. Two described boundary corners of the subject property are not required when the subject property is part of a townhouse (row house) community constructed prior to 1980, or a community designated as "55 or over", or a condominium community. A subject property within said communities will require~~ A minimum of two described boundary control points, either found or set, and their relationship denoted by appropriate courses and distances to each other and the subject property.
- 12.8.3.6 Easements or rights-of-way as shown on ~~plats or current deed of record~~ the aforementioned documents of record for subject property.

- 12.8.4 If, in connection with the preparation of an MIP MSP, a surveyor finds evidence to warrant, in the surveyor's professional opinion, the performance of a boundary survey, the surveyor shall so notify, in writing, the ~~consumer~~ ultimate user or the ~~consumer's~~ ultimate user's representative.
- 12.8.5 If the ~~consumer~~ ultimate user has approved the preparation of an MIP MSP, then:
- 12.8.5.1 The MIP MSP prepared by the surveyor shall prominently display, at a minimum, advice to the effect that:
- 12.8.5.1.1 The MIP MSP is of benefit to a ~~consumer~~ ultimate user only insofar as it is required by a lender, a title insurance company or its agent in connection with the contemplated transfer, financing, or refinancing of subject property; and
- 12.8.5.1.2 The MIP MSP is not to be relied upon for ~~the establishment or location of fences, garages, buildings or other existing~~ or future improvements.
- 12.9 Plats.
- 12.9.1 The original plat of an MIP MSP shall be a reproducible drawing at a scale which clearly shows the results of the field work, computations, research and record information as compiled and checked and shall bear the title "Mortgage Survey Plan".
- 12.9.2 The plat shall be prepared in accordance with the following procedures:
- 12.9.2.1 A reasonably stable and durable drawing paper, linen or film is considered a suitable material;
- 12.9.2.2 Plats may not be smaller than 8 ½ x 11 inches;
- 12.9.2.3 The plat shall show the following:
- 12.9.2.3.1 Caption or title and address ~~or~~ (if applicable) and subdivision lot number of the property (if applicable),
- 12.9.2.3.2 Scale,
- 12.9.2.3.3 Date,
- 12.9.2.3.4 Name and address of the firm or surveyor; and
- 12.9.2.3.5 Original signature and board-approved seal of the licensed surveyor in responsible charge,
- 12.9.2.3.6 ~~Consumer's~~ Ultimate User's name,
- 12.9.2.3.7 Statement with regard to the ~~level of accuracy and accuracy of apparent setback distances~~ Classification of Survey; (REFER TO ATTACHMENT A)
- 12.10 Maintenance of Records.
- 12.10.1 The surveyor shall make a reasonable effort to maintain records, including names or initials of all personnel, date of performance, reference to field data, such as book number, loose leaf pages and other relevant data.
- 12.11 Local Standards.
- 12.11.1 All work shall be performed according to the minimum standards for the community in which the service is provided, as long as said standards meet or exceed the standards herein. ~~(4)~~ Current local standards shall take precedence over the MIP MSP as to the manner in which mortgage or deed-related surveys or plans are prepared and as to the manner of field work and staking related to these surveys or plans, if those standards require more detailed or more accurate work to meet those local standards.
- 12.12 Based on current information, the MIP MSP shall be accepted as a minimum standard only in New Castle County when requested by the ultimate user as an option to a boundary survey. In Kent and Sussex counties, MIP's MSP's shall not be considered to meet the minimum local standards for the work required for mortgage or deed-related surveys or plans. For mortgage and deed-related surveys or plans in Kent County and Sussex County, the minimum requirement is ~~an Improvement Location Drawing~~ a Boundary Survey Plan prepared in compliance with Regulation 12.0 which includes proper monument placement.
- 12.12.1 Electronically Transmitted Documents. Documents including drawings, specifications and reports, that are transmitted electronically to a client or a governmental agency shall have the computer-

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generated seal removed from the original file, unless signed with a digital signature as defined in 12.12.2. After removal of the seal the electronic media shall have the following inserted in lieu of the signature and date: This document originally issued and sealed by (Name of sealer), containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of properly certified documents are not subject to the requirements of this paragraph. The electronic submission of CAD, vector or other files subject to easy editing are subject to the requirements of this paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted.

12.12.2 Documents to be electronically transmitted that are signed using a digital signature, shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

12.12.2.1 Unique to the licensee using it;

12.12.2.2 Capable of verification;

12.12.2.3 Under the sole control of the licensee; and

12.12.2.4 Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

12.12.3 Electronic formats must be approved by the board and must meet all criteria set forth in 12.2.1 and 12.2.2.

7 DE Reg. 918 (01/01/04)

11 DE Reg. 1664 (06/01/08)

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

2700 Board of Registration for Professional Land Surveyors

DIVISION OF PROFESSIONAL REGULATION

2900 Real Estate Commission

**Statutory Authority: 24 Delaware Code, Section 2905(a)(1) (24 Del.C. §2905(a)(1))
24 DE Admin. Code 2900**

PUBLIC NOTICE

Pursuant to 24 Del.C. §2905(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on January 12, 2012 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission has proposed extensive revisions to the rules and regulations to implement amendments to the Board's licensing law, Chapter 29 of Title 24 of the Delaware Code, which will go into effect on February 3, 2012.

In particular, the proposed rules specify the licensure requirements for Broker of Record, Associate Broker and Salesperson and for licensure by reciprocity.

The Commission proposes removal of the requirement that application must be made within twelve months

after course completion. However, if application is not made within twelve months, the applicant must meet continuing education requirements.

The amendments add provisions imposing greater responsibility on the Broker for the conduct of his or her Associate Brokers and Salespersons. Specifically, Brokers will be required to maintain continuing education certificates for Associate Brokers and Salespersons.

The rules pertaining to advertising are expanded to set forth disclosure requirements for all types of advertising, including internet advertising.

The rules pertaining to continuing education are expanded to specify requirements for licensure renewal. The Commission's authority to conduct audits and impose discipline in connection with rule to show cause hearings is also explained in detail.

Finally, the list of crimes substantially related to the provision of Real Estate Services is expanded.

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

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

2900 Real Estate Commission

DIVISION OF PROFESSIONAL REGULATION

3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

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

PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals in accordance with 24 **Del.C.** § 3006 (1) has proposed amendments to Rule 5.0 License for Marriage and Family Therapist and 6.0 License for Associate Marriage and Family Therapist. The proposed revisions to the rules are an attempt to bring the Board's standards in compliance with the Association of Marital and Family Therapy Regulatory Board's standards who administer the test.

A public hearing will be held on January 25, 2012 in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Blvd, Dover, DE where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jessica Williams, Administrative Assistant for the Delaware Board of Professional Counselors, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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

(Break in Continuity of Sections)

5.0 License for Marriage and Family Therapists (LMFT)

5.1 Licensure by Examination Requirements

5.1.1 LAMFT Required - Successful LMFT applicants must hold an active License for Associate Marriage and Family Therapists (LAMFT).

Limited Exception - Individuals who have completed the experience requirements of regulation 5.1.2 and hold an acceptable degree under regulation 6.2, may apply for an LMFT without first

obtaining an LMFT. LMFT applicants under this exception must submit documentation of their experience pursuant to the requirements of regulation 5.1.2 and their educational background pursuant to regulation 6.2. If the submitted documentation is acceptable to the Board, the applicant will receive permission to take the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) exam. If approved to take the exam, an applicant under this exception will receive an LMFT once the Board receives proof that the applicant has passed the exam. ~~A score of 70% or greater is required to pass the exam.~~ A score equal to or greater than the pass point set by the AMFTRB is required to pass the exam.

5.1.2 Experience - Applicants must provide documentation of completion of 3,200 hours of marriage and family therapy services, as defined in 24 Del.C. §3051(d), over a period of no less than two (2) but no more than four (4) consecutive years.

5.1.2.1 Of the required 3,200 hours total experience, 1,600 hours must have been completed under the supervision of an individual who meets the requirements of regulation 6.3.1. The 1,600 hours of supervised experience must be fulfilled as follows:

5.1.2.1.1 500 hours of couple and family therapy,

5.1.2.1.2 500 hours of individual therapy,

5.1.2.1.3 500 hours of couple and family or individual therapy or some combination of the two, and

5.1.2.1.4 100 hours of face-to-face clinical supervision with the applicant's supervisor.

5.1.2.2 Hours completed under the supervision of an individual who does not meet the requirements of 6.3.1 will not count toward fulfillment of the required 1,600 hours of supervised experience but may count toward fulfillment of the 1,600 hours of experience not required to be supervised.

5.2 Licensure by Reciprocity Requirements

5.2.1 Licensure Status - Verification of an applicant's possession of a current marriage and family therapy license in good standing from another state, the District of Columbia, or U.S. territory must be submitted directly to the Board by that state, the District of Columbia, or U.S. territory.

5.2.2 Prior Licensing Jurisdictions - The applicant must submit a notarized statement listing all licensing jurisdictions in which he previously practiced and a signed "Release of Information" granting the Board permission to contact those jurisdictions for verification of disciplinary history and current status.

5.2.3 Substantial Similarity of Licensing Standards - Applicants must submit the statute, rules, and regulations governing marriage and family therapy licensure for the state in which they are currently licensed and through which they are seeking reciprocity. The burden of proof is on the applicant to demonstrate that the licensing standards of that state are substantially similar to Delaware's standards. The Board will make a determination of substantial similarity based on the information presented.

5.2.4 No Substantial Similarity of Licensing Standards - Applicants from states whose licensing standards are not substantially similar to Delaware's standards may receive reciprocal licensure if they have held their license in good standing for at least five (5) years and have passed the AMFTRB exam.

5.3 License Renewal

5.3.1 Renewal Date – The LMFT shall be renewable biennially on or before September 30th of even-numbered years. License renewal may be accomplished online at the Division of Professional Regulation's (Division) website. Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.

5.3.2 Continuing Education (CE) Requirements

5.3.2.1 Purpose – The CE requirement is intended to maintain licensees' professional competence in the practice of marriage and family therapy.

- 5.3.2.2 Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. CE requirements for initial licensure periods of less than two (2) years shall be prorated.
- 5.3.2.3 Acceptable CE includes:
 - 5.3.2.3.1 CE courses approved by a national mental health or substance abuse treatment organization or their local affiliates, such as the American Association for Marriage and Family Therapy (AAMFT), the International Family Therapy Association (IFTA), the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), or the American Psychological Association (APA) are acceptable, regardless of course content, and do not need to be approved by the Board.
 - 5.3.2.3.2 Any course that would achieve the purpose of the CE requirement, explained in regulation 5.3.2.1 above, is acceptable and does not require Board review and approval. Courses that do not clearly achieve the purpose of CE require Board approval. Licensees should request Board approval in advance of attendance. Requests for approval may be submitted afterward, but there is no guarantee of approval. These hours must be documented by a course agenda, syllabus, or other brief documentation that would allow the Board to assess the appropriateness of the course content. Only licensees may request course approvals. Sponsoring organizations may not request course approvals.
 - 5.3.2.3.3 Teaching academic or CE courses, presentation of original papers, or the writing of a peer-reviewed article may account for up to 20 CE hours. An official transcript, agenda, or syllabus must be provided to document course hours and content. A copy of the published paper presented must be provided to document hours and content. Only the hours worked in preparation and delivery of the items contained in 5.3.2.3.2 will be counted.
 - 5.3.2.3.4 CE obtained through independent or home study, including online CE, may only account for a maximum of 50% of the CE requirement.
- 5.3.3 Hardship – The Board shall have the authority to make exceptions to the CE requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not limited to: disability, illness, military service, extended absence from the jurisdiction, or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the Board.
- 5.3.4 Verification - Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal documents. Requests for paper renewal forms must be directed to the Division of Professional Regulation.
- 5.3.5 Post-Renewal Audit - The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the CE requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period. Licensees shall retain their CE course attendance documentation for at least one (1) year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period shall be audited.
- 5.4 Inactive Status – Licensees may be placed in inactive status upon written request to the Board.
 - 5.4.1 A written request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue through the then

PROPOSED REGULATIONS

current licensure period and the following two-year licensure period. An inactive license shall expire at the end of the two-year licensure period unless either (1) the Board grants an extension before the end of the licensure period or (2) the license is returned to active status before the end of the licensure period.

5.4.2 Extension – The Board shall extend the inactive status for an additional two-year licensure period upon timely written request. Inactive licenses expire at the end of the licensure period, so written requests for extension must be received well in advance of the end of the licensure period to avoid expiration.

5.4.3 Return to Active Status – Before the end of the then current two-year licensure period, a license shall be returned to active status upon fulfillment of the following requirements by the licensee:

5.4.3.1 Written Request – Submit a written request to have the license returned to active status.

5.4.3.2 Continuing Education – Provide proof of completion of 40 hours of acceptable CE, obtained within the two (2) year period immediately preceding the request for return to active status.

5.4.3.3 Fee – Pay the licensure renewal fee. No late fee shall be assessed for return to active status.

5.5 Ethics - The Board hereby adopts the current version of the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics ("Code"). The practice of all persons possessing an LMFT or LAMFT shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

11 DE Reg. 225 (08/01/07)

11 DE Reg. 1066 (02/01/08)

6.0 Licensure for Associate Marriage and Family Therapists (LAMFT)

6.1 Examination - Successful LAMFT applicants must pass the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) exam. No LAMFT applicant may take the exam without prior approval of the Board. Board approval is based on fulfillment of the requirements in regulation 6.2 (proof of acceptable education) and regulation 6.3 (submission of a plan to acquire the requisite experience). LAMFT applicants must fulfill those requirements to receive permission to take the exam. If approved to take the exam, an applicant will receive an LAMFT once the Board receives proof that the applicant has passed the exam. ~~A score of 70% or greater is required to pass the exam~~ A score equal to or greater than the pass point set by the AMFTRB is required to pass the exam.

6.2 Education - An applicant's education must be documented by an official transcript submitted directly to the Board by the degree-granting institution.

6.2.1 All successful applicants must possess either:

6.2.1.1 A graduate degree in marriage and family therapy (MFT) from a graduate program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE),

6.2.1.2 A graduate degree in marriage and family therapy from a non-COAMFTE accredited graduate program acceptable to the Board, or

6.2.1.3 A graduate degree from a nationally accredited college or university in an allied field which is acceptable to the Board. Acceptable allied fields are limited to: counseling, social work, psychology, and psychiatry.

6.2.2 To be acceptable to the Board, a graduate degree under regulations 6.2.1.2 or 6.2.1.3 above must be based on at least 45 credit hours which must include the following:

6.2.2.1 Three (3) credit hours in each of the 10 core content areas for a total of 30 credit hours. The 10 core content areas are:

6.2.2.1.1 Marriage and Family Therapy Models and Theories

6.2.2.1.2 Diagnosis and Treatment of Mental and Emotional Disorder

6.2.2.1.3 Psychopathology

- 6.2.2.1.4 Gender, Culture, and Ethnic Diversity in marriage and family therapy
- 6.2.2.1.5 Sexual Issues In Marriage and Family Therapy
- 6.2.2.1.6 Family Therapy Theory & Techniques
- 6.2.2.1.7 Couple Therapy Theory and Techniques
- 6.2.2.1.8 Ethical, Legal and Professional Issues in marriage and family therapy
- 6.2.2.1.9 Research Methods and Evaluation
- 6.2.2.1.10 Clinical Supervised Experience in marriage and family therapy
- 6.2.2.2 Nine (9) credit hours earned by serving an internship. The internship must have included at least 300 hours of direct client counseling, 150 hours of which must have been spent on couples and family therapy.
- 6.2.2.3 Six (6) credit hours in electives.
- 6.3 Experience - LAMFT applicants must provide a written plan for acquiring the LMFT experience requirements contained in regulation 5.1.2 above. The plan must be signed by the applicant's proposed supervisor. Supervisors must be acceptable to the Board.
 - 6.3.1 To be acceptable to the Board, a supervisor must be either:
 - 6.3.1.1 a Delaware-licensed marriage and family therapist,
 - 6.3.1.2 an individual holding the "approved supervisor" designation from the American Association for Marriage and Family Therapy (AAMFT),
 - 6.3.1.3 a candidate for the AAMFT "approved supervisor" designation who is acceptable to the Board,
 - 6.3.1.4 a licensed marriage and family therapist from another state who has held a license in good standing for a minimum of five (5) years in that state and has passed the AMFTRB exam, or
 - 6.3.1.5 only if one of the above is not available, an individual with the following license from any state: clinical social worker, psychologist, professional counselor of mental health, or physician specializing in psychiatry with training in marriage and family therapy supervision.
 - 6.3.2 Licensees must notify the Board in writing, on the Board-approved form, within 30 days if their supervisor changes. Any supervisor must meet the requirements in 6.3.1. All changes are subject to Board approval. Contact the Board office or website for the proper form.

11 DE Reg. 225 (08/01/07)

11 DE Reg. 1066 (02/01/08)

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

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

DIVISION OF PROFESSIONAL REGULATION

3300 BOARD OF VETERINARY MEDICINE

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))

24 DE Admin. Code 3300

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on January 12, 2012 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments.

Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 2.0, addressing Unprofessional Conduct for Veterinarians. Specifically, Rule 2.1.17 is added to provide that, upon request of the client, directed to the veterinarian, the veterinarian shall disclose common side effects of the medications prescribed by the veterinarian.

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

3300 Board of Veterinary Medicine

(Break in Continuity of Sections)

2.0 Unprofessional Conduct for Veterinarians (24 Del.C. §3313(a)(1))

- 2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following:
 - 2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 or allowing licensed veterinary technicians to perform the acts forbidden under Section 1.3 of the Rules and Regulations.
 - 2.1.2 Allowing support personnel to perform tasks in Section 1.5 of the Rules and Regulations without the specified supervision or allowing veterinary technicians to perform the tasks in Section 1.6 without the specified supervision.
 - 2.1.3 Failing to be accessible to support or veterinary technician personnel by electronic means in a reasonable timeframe to provide off-site supervision for activities requiring indirect supervision as required by Section 1.4 of the Rules and Regulations.
 - 2.1.4 Failing to arrange for supervision by another licensed veterinarian when not able to provide supervision as required by Section 1.4 of the Rules and Regulations.
 - 2.1.5 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.
 - 2.1.6 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.
 - 2.1.7 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.
 - 2.1.8 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.
 - 2.1.9 Destruction of any part of a patient's records before a minimum of three (3) years have elapsed from the last entry in the medical record shall be considered unprofessional conduct. Records are to include, but are not limited to, information such as written or electronic documentation, rabies records, radiographs, ultrasounds, laboratory, and histopathological results.
 - 2.1.10 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 **Del.C.** §1325.
 - 2.1.10.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing sanitary conditions and convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

- 2.1.10.2 Housing should be kept in good repair to prevent injury to the animal.
- 2.1.10.3 Precautions should be taken to prevent the spread of communicable diseases in housing animals.
- 2.1.11 Improper labeling of prescription drugs. The package or label must contain the following information, either typed or in legible handwriting:
 - 2.1.11.1 Name and address of the prescribing veterinarian;
 - 2.1.11.2 Patient's first name and owner's last name;
 - 2.1.11.3 Name, strength and quantity of the drug, and date dispensed;
 - 2.1.11.4 Specific usage directions, describing the exact method by which the drug must be administered. A prescription without specific directions, or a prescription bearing the notation "as directed" without specific directions, may not be prepared or dispensed.
- 2.1.12 Failure to make childproof packaging available for prescription drugs upon the request of a client.
- 2.1.13 Misrepresenting continuing education hours to the Board.
- 2.1.14 Failure to obey a disciplinary order of the Board.
- 2.1.15 Prescribing medication without examining the animal(s) within a period of one year.
- 2.1.16 Advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The availability of the veterinarian who is to provide emergency service shall be specified as either "veterinarian on premises" or "veterinarian on call" The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond.
- 2.1.17 Failure to disclose common side effects upon request. Upon request of the client, directed to the veterinarian, the veterinarian shall disclose the common side effects of medications prescribed by the veterinarian. Such disclosure may be made verbally or in written or electronic format.

5 DE Reg. 1897 (4/1/02)

5 DE Reg. 1962 (5/1/02)

6 DE Reg. 273 (9/1/02)

6 DE Reg. 950 (2/1/03)

10 DE Reg. 884 (11/01/06)

12 DE Reg. 1233 (03/01/09)

12 DE Reg. 1357 (04/01/10)

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

3300 Board of Veterinary Medicine

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

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

PUBLIC NOTICE

The Delaware Department of Transportation Division of Planning hereby gives notice of its intention to adopt regulations pursuant to 29 **Del.C.** §8404(8) and in compliance with the Delaware Administrative Procedures Act, 29 **Del.C.** §10115. The proposed regulations set out below describe the requirements and procedures to be followed by DeIDOT personnel in releasing crash data and/or information related to sites identified under the

Highway Safety Improvement Program (HSIP).

The Department solicits, and will consider timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such comments will be thirty (30) days after the proposed amendments are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed, emailed or hand-delivered to Adam Weiser, whose address is Delaware Department of Transportation, 169 Brick Store Landing Road, Smyrna, Delaware 19977, or Adam.Weiser@state.de.us. by December 31, 2011.

2306 Crash Data Release

Authority

29 Del.C. §10002(g)(6) states that any records that are specifically exempted from public disclosure by statute or common law shall not be deemed public in accordance with the Freedom of Information Act.

21 Del.C. §313(b) of the Delaware Code, states that accident reports shall not be open to public inspection.

23 USC§409 states, "Notwithstanding any other provision of law, reports, surveys, schedules, lists or data compiled or collected for the purpose of identifying, evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions or railway-highway crossings, pursuant to sections 130, 144 and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists or data."

29 Del.C. §8404(8) states, "The Secretary [of the Department of Transportation] shall have the following powers, duties and functions: ...to establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof:"

1.0 Purpose

This regulation describes the requirements and procedures to be followed by all DeIDOT employees with respect to releasing, to any entity or personnel outside of DeIDOT, crash data and/or information related to sites indentified under the Highway Safety Improvement Program (HSIP). For purposes of this regulation, the HSIP includes the Hazard Elimination Program (HEP), High Risk Rural Roads Program (HRRRP), the Highway-Rail Grade Crossing Safety Program (HRGX) and the Transparency Report

2.0 Definitions

"Crash (Accident) Rates" - A distribution of the numerical data of the number of crash occurrences per year.

"Crash (Accident) Report" - The State of Delaware Uniform Traffic Collision Report supplied by the Delaware Department of Safety and Homeland Security and the Delaware Criminal Justice Information System (DELJIS) via the E-Crash program, on which all reported crashes involving an impaired driver, apparent property damage to the extent of \$1,500 or more or personal injury or death to a person, when such crashes occur within that agency's jurisdiction.

"Crash (Accident) Summaries" - A summary of the numerical data classified by several crash criteria such as Manner of Impact, Surface Conditions, Lighting Conditions, Weather Conditions, Time of Day, Day of Week etc. that pertains to the crash events.

"GIS (Geographical Information System) Crash Data" - The geographic location of a crash as well as the attributes that are related to the crash. This data can be used to conduct analyses and produce maps of the crash data.

"Highway Safety Improvement Program (HSIP)" - The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established 23 USC §148 to create the Highway Safety Improvement Program (HSIP) as a core Federal Highway Administration (FHWA) program. The overall purpose of the program is to achieve a significant reduction in traffic fatalities and

incapacitating injuries through the implementation of infrastructure-related highway safety improvements on all state-maintained roadways. Components of Delaware's HSIP include the Strategic Highway Safety Plan (SHSP), the Hazard Elimination Program (HEP), the High Risk Rural Roads Program (HRRRP), the Highway-Rail Grade Crossing Safety Program (HRGX), and the Transparency Report.

“Requestor” - Any person, employee, consultant, or other state agency, who requests crash data for analytical purposes.

“State Agency” - Any department of State Government that is recognized under the applicable sections of Delaware Code. This includes the Federal Highway Administration, Office of Highway Safety, Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization for the purposes of this regulation.

3.0 Regulation

The Delaware Department of Safety and Homeland Security are the owners of all crash data received by DeIDOT. Given the responsibilities of DeIDOT, crash data is transferred from the Department of Safety and Homeland Security databases to DeIDOT databases and the use of this data by DeIDOT is solely for the purposes of reviewing crash data to make engineering decisions to improve safety on the roadways under the jurisdiction of the Department. Given the sensitive personal nature of this data, it is important that this data and all HSIP-related information be handled with the utmost responsibility and not released outside of the Department except for Department business purposes. DeIDOT personnel must ensure that all released crash data, associated police reports, and HSIP-related information be used for official purposes only and shall not be transmitted, copied, distributed or provided to any other entity or personnel unless written approval is received from the Delaware Department of Transportation Traffic Safety Programs Section or the Statistics and Research Section in the Division of Planning.

The purpose of this regulation is to outline a list of personnel or entities that request such privileged information on a regular basis as well as define the level of disclosure or exemption that should be followed based on the requestor (see Table 1: Crash Data Release Guideline Matrix).

When data is approved to be released to any requestor outside of DeIDOT, a concurrence letter shall be prepared by the DeIDOT section that is releasing the data, and this letter shall be signed by the requestor and returned to DeIDOT prior to the data being released. This concurrence letter shall be a binding agreement between DeIDOT and the requestor and shall require the requestor to seek approval from DeIDOT to release the data to a third party individual or agency. A copy of the concurrence letter shall be provided electronically to the Deputy Attorney General assigned to DeIDOT, the DeIDOT Safety Programs Manager in the Traffic Section and the Manager of the Statistics and Research Section in Planning. An example of a concurrence letter is provided at the end of this regulation.

4.0 Responsibility

The Division of Planning shall have primary responsibility for implementation of this regulation since they are the distributors of crash data.

5.0 Effective Date

This regulation shall become effective ten (10) days after it is published in its final adopted form in the Register of Regulations in accordance with 29 Del.C. §10118(e).

Table 1: Crash Data Release Guideline Matrix

Requestor	Raw Crash Data (Number of Crashes Only)	Crash Rates	Crash Summaries	Crash Reports	GIS Crash Layers	HSIP Site Listing

PROPOSED REGULATIONS

Citizen	Yes	Yes	Yes	No	No	No
Legislator	Yes	Yes	Yes	No	No	Yes
DeIDOT (internal operations)	Yes	Yes	Yes	Yes	Yes	Yes
DeIDOT Consultant	Yes	Yes	Yes	Yes	Yes	Yes
Non-DeIDOT Consultant ¹	Yes	Yes	Yes	Yes	No	No
Other State Agency	Yes	See Note 2	Yes	No	See Note 2	See Note 2
Media	Yes	No	Yes	No	No	No

NOTES:

1. Non-DeIDOT Consultant must provide proof that the work they are doing involves state maintained roadways (i.e., developer's consultant)
2. This data may be released to FHWA, Office of Highway Safety, WILMAPCO or Dover/Kent County MPO. Release of data to other state agencies requires the approval of the Safety Programs Manager.

Example Concurrence Letter

September 7, 2011

Mr. John Smith
 Sample Area Planning Council (SAPCO)
 123 Main Avenue
 Newark, Delaware 19711

Dear Mr. Smith:

The Delaware Department of Transportation (DeIDOT) has received your request for crash data. As you might be aware, the Delaware State Police are the sole owners of the crash data and DeIDOT is strictly the end user of the data. Hence, any information contained within the requested crash data are privileged, confidential and/or exempt from disclosure under applicable law. As such, any crash data that will be provided is for SAPCO business use only and shall not be transmitted, copied, distributed or provided to any other entity unless written approval is received from the Delaware Department of Transportation.

DeIDOT will release the requested crash data on the terms and conditions set forth herein. By your signature below, SAPCO acknowledges that this letter has been read and understood and agrees to terms and conditions stated in this letter.

The requested crash data will be released as soon as the letter is signed and sent back at your earliest convenience. Future requests for crash data should be sent to my office for review, and the request should be in the form of a letter and on SAPCO letterhead. Should you have any questions regarding this information, please contact me at (302) 659-4073 or by e-mail at Adam.Weiser@state.de.us.

Sincerely,

Donna Robinson
 Statistics, Planning & Research
 Division of Planning

Cc: Tyrone Crittenden, Planning Supervisor
 Frederick Schranck, Deputy Attorney General
 Adam Weiser, Safety Programs Manager

Concurrence Date

EXECUTIVE DEPARTMENT OFFICE OF MANAGEMENT AND BUDGET

Statewide Benefits Office

29 Delaware Code, Section 5256 (29 Del.C. §5256)

PUBLIC NOTICE

Disability Insurance Program Rules and Regulations

Pursuant to the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 Del.C. §5256, the State Employee Benefits Committee established by 29 Del.C. §9602 is considering adopting rules and regulations for the general administration of the Disability Insurance Program established pursuant to Title 29, Chapter 52A of the Delaware Code.

Any person who wishes to submit written suggestions, compilations of data, briefs or other written materials concerning the proposed rules and regulations must submit same to Brenda Lakeman, Director, at Statewide Benefits Office, 500 W. Loockerman Street, Suite 320, Dover, DE 19904 or by email at brenda.lakeman@state.de.us or by fax at (302) 739-8339 by January 20, 2012. A public hearing to consider the adoption of the Disability Insurance Program Rules and Regulations will be held during the State Employee Benefits Committee meeting scheduled on January 30, 2012 at 2:00 pm at the Tatnall Building, 150 William Penn Street, Dover, DE 19901.

The action concerning the adoption of the proposed rules and regulations will be based upon the results of the State Employee Benefits Committee staff analysis and consideration of any comments and written materials submitted by any person.

Disability Insurance Program Rules and Regulations

1.0 Purpose

The purpose of the proposed Disability Insurance Program Rules and Regulations is to provide State employees and administrative staff with access to policies currently in force and in practice with respect to the Disability Insurance Program. The proposed Rules and Regulations encompass and combine processes that have been developed since inception of the Disability Insurance Program and over the past five (5) years.

2.0 Definitions

“Base Rate of Compensation” means the employee’s usual rate of pay, not including commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation.

“Claimant” means a person enrolled in the DIP who applies for STD and/or LTD benefits and/or an extension of STD and/or LTD benefits or who is receiving or has received STD and/or LTD benefits.

“Committee” means the State Employee Benefits Committee (SEBC)

“Creditable Compensation” as defined in 29 Del.C. §5251(c), shall mean the base rate of compensation that the employee received on the last day of employment before the employee developed a disability.

“Employee” shall mean an eligible “employee” as defined in 29 Del.C. §5501(e), (<http://delcode.delaware.gov/title29/c055/sc01/index.shtml>) who elects to participate in the DIP as specified in 29 Del.C. §5519 (<http://delcode.delaware.gov/title29/c055/sc02/index.shtml>). This shall include any employee who is collecting benefits pursuant to 11 Del.C. §8352(4) (<http://delcode.delaware.gov/title11/c083/sc03/index.shtml>).

“Essential Duty” means a duty that is substantial, not incidental; is fundamental or inherent to the occupation; and cannot be reasonably omitted or changed. To be at work for the number of hours in the employee’s regularly scheduled workweek is also an essential duty. Any occupation means an occupation for which the employee is qualified by education, training or experience.

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"Medical Care" is received when a physician is consulted or medical advice is given or treatment is recommended, prescribed by, or received from a physician. Treatment includes, but is not limited to, medical examinations, tests, attendance or observations and use of drugs, medicines, medical services or equipment.

"Member" means a person enrolled in or was previously enrolled in the DIP.

"Pre-Disability Base Pay" shall mean the compensation paid to the employee on the last day of employment before the employee developed a disability.

"Pre-Existing Condition" means any accidental bodily injury, sickness, mental illness, pregnancy, or episode of substance abuse or any manifestations, symptoms, findings, or aggravations related to or resulting from such accidental bodily injury, sickness, mental condition, pregnancy or substance abuse for which the employee received medical care during the 3 month period that ends the day before:

- a. The employee's effective date of coverage in DIP; or
- b. The effective date of a change in DIP coverage.

"RTW Coordinator" means the person selected by the Office of Management and Budget to assist individuals enrolled or previously enrolled in the DIP who expect to be out of work due to a disability in their transition back to work. Return To Work assistance may be requested by an employee, previously employed individual and/or by an employing organization. The RTW Coordinator may also consult with the individual's health care provider(s) to acquire and/or clarify a claimant's restrictions and/or limitations if applicable, to facilitate a safe return to the workplace.

3.0 Eligibility and Enrollment Rules

- 3.1 Pursuant to the authority vested in the State Employee Benefits Committee (SEBC) by 29 Del.C. §5210(4), §9602(b) (4) and §5255, the SEBC adopts these eligibility and coverage rules for the State of Delaware's Disability Insurance Program (DIP). In the event of conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules. DIP is comprised of a Short Term Disability (STD) program and a Long Term Disability (LTD) program.
- 3.2 An employee must meet one of the following criteria to be eligible for enrollment in the DIP:
 - 3.2.1 Hired on or after January 1, 2006 into a position covered by the Delaware State Employees Pension Plan pursuant to 29 Del.C. Ch. 55.
 - 3.2.2 As of January 1, 2006 had fewer than 5 credited years of service.
 - 3.2.3 As of January 1, 2006 had 5 or more years of credited service and elected enrollment in the DIP.
 - 3.2.4 Pursuant to 29 Del.C. §5251(e), a retired Delaware State Police Trooper employed in a pension covered position in the Delaware State Employees' Pension Plan on or after July 1, 2008.
- 3.3 Eligibility for participation in the DIP shall terminate upon the earliest to occur of:
 - 3.3.1 The date in which the State of Delaware ceases to sponsor this program; or
 - 3.3.2 The date the employee is no longer covered by the Delaware State Employees' Pension Plan pursuant to 29 Del.C. §5519; or
 - 3.3.3 Normal service retirement at age 65; or
 - 3.3.4 The death of the employee.
- 3.4 Dependents are not eligible for enrollment in the DIP.
- 3.5 Coverage is effective the first day the employee is actively at work or the date the employee returns to active employment on a full-time basis if the employee was absent due to a disabling condition. There is no waiting period to be enrolled in the DIP.
- 3.6 In accordance with 29 Del.C. §5252, the State shall pay all premium or subscription charges for the full cost of providing coverage for the DIP.

4.0 Short Term Disability (STD) Elimination Period

- 4.1 Pursuant to 29 Del.C. §5253(b)(1), STD benefits for participating employees shall commence upon the exhaustion of the calendar day elimination period. The elimination period shall begin on the first day following the onset of the participating employee's physical or mental incapacity. The calendar day

elimination period does not have to be satisfied consecutively however, if an employee returns to work for one day or less during the calendar day elimination period, but cannot continue to work thereafter, the period worked shall not be considered to have interrupted the calendar day elimination period.

- 4.2 Pursuant to 29 Del.C. §5253(b)(1), the calendar day elimination period must commence and conclude within normal working periods for employees who work less than 12 months per calendar year. "Normal working periods" are the scheduled working days of the participating employee.
- 4.3 Pursuant to 29 Del.C. §5253(b)(5), if a participating employee returns to the employee's position on a full time basis for 15 consecutive calendar days or longer, any succeeding period of disability for which the participating employee shall become eligible shall constitute a new period of STD with a corresponding calendar day elimination period.
- 4.4 There is no pre-existing conditions limitation in the STD program.

5.0 Claim Filing Requirements

- 5.1 Pursuant to 29 Del.C. §5253(b)(7), once an employee exhausts their elimination period, the employee will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid leave in lieu of application for STD.
- 5.2 All employees enrolled in DIP who expect to be out of work for the length of the calendar day elimination period are required to file a STD claim, even if the employee applied for and/or is receiving Workers' Compensation (WC) benefits or Other Income Benefits defined in the STD benefits booklet per Delaware Code.
- 5.3 Employees are required to immediately report all absences from work to their supervisor and are required to stay in contact with their supervisor and Human Resource office during all absences from work. For specific reporting time frames, merit employees should refer to the Merit Rules. Non-merit employees should refer to their employing organization's leave policy. All requested documentation must be provided. Supervisors are required to immediately report an employee's absence from work to their Human Resource office. The Human Resource office must send a letter to the employee via certified mail return receipt requested no later than the fifth calendar day of absence from work to remind the employee of their STD claim filing requirement in the event the employee expects to be out of work for at least the length of the elimination period.
- 5.4 Employees must contact their physician(s) to authorize the release of medical information required by the Return to Work (RTW) Coordinator and/or the DIP insurance carrier and/or third party administrator (Administrator) selected to administer and/or insure the program by the SEBC pursuant to 29 Del.C. §5254. It is the employee's responsibility to be sure that his or her medical documentation is submitted to the DIP insurance carrier and/or Administrator and the RTW Coordinator as requested.
- 5.5 Participating employees are responsible for the payment of fees requested by their physician(s) for the release of preliminary medical information and/or subsequent attending physician statements (APSs).
- 5.6 Medical documentation by the employee's physician(s) must be submitted to determine benefit payment. A physician's return to work note will not be sufficient.

6.0 Coverage

- 6.1 For a disability caused by a covered sickness and/or accident, STD benefits commence after completion of the calendar day elimination period for up to a maximum benefit period of 182 calendar days starting with the employee's date of disability per Delaware Code. The 182 calendar day STD benefit period includes the calendar day elimination period.
- 6.2 The employing organization is responsible for providing the DIP insurance carrier and/or Administrator, with the last day worked and any partial day(s) worked information, if applicable, for each claimant.
- 6.3 "Total Disability" or "Totally Disabled" means the employee is prevented by accidental bodily injury, sickness, mental condition, substance abuse or pregnancy from performing the essential duties of their occupation, and as a result, the employee is earning less than 80% of his or her base rate of compensation received on the last day of employment before becoming disabled.

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6.3.1 IMPORTANT NOTE: Weekly earnings means the employee's usual rate of pay, not including commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation. If disabled, weekly earnings will be the rate in effect on the last day as an active full-time employee before becoming totally disabled.

6.4 The STD program does not cover:

6.4.1 Injury, sickness, mental condition, substance abuse, or pregnancy not being treated by a physician or surgeon;

6.4.2 Disability caused by or contributed to by war or act of war, declared or not;

6.4.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the participating employee being engaged in an illegal occupation and/or activity;

6.4.4 Disability caused by or contributed to an intentionally self-inflicted injury, and;

6.4.5 Injury sustained as a result of doing work for pay or profit from another employer.

6.5 Bus drivers who are contractually required to remain symptom free from disabling illness and/or injury for one year starting with the date of disability will be approved for STD benefits for up to the maximum 182 calendar day benefit period.

7.0 Less Than Twelve Month Educational Employees Only (Institutions of Higher Education, School Districts, Charters Schools, Dept. of Education)

7.1 Employees who develop a disability during their normal working period are eligible to file an STD claim and receive benefits through the end of the current school year assuming the employee is able to satisfy the calendar day elimination period before the last day of the school year. Should the disability continue through the employee's non-working period and into the next school year, the non-working time period counts toward satisfaction of the 182 calendar day STD benefit period.

7.2 Employees who are unable to satisfy the calendar day elimination period before the end of the current school year will resume completion of the elimination period as of the first day of the next school year.

7.3 Disabilities that begin during a non-working period may not be claimed until the normal working period resumes. The actual date of the employee's disability will remain unchanged however the elimination period begins the first working day of the new school year.

8.0 Benefit Payment

8.1 STD benefit payments are paid by the employing organization to employees whose STD claims have been approved.

8.2 The DIP insurance carrier and/or Administrator shall notify the employee of the initial determination of the employee's eligibility for STD benefits in writing by certified mail, return receipt requested within 10 days of the determination.

8.3 STD benefits shall be payable at a rate of up to 75% of the participating employee's creditable compensation during the period the employee has a disability.

8.4 Pursuant to 29 Del.C. §5253(b)(3), creditable compensation during periods an employee receives STD benefits shall include general salary increases awarded or reductions in salary instituted during the period of Short Term disability coverage.

8.5 Creditable compensation during the period an employee has a disability also includes hazardous duty pay if applicable. No other additional types of pay are included in the payment of STD benefits.

8.6 The amount of any benefit for loss of income provided to an employee or to an employee's family as a result of a period of disability for which the employee is claiming STD benefits will be an offset to the employee's STD benefit payment. This includes any such benefits for which the employee or the employee's family is eligible or is paid to the employee, the employee's family, or to a third party on behalf of the employee. This includes the amount of any benefit for loss of income from:

8.6.1 The United States Social Security Act, the Civil Service Retirement System, the Railroad Retirement Act, the Jones Act, the Canada Pension Plan, the Quebec Pension Plan or similar plan

or act that a claimant, a claimants spouse, or a claimant's child(ren) are eligible to receive because of the employee's disability;

8.6.2 Any plan or arrangement of coverage, whether insured or not, as a result of employment by or association with the State of Delaware, or as a result of membership in or association with any group, association, union or other organization;

8.6.3 The Veteran's Administration or any other foreign or domestic governmental agency for the same disability;

8.6.4 Any governmental law or program that provides disability or unemployment benefits as a result of the employee's job with the State of Delaware;

8.6.5 An individual insurance policy where the premium is wholly or partially paid by the State of Delaware;

8.6.6 Any temporary or permanent disability benefits under a Workers' Compensation law, occupational disease law, or similar law;

8.6.7 Compulsory "no-fault" automobile insurance; or

8.6.8 The portion of a settlement or judgment, minus associated costs, of a lawsuit that represents or compensates for the employees loss of earnings for the same disability.

8.6.9 Payment for Rehabilitative employment by the State of Delaware or other employer. All income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator.

8.7 Any general increase in benefits required by law that a claimant is entitled to receive under any Federal Law will not reduce the STD Benefit payable for a period of Total Disability that began prior to the date of such increase.

IMPORTANT NOTE: Other Income Benefits also mean any payments that are made to the employee, the employee's family, or to a third party on behalf of the employee, pursuant to any:

disability benefit under the Employer's Retirement Plan;

permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of such benefits;

portion of a settlement or judgment, minus associated costs, of a lawsuit that represents or compensates for the claimant's loss of earnings;

retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:

the claimant was receiving it prior to becoming Disabled; or

the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.

8.8 Employees enrolled in and receiving STD compensation shall receive up to a maximum of 100% of pre-disability base pay from all sources. If the employee is otherwise eligible for holiday pay or a paid leave other than annual, sick, compensatory or donated leave, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay basis.

8.9 Calendar days used to satisfy the STD elimination period for employees who work alternate schedules are converted to a Monday through Friday schedule as all STD benefit payments are calculated using a 5 day work week. Once the employee has satisfied the calendar day elimination period, the STD program will pay 1/5 of the weekly amount for each weekday the employee is disabled during a pay period.

8.10 The minimum weekly STD benefit will be the greater of \$25.00 or 10% of the gross STD benefit before the deduction of other income benefits. If the employee is receiving 100% of his or her pre-disability pay from any other source which is an offset, a minimum STD benefit will not be paid.

8.11 If while covered under this program an employee develops a partial or residual disability and works on a part-time or limited duty basis, the employee will be entitled to a residual (partial) disability benefit. The employing organization is required to report hours worked by the employee to the DIP insurance carrier and/or Administrator on a weekly basis. The DIP insurance carrier and/or Administrator will

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calculate residual disability benefits for each claimant and promptly provide the results of the calculation to the employing organization. All income and/or benefit received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator by the employee.

- 8.12 If a participating employee returns to the employee's position on a full-time basis, as defined by the Committee, for 15 consecutive calendar days or longer, any succeeding period of disability for which the employee shall be approved for STD benefits shall constitute a new period of short-term disability with a new corresponding calendar day elimination period. If recurrent periods of disability are due to the same or a related cause; and separated by less than 15 consecutive day(s) of work as an active full-time employee, they will be considered to be the same period of disability.
- 8.13 If while receiving STD benefits an employee should experience a disability due to a new disability, the 182nd calendar day associated with the first disability will not be extended and the plan's exclusions will apply to the new disability. The employee is immediately required to report the new disability to their supervisor, Human Resource office and to the DIP insurance carrier and/or Administrator.
- 8.14 The DIP insurance carrier and/or Administrator shall provide each employing organization with an Explanation of Benefits (EOB) statement on each claimant illustrating the following information:
- 8.14.1 approval dates;
 - 8.14.2 payment amount, and;
 - 8.14.3 offset information
- 8.15 It is the employing organization's responsibility to promptly pay STD benefits to their employees. Overpayment and/or underpayment amounts must be immediately reported to the DIP insurance carrier and/or Administrator and to the employee by the employing organization. All overpayments must be immediately collected by the employing organization and returned to the Pension Office via the State's payroll system (PHRST) or other accepted payroll process for tax reporting purposes.
- 8.16 It is the employing organizations responsibility to promptly notify the DIP insurance carrier and/or Administrator of any and all retroactive awards from other programs awarded to STD claimants.
- 8.17 It is the employee's responsibility to promptly notify and repay the State of Delaware for all overpayments including income paid as an offset during the STD and/or LTD benefit period.

9.0 Leaves (Merit Agencies Only)

- 9.1 Provided the employee files their STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization's policy and procedures regarding attendance and calling out absent, the employee may continue to use available sick and/or annual leave to be paid until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period.
- 9.2 Pursuant to 29 Del.C. §5253(b)(4), an employee may utilize annual, sick, compensatory, or donated leave to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days.
- 9.3 Employees applying for STD benefits must also apply for the Family Medical Leave Act (FMLA).
- 9.4 Donated leave may be used to pay employees during the calendar day STD elimination period. However, regardless of whether a claim was filed with the DIP insurance carrier and/or Administrator, donated leave is not to continue following the calendar day elimination period until the employee's STD claim is in an approved status. Upon approval of the employee's STD claim, the employing organization may apply donated leave retroactively to supplement the STD benefit payment.
- 9.5 Employees on FMLA and/or donated leave must comply with the rules that apply to those programs.
- 9.6 If an employee is otherwise eligible for holiday pay or a paid leave other than identified in 29 Del.C. §5253(b)(4), the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay basis.

- 9.7 Employees on approved STD may choose to use accrued leave earned each month in its entirety or to save the accrual for payout upon the commencement of LTD or service pension. Leave rules for FMLA and donated leave take precedence.
- 9.7.1 Employees who exhaust leave accrual each month will accrue leave at 100% for the given month.
- 9.7.2 Employees who decide to save their leave accrual will accrue leave at 75% for the given month.
- 9.8 If the employee is in a “no pay” status during the STD elimination period, leave accrual stops. The employee should receive leave accrual prorated for the portion of the month last worked and a prorated amount of leave for the portion of the month in which STD benefits were received.
- 9.9 Employees remain subject to the provisions of Merit Rule 5.2.4 regarding leave carryover.
- 9.10 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 Del.C. §5933(c), shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 Del.C. §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. The employee has two options with respect to remaining accrued leave.
- 9.10.1 Escrow Leave. Prior to the commencement of LTD benefits, the employee may make written request to the employing organization to escrow accrued annual and sick leave for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the 6 month escrow period, the member’s leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed leave will be paid to the member based on the rules in place by the member’s former employing organization.
- 9.10.2 Payout of Leave. Upon the commencement of LTD benefits, the employee shall be eligible to receive a payout of accrued leave based on the rules in place by the employing organization. If the member is subsequently rehired or reinstated by the State of Delaware into a benefit eligible position, the member’s leave balance will be zero on the date of rehire or reinstatement.
- 9.11 Employees who supplement the STD benefit payment with annual, sick, compensatory or donated leave may defer any portion of the supplement into the Deferred Compensation program. Employees may not defer any portion of the STD benefit payment to the Deferred Compensation program.

10.0 Termination Of Benefits

- 10.1 An employee’s STD benefits will terminate upon the earliest of:
- 10.1.1 The date the program terminates;
- 10.1.2 The date the employee no longer meets the definition of eligibility;
- 10.1.3 The last day of the period for which the employee fails to pay contributions, if required by the program; or
- 10.1.4 The date in which the State of Delaware ceases to offer an STD program; or
- 10.1.5 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 Del.C. §5933(c), shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 Del.C. §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible.
- 10.1.6 The date the employee is no longer covered by the Delaware State Employees’ Pension Plan pursuant to 29 Del.C. §5519.
- 10.1.7 The date the employee is discharged for cause.

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11.0 Appeals

- 11.1 Claimants whose STD claims are not in an approved status and have not returned to work are entitled to file an appeal with the DIP insurance carrier and/or Administrator. Claimants who file an appeal are required to immediately advise their supervisor and Human Resource office of the status of their appeal for benefits.
- 11.2 Pursuant to 29 Del.C. §5258, within 90 days of the postmark date of the carrier's written notice of its determination regarding STD benefits, a claimant may appeal any determination of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the DIP insurance carrier and/or Administrator. The DIP insurance carrier and/or Administrator has the authority to reverse all or any part of its initial STD benefit determination and shall notify the claimant, the employing organization and the Statewide Benefits Office in writing by certified mail, return receipt requested within 10 days of the determination.
- 11.3 Pursuant to 29 Del.C. §5258, within 20 days of the postmark date of the DIP insurance carrier and/or Administrator's determination of benefits being appealed, a claimant may file a second level appeal by filing a written petition setting forth with particularity the grounds for second appeal to the Appeals Administrator at the Statewide Benefits Office, who shall conduct an informal review, and who shall have the authority to reverse all or any part of the decision of the DIP insurance carrier and/or Administrator to deny benefits. The claimant's written appeal should be addressed and mailed to:

Appeals Administrator
RE: DISABILITY APPEAL
Statewide Benefits Office
500 W. Loockerman Street, Suite 320
Dover, DE 19904
Tel: (302) 739-8331
Fax: (302) 739-8339

The Appeals Administrator or designee, shall issue a final written decision and shall mail it to the claimant by certified mail, return receipt requested, within 30 days of speaking with the claimant.

- 11.4 Pursuant to 29 Del.C. §5258, if the Appeals Administrator affirms the DIP insurance carrier and/or Administrator's decision to deny disability benefits or any part thereof, a claimant may file an appeal to the SEBC within 20 days of the postmark date of the notice of the determination from the Appeals Administrator by filing a written petition with the SEBC setting forth with particularity the grounds for the appeal. The claimant's written appeal should be addressed and mailed to:

Chair, State Employee Benefits Committee (SEBC)
RE: DISABILITY APPEAL
Office of Management and Budget
Haslet Armory, Third Floor
122 William Penn Street, Suite 301
Dover, DE 19901
Tel: (302) 739-4204
Fax: (302) 739-3342

The SEBC may designate an appropriate representative from the Office of Management and Budget as a hearing officer to hear evidence presented by the employee or, in its sole discretion, it may decide to hear the appeal directly. The Committee or the hearing officer, as the case may be, shall determine whether the determination to deny benefits complies with the applicable disability plan adopted by the Committee. The Hearing officer and/or Committee shall have all of the following powers in respect to the conduct at the hearing:

- 11.4.1 To issue subpoenas and administer oaths in any proceeding. Any subpoena process order or any notice or paper requiring service shall be sent by certified mail, return receipt requested;
- 11.4.2 To examine persons as witnesses, take evidence, require the production of documents, and do all other things pursuant to law which are necessary to determine the appeal. In proceedings before

the Committee or its hearing officer, if any person neglects to produce any pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be examined, disobeys or resists any lawful order or process, or intentionally obstructs the hearing, the Committee shall certify facts under the signature of its chairperson or the hearing officer to any judge of the Superior Court, which judge shall there upon hear evidence as to the acts complained of. The judge shall, if the judge deems the evidence so warrants, issue an order requiring such persons to testify or produce documents or otherwise comply with the requirements of the Committee, as the case may require. Refusal to comply with the order of the Court shall constitute contempt of Court;

11.4.3 Where the Committee assigns the matter to the hearing officer, the hearing officer shall decide the matter and prepare a report containing the findings of fact, and conclusions of law, within 60 days of the hearing, and shall transmit the report, with the full record of the hearing, to the Committee. The Committee may accept or modify the hearing officer's final report, and shall notify the parties of its action by certified mail, return receipt requested within 60 days.

11.4.4 If the Committee elects to hear the matter directly and not to assign it to the hearing officer, it shall issue its final decision containing findings of fact and conclusions of law, within 60 days of the hearing, and shall notify the parties of its action by certified mail, return receipt requested.

11.5 Pursuant to 29 Del.C. §5258, within 30 days of the postmark date of the Committee's determination to deny benefits on appeal, a claimant may file a final action to Superior Court. The appeal shall be on the record.

12.0 Employment Termination

12.1 The employing organization is required to fully complete a Vested LTD Pension Application prior to the exhaustion of the STD benefit period. The completed form must be submitted to the Office of Pensions for processing.

12.2 Employees leaving State service whose application for LTD benefits has not been approved, are eligible for continuation of their health care coverage(s) under COBRA. Employees should contact their Benefits Representative or Human Resource Office for details of this continuation option. Please refer to the Group Health Insurance Eligibility and Enrollment Rules for full details.

12.3 Prior to the commencement of LTD benefits, the employee shall be eligible to make a written election to escrow their accrued leave for a period of 6 months. See subsection 9.10 for a complete description.

13.0 Long Term Disability (LTD)

13.1 For employees hired on or after January 1, 2006, no LTD benefit will be payable for any disability that is due to, contributed to, by, or results from a pre-existing condition unless such disability begins:

13.1.1 After the last day of 12 consecutive month(s) while insured in DIP during which the employee received no medical care for the pre-existing condition; or

13.1.2 After the last day of 12 consecutive month(s) during which the employee has been continuously insured under this plan.

13.2 Claimants may not receive LTD benefits and a service pension at the same time.

14.0 Elimination Period

14.1 The elimination period is the period of time the employee has a disability before benefits can be paid. It is the last to be satisfied of the following:

14.1.1 The first 182 consecutive calendar days of any one period of disability; or

14.1.2 The exhaustion of the 182 calendar day STD benefit period.

14.2 The elimination period shall commence on the first day following the onset of a disability.

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15.0 Coverage

- 15.1 LTD benefits are paid by the DIP insurance carrier and/or Administrator on a monthly basis directly to the claimant.
- 15.2 "Disability" or "disabled" during the first 24 months following the elimination period means the claimant is prevented by accidental bodily injury, sickness, mental condition, substance abuse or pregnancy from performing one or more of the essential duties of the claimant's occupation and, as a result, the claimant's current monthly earnings are less than 80% of pre-disability earnings. After the exhaustion of the first 24 months of disability, the claimant is prevented from performing one or more of the essential duties of any occupation. The claimant's failure to pass a physical examination required to maintain a license to perform the duties of the claimant's occupation alone, does not mean that the claimant has a disability.
- 15.3 The LTD program does not cover:
- 15.3.1 Disabilities not under the regular care of a physician;
- 15.3.2 Disability that is caused or contributed to by war or an act of war (declared or not);
- 15.3.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the participating claimant's being engaged in an illegal occupation;
- 15.3.4 Disability caused by or contributed to by an intentionally self-inflicted injury, and;
- 15.3.5 Injury sustained as a result of doing work for pay or profit from another employer.
- 15.4 The maximum duration of LTD benefits is as follows:

<u>Age When Disabled</u>	<u>Benefit Duration (Months)</u>
<u>Prior to age 60</u>	<u>To age 65</u>
<u>60</u>	<u>60</u>
<u>61</u>	<u>48</u>
<u>62</u>	<u>42</u>
<u>63</u>	<u>36</u>
<u>64</u>	<u>30</u>
<u>65</u>	<u>24</u>
<u>66</u>	<u>21</u>
<u>67</u>	<u>18</u>
<u>68</u>	<u>15</u>
<u>69+</u>	<u>12</u>

- 15.5 If an individual has a disability because of:
- 15.5.1 mental condition that results from any cause;
- 15.5.2 any condition that may result from mental condition;
- 15.5.3 alcoholism; or
- 15.5.4 the non-medical use of narcotics, sedatives, stimulants, hallucinogens, or any other such substance, then, subject to all other policy provisions, LTD benefits will be payable:
- 15.5.4.1 only for so long as the claimant is confined in a hospital or other place licensed to provide medical care for the disabling condition; or
- 15.5.4.2 when the claimant is not so confined, a total of 24 months for all such disabilities during the individual's lifetime.
- 15.6 Pursuant to 29 Del.C. §5524(d), DIP participants vested in the Delaware State Employees' Pension Plan as of December 31, 2005 may be enrolled in the disability pension plan upon the exhaustion of LTD benefits due to mental condition and/or substance abuse. Members will be mailed an authorization form to complete and return to the DIP insurance carrier and/or Administrator. Upon receipt, the DIP insurance carrier and/or Administrator will send a copy of the member's disability file to the Pension Office for processing.

16.0 **Benefit Payment**

- 16.1 LTD benefits shall be paid in an amount up to 60% of the claimant's creditable compensation the day prior to the onset of the disability.
- 16.2 In no event shall a claimant utilize earned leave to supplement LTD benefit payments, unless the claimant has been rehired and is working on a part-time basis.
- 16.3 As defined in 29 Del.C. §5253(c)(3), LTD benefits shall not include general salary increases during the period of long term disability. LTD benefits may be increased annually by an amount approved by the State Employee Benefits Committee (SEBC).
- 16.4 Any claimant who applies for LTD benefits must apply to the Social Security Administration for disability benefits. LTD benefits shall be reduced by any disability benefits received from the Social Security Administration.
- 16.5 The amount of any benefit for loss of income provided to a claimant or to a claimant's family as a result of a period of disability for which the claimant is requesting LTD benefits will be an offset to the claimant's LTD benefit payment. This includes any such benefits for which the claimant or the claimant's family is eligible or is paid to the claimant, the claimant's family, or to a third party on behalf of the claimant. This includes the amount of any benefit for loss of income from:
 - 16.5.1 temporary disability benefits under Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges for such benefits;
 - 16.5.2 governmental law or program that provides disability or unemployment benefits as a result of the employees job with the State;
 - 16.5.3 plan or arrangement of coverage, whether insured or not, or as a result of employment by or association with the employer or as a result of membership in or association with any group, association, union or other organization;
 - 16.5.4 mandatory "no-fault" automobile insurance plan;
 - 16.5.5 disability benefits under:
 - 16.5.5.1 the United States Social Security Act or alternative plan offered by a state or municipal government;
 - 16.5.5.2 the Railroad Retirement Act;
 - 16.5.5.3 the Canada Pension Plan, the Canada Old Age Security Act, the Quebec Pension Plan or any provincial pension or disability plan; or
 - 16.5.5.4 similar plan or act, that the claimant, the claimant's spouse and children are eligible to receive because of the claimant's disability;
- 16.5.6 Disability benefit from the Veteran's Administration, or any other foreign or domestic governmental agency:
 - 16.5.6.1 that begins after the claimant developed a disability; or
 - 16.5.6.2 if the claimant were receiving the benefit before becoming Disabled, the amount of any increase in the benefit that is attributed to the claimant's disability.
- 16.5.7 Payment for Rehabilitative employment by the State of Delaware or other employer. All income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator.

IMPORTANT NOTE: Other Income Benefits also mean any payments that are made to the claimant, the claimant's family, or to a third party on behalf of the claimant, pursuant to any:

disability benefit under the Employer's Retirement Plan;

permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of such benefits;

portion of a settlement or judgment, minus associated costs, of a lawsuit that represents or compensates for the claimant's loss of earnings;

retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:

PROPOSED REGULATIONS

the claimant was receiving it prior to becoming Disabled; or
the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.

- 16.6 Claimants receiving LTD benefits are responsible for the accurate and timely payment of all health care premiums. Please refer to the Group Health Insurance Eligibility and Enrollment Rules for full details.

17.0 Termination of Benefits

- 17.1 A claimant's LTD benefit will terminate upon the earliest of:
- 17.1.1 The date the claimant is no longer disabled as determined by the DIP insurance carrier and/or Administrator;
 - 17.1.2 The date the Group Insurance Policy terminates;
 - 17.1.3 The date premium payment is due but not paid, if applicable;
 - 17.1.4 The date the claimant is no longer a member of the Delaware State Employees' Pension Plan, or;
 - 17.1.5 The date the claimant elects service retirement from the State of Delaware.

18.0 Appeals

- 18.1 The claimant or the claimant's representative may appeal to the DIP insurance carrier and/or Administrator for a full and fair review of any LTD benefit determination. The claimant may:
- 18.1.1 Request a review upon written application to the DIP insurance carrier and/or Administrator within 180 days of the claim denial;
 - 18.1.2 Request copies of all documents, records, and other information relevant to the claim; and
 - 18.1.3 Submit written comments, documents, records and other information relating to the claim.
- 18.2 The DIP insurance carrier and/or Administrator will make a decision no more than 45 days after receiving the claimant's appeal unless the DIP insurance carrier and/or Administrator determines special circumstances that require an extension of time to process the appeal. If the appeal requires an extension, the DIP insurance carrier and/or Administrator will make a decision no more than 90 days after receiving the claimant's appeal. The written decision will include specific references to policy provisions on which the decision is based.

19.0 Other Benefits During Disability

- 19.1 Short Term Disability (STD)
- 19.1.1 Employees receiving STD benefits accrue pension creditable service for each month the employee's STD claim is in an approved status.
 - 19.1.2 Employees receiving STD benefits under 29 Del.C. §5253(b) will be treated as "regular officers and employees" under these regulations and are eligible for enrollment in the Group Health Insurance Program with State Share contributions, as applicable. STD beneficiaries are subject to the Group Health Insurance Program Eligibility and Enrollment Rules.
- 19.2 Long Term Disability (LTD)
- 19.2.1 Claimants on approved LTD continue to accrue pension creditable service for each month the LTD claim is in an approved status.
 - 19.2.2 The State of Delaware's pension benefit and the DIP are separate programs. At the point an individual begins receiving LTD benefits, the individual can terminate their membership in the Delaware State Employees Pension Plan (SEPP) by withdrawing contributions. Should this occur, the individual forfeits their right to a service pension and all accompanying fringe benefits such as health care after LTD ceases.
 - 19.2.3 LTD claimants receiving benefits under 29 Del.C. §5253(c) will be treated as "eligible pensioners" and are eligible for enrollment in the Group Health Insurance Program with State Share

contributions, as applicable. LTD beneficiaries are subject to the Group Health Insurance Plan Eligibility and Enrollment Rules.

19.3 Return To Work (RTW)

19.3.1 Short Term Disability – Return To Work (RTW)

19.3.1.1 Pursuant to 29 Del.C. §5257(a), once an employee has been determined to have the ability to return to employment by the Committee, the employee will receive the following assistance:

19.3.1.1.1 Merit employees may be placed in any vacant merit position, for which they qualify, by the Office of Management and Budget.

19.3.1.1.2 Nonmerit state employees, and employees from nonstate employers will be placed by that employer into a vacant position within their respective employing organization for which the employee qualifies.

19.3.1.2 The employee must have a RTW Authorization from his/her attending physician to be permitted to return to work. Authorization forms may be obtained from the RTW Coordinator in the Statewide Benefits Office or from the employing organization if a specific form is required. A RTW Authorization is required PRIOR to the employee's first day back to work.

19.3.1.3 Return to work assistance for employees enrolled in DIP who expect to be out of work for less than the STD calendar day elimination period are eligible to utilize the services of the RTW Coordinator from the Statewide Benefits Office.

19.3.1.4 There is a Return to Work process that shall be followed to assess and plan for keeping or returning an employee with a disability to work. The return to work process for all employing organizations shall be as follows:

19.3.1.4.1 Same job, same employer

19.3.1.4.2 Same job with modifications, same employer

19.3.1.4.3 Same job, different employer

19.3.1.4.4 Same job with modifications, different employer

19.3.1.4.5 Different job, same employer

19.3.1.4.6 Different job, different employer

19.3.1.4.7 Retraining and Education

19.3.1.5 The employee is eligible to receive assistance from the RTW Coordinator and the employing organization if temporary restrictions and limitations prevent an employee from performing his/her job at full capacity or should an assistive device be necessary. The employee will return to modified, transitional, or full duty work as soon as approved to do so by a medical provider as well as with the approval of the employing organization.

19.3.1.6 If the employing organization is not able to accommodate the employee with temporary restrictions or limitations, the employing organization must notify the RTW Coordinator stating the reason the accommodation cannot be granted. Once an employee has been released to modified duty or regular work, the employee is required to return to work at such time that the employing organization is able to accommodate the restrictions or limitations. Employees should work closely with the RTW Coordinator and the employing organization if modified duty is being requested.

19.3.1.7 When looking for options beyond the employee's own job, the RTW Coordinator and employing organization shall consider the employee's abilities, anticipated absence duration, training and experience. If placement cannot be accommodated, the employing organization must provide a written explanation to the RTW Coordinator.

19.3.1.8 If the employing organization is not able to accommodate the employee's restrictions so that he/she may return to work, the employee may be eligible for a continuation of STD benefits provided the employee is still unable to perform the essential duties of their own occupation.

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- 19.3.1.9 If the employing organization agrees to accommodate the temporary restrictions or limitations recommended by the employee's medical provider while recovering from disability and the employee refuses to return to work, benefits may be discontinued.
 - 19.3.1.10 When appropriate, the RTW Coordinator may refer employees to the Division of Vocational Rehabilitation when it has been determined by a medical professional that an employee will no longer have the ability to perform the essential functions of the position on a permanent basis.
 - 19.3.1.11 When assigned to a rehabilitation program, the employee is required to maintain a treatment schedule corresponding to medical restrictions and/or normal working hours as designed by the location.
- 19.4 Long Term Disability (RTW)
- 19.4.1 Pursuant to 29 Del.C. §5257(b), once an individual has been determined to have the ability to return to employment by the committee, the individual will receive the following assistance:
 - 19.4.1.1 Former merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program may, when available and appropriate, be placed by the Office of Management and Budget in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short-Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.
 - 19.4.1.2 Former non-merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program will be placed by their previous employer into a vacant position within their respective agency for which they qualify.
 - 19.4.2 Employees previously employed in a Merit position, must contact the RTW Coordinator at the Statewide Benefits Office within 15 days of their release to return to work and/or the termination of their LTD benefit.
 - 19.4.3 Former Merit employees with documented performance /conduct issues prior to their disability may be determined ineligible for placement or RTW assistance. Refer to subsection 19.3.1.4 for the return to work process.
 - 19.4.4 Former Merit employees who are returning to State employment from an approved LTD claim are subject to Merit Rule 9.5 which states "Upon reinstatement, employees who left the Merit System shall be required to serve an initial probation period."
 - 19.4.5 When an individual is rehired from LTD into a Merit position on a reduced work schedule and the reduced work schedule is expected and/or exceeds 30 calendar days, the employee should be considered permanent part-time for the purposes of holiday pay and leave accruals which shall be pro-rated based on scheduled hours. The status of permanent part-time will continue until such time as the employee is released to work for a normal work week of 37.5 or 40 hours.
 - 19.4.6 Employees formerly employed by a school district, charter school, institution of higher education or other nonmerit employing organization, should contact their former Human Resource department for assistance in placement.
 - 19.4.7 When returning to work from LTD, former merit employees will be considered a new hire. Once rehired, the employee will accrue leave (vacation/sick) at the same rate as when the previous employment terminated.
 - 19.4.8 If an LTD beneficiary is offered a position for which the employee is qualified and the employee declines the position, RTW assistance will terminate.

Symbol Key

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

Final Regulations

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

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

DELAWARE NATIONAL GUARD

Statutory Authority: 29 Delaware Code, Section 10003(d) (29 **Del.C.** §10003(d))

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 20 **Del.C.** §104 and 29 **Del.C.** 10003(d), for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Delaware National Guard is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Delaware National Guard pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware National Guard has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations

reflect these procedures.

2. The Delaware National Guard has statutory authority to promulgate regulations pursuant to 20 **Del.C.** §104 and 29 **Del.C.** 10003(d).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware National Guard does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Francis D. Vavala, Major General
The Adjutant General, Delaware

Policies and Procedures Regarding State FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"Agency" means Delaware National Guard.

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

"FOIA Coordinator" shall mean the person designated by the Secretary to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

"FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"Non-Custodial Records" shall have the meaning set forth in Section 3.6.

"Public Record" shall have the meaning set forth in 29 **Del.C.** §10002.

"Requesting Party" shall mean the party filing a FOIA Request.

"Secretary" means the Secretary of Department of Military Affairs.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely

because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency's website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at Joint Force Headquarters, First Regiment Road, Wilmington, Delaware 19808, by email to ngdefoia@ng.army.mil, by fax at 302-326-7196; or via online request form, which may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request> on the Agency's home page at <http://www.delawarenationalguard.com/>. There is also a printable, fillable PDF version at http://www.delaware.gov/forms/foia_request_form.pdf

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records will be handled in accordance with the Federal FOIA law.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are

minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

- 4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.
- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Agency Specific Requirement

The Agency maintains Federal and State records; therefore, the Agency is required to follow State as well as Federal (5 U.S.C 522) FOIA laws. Requests that pertain to Federal records will be forwarded to the appropriate official and the request will be handled in accordance with the Federal FOIA law.

DELAWARE STATE HOUSING AUTHORITY **OFFICE OF THE DIRECTOR**

Statutory Authority: 29 Delaware Code, Section 10003(d) (29 **Del.C.** §10003(d))

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 31 **Del.C.** §4013(4), for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Delaware State Housing Authority is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Delaware State Housing Authority pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware State Housing Authority has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, the Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Delaware State Housing Authority has statutory authority to promulgate regulations pursuant to 31 **Del.C.** §4013 (4).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware State Housing Authority does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Anas Ben Addi, Director

Policies and Procedures Regarding FOIA Requests**1.0 Purpose**

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"Agency" means Delaware State Housing Authority.

"Director" means the Director of the Delaware State Housing Authority.

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

“FOIA Coordinator” shall mean the person designated by the Director to receive and process FOIA Requests.

“FOIA Request” or “Request” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 Del.C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at, by email to FOIACoordinator@destatehousing.com, by fax at (302) 739-6122; or via online request form, which may be found on the Agency’s FOIA page at <http://destatehousing.com/DirectorsOffice/foia.php>.

3.3 FOIA Coordinator

3.3.1 The Director shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency’s responses thereto. The FOIA Coordinator shall be identified on the Agency’s website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party’s contact information; the date the Agency received the Request; the Agency’s response deadline pursuant to §3.4; the date of the Agency’s response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5

and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

- 4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:
- 4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".
- 4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:
- | | |
|---|-------------------------------|
| <u>18" x 22":</u> | <u>\$2.00 per sheet</u> |
| <u>24" x 36":</u> | <u>\$3.00 per sheet</u> |
| <u>Documents larger than 24" x 36":</u> | <u>\$1.00 per square foot</u> |
- 4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.
- 4.2 Administrative Fees
- 4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.
- 4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.
- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Agency-Specific Provisions

With respect to any request for records that are submitted to the Agency as part of a confidential bidding or application process, the Agency reserves the right to withhold such material pending the closing of such bidding process and the evaluation of bids or proposals.

DEPARTMENT OF AGRICULTURE**OFFICE OF THE SECRETARY**

Statutory Authority: 29 Delaware Code, Section 103(3) (3 **Del.C.** §103(b))

ORDER**Policies and Procedures Regarding FOIA Requests**

AND NOW, this 1st day of December, 2011 in accordance with 3 **Del.C.** §101(3) and 29 **Del.C.** §10003(d) for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures of the Delaware Department of Agriculture regarding Freedom of Information Act ("FOIA") requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate uniform FOIA policies in substantial compliance with Exhibit A attached to the Executive Order. In accordance with 3 **Del.C.** §101(3) and 29 **Del.C.** §10113(b)(1) the Delaware Department of Agriculture is adopting final regulations governing its Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Delaware Department of Agriculture pursuant to 29 **Del.C.** Ch. 100, the FOIA. The regulations establish a reasonable fee structure for copying public records and streamline the procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware Department of Agriculture has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch.100. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Delaware Department of Agriculture has statutory authority to promulgate regulations pursuant to 3 **Del.C.** §101(3).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Secretary of the Delaware Department of Agriculture does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Ed Kee, Secretary

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

“**Agency**” means the Delaware Department of Agriculture (DDA).

“**FOIA**” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the **Delaware Code**.

“**FOIA Coordinator**” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“**FOIA Request**” or “**Request**” means a request to inspect Public Records pursuant to Chapter 29, Section 10003 of the **Delaware Code** and in accordance with the policy hereunder.

“**FOIA Request Form**” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“**Non-Custodial Records**” shall have the meaning set forth in Section 3.6.

“**Public Record**” shall have the meaning set forth in 29 **Del.C.** §10002.

“**Requesting Party**” shall mean the party filing a FOIA Request.

“**Secretary**” means the Secretary of Agriculture.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email or online in accordance with Section 3.2. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the proper form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at <http://dda.delaware.gov/>, by email to DDA.FOIA@state.de.us, or via online request form, which can be found at: <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request>. The Agency’s address is as follows:

The Delaware Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901

302.698.4500

302.697.6287 (FAX)

<http://dda.delaware.gov/>

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and shall coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA coordinator of the relevant agency has received the request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA coordinator of the relevant agency that the agency has received such request. The Agency shall provide the requesting party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records may be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot with reasonable effort fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall forward a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving the records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours from 8:00 am to 4:30 pm Monday through Friday.

4.0 **Fees**

4.1 Photocopying Fees:

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees:

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying responsive records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records are exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

FINAL REGULATIONS

- 4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.
- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment:
- 4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 Del.C. §10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations and promulgating new regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 Del.C. §10113(b)(1) the Department of Education is repealing its prior regulations and adopting new final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations are to prescribe procedures relating to the inspection and copying of public records retained by the Department of Education pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Education has developed new procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Department of Education has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §10003(d).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Department of Education does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

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

~~202 Freedom of Information Act (FOIA) Procedures~~

4-0 Purpose

~~The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Education. ("the DOE") pursuant to 29 **Del.C.** Chapter 100, the Freedom of Information Act ("FOIA"). It is the DOE's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.~~

~~This regulation applies to the DOE in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the DOE in its normal course of business with Federal, State or local agencies, nor to private parties (corporate or individual) with whom the DOE is conducting business, provided the public records are germane to the business being conducted.~~

~~It is the intent of the DOE, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of Department officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides it shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA shall be processed in the manner prescribed below.~~

2-0 Definitions

~~"Documents in Active Use" means those records required as working documents by the Department of Education staff in performing current assignments.~~

~~"Documents in Storage" means those documents officially placed in the custody of the Delaware State Archives.~~

~~"DOE" means the Delaware Department of Education.~~

~~"Public Business" means any matter over which the DOE has supervision, control, jurisdiction, or advisory power.~~

~~"Public Information Officer" or "PIO" means the Public Information Officer, Delaware Department of Education.~~

~~"Public Record" means written or recorded information made or received by DOE relating to public business except the following:~~

~~Any personnel, medical, or pupil file, the disclosure of which would constitute an invasion of personal privacy, under any State or Federal law as it relates to personnel privacy.~~

~~Financial information obtained from a person which is of a privileged or confidential nature.~~

~~Investigative files for law enforcement purposes.~~

~~Any records specifically exempted from public disclosure by statute or common law.~~

~~Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the Department of Education whenever public anonymity has been requested of the Department with respect to said contribution by the contributor.~~

~~Any records involving labor negotiations or collective bargaining.~~

~~Any records pertaining to pending or potential litigation which are not records of any court.~~

~~Any record of discussions held in executive session.~~

~~"Requestor" means any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.~~

~~"Secretary" means the Secretary of Education or the Secretary's designee.~~

3.0 Availability of Records

3.1 Access

~~3.1.1 The DOE will provide reasonable access and facilities for reviewing public records during regular business hours.~~

~~3.1.2 The DOE shall make all requested records available for review by the requestor unless such records or portions of records are determined to be in active use, in storage, or otherwise exempted from disclosure as records deemed non public pursuant to 29 ~~Del.C.~~ §10002(g).~~

~~3.1.3 The DOE reserves the right to deny any request in part or in full which does not comply with the procedures set forth herein and/or the provisions of the Freedom of Information Act, as amended.~~

3.2 DOE Records Review

~~3.2.1 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non public are removed.~~

~~3.2.2 The types of records deemed nonpublic are as contained in 29 ~~Del.C.~~ §10002(g).~~

~~3.2.3 DOE regulations, brochures, pamphlets, informational bulletins, and other such information are not subject to this regulation.~~

4.0 Record Request

~~4.1 Requests to access records shall be made in writing and shall adequately describe the records sought in sufficient detail to enable the DOE to locate the records with reasonable effort. The DOE shall make every reasonable effort to assist the requestor in identifying the record being sought. The request may be denied in part or in full and returned to the requestor for the following reasons:~~

~~4.1.1 The request does not adequately describe the records;~~

~~4.1.2 The request requires the DOE to perform research or to assemble information that has not been compiled; or~~

~~4.1.3 Reasons set forth in 3.1.3, or as addressed in other areas of this regulation not specified here.~~

5.0 DOE Response to Requests

- ~~5.1 The DOE shall make every reasonable effort to determine within 10 business days after receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.~~
- ~~5.2 If the DOE denies a request in whole or in part, the DOE shall indicate to the requestor the reasons for the denial.~~
- ~~5.3 The copying of any requested public records may be performed by DOE personnel and mailed to the requestor. If personnel are not available, DOE may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.~~
 - ~~5.3.1 If over 250 pages are requested to be copied, the requestor may be required to bring in both copier and personnel to make the desired copies.~~
 - ~~5.3.2 Fragmentation of requests in order to avoid the 250 page limit shall not be allowed.~~
 - ~~5.3.3 The Department shall have discretion based on circumstances involved to make decisions regarding copying.~~

6.0 Fees

- ~~6.1 Administrative Fees
 - ~~6.1.1 Charges for administrative fees include:
 - ~~6.1.1.1 Staff time associated with processing FOIA requests;~~
 - ~~6.1.1.2 Locating and reviewing files;~~
 - ~~6.1.1.3 Monitoring file reviews; and~~
 - ~~6.1.1.4 Generating computer records (electronic or print outs).~~~~
 - ~~6.1.2 Calculation of Administrative Charges
 - ~~6.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate (prorated for quarter hour increments) for the personnel performing the service. Administrative charges will be in addition to any copying charges.~~
 - ~~6.1.2.2 Appointment Rescheduling/Cancellation—Requestors that do not reschedule or cancel appointments to view files at least two full business days in advance of the appointment may be subject to the administrative charges incurred by the DOE in preparing the requested records. The DOE will prepare an itemized invoice of these charges and mail to the requestor for payment.~~~~~~
- ~~6.2 Photocopying Fees
 - ~~6.2.1 The charge for copying standard sized, black and white 8.5" x 11" public records shall be \$0.25 per printed page (i.e., single sided copies are \$0.25 and double sided copies are \$0.50).~~
 - ~~6.2.2 The charge for copying standard sized, black and white 8.5" x 14" public records shall be \$0.30 per printed page (i.e., single sided copies are \$0.30 and double sided copies are \$0.60).~~
 - ~~6.2.3 The charge for copying standard sized, color 8.5" x 11" public records shall be \$1.00 per printed page (i.e., single sided copies are \$1.00 and double sided copies are \$2.00).~~
 - ~~6.2.4 The charge for copying standard sized, color 8.5" x 14" public records shall be \$1.50 per printed page (i.e., single sided copies are \$1.50 and double sided copies are \$3.00).~~
 - ~~6.2.5 Multiple copies shall not be made.~~~~
- ~~6.3 Electronic Generated Records
 - ~~6.3.1 Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to magnetic tape, diskette, or compact disk costs) and administrative costs.~~
 - ~~6.3.2 In the event requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.~~~~
- ~~6.4 Other Copying Fees~~

- 6.4.1 ~~The DOE, at its discretion, may arrange to have records copied by an outside contractor if the DOE does not have the resources or equipment to copy such records. In this instance, the requestor shall be liable for payment of these costs.~~
- 6.5 **Payment**
- 6.5.1 ~~Payment for copies and/or administrative charges will be due at the time the copies are released to the requestor. The DOE reserves the right to refuse to make copies for requestors who have outstanding balances.~~
- 6.5.2 ~~The DOE may require pre payment of copying and administrative charges prior to mailing copies of requested records.~~
- 6.5.3 ~~DOE personnel will maintain a receipt register and, upon request, provide the requestor with a receipt when payment is received.~~

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

“**Agency**” means the Delaware Department of Education (DOE).

“**FOIA**” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the **Delaware Code**.

“**FOIA Coordinator**” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“**FOIA Request**” or “**Request**” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the **Delaware Code** and in accordance with the policy hereunder.

“**FOIA Request Form**” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“**Non-Custodial Records**” shall have the meaning set forth in Section 3.6.

“**Public Record**” shall have the meaning set forth in 29 **Del.C.** §10002.

“**Requesting Party**” shall mean the party filing a FOIA Request.

“**Secretary**” means the Secretary of the Delaware Department of Education.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

- 3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

- 3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.
- 3.2 Method of Filing Request
- 3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at the Delaware Department of Education, 401 Federal Street, Suite 2, Dover Delaware 19901, by email to FOIA Coordinator@doe.k12.de.us, by fax at 302-739-4654; or via online request form, which may be found on the Agency's home page at www.doe.k12.de.us.
- 3.3 FOIA Coordinator
- 3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.
- 3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.
- 3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.
- 3.4 Agency Response to Requests
- 3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.
- 3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.
- 3.5 Requests for Email
- 3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort.
- 3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (*i.e.*, \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

- 4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.
- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.
- 5.0** **Applicability**
- To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

13 DE Reg. 252 (08/01/09)

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

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

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) adding new appraisal criteria to the Planning and Preparation and Instruction Appraisal Components; 4) changing language to reflect the current Student Record System; 5) revision to the number of Appraisal Criteria needed in order for an Appraisal Component to be Satisfactory because of the additional criteria; 6) revising the definition of "Highly Effective"; 7) providing interim provisions for the determination of pattern of ineffective teaching; 8) revising the parameters around when an Improvement Plan is needed; 9) specifying in the Challenge Process that the process includes meeting with the

teacher; and 10) that the Department will monitor the evaluation implementation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 3, 2011, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The first comment related to formatting. This was a *Register of Regulations* issue and corrected. The Councils also commented on the definitions used within the regulation. A majority of the definitions have been used consistently since DPAS II was put in place initially. These and other terms, such as, "Exceeds" are further described in the DPAS II Revised Guide for Teachers that has been developed with stakeholder input. The DPAS II Revised Guide for Teachers is published by the *Register of Regulations* along with this Order.

A comment was made regarding the "Student Improvement" component and the concern that this component was new. The "Student Improvement" component of DPAS II is not a new component and is required by 14 **Del.C.** §1270, which also states that this component must be weighted at least as high as any other component. The policy to increase the weight of this component has been in place since the first DPAS II Revised was approved by action of the State Board of Education in January 2010. The Councils expressed concern over the "pattern of ineffective teaching." The Department with input made adjustments to the DPAS II Revised regulations, recognizing that the 2011-2012 school year is an interim year. This is because not all measures of student growth have been developed and approved. The results of those discussions are reflected in this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to make several changes and amendments as noted in the summary above.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 17, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of November 2011.

Department of Education

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

Approved this 17th day of November 2011

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Gregory Coverdale
Terry M. Whittaker, Ed.D.
James L. Wilson, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 409 (15 DE Reg. 409). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER**107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) adding new appraisal criteria to the Planning and Preparation and Instruction Appraisal Components; 4) changing language to reflect the current Student Record System; 5) revision to the number of Appraisal Criteria needed in order for an Appraisal Component to be Satisfactory because of the additional criteria; 6) revising the definition of "Highly Effective"; 7) providing interim provisions for the determination of pattern of ineffective practice; 8) revising the parameters around when an Improvement Plan is needed; 9) specifying in the Challenge Process that the process includes meeting with the specialist; and 10) that the Department will monitor the evaluation implementation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 3, 2011, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Councils commented on the definitions used within the regulation. A majority of the definitions have been used consistently since DPAS II was put in place initially. These and other terms, such as, "Exceeds" are further described in the DPAS II Revised Guide for Specialists that has been developed with stakeholder input. The DPAS II Revised Guide for Specialist is published by the *Register of Regulations* along with this Order. The Councils also commented on the use of the word "client" throughout the regulation and contends that all clients are students. At this time, the Department plans to maintain the use of the term "client" to address unique situations involving specialists such as that addressed in 14 **Del.C.** §1270(a); however, the Department will take the comment under advisement for the future.

A comment was made regarding the "Student Improvement" component. The "Student Improvement" component is required by 14 **Del.C.** §1270, which also states that this component must be weighted at least as high as any other component. The policy to increase the weight of this component has been in place since the first DPAS II Revised was approved by action of the State Board of Education in January 2010. The Councils expressed concern over the "pattern of ineffective practice." The Department with input made adjustments to the DPAS II Revised regulations, recognizing that the 2011-2012 school year is an interim year. This is because not all measures of student growth have been developed and approved. The results of those discussions are reflected in this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process

Delaware Performance Appraisal System (DPAS II) Revised in order to make several changes and amendments as noted in the summary above.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 17, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of November 2011.

Department of Education

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

Approved this 17th day of November 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 417 (15 DE Reg. 417). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

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

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code**

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) revising the definition of "Highly Effective"; 4) providing interim provisions for the determination of pattern of ineffective administrative performance; 5) revising the parameters around when an Improvement Plan is needed; 6) specifying in the Challenge Process that the process includes meeting with the administrator; and 7) that the Department will monitor the evaluation implementation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 3, 2011, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The first comment related to formatting. This was a *Register of Regulations* issue and corrected. The Councils also commented on the definitions used within the regulation. A majority of the definitions have been used consistently since DPAS II was put in place initially. These and other terms, such as, "Exceeds" are further described in the DPAS II Revised Guide for Administrators that has been developed with stakeholder input. The DPAS II Revised Guide for Administrators is published by the *Register of Regulations* along with this Order.

A comment was made regarding the "Student Improvement" component. The "Student Improvement" component of DPAS II is not a new component and is required by 14 **Del.C.** §1270, which also states that this component must be weighted at least as high as any other component. The policy to increase the weight of this component has been in place since the first DPAS II Revised was approved by action of the State Board of Education in January 2010. The Councils expressed concern over the "pattern of ineffective teaching." The Department with input made adjustments to the DPAS II Revised regulations, recognizing that the 2011-2012 school year is an interim year. This is because not all measure of student growth have been developed and approved. The results of those discussions are reflected in this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to make several changes and amendments as noted in the summary above.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 17, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of November 2011.

Department of Education

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

Approved this 17th day of November 2011

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Gregory Coverdale
Terry M. Whittaker, Ed.D.
James L. Wilson, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the Register at page 424 (15 DE Reg. 424). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 815

REGULATORY IMPLEMENTING ORDER**815 Physical Examinations and Screening****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 815 Physical Examinations and Screening to require a second physical examination or evaluation for high school students. The new requirement provides that students entering grade 9 shall have a physical examination or evaluation within 2 years of entry into grade 9. The requirement would begin with the 2012-2013 school year. The regulation also provides what is acceptable as the physical examination or evaluation form. The changes are being proposed based on input and conversations between the Departments of Public Health and Education.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 3, 2011, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Councils suggested a revision to the name of the physical examination to better represent that this is a health screening. The Department agrees and amendments were made to refer to the evaluations or examinations as "Health" rather than "Physical". The Department will make revisions to the Delaware School Health Form.

Additionally, the Councils suggested a dental health examination. While the Department agrees dental examinations are important for health, it could be a resource burden on families. The Department will investigate adding a provision to the "Delaware School Health Examination Form" that the qualified healthcare provider check for dental health and provide a referral or recommendation for further dental examination if needed.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 815 Physical Examinations and Screening in order to require a second physical examination or evaluation for high school students and to outline what is acceptable as the physical or examination form.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 815 Physical Examinations and Screening. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 815 Health Examinations and Screening attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 815 Health Examinations and Screening 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** 815 Health Examinations and Screening amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 815 Health Examinations and Screening 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 17, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of November 2011.

Department of Education

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

Approved this 17th day of November 2011

815 ~~[Physical Health]~~ Examinations and Screening

1.0 Definitions

"Delaware School Physical Examination Form" means the age appropriate form developed by the Delaware Department of Education for documenting information from the parent, guardian or Relative Caregiver and healthcare provider on the student's health status.

"Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation" means the form approved by the DIAA.

"Healthcare Provider" means a currently licensed physician, advanced practice nurse, nurse practitioner, or physician's assistant.

"~~[Physical Health]~~ Examination or ~~[Physical Health]~~ Evaluation" means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.

4.2.0 ~~[Physical Health]~~ Examinations

4.2.1 All public school students shall have a two ~~[physical health]~~ examinations that has ~~have~~ been administered by a licensed medical physician, nurse practitioner or physician's assistant ~~healthcare provider~~. The first ~~[physical health]~~ examination shall have been done within the two years prior to entry into school. ~~Beginning in school year 2012-2013, the second ~~[physical health]~~ examination shall be required for entering grade 9 students and shall be done within the two years prior to entry into grade 9.~~ Within ~~fourteen~~ thirty calendar days after notification of the requirement for a physical examination entry, new enterers and grade 9 students who have not complied with the second ~~[physical health]~~ examination requirement shall have received a the ~~[physical health]~~ examination or shall have a documented appointment with a licensed health care provider for a the physical examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2012 - 2013 school year shall not be required to have the second ~~[physical health]~~ examination or evaluation.

4.2.1.1 The requirement for the ~~[physical health]~~ examination may be waived for students whose parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of ~~[physical health]~~ examinations.

2.1.2 Notwithstanding the above, a second ~~[physical health]~~ examination shall not be required if the first ~~[physical health]~~ examination is within two years of entering Grade 9.

2.1.3 The Delaware School Physical Examination Form or the DIAA Pre-Participation **[Physical Health]** Evaluation form may be used as documentation of the **[physical health]** examination. In addition, a district or charter school may accept a **[physical health]** examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results on medical testings and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.

~~4.1.2~~ 2.1.4 The school nurse shall record all findings on the Delaware School Health Record Form within the student's electronic medical record (see 14 DE Admin. Code 811) and maintain the original copy in the child's medical file.

10 DE Reg. 1807 (06/01/07)

Non regulatory note: See 14 DE Admin. Code 1008.3 and 14 DE Admin. Code 1009.3 for physical **[or health]** examination requirements associated with participation in sports.

23.0 Screening

23.1 Vision and Hearing Screening

23.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.

23.1.1.1 In addition to the screening requirements in 2.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.

23.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in car driving hours.

23.1.2 The school nurse shall record the results on the Delaware School Health Record Form within the student's electronic medical record and shall notify the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.

23.2 Postural and Gait Screening

23.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.

23.2.2 The school nurse shall record the findings on the Delaware School Health Record Form within the student's electronic medical record (see 14 DE Admin. Code 811) and shall notify the parents, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.

23.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an on site follow up evaluation or a referral to the student's health care provider.

23.3 Lead Screening

23.3.1 Children who enter school at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 Del.C. Ch. 26.

23.3.1.1 For children enrolling in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.

23.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 Del.C. §2603.

23.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 Del.C., Ch. 26, requires all health care providers to order lead screening for children at or around the age of 12 months of age.

23.3.2 The school nurse shall document the lead screening on the Delaware School Health Record Form within the student's electronic medical record. See 14 DE Admin. Code 811.

DEPARTMENT OF FINANCE OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 8303(7) (29 Del.C. §8303(7))

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §8303(7), for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies that are substantially compliant with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1), the Department of Finance is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Finance pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Finance has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, the Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Secretary of the Department of Finance has statutory authority to promulgate regulations governing the administration and operation of the Department of Finance pursuant to 29 **Del.C.** §8303(7).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Secretary of the Department of Finance does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Thomas J. Cook, Secretary
Department of Finance

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

1.1 The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the Delaware Code, the Freedom of Information Act.

1.2 Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the

accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

“Agency” means the Department of Finance.

“FOIA” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the Delaware Code.

“FOIA Coordinator” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“FOIA Request” or “Request” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 Del.C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

“Secretary” means the Secretary of Finance.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at FOIA Coordinator, Department of Finance, Carvel State Office Building, Mail Stop C900, 820 North French Street, Wilmington, DE, 19801; by email to DOF_FOIA@state.de.us; by fax at (302) 577-8656; or via online request form, which may be found on the Agency’s home page at www.finance.delaware.gov.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency’s responses thereto. The FOIA Coordinator shall be identified on the Agency’s website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting

Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 In addition to the foregoing responsibilities, beginning on January 1, 2012, †The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with § 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any

other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 **Applicability**

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 **Agency-Specific Provisions**

- 6.1 The definition of Public Record contains various specific exceptions to the general definition of what records constitute Public Records. Several of these exceptions frequently apply to records in the custody of the Agency. These exceptions include, but are not limited to:
- 6.1.1 Investigatory files compiled for civil or criminal law-enforcement. The Agency routinely keeps investigatory files in connection with its enforcement of the tax, escheat and lottery statutes.
- 6.1.2 Any records specifically exempted from public disclosure by statute or common law. The Agency is subject to several statutes that prohibit public disclosure of particular types of records. These statutes prohibit disclosure of:
- 6.1.2.1 tax returns and information in tax returns,
- 6.1.2.2 most information in reports made to the State Escheator, and
- 6.1.2.3 the names and addresses of lottery prize winners, unless the winners consent.
- 6.1.3 Any records pertaining to pending or potential litigation which are not records of any court. The Agency is frequently involved in enforcement and other litigation. Accordingly, it creates and has custody of records that pertain to pending or potential litigation that are not records of any court in all areas over which it has administrative responsibility.
- 6.2 The Agency reserves the right to refuse Requests, in whole or in part, that seek disclosure of records that are not Public Records because of any exception to the statutory definition of Public Records, including those described in section 6.1.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)

ORDER

Asset Verification System

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 regarding the *Asset Verification System*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the October 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal serves as notice of intent of the Division of Medicaid and Medical Assistance (DMMA) to submit a State Plan Amendment (SPA) to implement section 1940 of the Social Security Act that requires all States to implement *Asset Verification System*, a system for verifying the assets of aged, blind or disabled applicants for and recipients of Medicaid.

Statutory Authority

- Supplemental Appropriations Act of 2008, Public Law 111-148, Title VII, Section 7001(d)
- Social Security Act §1940, *Asset Verification through Access to Information Held By Financial Institutions*

Background

Title VII, section 7001(d) of P.L. 110-252 (Supplemental Appropriations Act of 2008) added a new section 1940 to the Social Security Act. Section 1940 of the SSA requires all States to add "asset verification programs" to their Medicaid State plans.

Individuals whose eligibility is being determined or redetermined (and others whose finances are relevant to eligibility) must authorize the State agency to obtain records from any financial institution in connection with the eligibility determination in order to verify the individual's assets. The verification program is to be "consistent with the approach of the Commissioner of Social Security" under Section 1631 of the SSA, i.e., an electronic verification system. Individuals who refuse or revoke their authorization may be determined ineligible for medical assistance.

States are required to submit a state plan amendment which describes how they will implement an asset verification system. Plan amendments will have to be submitted at least six months before the implementation deadline applicable to each State. Delaware has been scheduled by CMS to implement an electronic asset verification system in year 2013. (Public Law 110-252)

If a State fails to implement an asset verification system as required by section 1940, Federal Financial Participation (FFP) for services provided to aged, blind or disabled individuals for whom assets should have been verified will be withheld.

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) will be implementing the Asset Verification System to comply with Section 1940 of the Social Security Act (SSA) and with the Centers for Medicare and Medicaid Services (CMS) directives.

The provisions of this State plan amendment are subject to approval by the CMS.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

The costs for system changes are already budgeted in the General Fund.

Savings/Cost Avoidance may be achieved to the extent that the asset verification data increases the accuracy of eligibility determinations.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of

Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

The proposed amendment suggests that DMMA plans to use a contractor to operate the asset verification system which includes interaction with local banks. However, DMMA indicates that “(t)he contractor is not known at this time.” See amendment, Par. 3. In Section 2, it appears that DMMA should be checking off Par. “B” since it is adopting a contractor-based approach as juxtaposed to the other available options. However, Par. B contains no “check-off”. DMMA should consider whether this is an oversight.

Agency Response: The check-off was inadvertently omitted during publication. The final order regulation shows paragraph “B” in section 2 appropriately checked.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to regarding the *Asset Verification System* is adopted and shall be final effective December 10, 2011.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 435 (15 DE Reg. 435). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Asset Verification System

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)

ORDER

Program of All Inclusive Care for the Elderly (PACE)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan to add Medicaid coverage for *Program of All Inclusive Care for the Elderly (PACE)* as an optional service. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 31 Del.C. §512.

The Department published its notice of proposed regulation changes pursuant to 29 Del.C. §10115 in the October 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed amends the Delaware Title XIX Medicaid State Plan to add Medicaid coverage for *Program of All Inclusive Care for the Elderly (PACE)* as an optional service. PACE is a provider type under Medicare that allows states the option to pay for PACE services under Medicaid. The PACE program is capitated by both Medicare and Medicaid to provide all medical and long-term care services.

Statutory Authority

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

Background

Program of All-Inclusive Care for the Elderly (PACE) is a benefit authorized by the Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. The PACE model was developed to address the needs of long-term care clients, providers, and payers. For most participants, the comprehensive service package permits them to continue living at home while receiving services rather than be institutionalized. Through PACE, organizations are able to deliver all services covered by PACE which participants need rather than only those services reimbursable under the Medicare and Medicaid fee-for-service systems.

The BBA establish PACE within the Medicare program and enable States to provide PACE services to Medicaid beneficiaries as a State option. In order to provide this Medicaid benefit, States must elect to cover PACE services as a State plan option and also enter into a program agreement with the PACE provider and the Secretary of the Department of Health and Human Services (DHHS). PACE providers must operate under both the Medicare and Medicaid programs. The program agreement is the contract between the PACE provider, the State, and the Federal government, and is the mechanism for receiving Federal matching funds for PACE services.

Eligibility - Participants must be at least 55 years old, live in the PACE service area, and be certified as eligible for nursing home care by the appropriate State agency. The PACE program becomes the sole source of services for Medicare and Medicaid eligible enrollees.

Services - An interdisciplinary team, consisting of professional and paraprofessional staff, assesses participants' needs, develops care plans, and delivers all services (including acute care services and when necessary, nursing facility services) which are integrated for a seamless provision of total care. PACE programs provide social and medical services primarily in an adult day health center, supplemented by in-home and referral services in accordance with the participant's needs. The PACE service package must include all Medicare and Medicaid covered services, and other services determined necessary by the multidisciplinary team to improve and maintain the care of the PACE participant.

Payment - PACE providers receive monthly Medicare and Medicaid capitation payments for each eligible Medicare and Medicaid enrollee. Medicare eligible participants who are not eligible for Medicaid pay monthly premiums equal to the Medicaid capitation amount, but no deductibles, coinsurance, or other type of Medicare or Medicaid cost-sharing applies. PACE providers assume full financial risk for participants' care without limits on amount, duration, or scope of services.

Summary of Proposal

The intent of this rule is to implement the Program of All-Inclusive Care for the Elderly (or PACE) program as administered by the Division of Medicaid and Medical Assistance (DMMA) and to address the responsibilities of DMMA as the state administering agency under 42 CFR 460.

The proposed amendments add Medicaid coverage for PACE, as allowed under federal Medicaid regulations at 42 CFR Part 460. For a monthly capitated rate, a PACE organization provides all preventive, primary, acute, and long-term care services to persons who enroll in the program. To become a PACE organization, an entity must be approved both by the Division of Medicaid and Medical Assistance (DMMA) and by the Centers for Medicare and Medicaid Services (CMS). The organization must enter into a three-party agreement with DMMA and CMS committing to abide by state rules and federal regulations for PACE programs. The agreement must specify which areas the program will serve. The State plan amendment (SPA) must be approved before CMS can enter into a PACE program agreement.

The provisions of this SPA are subject to approval by the CMS.

Fiscal Impact Statement

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

PACE providers receive monthly Medicare and Medicaid capitation payments for each eligible enrollee. Medicare eligible participants who are not eligible for Medicaid pay monthly premiums equal to the Medicaid capitation amount, but no deductibles, coinsurance, or other type of Medicare or Medicaid cost-sharing applies. PACE providers assume full financial risk for participants' care without limits on amount, duration, or scope of services.

DMMA will assure CMS that the PACE program will be budget-neutral.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The federal Balanced Budget Act of 1997 authorized states to adopt and implement an integrated Medicare/Medicaid program. DMMA is now adding this new "Program of All Inclusive Care for the Elderly" (PACE) to the Medicaid State Plan. Individuals enrolled in PACE will be exempt from the proposed Diamond State Health Plan Plus program. PACE will have the following features:

Eligibility: Individuals must be at least 55 years old. Applicant countable income cannot exceed 250% of the SSDI Federal Benefit (p. 441).

Services: An approved provider will be paid a capitated amount which can be derived from both Medicare and Medicaid funds to essentially provide "wrap around" services. The financial risk is borne by the provider which is responsible for "all preventive, primary, acute, and long-term care services". Services would be identified in a plan developed in collaboration with an interdisciplinary team. Available services include "all Medicare and Medicaid covered services, and other services determined necessary by the multidisciplinary team to improve and maintain the care of the PACE participant."

GACEC and the SCPD endorse the proposed regulation since the new program benefits individuals with disabilities.

Agency Response: Thank you for the endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan to add Medicaid coverage for *Program of All Inclusive Care for the Elderly (PACE)* as an optional service is adopted and shall be final effective December 10, 2011.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 437 (15 DE Reg. 437). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Program of All Inclusive Care for the Elderly \(PACE\)](#)

OFFICE OF THE SECRETARY

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

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 Del.C. §10003(d) and 16 Del.C. §122, for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the DHSS is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the DHSS pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. DHSS has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. DHSS has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §10003(d) and 16 **Del.C.** §122.

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DHSS does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Rita M. Landgraf, Secretary, DHSS

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under 29 **Del.C.** Ch. 100.

Agency employees are reminded that all Public Records under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"Agency" means the Delaware Health and Social Services.

"FOIA" means the Freedom of Information Act as established pursuant to 29 **Del.C.** Ch. 100.

"FOIA Coordinator" shall mean the person designated by the Secretary to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect Public Records pursuant to 29 **Del.C.** §10003 of the Delaware Code and in accordance with the policy hereunder.

"FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"Non-Custodial Records" shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 Del.C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

“Secretary” means the Secretary of Delaware Health and Social Services.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email or online in accordance with Section 3.2. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the proper form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at 1901 N. Du Pont Highway, Main Bldg. New Castle, DE 19720; or by fax at 302 255-4429; or via the DHSS online request form, which can be found at http://dhss.delaware.gov/main/mailforms/dhss_foiaform.aspx.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and shall coordinate the Agency’s responses thereto. The FOIA Coordinator shall be identified on the Agency’s website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA coordinator of the relevant agency has received the request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA coordinator of the relevant agency that the agency has received such request. The Agency shall provide the requesting party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party’s contact information; the date the Agency received the Request; the Agency’s response deadline pursuant to §3.4; the date of the Agency’s response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records;

denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records may be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot with reasonable effort fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall forward a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving the records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include archived material or budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours from 8:00 am to 4:30 pm Monday through Friday.

4.0 Fees

4.1 Photocopying Fees:

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge

applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees:

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying responsive records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records are exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted in a short time period by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment:

4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
INDUSTRIAL ACCIDENT BOARD**

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

ORDER

1331 Industrial Accident Board Regulations

Pursuant to 29 Del.C. §10118, the Industrial Accident Board (IAB) issues this Order adopting proposed amendments to the Industrial Accident Board's Rules. Following notice and a public hearing on October 18, 2011, the IAB makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The IAB posted public notice of the proposed amendments in the September 1, 2011 *Register of Regulations* and in *The News Journal* (Delaware) and in the *Delaware State News*. IAB Exhibits 1&2. The IAB was making a comprehensive revision to their rules as there has been no revision since 1998.

2. The IAB did not receive any formal written comments. The Deputy Attorney General for the IAB did receive an informal email from Michael Weiss, Esq., who was present at the hearing to discuss the contents of that email.

3. At the public hearing, the Committee received public comment from Michael Weiss, Esquire, addressed the Board on behalf of the Delaware State Bar Association, Worker's Compensation Section, Rules Committee. Mr. Weiss addressed proposed Rule 3.6, as it relates to the filing of petitions. In Delaware, the statute of limitations for initial claims is two years from the date of the accident. Once the claims are accepted, the statute of limitations is five years from the date of last payment. The only way to toll the statute of limitations is to file a petition with the Board. The concern is in the event that a petition is filed close to the statute of limitations and rejected, the statute of limitations may run out before the claimant's attorney can revised and resubmit a petition. On October 13, 2011, via email, Mr. Weiss submitted proposed revised language to DAG Linda Carmichael on behalf of the DSBA's Workers' Compensation Section Rules committee replacing the language in 3.6 as follows: "The Department shall not reject a filing even if the filing is not substantially completed. However, the Department may file a motion to dismiss the filing as incomplete, after notice per Rule 8. The Department will not take steps to schedule a hearing until the filing is appropriately completed unless ordered to do so after a motion pursuant to Rule 8." Mr. Weiss indicated that the Board should not proceed with a claim if it has been incompletely filed.

4. At the public hearing, the Committee received public comment from Dennis Menton, Esq., who supported Mr. Weiss's presentation and stated that he joined in the fear that if a petition was rejected when it is filed close to the statute of limitations period, the claimant may not have any redress. Thus, a claimant may risk being barred from having his case heard, if the petition was "kicked back" for a deficiency. Mr. Menton also commented on proposed Rule 9.3.2, which allows medical bills during the pendency of a petition to be presented at least thirty days before the hearing. He requested the board consider changing the thirty days to forty days. He reported that the thirty day rule is inconsistent with one of the most important functions or policies of the board - to resolve issues without litigation. When bills are allowed to be presented during the course of a pending petition up to the thirtieth day, the employer loses the opportunity to evaluate those bills in conjunction with the thirty day rule. Usually, all of the pieces of the puzzle are in place by thirty-five days; and counsel has the opportunity to make an offer to settle, get the settlement letter, and try to resolve issues without taking it further into litigation. Mr. Menton contends that permitting bills to be presented at the eleventh hour makes it impossible, and he requested the deadline be changed to forty days.

5. At the public hearing, the Committee received public comment from Maura Cullington, Director, Delaware Occupational Health Nurses Association, who commented on the proposed Rules 11.5 and 11.6. Her understanding is that carriers and employers would need authorization from the claimant's counsel in order for case managers to communicate with patients. That would present a barrier to what she has established over these eight years. She has found that the authorization has not been obtained or it does not get to the right person. She sees these changes causing a significant slowdown and barrier to everyone being on the same page in a Workers' Compensation claim.

6. At the public hearing, the Committee received public comment from Neil Taylor, Director, PRO Physical Therapy, who expressed concern the added step of getting authorization to review and access medical records would delay comprehensively understanding the case. Mr. Taylor stated that they go through great lengths to educate their physical therapist and occupational therapist to understand the workers' compensation statute and what they are suppose to do. Further, that they try to get as much information as possible about the injured workers' job or injury, available modified duties, and employer forms authorized through the statute. This additional authorization is going to make it difficult to understand all the pieces of the puzzle as they start to rehabilitate an injured worker.

7. At the public hearing, the Committee received public comment from Stephen Morrow, Esq. who commented on proposed Rules 11.4 to 11.6 from a claimant's and a claimant's bar perspective. Mr. Morrow stated that these rules merely codified the present case law and prevent communication occurring between defense counsel and the health care provider. The claimant's bar would be concerned about a defense lawyer calling a doctor and accessing information without the claimant's attorney having any knowledge or chance to get the information garnered from the health care provider. In reality, proposed Rules 11.4 to 11.6 codify the present case law that the IAB has in regards to contacting health care providers and how nurse case managers are allowed to contact health care providers.

8. At the public hearing, the Committee received public comment from Kristopher Starr, Esq., who commented on proposed Rule 11.6. Mr. Starr asked to submit a memorandum as part of the record. In addition, he opined that Rule 11.6 as applied to government employers could be illegal on constitutional grounds. He addressed several issues regarding communication amongst a government employer, provider of health care services, and an injured workers' counsel. He further opined that an argument may be raised concerning the legality of proposed Rule 11.6 as specifically applied to government employers from the standpoint of impinging on government operations. Furthermore, Mr. Starr stated that proposed Rule 11.6 restricts speech, specifically commercial speech. In his opinion, the rule prevents government employers from conducting their operations as it curtails their ability to see what is going on with their employees and their efforts to reduce costs through the use of case management services. Continuing with this position, Mr. Starr believes that the rule legislatively delegates to a claimant's attorney the ability to bring to a halt free discovery in the medical context from a government employer. Lastly, Mr. Starr argued that it is his opinion that the proposed rule is an illegal provision.

9. At the public hearing, the Committee received public comment from Scott Mondell, Esq. who commented that the prohibition in proposed Rule 11.6 deals with, and only applies to, legal counsel for the employer. It does not apply to the employer itself or to medical management, only to legal counsel for the employer.

10. At the public hearing, the Board Chair requested that Mr. John Kirk, Deputy Director of the Division of Industrial Affairs, address certain questions regarding proposed Rule 3.6 pertaining to the Department's discretion to reject incomplete filings. Mr. Kirk stated that the genesis of the proposed rule comes from issues that the Department has had to deal with for several years. According to Mr. Kirk, it is unfortunate that some practitioners file petitions which contain little, if any, information other than the claimant's name and the claimant's employer. Currently, when this occurs the Department must conduct an investigation to determine who should receive notice. The Department discussed the impact of this problem on the Department and also discussed its proposal with the Department's Deputy Attorney General, as well as members of the Board and members of the Bar Association's Workers' Compensation Rules Committee. Mr. Kirk's understanding was that this rule was similar to the civil rules in Superior Court. When a complaint is filed in Superior Court, it is filed with the Prothonotary. The Prothonotary is the administrative body for the Court. The Prothonotary's office reviews the filing to confirm that the filings contain all relevant information necessary for the Prothonotary to direct notices to the proper parties, as necessary. According to Mr. Kirk, the proposed rule change provides the Department, as the Board's administrative body, with that ability. Continuing further, Mr. Kirk stated that obviously, if there is a statute of limitations problem, the petition would be accepted and a letter would go out to the petitioner letting them know that it will be held in abeyance until such time as the Department receives sufficient information to be able to send notices to the proper parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. The public was given notice and an opportunity to provide the IAB with comments in writing and by testimony at the public hearing on the proposed amendments to the IAB's Rules as required by 19 **Del.C.** §10117.

12. With regard to proposed Rule 3.6, the IAB appreciates the concerns raised regarding potential problems when a petition is filed close to end of the statute of limitations. However, the IAB finds that the Department's practice and appreciation for this problem along with the discretion given within the rule provides sufficient leeway for the Department to work with the petitioners and their counsel to ensure that an incomplete petition is not rejected when faced with a statute of limitations issue. Additionally, the proposed Rule 3.6 provides an avenue for the Department to obtain the information necessary for a petition to proceed.

13. With regard to proposed Rule 9.3.2, the IAB finds that this issue has remained outstanding during the entire 7 years of attempted revisions and believes that the amount of time provided is sufficient. Should the practitioners find that the time prescribed is not sufficient, practitioners may bring the issue back up to the IAB for future possible rule change consideration. The IAB acknowledges that if proposed Rule 9.3.2 is adopted, there may be a future need to make additional changes; but at this time, the process has taken longer than anticipated and has left the IAB without the ability to proceed with these needed changes.

14. With regard to proposed Rules 11.4, 11.5 and 11.6, the IAB finds that the requirement for authorization is not so onerous as to stop the process. Rules 11.5 and 11.6 apply when the claimant is represented by legal counsel. Further, that the proposed rule amendments comply with case law.

15. Having heard and considered the public comments on the proposed comprehensive revisions to the IAB Rules, the IAB has determined that no additional changes should be made to the rules as published. Therefore, the IAB adopts the comprehensive rule changes as proposed and published in the *Register of Regulations*, Vol. 15, Issue 3 (September 1, 2011).

SO ADOPTED this 18th day of October, 2011.

INDUSTRIAL ACCIDENT BOARD

Lowell L. Groundland, Chair

Mary M. Mantzler

William F. Hare

Terrence M. Shannon

John D. Daniello

Marilyn J. Doto

Otto R. Medinilla, Sr.

Alice M. Mitchell

***Please note that no changes were made to the regulation as originally proposed and published in the September 2011 issue of the *Register* at page 287 (15 DE Reg. 287). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1331 Industrial Accident Board Regulations

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 105(a)(8) (29 **Del.C.** §105(a)(8))

ORDER**Policies and Procedures Regarding FOIA Requests**

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §105(a)(8) and 29 **Del.C.** §10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations and promulgating new regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing

each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Delaware Department of Labor is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations are to prescribe procedures relating to the inspection and copying of public records retained by the Delaware Department of Labor pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware Department of Labor has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Delaware Department of Labor has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §105(a)(8) and 29 **Del.C.** §10003(d).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Secretary of the Delaware Department of Labor does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

John J. McMahon, Jr., Secretary

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"**Agency**" means the Delaware Department of Labor.

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

"**FOIA Coordinator**" shall mean the person designated by the Secretary to receive and process FOIA Requests.

"**FOIA Request**" or "**Request**" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the **Delaware Code** and in accordance with the policy hereunder.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 Del.C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

“Secretary” means the Secretary of Labor.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at Department of Labor, 4425 North Market Street, Wilmington, Delaware, by email to Robert.strong@state.de.us, by fax at (302) 761-6621; or via online request form, which may be found on the Agency’s home page at www.delawareworks.com.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency’s responses thereto. The FOIA Coordinator shall be identified on the Agency’s website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party’s contact information; the date the Agency received the Request; the Agency’s response deadline pursuant to §3.4; the date of the Agency’s response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

- 3.4.1** The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.
- 3.4.2** If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

- 3.5.1** Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.
- 3.5.2** Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

- 3.6.1** If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.
- 3.6.2** Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

- 3.7.1** Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

- 3.8.1** The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 **Fees****4.1** Photocopying Fees

- 4.1.1** In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:
- 4.1.1.1** Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard

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sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)
7 DE Admin. Code 1138

Secretary's Order No.: 2011-A-0046

7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 8.0: "Facility-Wide Requirements for Halogenated Solvent Cleaning Operations".

Date of Issuance: November 16, 2011

Effective Date of the Amendment: December 11, 2011

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 amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 8.0, "Facility-Wide Requirements for Halogenated Solvent Cleaning Operations". In 2001, Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standard applicable to halogenated solvent cleaning operations (40 CFR Part 63, Subpart T) as Section 8.0 of Regulation 1138. Since that initial adoption, the U.S. Environmental Protection Agency (EPA) has revised this federal MACT standard several times. The most significant of these revisions was the adoption of facility-wide 12-month rolling total halogenated solvent emission limits (72 FR 25138, May 3, 2007). This more stringent requirement was incorporated into the federal MACT standard after the EPA determined that, following the full implementation of the MACT requirements, the original MACT requirements did not protect the public's health with an ample margin of safety, as required under the Clean Air Act.

Delaware is proposing to amend Section 8.0 of Regulation 1138 by adding the facility-wide emission limits and their associated monitoring, recordkeeping and reporting requirements that the EPA promulgated on May 3, 2007. The Department is proposing these revisions to existing Regulation 1138, Section 8.0, to assist the affected facilities in (1) tracking their HAP emissions; and (2) in documenting their ongoing compliance with the risk-based emission limits.

The Department's Air Quality Management (AQM) Section of the Divisions of Air Quality commenced the regulatory development process with Start Action Notice 2010-24. The Department published the proposed regulatory amendments in the August 1, 2011 Delaware Register of Regulation and held a public hearing on August 24, 2011. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 10, 2011 (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. It should be noted that, throughout the entire regulatory development process

regarding this promulgation, the Department received no public comment from the regulated community, as noted in the Report.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 8.0, "Facility-Wide Requirements for Halogenated Solvent Cleaning Operations", Delaware will be able to assist affected facilities in tracking their HAP emissions and in documenting their ongoing compliance with risk-based emission limits by adding facility-wide emission limits and their associated monitoring, recordkeeping and reporting requirements, as promulgated by the EPA on May 3, 2007. In doing so, Delaware will be enabled to provide increased protection for Delaware citizens by strengthening the existing MACT standards to protect public health with an ample margin of safety.

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 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 August 24, 2011 on the proposed Amendment in order to consider public comments before making any final decision concerning this matter;
4. The Department's Hearing Officer's Report, including its recommended record and the recommended revised Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
5. The recommended revised Amendments does not reflect any substantive change from the proposed regulation Amendment as published in the August 1, 2011, Delaware *Register of Regulations*;
6. The recommended revised Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) assist the affected facilities in tracking their HAP emissions and in documenting their ongoing compliance with risk-based emission limits; and to (2) provide increased protection for Delaware citizens and strengthen the existing MACT standards to protect public health with an ample margin of safety; 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

***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, Section 6010, (7 Del.C. §6010)
7 DE Admin. Code 1302

Secretary's Order No.: 2011-WH-0045

Delaware Regulations Governing Hazardous Waste, 7 DE Admin. Code 1302

Date of Issuance: November 15, 2011

Effective Date of the Amendment: December 21, 2011

I. Background:

A public hearing was held on Monday, October 24, 2011, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware *Regulations Governing Hazardous Waste* (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer federal authority as part of its

State hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program. To accomplish this, the State is proposing to adopt mandated federal regulations and miscellaneous changes to correct errors and add consistency or clarification. Some of the changes DNREC is proposing to make are currently in effect at the federal level.

The Department is proposing amendments to the following sections of its existing *Regulations Governing Hazardous Waste*: (1) Adoption of federal technical corrections; (2) Adoption of federal withdrawal of the Emission-Comparable Fuel Exclusion; (3) Adoption of federal delisting of saccharin; (4) Modification of §262.20(f) to allow Universities to transport hazardous waste to an accumulation area; (5) Clarification of the necessity of 270 day accumulation for Small Quantity Generators (SQG); (6) Clarification of SQG recordkeeping and reporting requirements in §262.44; (7) Clarification of records retention of Contingency Plan submission; (8) Clarification of Conditionally Exempt Small Quantity Generator container requirements in §261.5; (9) Correction of references to the regional contingency plan under 40 CFR 1510; and (10) Requirement of used oil facilities to close containers.

The Department published the proposed regulatory amendments in the October 1, 2010 *Delaware Register of Regulations*. Due to the fact that the proposed changes to RGHW are required by the EPA, are self explanatory, and are not controversial, no workshop to explain these changes to the public was held by the Department. Instead, a letter was sent to all interested persons (i.e., the regulated community throughout Delaware) on August 4, 2011, encouraging the public to review the proposed amendments on the Department's web page, and to submit any comments prior to or at the hearing. No comments of any kind were received from the public or the regulated community regarding these proposed amendments during any phase of this proceeding. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on October 24, 2011, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated November 10, 2011, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's *Regulations Governing Hazardous Waste*, as reflected in the Hearing Officer's Memorandum of November 10, 2011, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chs. 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The addition of clarifying language, as well as the correction of clerical errors currently found in Delaware's existing regulations, will strengthen and provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation, as published in the October 1, 2011 *Delaware Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws

and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*;

10. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated November 10, 2011 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste* be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware's *Regulations Governing Hazardous Waste* will update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to provide additional clarifying language, as well as to correct clerical errors currently found in Delaware's existing regulations, will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.** Chs. 60 and 63.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 471 (15 DE Reg. 471). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Delaware Regulations Governing Hazardous Waste

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 8003(7) (29 **Del.C.** §8003(7))

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §8003(7) and 29 **Del.C.** §10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations and promulgating new regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Department of Natural Resources and Environmental Control is repealing its prior regulations and adopting new final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations are to prescribe procedures relating to the inspection and copying of public

records retained by the Department of Natural Resources and Environmental Control pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Natural Resources and Environmental Control has developed new procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Department of Natural Resources and Environmental Control has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §8003(7).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Secretary of the Department of Natural Resources and Environmental Control does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, in accordance with 29 **Del.C.** §10118(g).

Collin P. O'Mara, Secretary

~~402 Freedom of Information Act Regulation~~

4.0 Purpose

~~The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Natural Resources and Environmental Control ("the Department") pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act ("FOIA"). It is the Department's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.~~

~~This regulation applies to the Department in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the Department in its normal course of business with Federal, State, or local agencies, nor to private parties (corporate or individual) with whom the Department is conducting business (permit, contractual agreement, licenses, etc.); provided the public records are germane to the business being conducted. Requests made pursuant to the Hazardous Waste Disclosure Regulation ("HWDR") shall remain independent of this regulation in order to maintain EPA authorization for the Hazardous Waste program.~~

~~A new and integral part of the FOIA regulation is a procedure outlined to address the confidential treatment of information submitted to the Department. It is important to understand that this confidentiality procedure is a necessary part of the FOIA regulation in that any information submitted to the Department is subject to public review unless deemed to be confidential by the Secretary in accordance with the criteria and procedures established in this regulation.~~

~~It is the intent of the Department, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of Department officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides that it shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA, shall be processed in the manner prescribed below.~~

2.0 Definitions

~~“Confidential information” means information determined by the Secretary to constitute a trade secret, or commercial or financial information which is of a confidential nature.~~

~~“Department” means the Department of Natural Resources & Environmental Control.~~

~~“Requestor” shall mean any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.~~

~~“Responsible Official” means:~~

~~For a Corporation: A President, Vice President, Secretary, or Treasurer of the corporation or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.~~

~~For a Partnership or Sole Proprietorship: A general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.~~

~~For a Municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.~~

~~“Secretary” means the Secretary of the Department of Natural Resources & Environmental Control or the Secretary’s designee.~~

~~“Trade Secret” means a formula, pattern, device or compilation of information which may be used to obtain competitive advantage over others.~~

3.0 Availability of Records**3.1 Access**

~~3.1.1 The Department will provide reasonable access and facilities for reviewing public records during regular business hours.~~

~~3.1.2 The Department shall make all requested records available for review by requestor unless such records or portions of records are determined by the Secretary to be confidential in accordance with Section 6 of this regulation or otherwise exempted from disclosure as records deemed non-public pursuant to 29 ~~Del.C.~~ §10002(d).~~

~~3.1.3 The Department reserves the right to deny any request in part or in full which does not comply with the Form of Request procedures pursuant to Section 4.1 of this regulation and/or the provisions of the Freedom of Information Act, as amended.~~

3.2 Department Records Review

~~3.2.1 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public are removed.~~

~~3.2.2 Upon request, the Department will provide a log of records which may have been deemed non-public. The log will include the following information:~~

~~3.2.2.1 The document’s author,~~

~~3.2.2.2 The addressee,~~

~~3.2.2.3 The date of the document,~~

~~3.2.2.4 The title of the document or a brief explanation of the document’s contents, and~~

~~3.2.2.5 The statutory exemption.~~

~~3.2.3 The types of records deemed non-public are as contained in 29 ~~Del.C.~~ §10002(d).~~

~~3.2.4 Departmental regulations, brochures, pamphlets, informational bulletins, and other such information are not subject to this regulation.~~

~~7-DE-Reg-1565 (5/1/04)~~

4.0 Record Request and Response Procedures**4.1 Form of Request**

~~4.1.1 Requests for access to records shall be made in writing and shall adequately describe the records sought in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall make every reasonable effort to assist the requestor in identifying the record being sought. The request may be denied in part or in full and returned to the requestor for the following reasons:~~

~~4.1.1.1 The request does not adequately describe the records;~~

~~4.1.1.2 The request requires the Department to perform research or to assemble information that has not been compiled; or~~

~~4.1.1.3 Reasons set forth in Section 3.1.3 or as addressed in other areas of this regulation not specified here.~~

~~4.2 Department Response to Requests~~

~~4.2.1 The Department shall make every reasonable effort to determine within twenty (20) business days after the receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.~~

~~4.2.2 If the Department denies a request in whole or in part, the Department shall indicate to the requestor the reasons for the denial.~~

~~4.3 Reproduction of Records~~

~~4.3.1 The copying of any requested public records may be performed by Department personnel and may be provided to the requestor as follows:~~

~~4.3.1.1 If 25 pages or less are requested to be copied, the Department may, if time and personnel are available, make the copies at the time of the review. If personnel are not available, the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.~~

~~4.3.1.2 If over 25 pages are requested to be copied the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.~~

~~4.3.1.3 If over 250 pages are requested to be copied, the requestor may be required to bring in both copier and personnel to make the desired copies.~~

~~4.3.1.4 Fragmentation of requests, in order to circumvent the 250 page limit, shall not be allowed.~~

~~4.3.1.5 The Department shall have discretion based on circumstances involved to make decisions regarding copying.~~

7-DE Reg. 1560 (5/1/04)

5.0 Fees

5.1 Administrative Fees:

~~5.1.1 Charges for administrative fees include:~~

~~5.1.1.1 Staff time associated with processing FOIA requests;~~

~~5.1.1.2 Locating and reviewing files;~~

~~5.1.1.3 Monitoring file reviews;~~

~~5.1.1.4 Generating computer records (electronic or print outs); and~~

~~5.1.1.5 Preparing logs of records deemed non-public.~~

~~5.1.2 Calculation of Administrative Charges: Administrative charges will be calculated as follows:~~

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

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

- 5.2 Photocopying Fees—The following are charges for photocopies of public records made by Department personnel:
- 5.2.1 Standard Sized, Black and White Copies
The charge for copying standard sized, black and white public records shall be \$0.10 per printed page (i.e. single sided copies are \$0.10 and double sided copies are \$0.20). This charge applies to copies on the following standard paper sizes:
- 5.2.1.1 8.5" x 11";
- 5.2.1.2 8.5" x 14"; and
- 5.2.1.3 11" x 17"
- 5.2.2 Oversized Copies/Printouts
The charge for copying oversized public records (including, but not limited to: blueprints, engineering drawings, GIS print outs, and maps) shall be as follows:
- 5.2.2.1 24" x 26" \$2.00 each;
- 5.2.2.2 24" x 36" \$3.00 each;
- 5.2.2.3 30" x 42" \$5.00 each; and
- 5.2.2.4 all copies larger than 30" x 42" shall be calculated at the rate of \$0.60 per square foot.
- 5.2.3 Color Copies/Printouts
The charge for color copies or color printouts shall be as follows:
- 5.2.3.1 8.5" x 11" \$1.00 per page;
- 5.2.3.2 8.5" x 14" \$1.50 per page;
- 5.2.3.3 11" x 17" \$2.00 per page; and
- 5.2.3.4 all color copies larger than 11" x 17" (including, but not limited to: blueprints, engineering drawings, photographic imagery, GIS print outs, and maps) shall be calculated at the rate of \$2.50 per square foot.
- 5.2.4 Microfilm and/or Microfiche Printouts
Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.15 per printed page.
- 5.2.5 Electronically Generated Records
Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.
- 5.2.5.1 In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.
- 5.2.6 Other Copying Fees
The Department, at its discretion, may arrange to have records copied by an outside contractor if the Department does not have the resources or equipment to copy such records. In this instance, the requestor will be liable for payment of these costs.
- 5.3 Exemptions
- 5.3.1 The administrative charge shall be waived for individuals making a FOIA request to the Department who are not deriving income or other forms of compensation from the use of the information obtained through the FOIA request. To qualify for this exemption, individuals must provide a signed affidavit accompanying the FOIA request, stating that they are not deriving income or other forms of compensation from the use of information obtained through FOIA.
- 5.3.2 The administrative charge shall be waived for not for profit organizations working in the public interest on the condition that such organizations provide, along with their FOIA request, proof of tax exempt status and a signed affidavit from an officer or the governing body of the organization which indicates that the requestor is authorized to request the information on behalf of the organization.
- 5.3.3 Individuals and not for profit organizations that qualify under 5.3.1 or 5.3.2 shall also be granted a waiver for copying fees of \$25.00 or less. For those requests exceeding \$25.00 in copying fees, charges will be assessed pursuant to Section 5.2 of this regulation.
- 5.4 Payment

- 5.4.1 ~~Payment for copies and/or administrative charges will be due at the time copies are released to the requestor. The Department reserves the right to refuse to make copies for requestors who have outstanding balances.~~
- 5.4.2 ~~The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records and/or in preparing logs of records deemed non-public.~~
- 5.4.3 ~~Department personnel will maintain a receipt register and, upon request, provide the requestor with a receipt when payment is received.~~

6.0 Requests for Confidentiality

~~A person may request that certain records or portions of records submitted to the Department be held confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained.~~

~~The following section sets forth procedures and criteria by which the Department will determine confidentiality of records or portions of records.~~

6.1 Procedure

- 6.1.1 ~~In order for the Department to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Secretary at the time the record is submitted. The request shall provide substantiation for the allegation that the information should be treated as confidential. The request shall contain the following information:~~
 - 6.1.1.1 ~~The measures taken to guard against undesired disclosure of the information to others;~~
 - 6.1.1.2 ~~The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;~~
 - 6.1.1.3 ~~Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and~~
 - 6.1.1.4 ~~Verification that significant effort or money has been expended in developing the information.~~
- 6.1.2 ~~The following information shall be submitted:~~
 - 6.1.2.1 ~~Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review). The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;~~
 - 6.1.2.2 ~~Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and~~
 - 6.1.2.3 ~~Certification through a separate, notarized affidavit that the information is either trade secret, or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.~~
- 6.1.3 ~~The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Secretary in making a determination of confidentiality pursuant to this privilege.~~
- 6.1.4 ~~After a final determination of confidentiality has been issued by the Secretary, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if the Department determines that:~~
 - 6.1.4.1 ~~The Responsible Official notified the Department in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and~~
 - 6.1.4.2 ~~The later submission identifies with particularity the prior confidentiality determination; and~~

- 6.1.4.3 The notice to the Department met the requirements of Section 6.1.2 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and
- 6.1.4.4 The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.
- 6.2 Criteria
- 6.2.1 The Secretary may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:
- 6.2.1.1 Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;
- 6.2.1.2 The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;
- 6.2.1.3 No statute specifically requires disclosure of the information;
- 6.2.1.4 A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and
- 6.2.1.5 Verification that significant effort or money has been expended in developing the information.
- 6.3 Final Determination
- The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.
- 6.3.1 If the Secretary determines that disclosure of the information would violate ~~29 Del.C. §10002(d)(2)~~, the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify the Department in writing of such changes.
- 6.3.2 If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.
- 6.4 Defense of Secretary's Determination
- 6.4.1 Verification of Information
- There will be instances in which the Secretary may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.
- 6.4.2 Information Determined Confidential
- If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and the Department is sued by a requestor for disclosure of that information, the Department will:
- 6.4.2.1 Notify each affected party of the suit;
- 6.4.2.2 Call upon each affected party to furnish assistance where necessary in preparation of the Department's defense; and
- 6.4.2.3 Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

~~7-DE Reg. 1560 (5/1/04)~~

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the Delaware Code, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld

only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"Agency" means the Department of Natural Resources and Environmental Control or DNREC.

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

"FOIA Coordinator" shall mean the person designated by the Secretary to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

"FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"Non-Custodial Records" shall have the meaning set forth in Section 3.6.

"Public Record" shall have the meaning set forth in 29 Del.C. §10002.

"Requesting Party" shall mean the party filing a FOIA Request.

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or DNREC.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the proper form. Copies of the FOIA Request Form may be obtained from the Agency's website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at: DNREC FOIA Coordinator, OTS, 89 Kings Highway, Dover, DE 19901, by email to: DNREC_FOIA_Request@state.de.us, by fax at: (302) 739-6242; or via online request form, which may be found on the Agency's home page at www.dnrec.delaware.gov.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify

the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with § 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del. C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del. C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 **Fees****4.1** Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 Payment of all fees shall be due no later than the time the records are released to the Requesting Party.

- 4.5.2 The Agency may require pre-payment of all fees prior to performing any services hereunder.
- 4.5.3 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Requests for Confidentiality

- 6.1 A person may request that certain records or portions of records submitted to DNREC be held confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained. The following section sets forth procedures and criteria by which DNREC will determine confidentiality of records or portions of records.
- 6.2 Procedure - In order for DNREC to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Secretary at the time the record is submitted. The request shall provide substantiation for the allegation that the information should be treated as confidential. The request shall contain the following information:
- 6.2.1 The measures taken to guard against undesired disclosure of the information to others;
- 6.2.2 The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- 6.2.3 Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and
- 6.2.4 Verification that significant effort or money has been expended in developing the information.
- 6.3 The following information shall be submitted:
- 6.3.1 Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review). The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;
- 6.3.2 Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and
- 6.3.3 Certification through a separate, notarized affidavit that the information is either trade secret or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.
- 6.4 The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Secretary in making a determination of confidentiality pursuant to this privilege.
- 6.5 After a final determination of confidentiality has been issued by the Secretary, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if DNREC determines that:
- 6.5.1 The Responsible Official notified DNREC in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and
- 6.5.2 The later submission identifies with particularity the prior confidentiality determination; and
- 6.5.3 The notice to DNREC met the requirements of Section 6.3 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

- 6.5.4 The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.
- 6.6 Criteria**
- 6.6.1 The Secretary may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:
- 6.6.2 Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;
- 6.6.3 The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;
- 6.6.4 No statute specifically requires disclosure of the information;
- 6.6.5 A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and
- 6.6.6 Verification that significant effort or money has been expended in developing the information.
- 6.7 Final Determination -** The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.
- 6.7.1 If the Secretary determines that disclosure of the information would violate 29 Del.C. §10002(g)(2), the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify DNREC in writing of such changes.
- 6.7.2 If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.
- 6.8 Defense of Secretary's Determination**
- 6.8.1 Verification of Information - There will be instances in which the Secretary may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.
- 6.8.2 Information Determined Confidential - If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and DNREC is sued by a requestor for disclosure of that information, DNREC will:
- 6.8.2.1 Notify each affected party of the suit;
- 6.8.2.2 Call upon each affected party to furnish assistance where necessary in preparation of DNREC's defense; and
- 6.8.2.3 Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.
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DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)
24 DE Admin. Code 1300

ORDER

1300 Board of Examiners of Private Investigators & Private Security Agencies

Pursuant to the Guidelines in 29 Del.C. §10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 1.0 – Firearm's Policy; rule 2.0 - Use of Rifle and Shotgun, and rule 4.0 - Training Requirements. The Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoptions.
2. The Board expressed its desire to adopt the amendments to add the .45 caliber weapon to those that are approved firearms, change the threat level wording to meet today's usage, and clarify when training certificates must be submitted.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of these rules will add the .45 caliber weapon to those that are approved firearms, change the threat level wording to meet today's usage, and clarify when training certificates must be submitted.
5. The Board finds that the adoptions will have no adverse impact on the public.
6. The Board finds that these amendments are well written and describe their intent to adopt the rule to add the .45 caliber weapon to those that are approved firearms, change the threat level wording to meet today's usage, and clarify when training certificates must be submitted.

Conclusion

7. The proposed rule adoptions were published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).
8. The Board deems these adoptions necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.
9. The Board concludes that the adoption of these rules will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendments pursuant to 24 **Del.C.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. These adopted rules replace in their entirety any former rules or regulations heretofore promulgated by the Board.
12. The effective date of this Order shall be December 1, 2011.
13. Attached hereto and incorporated herein this order are the amended rules marked as exhibit A and executed simultaneously on the 27th day of October, 2011.

Lt. Colonel James Paige, Chairman

APPROVED AS TO FORM:
W. Michael Tupman, Esquire
Deputy Attorney General

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 484 (15 DE Reg. 484). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1300 Board of Examiners of Private Investigators & Private Security Agencies

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 10003(d) (29 **Del.C.** §10003(d))

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 14th day of November, 2011 in accordance with 29 **Del.C.** §10003(d); 29 **Del.C.** §8203(7), for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Delaware Department of Safety and Homeland Security is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Delaware Department of Safety and Homeland Security pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware Department of Safety and Homeland has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Delaware Department of Safety and Homeland has statutory authority to promulgate regulations pursuant to 29 **Del.C.** 10003(d); 29 **Del.C.** §8203(7).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Secretary of the Delaware Department of Safety and Homeland Security does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Lewis D. Schiliro, Secretary

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the

accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

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

“FOIA” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the Delaware Code.

“FOIA Coordinator” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“FOIA Request” or “Request” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 Del.C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

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

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at 303 Transportation Circle, P.O. Box 818, Dover, DE 19903, by email to DSHS_FOIA@state.de.us, by fax at 302-739-4872; or via online request form, which may be found on the Agency’s home page at <http://dshs.delaware.gov>.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency’s responses thereto. The FOIA Coordinator shall be identified on the Agency’s website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the

FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any

other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(14) (29 **Del.C.** §9003(14))

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §9003(14), and 29 **Del.C.** §10003(d) for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Department of Services for Children, Youth and Their Families is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Children, Youth and Their Families pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Services for Children, Youth and Their Families has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, the Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Delaware State Housing Authority has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §9003(14).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining

information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Department of Services for Children, Youth and Their Families does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Vivian L. Rapposelli, Secretary

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

“**Agency**” means Department of Services for Children, Youth and Their Families.

“**FOIA**” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the **Delaware Code**.

“**FOIA Coordinator**” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“**FOIA Request**” or “**Request**” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the **Delaware Code** and in accordance with the policy hereunder.

“**FOIA Request Form**” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“**Non-Custodial Records**” shall have the meaning set forth in Section 3.6.

“**Public Record**” shall have the meaning set forth in 29 **Del.C.** §10002.

“**Requesting Party**” shall mean the party filing a FOIA Request.

“**Secretary**” means the Secretary of the Department of Services for Children, Youth and Their Families.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as

possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at 1825 Faulkland Road, Wilmington, DE, 19805, Attn: FOIA Request; by email to info.DSCYF@state.de.us; by fax at 302-995-8290; or via online request form, which may be found on the Agency's home page at www.kids.delaware.gov.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c)

generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Waiver of Fees Pursuant to Prior Policy

4.6.1 Notwithstanding anything herein to the contrary, if any executive branch agency subject to this policy had a FOIA policy in effect as of October 20, 2011, and such policy included a waiver of any copying or administrative fees (i.e., for non-profit organizations or members of the media), then such agency shall have the right (but not the obligation) to continue such waiver of fees.

4.7 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Agency-Specific Provisions

Client-specific information cannot be shared, unless it meets criteria described in Department policy #205, which can be found online at

http://www.kids.delaware.gov/pdfs/pol_dsc205_ConfidentialityClientRecord_v2.pdf

FINAL REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION Gaming Control Board

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

ORDER

103 Regulations Governing Charitable Gambling Other Than Raffles **104 Regulations Governing Texas Hold 'Em Poker**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on Thursday, November 3, 2011, at a scheduled meeting of the Delaware Board of Charitable Gaming, to receive comments and to review written comments submitted by the public, if any, regarding proposed amendments to the Board's Rules.

There are several proposed amendments. The first would amend 10 **DE Admin. Code** 103, Rule 1.0 and would add definitions of the terms "charitable gaming vendor," a term used to describe third party vendors who assist charitable organizations in conducting charitable gaming events, and "officer," to indicate that this term includes investors, managers, and others involved in the operation of a charitable gaming vendor.

Additional proposed amendments would add new rules 14.0 and 15.0, and renumber former Rule 14.0 as Rule 16.0 in 10 **DE Admin. Code** 103. New Rule 14.0 would explain the requirements for the licensing of charitable gaming vendors and the background checks required of officers of such vendors. New Rule 15.0 would explain the Board's view on the number of events organizations may have when they are affiliated with other organizations.

Another proposed amendment would create a new Rule 6.0 in 10 **DE Admin. Code** 104 explaining the requirements for licensing employees, principals, owners and contractors of third party vendors or charitable gaming vendors, including the licensing of members of the charitable organization serving as dealers, bookkeepers, treasurers or tournament directors. These requirements already appear in the statute at 28 **Del.C.** §1832, and would be essentially be very similar requirements as for licensing charitable gaming vendors.

The proposed amendments were published in the *Register of Regulations*, Volume 15, Issue 4, on October 1, 2011.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

DECISION AND EFFECTIVE DATE

The Board hereby adopts the proposed amendments to its rules in the manner to be published in the *Register of Regulations* in December, 2011, to be effective ten days after publication of the Order in the *Register of Regulations*.

TEXT AND CITATION

The text of the revised rules shall be as published in the *Register of Regulations* in December, 2011, as attached hereto as Exhibit A.

SO ORDERED this 3rd day of November, 2011.

DELAWARE BOARD OF CHARITABLE GAMING

James Greene, Chair

Deborah Messina, Member

Scott Angelucci, Member

Sharon McDowell, Member

Janet Williams-Coger, Member

***Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 491 and 495 (15 DE Reg. 491, 495). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Gaming Control Board

DIVISION OF PROFESSIONAL REGULATION

2500 BOARD OF PHARMACY

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

ORDER

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §2506(a)(l), the Delaware Board of Pharmacy issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on November 16, 2011 the Board makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the September 1, 2011 *Register of Regulations* and for two consecutive weeks in the *News Journal* and *Delaware State News*. The Board proposed to add a new Rule 3.9 requiring pharmacies to post conspicuous signage informing customers of their right to request the lot number of the medication they are receiving at the time the drop a prescription to be filled. Board Exhibit 1 consisted of an affidavit of publication from the *News Journal* and the *Delaware State News* indicating publication of the notice.

2. The Board received no written comments during the public comment period. The Board held a public hearing on November 16, 2011 and received public comment from John Reitz of Walgreens Pharmacy. Mr. Reitz's comment was that this regulation should also address mail order pharmacies and this regulation only applies to retail pharmacies. Mr. Reitz is hopeful that pharmacies will be able to work with the Board of Pharmacies to get whatever signage they propose approved in a timely manner with enough time to comply with the regulation.

FINDINGS OF FACT AND CONCLUSIONS

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules.

5. With regard to Mr. Reitz's comment, the Board feels that the purpose of the regulation is to communicate to patients coming into pharmacies and all pharmacies will be required to have this signage. With regard to mail order, the Board believes that mail order pharmacies will have to be addressed in an additional regulation that it will draft at its next meeting.

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, 2011.

IT IS SO ORDERED this 16th day of November, 2011.

Sebastian Hamilton

Johe Martini

Matt Maher

Howard Simon

Ron Shennan

Sandra Robinson

Jay Galloway

***Please note that no changes were made to the regulation as originally proposed and published in the September 2011 issue of the *Register* at page 321 (15 DE Reg. 321). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2500 Board of Pharmacy

DIVISION OF PROFESSIONAL REGULATION

2930 Council on Real Estate Appraisers

Statutory Authority: 24 Delaware Code, Section 2905 (24 Del.C., §2905)

24 DE Admin. Code 2930

ORDER

AND NOW, this 1st day of December, 2011 in accordance with 24 Del.C. §4006(a)(l), for the reasons stated below, this ORDER adopts new regulations governing the licensing and training of assessors as required by 24 Del.C. §4019(e).

NATURE OF PROCEEDINGS

On June 1, 2011, the Council on Real Estate Appraisers published proposed regulations governing the licensing and training of assessors, after seeking input from the Delaware Association of Counties and the Executive Director of the League of Local Governments.

The proposed rules are an attempt to develop standards in cooperation with the Delaware Association of Counties and the Executive Director of the League of Local Governments for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards pursuant to 24 Del.C. §4019(e).

Following two public hearings, on July 19, 2011 and October 18, 2011, the Council determined that a few non-substantive changes should be made to the regulations as originally published. These changes are addressed below, and reflected in Exhibit A.

SUMMARY OF THE EVIDENCE

The Council considered the following documents:

Board Exhibit 1	Affidavit of Publication from the News Journal, noticing the July 19, 2011 hearing.
Board Exhibit 2	Affidavit of Publication from the Delaware state news, noticing the July 19, 2011 hearing.
Board Exhibit 3	Written comments from Louis Cox, Delaware Association of Assessing Officers to the Council.
Board Exhibit 4	Written comments from Lou Cox, Delaware Association of Assessing Officers to the Levy Court Leadership.
Board Exhibit 5	Written comments from Eddy J. Parker, Director of Assessments to David Baker, County Administrator.
Board Exhibit 6	2011 hearing.
Board Exhibit 7	Affidavit of Publication from the News Journal, noticing the October 18, 2011 hearing.
Board Exhibit 8	Written comments from Douglas Sensabaugh, New Castle County Property

Assessment Division.

Board Exhibit 9 Written comments from Charles Brown, President of the Delaware Chapter of the Appraisal Institute.

Board Exhibit 10 Written comments from Douglas L. Nickel, President of the Delaware Association of Appraisers, Inc.

Board Exhibit 11 Written comments from George C. Wright, Jr. of the Delaware League of Local Governments dated October 13, 2011.

Board Exhibit 12 Written comments from Susan Miccio, of the Division of Professional Regulations.

Board Exhibit 13 Written comments from George C. Wright, Jr. of the Delaware League of Local Governments dated February II, 2011.

In addition to the documentary evidence, the Council received and considered the following public comment, received at its two public hearings on this matter:

Georgeanna Trietley testified that until July 1, 2011 she was an employee of DeIDOT. She is now an employee of New Castle County Assessors. She is here to give the position of the Delaware Association of Assessing Officers. In July of 2010, a letter from her predecessor for the county was sent to this Council. That letter indicates that some county assessment employees are certified appraisers. They operate under the jurisdictional exception of USPAP. The Kent County office is conducting assessments based on 1987 market values; Sussex County is using 1974. Assessment is a software program, the software program takes in data regarding the amount of bathrooms, bedrooms, etc. and the program spits out a number. That's how assessments are done. Ms. Trietley wants the Board to know how assessments are done before deciding. The DAAO wants any regulation of assessors tabled until a reassessment of the state is complete. Ms. Trietley also provided a July 6, 2010 letter from Louis Cox, President of the DAAO. This letter indicates that current assessment practices in the three counties do not conform to USPAP.

Hal Godwin addressed the Council. Mr. Godwin is the Deputy County Administrator for Sussex County. On September 28, 2010, Sussex County Council unanimously supported a motion that the Council propose legislation for an amendment of the state statute regarding the regulating of assessors. HB 152 was introduced to amend 24 **Del.C.** §4019(e) so that the training and certification of assessors would happen only after there had been a total reassessment of properties in Sussex County. Sussex County feels that without a reassessment, the training and education of assessors would be providing them with skills they wouldn't use.

Eddy Parker was the next witness to address the Council. Mr. Parker has been employed by Sussex County for the past 20 years. His concern is that the standards cannot be met by the assessors in the counties. The assessors are required by law to have uniform assessments. They have tried to maintain uniform assessments since the law passed. If these regulations are enacted, there are going to be gross inequities in the assessment process. The main problem is that this Council doesn't understand the process used by assessors in the assessment process.

Assessors could care less what the fair market value is of a property. That has no affect on the assessment value. This is not a good use of tax payer money to train people on skills they will not be able to use when they get back to the office. A few years ago, the Board seemed to understand what assessors do, but it seems to have lost that understanding. There must be uniformity and that takes precedence over method. They must maintain uniformity. Assessors and appraisers serve different functions. Rule 10.5.1.4 "requires assessors to complete a comprehensive examination covering all phases of the appraisal process." This is too expansive and not needed by assessors in order for them to do their job.

Phillip McGinnis next addressed the Council. Mr. McGinnis reminded the Council that he served for eight years on this Council back in the 1990's. When the original appraiser legislation went through, the assessors were exempted from that legislation for a period of five to ten years. The point was that the assessors did not have the training that was required to come into compliance. At that time, the assessors were not addressed. Subsequently, all states began to realize that assessors were unregulated. During his time on the Council, he worked on regulations for assessors and worked on the "Massachusetts Rule," which relied heavily on the regulatory language used by the state of Massachusetts. However, the assessor exception was then extended until 2002. There was later a bill enacted that attempted to give assessors three years to comply with the regulations once they are enacted. Thereafter, in 2006 or 2007, Mr. McGinnis brought it to the Council's attention that there still were no regulations in place. At this point, there is no question that assessors don't do everything that appraisers do. The assessors have been exempted for close to 20 years and they have had plenty of time to get their

education and start coming into compliance. USPAP recognizes assessors and mass appraising, so it is not unheard of that assessors are regulated. There have been attempts to get assessors licensed or certified for a long time and the time has come.

Doug Sensabaugh was the final witness to give live commentary to the Council. Mr. Sensabaugh stated that no assessor is opposed to regulation but the timing is poor right now. If the Council requires assessors to follow USPAP rules, they will go out of business. They will cease all assessments in Delaware and the counties will go out of business. Every other state has some certification or licensing program. Most, but not all, are different than the process for appraisers. Assessors in Delaware have no interest in the fair market value of property. Until there is a reassessment, the assessors cannot meet USPAP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 24 **Del.C.** §4019(e) requires the Council on Real Estate Appraisers to "develop standards in cooperation with the Delaware Association of Counties and the Executive Director of the League of Local Governments or his or her designee for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards."

2. In December of 2010, the Council sent a draft of its proposed regulations to the Delaware Association of Counties and the Executive Director of the League of Local Governments, seeking input and comments on the regulations as proposed.

3. The Delaware Association of Counties responded, first on February 11, 2011 and then again on October 13, 2011. A follow-up letter was sent to the Executive Director of the League of Local Governments on March 31, 2011 but no response was ever received.

4. The Delaware Association of Counties response dated February 11, 2011 included only comments from its legal representative. Counsel for the Delaware Association of Counties indicated that the proposed regulations "seem to me to be appropriate and beneficial in that they require formal training for real estate assessors." Further, the comments indicate "I think one would be hard put to argue against these type of requirements which will ensure that appraisals and assessments for municipal tax purposes are done properly." Counsel for the Delaware Association of Counties went on to state that he did not believe these regulations would impact how some towns—namely, those that adopt their county's assessments—do business in this area. Further, he does not believe these regulations will impact those towns that hire outside assessors to consult with their town Board of (lay) Assessors. Counsel closed his comments by asking if a citizen member of a Board of Assessors would be required to get all of the requisite training and education of a licensed assessor under the regulations. The Council does not believe any changes are necessary as a result of these comments. Lay persons on Boards of Assessors that either adopt county assessments or rely on professional assessments in reaching assessment value are not practicing assessing and will not need to be trained to the level of licensed assessors.

5. On October 13, 2011, the Delaware League of Local Governments sent a second comment to the Council, indicating it "supports and agrees with the Council proposals. However, we feel that they should not be implemented until a general revaluation of real property is approved, mandated and funded by the State of Delaware. The League believes that the provisions providing for retraining and licensing of municipal assessors would be of value only after a new property reassessment is completed." The Council on Real Estate Appraisers' enabling statute currently requires it to enact regulations "for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards." 24 **Del.C.** §4019(e). The Council started this process over a year ago when it drafted up proposed regulations and shared them with the Delaware Association of Counties and the Executive Director of the League of Local Governments, as required by the statute. *Id.* Delaware is a mandatory state for real estate appraising. That is, no person may appraise a property's value in this state without first obtaining a license. The model used by assessors is a valuation model. Although the assessors characterize their work as merely plugging in numbers to a computer system, this is appraising using a mass appraising model. The information that spits out the assessment comes from a company that provides a system of assessment to the County or municipality. Although the assessors claim they are using construction costs from 1983, they are actually doing a retrospective valuation. That is, assessing is valuation of a property at a historical point in time. Although the assessors claim that they do not concern themselves with fair market value, assessors send out tax notices based on fair market value.

Further, to the extent that assessments are relying on a universe of properties that were appraised in 1974,

that data is the result of a mass appraisal. When assessing a home's value today within that mass appraisal, assessors are conducting a retrospective mass appraisal. Further, if there exists today a unique property that doesn't fall into the mass appraisal model, a separate valuation report must be completed. Although the assessors argue that requiring them to come into compliance with USPAP will be a hardship, assessments need only be conducted in accordance with Standard 6 of USPAP, "Mass Appraisal, Development and Reporting." Assessors will only comport their behavior to Standards 1 & 2 when they are assessing a unique property that does not fall within the mass appraisal model.

Finally, the Council's enabling statute mandates the Council to promulgate these regulations. The process began with the input of the assessors and continued with public comment and more input from the assessors. The Council has made every effort to address the assessors' concerns; however, delaying the promulgation of these regulations until such time as there is a state wide reassessment would run afoul of the legislative mandate found at 24 **Del.C.** §4019(e).

6. All written and verbal public comment raised the same concerns. Namely, that assessors are not concerned with market value and that any regulation of assessors should be postponed until such time as there is a state wide assessment. The only other topic raised by the public comment was that the education requirements are onerous on assessors, despite the fact that they will have three years to come into compliance pursuant to the statutory mandate. The requirement for general real estate appraisers is 300 hours of classroom time, as well as 3000 hours of experience credit. The appraiser trainee is only required to have 90 hours of education prior to licensure pursuant to the AQB. That is far more than what the assessors are being asked to do. Further, the assessors have three years to come into compliance with the regulation and get the requisite amount of pre-licensure education. The Council does not believe this is an unconscionable burden. The regulations proposed by the Council require a much lower threshold of education and training that that currently imposed on appraisers in this state and are an attempt to obtain only a minimum level of competency in the practice of assessing. The ongoing education requirement for assessors was proposed as only 28 hours every two years, half of which can be taken on-line. However, the Council is sensitive to the assessors' concerns and in its final form, will cut the proposed amount of education in half, and will permit all hours to be taken on-line. This is a significant concession as appraisers are only permitted to take half of their education credit hours on-line.

7. Finally, the Council considered technical suggestions made by the Division of Professional Regulation. Only non-substantive changes were made as a result.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Council on Real Estate Appraisers does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

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

2930 Council on Real Estate Appraisers

DIVISION OF PROFESSIONAL REGULATION CONTROLLED SUBSTANCE ADVISORY COMMITTEE

Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

ORDER

Uniform Controlled Substances Act Regulations

Pursuant to 29 **Del.C.** §10118, the Secretary of State issues this Order adopting proposed amendments to the Controlled Substance Advisory Committee's Rules. Following notice and a public hearing on May 25, 2011, the Secretary makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Committee posted public notice of the proposed amendments in the April 1, 2011 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. Committee Exhibits 1 & 2. The Committee attempted to address the audit requirements when a pharmacy relocates, broaden the categories classes of persons who may give and accept verbal prescriptions, permit electronic transmission of prescriptions, clarify the non-resident practitioner waiver, require identification to be presented at the time a controlled substance prescription is picked up only, bar the pick-up of certain controlled substance prescriptions at drive-through windows, and impose additional security requirements on newly constructed or renovated pharmacies with these proposed amendments.

2. The Committee received written comments from CVS, stating that CVS supports obtaining identification for controlled substances only at pickup. Committee Exhibit 3. The Committee received written comments from Rite Aid stating that Rite Aid supports requiring identification only on pickups for the existing required schedules. Committee Exhibit 4.

3. The Committee received written comments from the Cancer Action Network of the American Cancer Society urging the Committee to end the seven day prescription validity rule and the 100 unit dosage limitation. Committee Exhibit 5.

4. The Committee received additional written comments from the Cancer Action Network of the American Cancer Society entitled "Joint Position Statement: Pain Medication and Prescribing Restrictions" encouraging the Committee to work with the health care community and patient advocates to develop a balanced policy toward controlled substances. Committee Exhibit 6.

5. At the public hearing, the Committee received public comment from Jeanne Chiquoine, Government Relations Director for Delaware, Cancer Action Network of the American Cancer Society. Ms. Chiquoine testified that her organization makes it a priority to not have cancer patients have their lives overtaken by pain. Almost all cancer pain can be managed with pain medication. Studies show that patients have better health outcomes when their pain is properly managed. Neither the American Cancer Society ("ACS") nor the Cancer Action Network ("CAN") want additional barriers impeding pain policy and practitioners willingness to provide pain medication and pain management when treating patients with cancer. The Federal Controlled Substance Act does not limit the quantity of a Schedule II controlled substance and Delaware's current regulation limiting to 100 units and seven day prescription validity is more stringent than the federal rules and the ACS and CAN ask the Committee to reconsider these regulations. The federal regulations allow practitioners to issue multiple prescriptions of a schedule II controlled substance in a prescription series, allowing up to a 90 day supply in situations where the practitioner determines that a periodic review of treatment effectiveness is not required more frequently.

6. At the public hearing, the Committee received public comment from Geoffrey Christ on behalf of Walgreens Pharmacy. Mr. Christ informed the Committee that he is a professional member of the Board of Pharmacy. He commended the Committee for clearing up the identification requirement only at pick-up. Regarding the regulation that allows for controlled substances scripts to be dropped off at the drive-thru, but picked up inside, he is opposed to this because he believes it is a huge barrier to patient care. He believes the rule could be changed to address the fraud concerns and he suggests that the regulation require in-store pick-up only if the pharmacist can't clearly identify the person in the car. He has never had a problem with people passing fraudulent prescriptions in his drive-thru, and he doesn't know what the impetus for this was. Overall, this will negatively affect patient care, especially for chronic pain patients. Mr. Christ commented on the drive-thru window is that it does not allow any discretion to the pharmacist. If, as the overnight pharmacist, he can collect a license and identify the person collecting the prescription, he should have the discretion to allow for filling the prescription at the window. The pharmacist should have some discretion. He works at a 24 hour store, and the only pharmacy open for 30 miles. This stigmatizes certain people based on the classification of their drug.

With regard to the new 5.1.1.4 requirement of floor to ceiling barriers, Mr. Christ feels this will have a huge economic impact on stores already in existence and he thinks there has only been one burglary of a pharmacy in the past three years and the real problem is robbery and diversion, not after hours burglary. Also, this is extremely cost prohibitive. Also, the floor to ceiling barrier requirement is going to be immediately enforceable regardless of what is said off the record.

7. The Committee proposed the following changes to the regulations: (see text below:)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The public was given notice and an opportunity to provide the Committee with comments in writing and by testimony at the public hearing on the proposed amendments to the Committee's Rules as required by 29 **Del.C.** §10117.

9. With regard to Ms. Chiquoine's request that regulation 4.8.1 be changed to allow for written prescriptions to remain good beyond seven days, the Committee recognizes that the pharmacist always has the power to change what is written on the prescription after contacting the doctor and so this can be worked around, but it requires communication between the pharmacist and the doctor.

10. With regard to Ms. Chiquoine's request that regulation 4.8.1 be changed to allow for a greater than 100 unit maximum, the Committee recognizes that this limitation was established at the request of the medical society because doctors had a problem with patients not coming in to see them on a monthly basis, and because patients were hoarding their controlled substances and there were suicide concerns. Further, the Committee notes that neither the seven day requirement nor the 100 unit maximum apply to long term care residents. By adding the 31 day supply alternative, the Committee created a way for doctors of cancer patients to write for more than 100 units at a time.

11. With regard to the drive-thru controlled substance pick-up, the Committee understands that someone who is able to drive themselves without being unsafely under the influence of controlled substances should be able to come into the pharmacy to pick up their medication. Also, the pick-up person does not have to be the person for whom the script is written. The balance that must be struck is between the few people who may be chronic pain patients or returning from taking themselves to the emergency room for whom this will be an inconvenience against the law enforcement concern of limiting diversion through the use of stolen identification and/or prescription pads. The Committee hears the hardship this regulation will cause, but the overall concern is to public safety and this is a limited hardship, affecting only a few individuals while public safety affects a greater number. The law enforcement presentation indicates that drive thru windows are a growing source of fraudulent activity. Also, this restriction is limited to Schedule II controlled substances, it is not applicable to Schedule III. Schedule III scripts can still be picked up at the drive thru. In this way, the Committee attempted to strike a balance between the two concerns.

12. With regard to the floor to ceiling barrier, the Committee does not believe this will be too cost prohibitive as many pharmacies are already in compliance with this. Shelving and computer systems that then are topped with a security fence will comply with this requirement. There will be some costs associated with this requirement, especially with the older pharmacies. The office of controlled substances will work with pharmacies pre-build or pre-remodel to help them comply with this regulation and Mr. Dryden assured everyone that he will not be enforcing this regulation unless the pharmacy has a problem. A floor to ceiling physical barrier can also be around the entire facility, it does not have to be just around the pharmacy. The Secretary finds that this regulation should only apply to pharmacies remodeled or newly constructed after July 31, 2011 and the regulation is amended to reflect this.

13. In addition to the changes previously published, the Secretary finds that certain non-substantive changes are necessary, including clarification of the floor to ceiling regulation applying only to pharmacies remodeled or newly constructed after July 31, 2011. These changes are reflected in Exhibit A.

14. Having heard and considered the public comments on the proposed regulations, the Committee recommended that no additional changes should be made to the regulations as published. The Secretary accepts the regulation changes as proposed, with the non-substantive changes reflected in Exhibit A. These regulations will become effective ten days after their publication on December 1, 2011.

IT IS SO ORDERED this 3rd day of November, 2011.

Jeffrey Bullock, Secretary of State

Uniform Controlled Substances Act Regulations

~~(Adopted by the Secretary of Health and Social Services pursuant to 16 **Del.C.** §4731 effective February, 1973 amended July 8, 1974, May 27, October 30, 1975, September 27, 1976, February 1, 1983, July 1, 1985, January 28, 1987, March 5, 1992, and August 29, 1995.)~~

Adoption of Federal Regulations

To the extent consistent with ~~16 Del.C. Ch. 47~~, regulations promulgated by the Federal Government pursuant to the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and in effect as of this date, are adopted as a part of these regulations. ~~Readopted October 30, 1975.~~

13 DE Reg. 281 (08/01/09)**1.0 Controlled Substance Advisory Committee**

- 1.1 The Controlled Substance Advisory Committee (hereafter designated as "the Committee") has a primary objective to promote, preserve and protect the public health, safety and welfare by regulating and monitoring controlled substance use and abuse through a program of registration, inspection, investigation and education. The Committee regulates by registering prescribers, dispensers, manufactures, distributors, clinics, researchers and other controlled substance registrants (i.e. – dog handler). Among its functions, the Committee issues and renews licenses; and makes recommendations to the Secretary of State of new or amended controlled substance regulations and disciplinary actions of registrants who violate the law. (16 ~~Del.C.~~ §4700 to the end)
- 1.2 The Committee shall consist of 9 members: one physician, one dentist, one podiatrist, one veterinarian, one nurse practitioner, two pharmacists, one physician assistant and one public member. The Secretary of State will be provided recommendations for appointments to the Committee from the associated licensing Boards. Members shall have engaged in the prescribing, dispensing or storing of controlled substances for at least 5 years except for the public member. The public member will be appointed by the Secretary of State or their designee.
- 1.3 Each Committee member shall serve a term of three years and may succeed themselves for one additional term. A Committee member whose appointment has expired remains eligible to participate in Committee proceedings unless replaced ~~[by their respective regulatory board]~~.
- 1.4 The Committee shall hold regularly scheduled meetings at least four times a calendar year and at other times the Committee considers necessary at the request of a majority of the members. A president and vice-president shall be elected by the members annually.
- 1.5 The conduct of all hearings and issuance of orders shall be in accordance with the procedures established pursuant to this section, Chapter 101 of Title 29, section 8735 of Title 29, and sections 4731 through 4736 of Title 16.
- 1.6 The Drug Control Administrator for the Division of Professional Regulation~~[-who is an ex officio member of the Committee without a vote,]~~ is responsible for the performance of the regular administrative functions of the Committee and other duties as the Committee may direct.
- 1.7 A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 5 members. For proceedings involving the denial, suspension or revocation of a controlled substance registration at least 1 member of the quorum must be from the same profession as the practitioner whose registration is the subject of the proceeding. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Secretary of State.
- 1.8 Minutes of all meetings shall be maintained by the Division of Professional Regulation. A record from which a verbatim transcript can be prepared shall be made of all hearings where evidence is presented. The expense of preparing any transcript shall be borne by the person requesting it.

13 DE Reg. 281 (08/01/09)**2.0 Requirements**

- 2.1 Registration shall be on a biennial basis upon forms supplied by the Division of Professional Regulation and/or Secretary of State for that purpose. A separate registration is required at each principal place of business or professional practice where controlled substances are manufactured, distributed, dispensed, or kept for research substances are manufactured, distributed, dispensed, or

kept for research or analysis. Out-of-State registrants who dispense or distribute controlled substances to patients or facilities in Delaware are required to obtain a registration.

2.2 Revocation and Suspension

- 2.2.1 Revocation of registration by the Federal Government will result in automatic revocation of the State registration.
- 2.2.2 Proceedings for denying, suspending or revoking a registration shall be held before the Committee. The Committee will forward their recommendation in writing to the Secretary of State for his/her review and decision. Persons complained against may appear personally or by counsel, and may produce any competent evidence in their behalf in answer to the alleged violation.
- 2.2.3 Whenever a registration is denied, suspended, or revoked by the Secretary of State, the Secretary of State or his/her designee will reduce in writing his/her findings and rulings, and the reasons therefore, and forward them to the persons **[applying for registration or]** complained against within 15 days of receiving the written recommendation of the Committee. This provision shall in no way stay any such denial, suspension, or revocation. The Secretary of State's decision is final and conclusive. A person aggrieved may file an appeal as provided in 16 **Del.C.** §4786.

13 DE Reg. 281 (08/01/09)

3.0 Records and Inventory

3.1 Requirements

- 3.1.1 Practitioners authorized to prescribe or dispense controlled substance shall maintain a record with the following information:
 - 3.1.1.1 Name and address of patient
 - 3.1.1.2 Date prescribed
 - 3.1.1.3 Name, strength, refills authorized and amount of medication.
- 3.1.2 Other records required by 21 **CFR** 1300 to end of 1316. The information for prescribed controlled substances may be kept either in a log or on patient records provided such records or logs are made available for inspection. The information for dispensed controlled substances must be maintained in a separate log. Entries must include the date dispensed, name and address of the patient, name and strength of medication, and amount dispensed.
- 3.1.3 Other persons registered to manufacture, distribute, or dispense controlled substances shall maintain a record with the following information:
 - 3.1.3.1 Amount received or distributed.
 - 3.1.3.2 Names, addresses and dates regarding these transactions.
 - 3.1.3.3 Other records required by 21 **CFR** 1300 to the end of 1316.
- 3.1.4 When a pharmacy relocates to a new building, a complete audit of all controlled substances must be conducted before the move and within twenty-four hours after the move is complete. If the relocation occurs in the same building, no inventory count shall be required, so long as a pharmacist physically moves the controlled substance inventory.

3.2 Accountability Audits

- 3.2.1 Accountability audits in pharmacies will be accomplished through a review of invoices, prescription files, other records required by 21 **CFR** 1300 to the end of 1316.
- 3.2.2 Accountability audits of registered practitioners will be accomplished through a review of records to be kept by paragraph 3.1 of this section.
- 3.2.3 Accountability audits of registered manufacturers and distributors (including wholesalers) will be accomplished through a review of invoices received and distributed and other records required by 21 **CFR** 1300 to the end of 1316.

3.3 Final inventory

- 3.3.1 Pharmacies. Whenever the pharmacist in charge of a pharmacy in the State of Delaware leaves his position, a complete inventory of all medication covered by 16 **Del.C.**, Ch. 47 will be taken by

the present and prospective pharmacist-in-charge. A copy of such inventory will be sent to the Office of Controlled Substances and another copy retained on the premises.

For the purpose of this regulation, the "pharmacist-in-charge" is a pharmacist registered with the State Board of Pharmacy and who is responsible for the prescription department of the registrant.

- 3.3.2 Registered practitioners who cease legal existence or discontinue business or professional practice shall notify the Office of Controlled Substances promptly of such fact, and shall provide the Office with an inventory of controlled substances on hand.

3.4 Retention of Records

- 3.4.1 All records required by this Regulation must be retained for a period of at least two (2) years.

13 DE Reg. 281 (08/01/09)

4.0 Prescriptions

4.1 Definitions. As used in this section:

- 4.1.1 The term "**Act**" means the Controlled Substance Act, 16 **Del.C.**, Ch. 47.
- 4.1.2 The term "practitioner" means physician, dentist, veterinarian, podiatrist, nurse practitioner, physician assistant or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe, dispense or store a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy, or an institutional practitioner.
- 4.1.3 The term "pharmacist" means any pharmacist licensed by the State of Delaware to dispense controlled substances and shall include any other person (e.g. pharmacist intern) authorized by the State of Delaware to prescribe, dispense or store controlled substances under the supervision of a pharmacist licensed by this State.
- 4.1.4 The term "prescription" means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)
- 4.1.5 The terms "register" and "registered" refer to registration required by 16 **Del.C.** §4732.

4.2 Persons Entitled to Issue Prescriptions

- 4.2.1 A Prescription for a controlled substance may be issued only by a practitioner who is:
- 4.2.1.1 Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and
- 4.2.1.2 Either registered or exempt from registration pursuant to 16 **Del.C.** §4732.
- 4.2.2 A verbal prescription for a controlled substance may only be communicated to a pharmacist ~~or a~~ pharmacy intern ~~or a pharmacy student participating in an approved College of Pharmacy coordinated practical experience program under the direct supervision of a licensed pharmacist by the prescriber. Prescriptions for controlled substances communicated by an employee or agent of the prescriber are not valid. Verbal prescriptions for schedule III-V controlled substances in a hospice or long term care facility may be communicated by an authorized agent of the prescriber.~~
- 4.2.3 All verbal prescriptions for controlled substances must be verified and authorized by the prescriber.
- 4.2.34 ~~Written p~~rescriptions for controlled substances may be transmitted via facsimile or electronic transmission by a practitioner or by the practitioner's authorized agent to a pharmacy ~~only when the transmission complies with 21 CFR 1306.11, 1306.21 and 1306.31.~~

4.3 Purposes of Issue of Prescription

- 4.3.1 A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by practitioner acting in the usual course of their professional practice. The responsibility for proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription not issued in the usual course of professional treatment or in

legitimate and authorized research is not a prescription within the meaning and intent of §4738 of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances.

- 4.3.2 A prescription may not be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.
- 4.3.3 A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs, unless otherwise authorized by law.
- 4.4 Manner of Issuance of Prescriptions. All prescriptions for controlled substances shall be dated **[and signed]** on the day when issued and shall bear the full name and address of the patient, and the name, address, telephone number and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g. J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner but the prescribing practitioner is responsible where the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations. Each written prescription shall have the name of the practitioner stamped, typed, or hand-printed on it, as well as the signature of the practitioner.
- 4.5 Persons Entitled to fill Prescriptions. A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy or by a registered institutional practitioner.
- 4.6 Dispensing Narcotic Drugs for Maintenance Purposes. No person shall administer or dispense narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence except in compliance with and as authorized by Federal law and regulation.
- 4.7 Emergency Dispensing of Schedule II Substances. In an emergency situation a pharmacist may dispense controlled substances listed in Schedule II upon receiving oral authorization of a prescribing practitioner, provided that the procedures comply with Federal law and regulation.
- 4.8 Expiration of Prescription.
 - 4.8.1 Prescriptions for controlled substances in Schedules II and III will become void unless dispensed within seven (7) days of the original date of the prescription or unless the original prescriber authorizes the prescription past the seven (7) day period. Such prescriptions ~~cannot be written nor dispensed for more than~~ may be dispensed up to 100 dosage units or a 31 day supply whatever is the greater ~~at one time~~. As an exception to dosage limitations set forth in this subparagraph, and in accordance with 21 **CFR** Section 1306.1(b), prescriptions for controlled substances in Schedule II for patients either having a medically documented terminal illness or patients in Long Term Care Facilities (LTCF), may be filled in partial quantities, to include individual dosage units. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed.
 - 4.8.2 Schedule II prescriptions for terminally ill or LTCF patients, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.
- 4.9 Mail Order Prescription. Before dispensing prescriptions for Schedules II, III, IV, V controlled substances by mail, the registrant and/or the pharmacist-in-charge must assure that the prescription is valid and written by a prescriber properly registered with the Federal Government. Such verification may be made either in writing or orally.
- 4.10 Pursuant to authority granted by 16 **Del.C.** §4732 the Secretary of State finds that waiver of the registration requirements contained in that section as to non-resident practitioners is consistent with the public health and safety subject to the conditions contained in this regulation. ~~Pharmacists may~~

~~dispense controlled substances pursuant to a prescription written by a non-resident practitioner (who is not registered under 16 Del.C. Ch. 47) provided that:~~

- ~~4.10.1 The pharmacist must establish that the name of the non-resident practitioner does not appear on the list kept by the Office of Controlled Substances of those non-resident practitioners to whom the waiver granted by this regulation does not apply.~~
- ~~4.10.2 The waiver of the registration requirement provided by the registration shall not apply to non-resident practitioners determined by the Office of Controlled Substances to have acted in a manner inconsistent with the Public Health and Safety. The Office of Controlled Substances shall maintain a list of those non-resident practitioners found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident practitioners whose names appear on that list unless such non-resident practitioners have registered pursuant to the provisions of 16 Del.C. §4732.~~
- ~~4.10.3.1 The pharmacist must establish that the non-resident a practitioner is properly registered to prescribe controlled substances under Federal Law. The pharmacist may keep a record which contains the name and address of the non-resident practitioner, his Federal registration number, and the name and address of the source of the registration data.~~
- ~~4.10.211.1 The pharmacist and/or an employee under his/her direct supervision must verify the identification of the bearer and receiver of the controlled substance prescription by reference to valid photographic identification and record the unique number associated with the valid photographic identification as part of the prescription record. For the purposes of this section, a valid photographic identification is limited to the following:~~
- ~~4.10.2-111.1.1 A valid Delaware motor vehicle operator's license which contains a photograph of the person presenting receiving the prescription - record the license number listed on the license as part of the prescription patient record.~~
- ~~4.10.2-211.1.2 A valid Delaware identification card which contains the photograph of the person presenting- receiving the prescription - record the identification number listed on the card as part of the prescription patient record.~~
- ~~4.10.2-311.1.3 A valid United States passport.~~
- ~~4.10.2-411.1.4 A valid passport or motor vehicle operator's license or state identification card of another state, territory or possession of the United States or a foreign country only if it:~~
- ~~4.10.2-11.1.4.1 Contains a photograph of the person presenting receiving the prescription:~~
- ~~4.10.2-11.1.4.2 Is encased in tamper-resistant plastic or is otherwise tamper-resistant.~~
- ~~4.10.2-11.1.4.3 Identifies the date of birth of the person presenting receiving the prescription and has an identification number assigned to the document which can be recorded as part of the prescription patient record.~~
- ~~4.11.2 [ID-s Identification] for mail order dispensed controlled substances must comply with all federal standards.~~
- ~~4.10.3 The pharmacist must establish that the name of the non-resident practitioner does not appear on the list kept by the Office of Controlled Substances of those non-resident practitioners to whom the waiver granted by this regulation does not apply.~~
- ~~4.10.3.1 The waiver of the registration requirement provided by the registration shall not apply to non-resident practitioners determined by the Office of Controlled Substances to have acted in a manner inconsistent with the Public Health and Safety. The Office of Controlled Substances shall maintain a list of those non-resident practitioners found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident practitioners whose names appear on that list unless such non-resident practitioners have registered pursuant to the provisions of 16 Del.C. §4732.~~
- ~~4.11.3 No filled prescription for any Schedule II controlled substance may be received at any drive through window. Written prescriptions for Schedule II controlled substances may be initially presented at a drive through, but the filled prescription must be picked up inside the pharmacy.~~

4.142 Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no Schedule V cough preparation containing codeine, dilaudid or any other narcotic cough preparation may be dispensed without the written or oral prescription of a practitioner.

~~4.12 The pharmacist and/or an employee under his/her supervision must also verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. The manner in which valid photographic identification is verified and recorded shall be the same as provided in 4.10.2.~~

13 DE Reg. 281 (08/01/09)

5.0 Security and Disposal

5.1 Security

5.1.1 Schedule II Substances Storage

5.1.1.1 Pharmacies and practitioners must store Schedule II controlled substances in a burglar resistant type safe. If the safe weighs less than 750 pounds, it must be bolted, cemented, or secured to the wall or floor in such a way that it cannot be readily removed. Other types of substantially construed, securely locked cabinets or drawers are acceptable provided that the room, storage area or areas shall be provided with electronic intrusion detection equipment to all sections of the said area or areas where Schedule II controlled substances are stored, so as to detect four-step movement (as defined in Section 12.8 of U.L. Standards 681).

5.1.1.1.1 The aforementioned electronic intrusion detection equipment shall be installed using equipment that must be U.L. approved and listed. The said system must be capable of transmitting a local alarm to an outside audible device that shall comply with U.L. Standard 4.64.

5.1.1.1.2 A local alarm connection shall not be permitted if the controlled substance premise is located more than 400 feet from a public roadway. If said controlled substances premise is more than 400 feet from public roadway or found to be within a location where such an alarm would not be effective, then the alarm system on said controlled substances premises shall transmit an alarm signal to a certified station or directly into a law enforcement agency that has 24-hour monitoring capabilities.

5.1.1.1.3 The Secretary of State may require additional security requirements if he/she deems it necessary as a result of diversion of controlled substances.

5.1.1.1.4 Definitions: Four-step movement - 12.8 - The system shall respond to the movement of a Four-step person walking not more than four consecutive steps at a rate of one step per second. Such Four-step movement shall constitute a "trial", and a sufficient number of detection units shall be installed so that, upon test, an alarm will be initiated in at least three out of every four consecutive "trials" made moving progressively through the protective area.

5.1.1.2 Safes containing Schedule II controlled substances must be kept locked at all times. They may be opened only by the practitioner or by the pharmacist-in charge or other designees, who must be licensed medical professionals.

5.1.1.3 Practitioners who store no more than 400 total dosage units of Schedule II substances are not required to comply with the safe or alarm requirements of the Regulation. However, their Schedule II controlled substances must be stored in securely locked, substantially constructed cabinets.

5.1.1.4 Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. Pharmacies may disperse such substances in Schedule III, IV and V throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances. The immediate area in a pharmacy **[remodeled or newly constructed after July 31, 2011]** containing dispersed, controlled drugs must be secured in a manner approved by the Office of Controlled Substances which will prevent entry by unauthorized persons. Such a matter includes, but

is not limited to, the implementation of a floor to ceiling physical barrier limiting access to the pharmacy area, motion detectors, strategically placed surveillance cameras and back-up alarm systems. In addition, ~~the~~ keys to such area shall at all times be carried by a pharmacist. The doors shall be locked whenever the area is not directly under the supervision of a pharmacist or a responsible person designated by the pharmacist.

5.1.2 Pharmacies.

5.1.2.1 Schedule II controlled substances kept in areas other than prescription areas in pharmacies must be placed in safes of the type described above. These must be kept locked at all times and may be opened only by the pharmacist-in-charge or his designee, who must also be a registered pharmacist.

5.1.2.2 Schedule III through V controlled substances kept in areas other than prescription areas in pharmacies must be kept in adequately locked enclosures. They may be opened only by the pharmacist-in-charge, or his designees, who must be licensed pharmacists.

5.1.3 Report of Loss or Theft. Registrants shall notify the Office of Controlled Substances, of any theft or significant loss of any controlled substances, or of any prescription blanks, upon the discovery of such loss or theft. In addition, registrants shall complete the Federal forms regarding such loss or theft, one copy of which must be filed with the Office of Controlled Substances.

5.1.4 Hypodermic syringes and needles must be secured in an area only accessible to personnel authorized under 16 **Del.C.** Ch. 47 to dispense such items.

5.2 Disposal

5.2.1 Controlled Substances. Any registrant in possession of any controlled substances and desiring or required to dispose of such substance or substances shall contact the Office of Controlled Substances for proper instructions regarding disposal.

5.2.2 Hypodermic Syringe or Needle. Hypodermic syringes or needles shall be destroyed before disposal in such a manner as will render it impossible to adapt them for the use of narcotic drugs by subcutaneous injections.

13 DE Reg. 281 (08/01/09)

6.0 Procedures for Adoption of Regulations

6.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary of State/Committee will give at least twenty (20) days notice of the intended action.

6.1.1 The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, or the time when, the place where present their views thereon. The notice will be mailed to persons who have made timely request of the Office of Controlled Substances for advance notice of such rule-making proceedings and shall be published in two newspapers of general circulation in this State.

6.2 Hearing. The Secretary of State shall designate the Committee to preside over hearings. The Committee will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing.

6.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his/her reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing he/she finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.

6.4 Finding and Availability. The Secretary of State will maintain on file any adoption, amendment or repeal of these regulations. In addition, copies of these regulations will be available for public inspection at the Office of Controlled Substances.

13 DE Reg. 281 (08/01/09)

7.0 Severability

- 7.1 If any provision of these regulations is held invalid the invalidity does not affect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable.
- 7.2 Pursuant to 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c) the Secretary of State finds that the compounds, mixtures or preparations listed in 21 CFR 1301.21, 21 CFR 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore:
- 7.2.1 The Secretary of State, as authorized by 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c), does hereby except by rule the substances listed in 21 CFR 130.21, CFR 1308.24 and 21 CFR 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.

13 DE Reg. 281 (08/01/09)

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 8703 (29 **Del.C.** §8703)

ORDER**Policies and Procedures Regarding FOIA Requests**

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §10003(d) and 29 **Del.C.** §8703, for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Department of State is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of State pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of State has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Department of State has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §10003(d) and 29 **Del.C.** §8703.

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Department of State does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Jeffrey W. Bullock, Secretary, Department of State

Policies and Procedures Regarding FOIA Requests**1.0 Purpose**

- 1.1 The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.
- 1.2 Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

“Agency” means Delaware Department of State.

“FOIA” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the **Delaware Code**.

“FOIA Coordinator” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“FOIA Request” or “Request” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the **Delaware Code** and in accordance with the policy hereunder.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 **Del.C.** §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

“Secretary” means the Secretary of State.

3.0 Records Request, Response Procedures and Access**3.1 Form of Request**

- 3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.
- 3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the

Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator, Delaware Department of State, 401 Federal Street, Suite 3, Townsend Building, Dover, DE 19901; by fax at (302) 739-3811; by online request form at www.sos.delaware.gov; or by email to the FOIA Coordinator email address listed at www.sos.delaware.gov.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 In addition to the foregoing responsibilities, beginning on January 1, 2012, the FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving

such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is

exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Agency-Specific Provisions

6.1 Fees set by statute: Notwithstanding Section 4.0 of this Policy, all fees or charges for photocopies, administrative fees, microfilm and microfiche printouts and/or electronically generated records for the Delaware Division of Corporations and the Office of the Secretary of State shall be subject to the statutory fees set forth in the following sections of the Delaware Code:

6.1.1 6 Del.C. §9-525 (Uniform Commercial Code);

6.1.2 6 Del.C. §15-1207 (Delaware Revised Uniform Partnership Act);

6.1.3 6 Del.C. §17-1107 (Delaware Revised Uniform Limited Partnership Act);

6.1.4 6 Del.C. §18-1105 (Limited Liability Company Act);

6.1.5 8 Del.C. §391 (Delaware General Corporation Law);

6.1.6 12 Del.C. §3813 (Treatment of Delaware Statutory Trusts);

6.1.7 29 Del.C. §§2315 and 2318 (Secretary of State fees);

6.1.8 29 Del.C. §4307 (Notaries Public); and

6.1.9 any other such fees as set forth in Delaware Code relating to the Division of Corporations and the Office of the Secretary of State.

- 6.2 Fees for archival and historical materials: Special handling of archival and/or historical materials may require the assessment of fees in excess of those listed in Section 4.0 of this policy. Such fees shall be posted online and may include but are not limited to: fees associated with outsourcing; fees associated with copying of certain bound materials; and fees for the copying or duplication of photographic, video, audio or other special holdings of the Delaware Public Archives and Division of Historical and Cultural Affairs. Unless otherwise noted at www.archives.delaware.gov or www.history.delaware.gov all requests for copies under this policy shall adhere to the fees set forth in Section 4.0 of this policy.

DEPARTMENT OF TECHNOLOGY AND INFORMATION OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9004C (29 Del.C. §9004C)

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011, in accordance with 29 Del.C. §9004C and 29 Del.C. §10003(d), for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 Del.C. § 10113(b)(1) the Department of Technology and Information is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Technology and Information pursuant to 29 Del.C. Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Technology and Information has developed procedures for responding to requests from the public for information as set forth in 29 Del.C. Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Department of Technology and Information has statutory authority to promulgate regulations pursuant to 29 Del.C. §9004C and 29 Del.C. §10003(d).

3. Pursuant to 29 Del.C. §10113(b)(l), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 Del.C. Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Secretary of the Department of Technology and Information does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 Del.C. §10118(g).

Jim Sills, Secretary

Policy and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"**Agency**" means the Department of Technology and Information (DTI).

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

"**FOIA Coordinator**" shall mean the person designated by the Secretary to receive and process FOIA Requests.

"**FOIA Request**" or "**Request**" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the **Delaware Code** and in accordance with the policy hereunder.

"**FOIA Request Form**" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"**Non-Custodial Records**" shall have the meaning set forth in Section 3.6.

"**Public Record**" shall have the meaning set forth in 29 **Del.C.** §10002.

"**Requesting Party**" shall mean the party filing a FOIA Request.

"**Secretary**" means the Secretary of Technology and Information.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency's website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made to the FOIA Coordinator by email to DTI_FOIA@state.de.us; by fax at (302) 677-7040; via online FOIA Request Form, which may be found on DTI's website at <http://dti.delaware.gov>; or by mail or in person at the following address:

State of Delaware
Department of Technology and Information
William Penn Building

801 Silver Lake Blvd.
Dover, DE 19904
Attention: FOIA Coordinator

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 In addition to the foregoing responsibilities, the FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Before providing any email records hereunder, DTI shall provide a written cost estimate to the agency requesting such records (or the Requesting Party, as the case may be), which shall set forth all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public

body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

FINAL REGULATIONS

- 4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.
- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Agency requires all fees to be paid prior to any service being performed.
- 4.6 Appointment Rescheduling or Cancellation
- 4.6.1 Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 **Applicability**

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Chapter 100 (29 Del.C. Ch. 100)
ORDER

Freedom of Information Act (FOIA)

AND NOW, this 1st day of December, 2011 in accordance with 29 Del.C. 10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations and promulgating new regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 Del.C. §10113(b)(1) the Delaware Department of Transportation is repealing its prior regulations and adopting new final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations are to prescribe procedures relating to the inspection and copying of public records retained by the Delaware Department of Transportation pursuant to 29 Del.C. Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware Department of Transportation has developed new procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Delaware Department of Transportation has statutory authority to promulgate regulations pursuant to 29 **Del.C.** 10003(d).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Department of Transportation does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, in accordance with 29 **Del.C.** § 10118(g).

Shailen P. Bhatt, Secretary

Freedom of Information Act (FOIA)

1.0 Purpose

~~The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Transportation ("the Department") pursuant to 29 **Del.C.** Chapter 100, the Freedom of Information Act ("FOIA"). It is the Department's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.~~

~~This regulation applies to the Department in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the Department in its normal course of business with Federal, State, or local agencies, nor to private parties (corporate or individual) with whom the Department is conducting business (permit, contractual agreement, licenses, etc.), provided the public records are germane to the business being conducted. Record requests handled under 21 **Del.C.** §305 are also not covered by these regulations.~~

~~A new and integral part of the FOIA regulation is a procedure outlined to address the confidential treatment of information submitted to the Department. This confidentiality procedure is a necessary part of the FOIA regulation, in that any information submitted to the Department is subject to public review unless deemed to be confidential by the Secretary in accordance with Delaware Code and the criteria and procedures established in this regulation.~~

~~It is the intent of the Department, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of Department officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides that it shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA shall be processed in the manner prescribed below.~~

2.0 Definitions

~~"**Confidential information**" means information determined by the Secretary to constitute a trade secret, or commercial or financial information which is of a confidential nature.~~

~~"**Department**" means the Department of Transportation of the State of Delaware.~~

~~"Requestor" shall mean any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.~~

~~"Responsible Official" means:~~

~~*For a Corporation:* A President, Vice-President, Secretary, or Treasurer of the corporation or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.~~

~~*For a Partnership or Sole Proprietorship:* A general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.~~

~~*For a Municipality, State, Federal, or other public agency:* Either a principal executive officer or ranking elected official including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.~~

~~"Secretary" means the Secretary of the Department of Transportation or the Secretary's designee.~~

~~"Trade Secret" means a formula, pattern, device or compilation of information which may be used to obtain competitive advantage over others.~~

3.0 Availability of Records

3.1 Access

~~3.1.1 The Department will provide reasonable access and facilities for reviewing public records during regular business hours.~~

~~3.1.2 The Department shall make all requested records available for review by requestor unless such records or portions of records are determined by the Secretary to be confidential in accordance with Section 6 of this regulation or otherwise exempted from disclosure as records deemed non-public pursuant to 29 Del.C. §10002(g).~~

~~3.1.3 The Department reserves the right to deny any request in part or in full which does not comply with the Form of Request procedures pursuant to Section 4.1 of this regulation and/or the provisions of the Freedom of Information Act, as amended.~~

3.2 Department Records Review

~~3.2.1 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public are removed.~~

~~3.2.2 Upon request, the Department will provide a log of records which may have been deemed non-public. The log will include the following information:~~

~~3.2.2.1 The document's author;~~

~~3.2.2.2 The addressee;~~

~~3.2.2.3 The date of the document;~~

~~3.2.2.4 The title of the document or a brief explanation of the document's contents; and~~

~~3.2.2.5 The statutory exemption.~~

~~3.2.3 The types of records deemed non-public are as contained in 29 Del.C. §10002(g).~~

~~3.2.4 Departmental regulations, brochures, pamphlets, informational bulletins, and other such information are not subject to this regulation.~~

4.0 Record Request and Response Procedures

4.1 Form of Request

~~4.1.1 Requests for access to records shall be made in writing to the Department's Director of Public Relations. The request shall adequately describe the records sought in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall make~~

~~reasonable effort to assist the requestor in identifying the record being sought. Responses will be coordinated between the Office of Public Relations and the Office of Legal Affairs. The request may be denied in part or in full and returned to the requestor for the following reasons:~~

- ~~4.1.1.1 The request does not adequately describe the records; or~~
- ~~4.1.1.2 The request requires the Department to perform research or to assemble information that has not been compiled; or~~
- ~~4.1.1.3 The request is overly broad. For example, a request for all email records of a state employee or department would be overly broad. The request should be limited to a particular subject, time frame, and/or recipient/sender.~~

~~4.2 Department Response to Requests~~

- ~~4.2.1 The Department shall make reasonable effort to determine within ten (10) business days after the receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.~~
- ~~4.2.2 If the Department denies a request in whole or in part, the Department shall indicate to the requestor the reasons for the denial.~~

~~4.3 Reproduction of Records~~

- ~~4.3.1 The copying of any requested public records may be performed by Department personnel and may be provided to the requestor as follows:~~
 - ~~4.3.1.1 If 25 pages or less are requested to be copied, the Department may, if time and personnel are available, make the copies at the time of the review. If personnel are not available, the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.~~
 - ~~4.3.1.2 If over 25 pages are requested to be copied the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.~~
 - ~~4.3.1.3 If over 250 pages are requested to be copied, the requestor may be required to bring in both copier and personnel to make the desired copies.~~
 - ~~4.3.1.4 Fragmentation of requests, in order to circumvent the 250 page limit, shall not be allowed.~~
 - ~~4.3.1.5 The Department shall have discretion based on circumstances involved to make decisions regarding copying.~~

5.0 Fees

~~5.1 Administrative Fees:~~

- ~~5.1.1 Charges for administrative fees include:~~
 - ~~5.1.1.1 Staff time associated with processing FOIA requests will include:~~
 - ~~5.1.1.1.1 Locating and reviewing files;~~
 - ~~5.1.1.1.2 Monitoring file reviews;~~
 - ~~5.1.1.1.3 Generating computer records (electronic or print outs);~~
 - ~~5.1.1.1.4 Preparing logs of records deemed non-public; and~~
 - ~~5.1.1.1.5 Other work items as necessary per request.~~
- ~~5.1.2 Calculation of Administrative Charges: Administrative charges will be calculated as follows:~~
 - ~~5.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.~~
 - ~~5.1.2.2 Appointment Rescheduling/Cancellation — Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Department in preparing the~~

requested records. The Department will prepare an itemized invoice of these charges and mail to the requestor for payment.

5.2 Photocopying Fees—The following are charges for photocopies of public records made by Department personnel:

5.2.1 Standard Sized, Black and White Copies

The charge for copying standard sized, black and white public records shall be \$0.25 per sheet. This charge applies to copies on the following standard paper sizes:

8.5" x 11"

8.5" x 14" and

11" x 17"

5.2.2 Oversized Copies/Printouts

The charge for copying oversized public records (including, but not limited to: blueprints, engineering drawings, GIS print-outs, and maps) shall be as follows:

18" x 22" \$2.00 each

24" x 36" \$3.50 each

5.2.3 Color Copies/Printouts

The charge for standard sized, color copies or color printouts shall be \$0.25 per sheet. This charge applies to copies on the following standard paper sizes:—

8.5" x 11"

8.5" x 14" and

11" x 17"

5.2.4 Microfilm and/or Microfiche Printouts

Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.25 per printed page.

5.2.5 Electronically Generated Records

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

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

5.2.6 Other Copying Fees

The Department, at its discretion, may arrange to have records copied by an outside contractor if the Department does not have the resources or equipment to copy such records. In this instance, the requestor will be liable for payment of these costs.

5.3 Exemptions

5.3.1 The first \$25.00 in FOIA charges shall be waived for not for profit organizations working in the public interest on the condition that such organizations provide, along with their FOIA request, proof of tax exempt status and a signed affidavit from an officer or the governing body of the organization which indicates that the requestor is authorized to request the information on behalf of the organization.

5.4 Payment

- ~~5.3.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor. The Department reserves the right to refuse to make copies for requestors who have outstanding balances.~~
- ~~5.3.2 The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records and/or in preparing logs of records deemed non-public.~~

6.0 Requests for Confidentiality

~~A person may request records or portions of records submitted to the Department that are confidential. A person may request that records or portions of records submitted to the Department be treated as confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained.~~

~~The following section sets forth procedures and criteria by which the Department will determine confidentiality of records or portions of records.~~

~~6.1 Procedure~~

- ~~6.1.1 In order for the Department to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Secretary at the time the record is submitted. The request shall provide substantiation (following guidelines in 29 **Del.C.** §10002(g)) for the allegation that the information should be treated as confidential.~~

~~The request shall contain the following information:~~

- ~~6.1.1.1 The measures taken to guard against undesired disclosure of the information to others;~~
- ~~6.1.1.2 The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;~~
- ~~6.1.1.3 Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and~~
- ~~6.1.1.4 Verification that significant effort or money has been expended in developing the information.~~
- ~~6.1.2 The following information shall be submitted:~~
 - ~~6.1.2.1 Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review).
The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;~~
 - ~~6.1.2.2 Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and~~
 - ~~6.1.2.3 Certification through a separate, notarized affidavit that the information is either trade secret, or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.~~
- ~~6.1.3 The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Secretary in making a determination of confidentiality pursuant to this privilege.~~
- ~~6.1.4 After a final determination of confidentiality has been issued by the Secretary, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if the Department determines that:~~
 - ~~6.1.4.1 The Responsible Official notified the Department in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and~~

- ~~6.1.4.2~~ The later submission identifies with particularity the prior confidentiality determination; and
- ~~6.1.4.3~~ The notice to the Department met the requirements of Section 6.1.2 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and
- ~~6.1.4.4~~ The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

6.2 Criteria

~~6.2.1~~ The Secretary may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:

- ~~6.2.1.1~~ Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;
- ~~6.2.1.2~~ The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;
- ~~6.2.1.3~~ No statute specifically requires disclosure of the information;
- ~~6.2.1.4~~ A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and
- ~~6.2.1.5~~ Verification that significant effort or money has been expended in developing the information.

6.3 Final Determination

The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.

~~6.3.1~~ If the Secretary determines that disclosure of the information would violate ~~29 Del.C. §10002(g)(2)~~, the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify the Department in writing of such changes.

~~6.3.2~~ If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.

6.4 Defense of Secretary's Determination

6.4.1 Verification of Information

~~There will be instances in which the Secretary may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.~~

6.4.2 Information Determined Confidential

~~If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and the Department is sued by a requestor for disclosure of that information, the Department will:~~

- ~~6.4.2.1~~ Notify each affected party of the suit;
- ~~6.4.2.2~~ Call upon each affected party to furnish assistance where necessary in preparation of the Department's defense; and
- ~~6.4.2.3~~ Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

7.0 Effective Date of this Regulation

~~These regulations will become effective 11 days after being published as a final regulation. Any and all FOIA requests currently in process at the time of adoption will be subject to these regulations.~~

1.0 Purpose

- 1.1 The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.
- 1.2 Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"Agency" means Delaware Department of Transportation.

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

"FOIA Coordinator" shall mean the person designated by the Secretary to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

"FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"Non-Custodial Records" shall have the meaning set forth in Section 3.6.

"Public Record" shall have the meaning set forth in 29 Del.C. §10002.

"Requesting Party" shall mean the party filing a FOIA Request.

"Secretary" means the Secretary of Transportation.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency's website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at Delaware Department of Transportation, 800 Bay Road, Dover, Delaware 19901, by email to dotpr@state.de.us, by fax at 302-739-2092; or via online request form, which may be found on the Agency's home page at deldot.gov.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be

identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 In addition to the foregoing responsibilities, the FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid

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employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Waiver of Fees Pursuant to Prior Policy

4.6.1 Notwithstanding anything herein to the contrary, if any executive branch agency subject to this policy had a FOIA policy in effect as of October 20, 2011, and such policy included a waiver of any copying or administrative fees (i.e., for non-profit organizations or members of the media), then such agency shall have the right (but not the obligation) to continue such waiver of fees.

4.7 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

EXECUTIVE DEPARTMENT

DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: 29 Delaware Code, Section 5005(11) (3 **Del.C.** §5005(11))

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §5005(11) and 29 **Del.C.** §10003(d), for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Delaware Economic Development Office is adopting final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public

records retained by the Delaware Economic Development Office pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware Economic Development Office has developed procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Delaware Economic Development Office has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §5005(11) and 29 **Del.C.** §10003(d).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Economic Development Office does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Alan B. Levin, Director,

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"**Agency**" means the Delaware Economic Development Office ("DEDO").

"**Director**" means the Director of DEDO.

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

"**FOIA Coordinator**" shall mean the person designated by the Director to receive and process FOIA Requests.

"**FOIA Request**" or "**Request**" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

"**FOIA Request Form**" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"**Non-Custodial Records**" shall have the meaning set forth in Section 3.6.

"**Public Record**" shall have the meaning set forth in 29 **Del.C.** §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at The Delaware Economic Development Office, 99 Kings Highway, Dover, DE 1990, by email to DEDO_FOIA@state.de.us; by fax at (302) 739-5749; or via online request form, which may be found on the Agency’s home page at <http://dedo.delaware.gov>.

3.3 FOIA Coordinator

3.3.1 The Director shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency’s responses thereto. The FOIA Coordinator shall be identified on the Agency’s website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party’s contact information; the date the Agency received the Request; the Agency’s response deadline pursuant to §3.4; the date of the Agency’s response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one

of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with §3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

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4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Waiver of Fees Pursuant to Prior Policy

4.7 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Requests for Confidentiality

- 6.1 A person or entity may request that certain documents or portions of documents submitted to the Agency be held confidential. Certain information may be determined to be confidential if its disclosure could potentially cause substantial harm to the competitive position of the person or entity from whom the information was obtained, and such information is the type of information that the person or entity does not customarily disclose to the public.
- 6.2 The following section sets forth procedures and criteria by which the Agency will determine the confidentiality of documents or portions of documents within its custody.
- 6.2.1 Procedure.
- 6.2.1.1 All requests by persons or entities that certain information provided to the Agency be determined to be confidential shall be made in writing to the Secretary and signed by an officer or other such authorized party to make the request.
- 6.2.1.2 All such requests should be submitted with a public version of the entire package of information that is submitted for determination, with the alleged confidential information redacted. (This version will be made available for public review.) The public version shall correspond page for page with the confidential version, with the confidential portions having been redacted. A confidential version of the entire package of information should also be submitted for determination which includes the alleged confidential information. This version will be marked in the Agency file as confidential and will be used for Agency review only.
- 6.2.1.3 All such requests should identify the information sought to be protected, and the basis upon which it would be considered to be “[t]rade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature” pursuant to 29 Del.C. §10002(g)(2).
- 6.2.1.4 All such requests should contain the following information, where applicable:
- 6.2.1.4.1 The extent to which such information has been disclosed to others, including, but not limited to, banks, financial institutions, or other entities, and the precautions taken in connection therewith.
- 6.2.1.4.2 The extent to which such information is reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent.
- 6.2.1.4.3 The extent to which the release of such information would result in substantial harmful effects upon the requesting party’s financial or competitive position; and
- 6.2.1.4.4 The extent to which the release of such information is barred by statute or law.
- 6.3 Determination by Director: The Director will make a determination as to whether the information shall be considered public or confidential based upon a review of the submission pursuant to this section, and make findings consistent with 29 Del.C. Ch. 100.
- 6.4 If the Director makes a determination that certain information is entitled to confidential treatment, and the Agency is sued by a requestor for disclosure of that information, the Agency shall defend such determination of confidentiality, but expect the affected party to cooperate to the fullest extent possible in such defense.

OFFICE OF MANAGEMENT AND BUDGET

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

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 Del.C. §6303A(16) and 29 Del.C.

§10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations and promulgating new regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Office of Management and Budget is repealing its prior regulations and adopting new final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations are to prescribe procedures relating to the inspection and copying of public records retained by the Office of Management and Budget pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Office of Management and Budget has developed new procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.

2. The Office of Management and Budget has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §6303A (16).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of Management and Budget does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Ann Shepard Visalli, Director

~~Freedom Of Information Act Regulation~~

~~1.0 Definitions~~

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

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

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

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

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

~~2.0 Enabling Legislation~~

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

3.0 Purpose

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

4.0 ~~Records Request, Response Procedures and Access~~

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

5.0 Fees

- 5.1 Administrative Fees:
 - 5.1.1 Charges for administrative fees include:
 - 5.1.1.1 Staff time associated with processing FOIA Requests will include:
 - 5.1.1.2 Locating and reviewing files;
 - 5.1.1.3 Monitoring file reviews;
 - 5.1.1.4 Generating computer records (electronic or print-outs);
 - 5.1.1.5 Other work items as necessary per request.
 - 5.1.2 Calculation of Administrative Charges:
 - 5.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.
 - 5.1.2.2 Appointment Rescheduling/Cancellation—Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Office in preparing the requested records. The Office will prepare an itemized invoice of these charges and mail to the requestor for payment.

- 5.2 ~~Photocopying Fees—The following are charges for photocopies of public records made by Office personnel:~~
- 5.2.1 ~~Standard Sized, Black and White Copies.~~
- 5.2.1.1 ~~The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:~~
- ~~8.5" x 11"~~
- ~~8.5" x 14" and~~
- ~~11" x 17"~~
- 5.2.2 ~~Oversized Copies/Printouts.~~
- 5.2.2.1 ~~The charge for copying oversized public records shall be as follows:~~
- ~~18" x 22" \$2.00 each~~
- ~~24" x 36" \$3.00 each~~
- 5.2.3 ~~Color Copies/Printouts~~
- 5.2.3.1 ~~The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:~~
- ~~8.5" x 11"~~
- ~~8.5" x 14" and~~
- ~~11" x 17"~~
- 5.2.4 ~~Microfilm and/or Microfiche Printouts.~~
- 5.2.4.1 ~~Microfilm and/or microfiche printouts, made by Office personnel on standard sized paper, will be calculated at \$0.50 per printed page.~~
- 5.3 ~~Electronically Generated Records.~~
- 5.3.1 ~~Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.~~
- 5.3.2 ~~In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.~~
- 5.4 ~~Payment.~~
- 5.4.1 ~~Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.~~
- 5.4.2 ~~The Office may require pre-payment of copying and administrative charges prior to mailing copies of requested records.~~

6.0 ~~Effective Date of this Regulation.~~

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

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Office employees are reminded all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the

accountability of the Office and comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

“Director” means the Director of the Office of Management and Budget.

“FOIA” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the Delaware Code.

“FOIA Coordinator” shall mean the person designated by the Director to receive and process FOIA Requests.

“FOIA Request” or “Request” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Office” means the Office of Management and Budget.

“Public Record” shall have the meaning set forth in 29 Del.C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Office in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Office’s website or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Office to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Office in locating the requested records, the Office may request the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at:

FOIA Coordinator

Office of Management and Budget

Office of the Director

122 William Penn St.

Dover, DE 19901

by email to omb_foia@state.de.us; by fax at (302) 739-5661; or via online request form, which may be found on the Office’s home page at www.omb.delaware.gov.

3.3 FOIA Coordinator

3.3.1 The Director shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Office’s responses thereto. The FOIA Coordinator shall be identified on the Office’s website. The FOIA Coordinator may designate other Office employees to perform specific duties and functions hereunder.

- 3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Office employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought and assist the Office in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Office and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party the request has been forwarded. The Office may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Office shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.
- 3.3.3 In addition to the foregoing responsibilities, beginning on January 1, 2012, the FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Office received the Request; the Office's response deadline pursuant to §3.4; the date of the Office's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Office pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.
- 3.4 Office Response to Requests
- 3.4.1 The Office shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising additional time is needed because the request is for voluminous records, requires legal advice or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Office shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.
- 3.4.2 If the Office denies a request in whole or in part, the Office's response shall indicate the reasons for the denial. The Office shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.
- 3.5 Requests for Email
- 3.5.1 Requests for email records shall be fulfilled by the Office from its own records, if doing so can be accomplished by the Office with reasonable effort. If the Office determines it cannot fulfill all or any portion of such request, the Office shall promptly request the Department of Technology and Information ("DTI") provide the email records to the Office. Upon receipt from DTI, the Office may review the email records in accordance with §3.7 hereunder.
- 3.5.2 Before requesting DTI to provide email records, the Office shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 3.6 Requests for Other Non-Custodial Records
- 3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Office but that are either not within its possession or cannot otherwise be fulfilled by the Office with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Office shall promptly request the relevant public body provide the Non-Custodial Records to the Office. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Office, the public body fulfilling the request or both. Without limitation, Non-Custodial Records shall include budget data relating to the Office.
- 3.6.2 Before requesting any Non-Custodial Records, the Office shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon

receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Office

3.7.1 Prior to disclosure, records may be reviewed by the Office to ensure those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Office from disclosing or permitting access to Public Records if the Office determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Office shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 **Fees**

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Office's legal review of whether any portion of the requested records is exempt from FOIA. The Office shall make every effort to ensure administrative fees are minimized and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Office shall minimize the use of non-administrative personnel in processing FOIA Requests to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Office shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Office may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Office may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Office may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Office in preparing the requested records. The Office shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 **Applicability**

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council to the Division of Substance Abuse and Mental Health	Anthony J. Brazen, III, D.O.	11/1/2014
	Colonel Robert M. Coupe	12/16/2012
	Ms. Andrea Guest	11/1/2014
	Mr. James J. Lafferty	11/1/2014
	Mr. Dennis E. Rozumalski	11/7/2014
Board of Accountancy	Mr. Robert D. Mosch, Jr.	10/18/2014
	Mr. Jeffrey L. Premo	10/18/2014
Board of Architects	Mr. Richard W. Wertz	10/18/2014
Board of Chiropractic	Brian R. Chandler, D.C.	10/18/2014
	Ms. Jill K. Morrison	10/18/2014
Board of Dentistry and Dental Hygiene	John J. Lenz, D.D.S.	10/18/2014
Board of Geologists	Mr. Scott C. Blaier	10/18/2014
	Ms. Maureene Lafate	10/18/2014
	Mr. Douglas E. Rambo	10/18/2014
Board of Massage and Bodywork	Ms. Sharon L. Harris	10/18/2014
Board of Podiatry	Raymond V. Feehery, Jr., D.P.M.	10/18/2014
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Tracey D. Frazier, Psy.D.	10/20/2014
	Ms. Joan T. McDonough	10/18/2014
	Ms. Elisabeth A. Vassas	11/14/2014
Cabinet Committee on State Planning Issues	Mr. Andrew H. Lippstone	Pleasure of the Governor
Child Placement Review Board, Kent	Ms. Gail L. Allen	11/1/2014
	Ms. Mary Austria	11/1/2014
	Ms. Jean R. King	11/1/2014
	Ms. Dana S. Stonesifer	11/1/2014
Child Placement Review Board, New Castle	Ms. Mary W. Angerer	11/1/2014
	Ms. Nancy Czeiner	11/1/2014
	Ms. K. Sun Moon	11/1/2014
	Ms. Mary R. Morgan	11/1/2014
Child Placement Review Board, Sussex	Ms. Cora Norwood Selby	11/1/2014
	Ms. Ruth T. Tull	11/1/2014
Community Involvement Advisory Council	Ms. Sarah B. Bucic	10/11/2014
Council on Boiler Safety	Mr. Paul W. Frank	11/1/2014
	Mr. Carl D. Kinney, Sr.	11/1/2014

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Forestry	Mr. Steven L. Ditmer, Sr.	11/1/2014
	Ms. Grace W. Lowe	11/1/2014
Council on Health Promotion and Disease Prevention	Faith B. Kuehn, Ph.D.	Pleasure of the Governor
	Ms. Linda A. Payne	Pleasure of the Governor
	Mr. Matthew Ritter	Pleasure of the Governor
	Michael Rosenthal, M.D.	Pleasure of the Governor
	Ms. Valeria O. Whiting	Pleasure of the Governor
Council on Manufactured Housing	John C. Badger	11/3/2014
	Mr. John H. Morris	11/3/2014
Council on Real Estate Appraisers	Mr. Richard B. Wheeler	10/18/2014
Council on Recreational Fishing Funding	Mr. Douglas M. Valentine	10/18/2014
Council on Services for Aging and Adults with Physical Disabilities	Ms. Carolyn E. Fredricks	11/1/2014
Council on Social Services	Ms. Mable F. Cephas	11/1/2014
	Ms. Retha S. Fisher	11/1/2014
	Mr. Kevin M. Hansbury	11/1/2014
Council on Transportation	Mr. Robert S. Fifer	11/7/2014
	Mr. Martin S. Lessner	10/13/2014
	Ms. Sue McNeil	10/18/2014
Delaware Bicycle Council	Mr. Fred N. Breukelman	11/1/2014
Delaware Board of Examiners of Nursing Home Administrators	Mr. Timothy W. Bane	10/7/2014
	Ms. Elizabeth F. Hague	10/18/2014
Delaware Commission for Women	Ms. Farzana A. McCormick	11/3/2014
Delaware Commission on Italian Heritage and Culture	Mr. James Gambacorta	11/8/2014
Delaware Commission of Veterans' Affairs	Mr. Mark M. Newman	11/8/2015
Delaware Greenways and Trails Council	Ms. Mary Everhart	11/1/2014
	Mr. James G. Ireland	11/1/2014
	Ms. Peggy C. Koster	11/1/2014

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Greenways and Trails Council	Mr. John W. Martin	11/1/2014
	Ms. Diane K. Wilson	11/1/2014
Delaware Guardianship Commission	The Honorable Sam Glasscock, III	Pleasure of the Governor
	Ms. Carla R. Griffith	Pleasure of the Governor
	Ms. Krista M. Griffith	Pleasure of the Governor
	Ms. Sherri J. Harmer	Pleasure of the Governor
	Mr. Brian Hartman	Pleasure of the Governor
	Ms. Patricia S. Justice	Pleasure of the Governor
	Rosemary T. Madl-Young, Ph.D.	Pleasure of the Governor
	Mr. James R. Reynolds	Pleasure of the Governor
Delaware Health Care Commission	Ms. Kathleen A. Weiss	Pleasure of the Governor
	Mr. Theodore W. Becker, Jr.	10/21/2015
	Kathleen S. Matt	10/21/2015
Delaware Health Resources Board	Janice E. Nevin, M.D.	10/21/2015
	Ms. Brenda C. Heckert	1/5/2012
The Delaware Hispanic Commission	Mr. David A. Hollen	12/31/2011
	The Honorable Joseph E. Miro	Pleasure of the Governor
Delaware Institute of Dental Education and Research, Board of Directors	Wanda Gardiner Smith, D.D.S	11/3/2014
Delaware Manufactured Home Relocation Authority	Richard H. Lemire	11/3/2012
	Mr. Andrew C. Strine	11/3/2012
	Mr. Anthony J. Testa	11/3/2014
Delaware Mentoring Council	Ms. Karen D. Lessey	Pleasure of the Governor
Delaware Open Space Council	Mr. David A. Humes	11/13/2015
Delaware STEM Education Council	Ms. Theresa L. Angelus	Pleasure of the Governor
	Ms. Pratyusha Gupta	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware STEM Education Council	Mr. Steven K. Vanderloo	Pleasure of the Governor
Dental Hygiene Advisory Committee	Ms. Buffy L. Parker	10/18/2014
Developmental Disabilities Council	Mr. William J. Bancroft	6/3/2016
Early Childhood Council	Ms. Melia J. Anderson	11/3/2014
	Daniel D. Curry, Ed.D.	11/3/2014
	Ms. Carlina L. Hall	11/3/2014
	Mr. Paul H. Harrell, Jr.	11/3/2014
	Dr. Tony J. Marchio, Ed.D.	9/13/2012
	Ms. Terri C. Murphy	11/3/2014
	Ms. Terri C. Murphy	11/3/2014
	Daniel Rich, Ph.D.	11/3/2014
Ms. Jocelyn Stewart	11/3/2014	
Education Commission of the States	Ms. Jennifer Ranji	Pleasure of the Governor
	Daniel Rich, Ph.D.	Pleasure of the Governor
Governor's Supplier Diversity Council	The Honorable Anas Ben Addi	11/14/2015
Healthy Mother and Infant Consortium	Ms. Michelle A. Taylor	Pleasure of the Governor
Investment Infrastructure Committee	Mr. Michael Ratchford	Pleasure of the Governor
Judicial Nominating Commission	Mr. Ian Connor Bifferato	10/17/2014
	Ms. Teresa J. Ford	10/17/2014
	Mr. Scott A. Green	10/17/2014
	Mr. Michael P. Kelly	10/17/2014
	Ms. Ileana M. Smith	10/17/2014
Riverfront Development Corporation, Board of Directors	Mr. Bernhard M. Koch	Pleasure of the Governor
	Ms. Linda M. Parkowski	Pleasure of the Governor
State Board of Dietetics/Nutrition	Ms. Elizabeth A. Tschiffely	11/1/2014
State Board of Examiners of Psychologists	Marcia S. Halperin, Ph.D.	10/18/2014
	Ms. Rosa M. Robinson	10/18/2014
	Joseph C. Zingaro	10/18/2014
State Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration	Mr. Charles J. Robbins	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Board of Veterinary Medicine	Natalie S. Titus, D.V.M.	10/18/2014
State Employee's Charitable Campaign Steering Committee	Ms. Kelly M. Bachman Mr. David M. Hanich	Pleasure of the Governor Pleasure of the Governor
State Examining Board of Physical Therapists and Athletic Trainers	Ms. Cheryl L. Fruchtman Mr. Damien A. McGovern Mr. W. Wayne Woodzell	10/18/2014 10/18/2014 10/18/2014
State Human Relations Commission	Ms. Bernice M. Edwards Mr. Douglas T. James Ms. Prameela D. Kaza Nancy A. Maihoff, Ph.D.	11/1/2015 11/1/2015 11/1/2015 11/1/2015
Statewide Independent Living Council	Ernest G. Cole, Ed.D. Ms. Suzanne A. Howell Ms. Andrea J. Wozny	11/3/2014 11/19/2012 11/1/2014
Sussex County Vocational-Technical School Board of Education	Ms. Judy L. Emory Mr. George H. Torbert, III	11/3/2018 11/3/2018
Vocational Rehabilitation Advisory Council for DVI	Ms. Alice S. Coleman	11/1/2014
Welfare Employment Committee	Ms. Carol R. Aiken Mr. Scott M. Welch	11/1/2014 11/1/2014

DELAWARE RIVER BASIN COMMISSION

The Delaware River Basin Commission will hold a public hearing and business meeting on Thursday, December 8, 2011 beginning at 10:30 a.m. The meeting will be held at the West Trenton Volunteer Fire Company, West Upper Ferry Road, West Trenton, NJ. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, December 15, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE**Reimbursement Methodology for Certain Medicaid Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for certain Medicaid services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, 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, 2011.

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE**4202 Control of Communicable and Other Disease Conditions**

The Health Promotion and Disease Prevention Section, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations for the Control of Communicable and Other Disease Conditions related to the Reporting of Hospital Acquired Infections (HAIs). The purpose of the amendments is to update the Hospital Acquired Infections regulations to clarify that HAIs required to be reported to the Department of Health and Social Services shall consist of the same HAIs required to be reported to the Centers for Medicare and Medicaid Services (CMS). This will increase the number of reportable conditions to the Division of Public Health without placing additional burden on the hospitals. It also coordinates reporting requirements between the state and CMS. On December 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the December 1, 2011 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Health Promotion and Disease Prevention Section at (302) 744-1000.

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

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

DEPARTMENT OF INSURANCE
1314 Health Premium Consumer Comparison
PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1314 relating to Health Premium Consumer Comparisons. The docket number for this proposed regulation is 1530.

The proposed regulation would require health insurance companies to provide survey data to the Department of Insurance for the purposes of allowing consumers of health insurance the opportunity to compare rates from different companies. The survey data would have to be filed with the Department on an annual basis. The regulation would also require the insurers to provide direct email responses to the consumer. The Delaware Code authority for the change is **18 Del.C.** §§311 and 2501 et seq.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, December 30, 2011. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF AIR AND WASTE MANAGEMENT

**Proposed Revision to Delaware's 2008 State Implementation Plan For Attainment of the PM_{2.5} Annual
National Ambient Air Quality Standard - Attainment Demonstration**

PUBLIC NOTICE

On March 2, 2010 the USEPA published a notice in the Federal Register of the approval of using the Motor Vehicle Emissions Simulator (MOVES) model as a tool for calculating on-road mobile emissions. The agency also stated in the notice that "today's approval also starts a two-year transportation conformity grace period which ends on March 2, 2012, after which MOVES 2010 is required to be used for new regional emissions analyses for

transportation conformity". In consideration of the MOVES requirement for regional emissions analysis and that the MOVES model predicts more accurate mobile emissions; the Department is proposing to amend its currently adopted State Implementation Plan with a revised on-road mobile emissions budget using the MOVES model. This action will more accurately calculate the on-road sector's portion of particulate matter and oxides of nitrogen emissions in New Castle County. The action will also address the compatibility issue with future regional emissions analyses for transportation conformity for the annual PM 2.5 standard.

This action is not a regulation and does not have a sunset date.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on December, 28, 2011 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Interested parties may submit comments in writing to: Philip Wheeler, DNREC Division of Air Quality, 655 South Bay Road, Dover Delaware, 19901.

DIVISION OF FISH AND WILDLIFE

3900 Wildlife PUBLIC NOTICE

The changes to regulation 3900 Wildlife will be presented in a public hearing on January 25, 2012 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for the proposed regulatory changes will remain open until 4:30 p.m. January 31, 2012. The hearing order is as follows:

3900.1 – Definitions

3900.2 – Method of Take

3900.3 – Federal Laws

3900.4 – Seasons

3900.5 – Wild Turkeys

3900.7 – Deer

3900.8 – General Rules and Regulations Governing Land and Waters Administered by the Division

3900.15 – Collection or Sale of native Wildlife

3900.22 - Hunter and Trapper Identification Number

1.0 Definitions. This action will correct a typographical error

2.0 Method of Take. This action will 1- Allow red fox to be hunted with revolvers and single shot pistols which is a liberalization of the current regulation. 2. Revise snapping turtle regulations to require that traps be set allowing for breathing space, require traps be marked with the trapper's name and address, require that traps be checked and emptied at least every 35 hours and require that a free permit to trap snapping turtles be obtained prior to trapping.

3.0 Federal Laws. This action will allow for an increase in the number of special youth waterfowl days from 1 to 2 days.

4.0 Seasons. This action will 1- Reduce the length of the quail hunting season by 1 month. 2. Increase the size of a legal snapping turtle from 8 inches to 11 inches. 3. Allow for the muskrat trapping season to be extended if certain weather conditions exist.

5.0 Wild Turkeys. This action will 1- Clarify parts of existing regulations related to the hunter education requirement for turkey hunting. 2. Allow for 7 and 7 ½ shot size to be used for turkey hunting if this shot is part of a multiple shot size load that also contains 4, 5 or 6 shot. 3. Clarify what constitutes the written authorization from the Division to turkey hunt. 4. Establishes a youth turkey hunting day on selected public lands.

7.0 Deer. This action will 1- Correct typographical errors. 2. Allow the Division to target more specific geographical locations from which to ban importation of deer carcasses that have documented cases of Chronic Wasting Disease.

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division. This action will 1- Prohibit the general collection of wildlife species from Division lands without the authorization of the Division Director. 2. Clarify that it is unlawful to fish in Division ponds except in accordance with conditions set forth on area maps and/or signs. 3. Make it illegal to hunt or be in possession of firearms on Division lands while consuming, possessing, or under the influence alcohol or drugs.

15.0 Collection or Sale of native Wildlife. This action will strike a regulation related to snapping turtles and moves the elements to other regulations.

22.0 Hunter and Trapper Identification Number. This action will change the name of the Hunter and Trapper Identification Number to the Hunter and Trapper License Exempt Number.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE

1300 Board of Examiners of Private Investigators & Private Security Agencies
PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 3.0 - Nightstick, PR 24, Mace, Peppergas and Handcuffs, Adopted Rule 5.0 - Use of Animals, Adopted Rule 7.0 - Employment Notification, and Adopted Rule 12.0 - Record Book: Right of Inspection. The amendment to Rule 3.0 changes who the training records are sent to. The amendment to Rule 5.0 expands the rule to cover any regulated by this chapter. The amendment to Rule 7.0 omits the first paragraph and will be placed in another rule at a later date. The amendment to Rule 12.0 adds the requirement to keep a copy of the 16 hours mandatory security guard training. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by December 31, 2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Friday, January 27, 2012, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

DIVISION OF STATE POLICE
5500 Bail Enforcement Agents
PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with Del. Code Title 24 Chapter 55 proposes to adopt/amend the Rules & Regulations. These adoptions/amendments will improve the safety of the public and the bail enforcement agents and professionalize the industry. If you wish to view the complete Rules & Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by December 31, 2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, February 16, 2012, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
200 Board of Landscape Architecture
PUBLIC NOTICE

The Delaware Board of Landscape Architects in accordance with 24 Del.C. §205 has proposed amendments to Rule 4.0 Licenses. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing Landscape Architects in the State of Delaware.

A public hearing will be held on February 9, 2012, at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jessica Williams, Administrative Assistant for the Delaware Board of Landscape Architects, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION

1100 Board of Dental Examiners
PUBLIC NOTICE

The Board of Dentistry and Dental Hygiene ("the Board") in accordance with 24 **Del.C.** §1106(a)(1) has proposed amendments to Rule 7.0 Anesthesia Regulations. The proposed amendments clarify and distinguish the requirements for a dentist seeking an "Unrestricted Permit" to administer anesthesia in his or her individual capacity and the requirements for an "Unrestricted Facility Permit" that would enable an anesthesiologist to be utilized at a dental facility to provide the anesthesia. A public hearing will be held on January 12, 2012 at 3:15 p.m. in the Public Service Commission Hearing Room on the first floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Dentistry and Dental Hygiene, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION

2700 Board of Professional Land Surveyors
PUBLIC NOTICE

The Delaware Board of Professional Land Surveyors, pursuant to 24 **Del.C.** §2706(a), proposes to revise regulation 12.0 *et seq.* The proposed revisions to this regulation requires ALTA/ACSM be titled according to current published standards, requires subdivision surveys be titled according to the governing regulatory agency, and clarifies boundary survey plans as the only acceptable plat title; clarifies that when no recorded rights-of-way are provided, it is to be noted on the plan; requires written property descriptions accompany boundary survey, ALTA/ACSM land title Surveys and Subdivision Surveys except in certain circumstances; details the setting of boundary corners for major and minor subdivision surveys; renames MIP to MSP; details the necessary language for ultimate user waiver and disclosure forms; and requires licensees to maintain waivers on file for three years. The requirement of two corner markers to be included with every MSP has been deleted.

The Board will hold a public hearing on the proposed regulation change on January 19, 2012 at 9:00 a. m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sandy Wagner, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION

2900 Real Estate Commission
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2905(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on January 12, 2012 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments

will be at the public hearing.

The Commission has proposed extensive revisions to the rules and regulations to implement amendments to the Board's licensing law, Chapter 29 of Title 24 of the Delaware Code, which will go into effect on February 3, 2012.

In particular, the proposed rules specify the licensure requirements for Broker of Record, Associate Broker and Salesperson and for licensure by reciprocity.

The Commission proposes removal of the requirement that application must be made within twelve months after course completion. However, if application is not made within twelve months, the applicant must meet continuing education requirements.

The amendments add provisions imposing greater responsibility on the Broker for the conduct of his or her Associate Brokers and Salespersons. Specifically, Brokers will be required to maintain continuing education certificates for Associate Brokers and Salespersons.

The rules pertaining to advertising are expanded to set forth disclosure requirements for all types of advertising, including internet advertising.

The rules pertaining to continuing education are expanded to specify requirements for licensure renewal. The Commission's authority to conduct audits and impose discipline in connection with rule to show cause hearings is also explained in detail.

Finally, the list of crimes substantially related to the provision of Real Estate Services is expanded.

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

DIVISION OF PROFESSIONAL REGULATION

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

The Delaware Board of Mental Health and Chemical Dependency Professionals in accordance with 24 **Del.C.** § 3006 (1) has proposed amendments to Rule 5.0 License for Marriage and Family Therapist and 6.0 License for Associate Marriage and Family Therapist. The proposed revisions to the rules are an attempt to bring the Board's standards in compliance with the Association of Marital and Family Therapy Regulatory Board's standards who administer the test.

A public hearing will be held on January 25, 2012 in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Blvd, Dover, DE where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jessica Williams, Administrative Assistant for the Delaware Board of Professional Counselors, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION

3300 BOARD OF VETERINARY MEDICINE PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on January 12, 2012 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 2.0, addressing Unprofessional Conduct for Veterinarians. Specifically, Rule 2.1.17 is added to provide that, upon request of the client, directed to the veterinarian, the veterinarian shall disclose common side effects of the medications prescribed by the veterinarian.

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

DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND POLICY
PUBLIC NOTICE
2306 Crash Data Release

The Delaware Department of Transportation Division of Planning hereby gives notice of its intention to adopt regulations pursuant to 29 **Del.C.** §8404(8) and in compliance with the Delaware Administrative Procedures Act, 29 **Del.C.** §10115. The proposed regulations set out below describe the requirements and procedures to be followed by DelDOT personnel in releasing crash data and/or information related to sites identified under the Highway Safety Improvement Program (HSIP).

The Department solicits, and will consider timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such comments will be thirty (30) days after the proposed amendments are promulgated in the Delaware Register of Regulations. Any such submissions should be mailed, emailed or hand-delivered to Adam Weiser, whose address is Delaware Department of Transportation, 169 Brick Store Landing Road, Smyrna, Delaware 19977, or Adam.Weiser@state.de.us. by December 31, 2011.

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATEWIDE BENEFITS OFFICE
Disability Insurance Program Rules and Regulations
PUBLIC NOTICE

Pursuant to the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 **Del.C.** §5256, the State Employee Benefits Committee established by 29 **Del.C.** §9602 is considering adopting rules and regulations for the general administration of the Disability Insurance Program established pursuant to Title 29, Chapter 52A of the **Delaware Code**.

Any person who wishes to submit written suggestions, compilations of data, briefs or other written materials concerning the proposed rules and regulations must submit same to Brenda Lakeman, Director, at Statewide Benefits Office, 500 W. Loockerman Street, Suite 320, Dover, DE 19904 or by email at brenda.lakeman@state.de.us or by fax at (302) 739-8339 by January 20, 2012. A public hearing to consider the adoption of the Disability Insurance Program Rules and Regulations will be held during the State Employee Benefits Committee meeting scheduled on January 30, 2012 at 2:00 pm at the Tatnall Building, 150 William Penn Street, Dover, DE 19901. The action concerning the adoption of the proposed rules and regulations will be based upon the results of the State Employee Benefits Committee staff analysis and consideration of any comments and written materials submitted by any person.