
Delaware Register of Regulations

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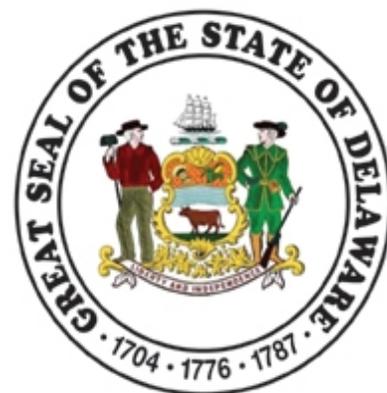


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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before June 15, 2011.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 **Del.C.** §6403)
1 **DE Admin. Code** 501

PUBLIC NOTICE**501 Regulations of the Delaware Solid Waste Authority**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Regulations of the Delaware Solid Waste Authority (the "Regulations") adopted by DSWA Board in March, 2009.

Notice of Hearing:

A public hearing will be held Monday, July 25, 2011, at 6:00 p.m. at the Delaware Solid Waste Authority Administrative Office 1128 S. Bradford Street, Dover, Delaware 19903. The hearing is to provide an opportunity for public comment on the proposed amendments. The public record will close at the close of business, August 1, 2011.

Written Comments:

The DSWA will receive written comments, suggestions briefs or other written material until the close of business, August 1, 2011. Written comments, suggestions, compilations of data, briefs or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

Summary of Proposed Changes:

The proposed amendments will make certain non-substantive changes to the regulations, and will amend current provisions dealing with the extension of credit in payment for the use of DSWA facilities and services.

Background and Purpose:

The proposed amendments to the Regulations are intended to: (i) make non-substantive clarifications to words and phrases used in the text, (ii) clarify the purpose of the sticker to be affixed to vehicles using DSWA facilities in connection with permitting, and (iii) remove provisions respecting the extension of credit, which shall hereafter be addressed through a policy document.

501 Regulations of the Delaware Solid Waste Authority

1.0 Purpose and Authorization

These Regulations are adopted pursuant to the Act to achieve the goals set forth therein.

2.0 Definitions

"Act" means the Delaware Solid Waste Authority Act, 7 Del.C. Ch. 64.

"Applicant" means any person applying for a License under these regulations.

"CEO" means Chief Executive Officer and General Manager of DSWA.

"Chairman" means the Director designated by the Governor as chairman of DSWA in accordance with 7 Del.C. §6403(a).

"Collection Vehicle" means any vehicle, truck, container, box, trailer, roll-off, or other device used for the collection, transportation or delivery of solid waste or recyclable materials.

"Contamination" means unacceptable material(s) mixed in a primary material, which in DSWA's sole judgment corrupts the intended use or the intended classification of the primary material. For example, a DSWA representative using visual senses may determine a load of material to be "contaminated" because municipal waste was found mixed in a load of recyclable materials.

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

"Directors" means the directors of DSWA holding office in accordance with 7 Del.C. §6403.

"Dry Waste" means any solid waste including, but not limited to construction and demolition waste, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"DSWA" means the Delaware Solid Waste Authority, an instrumentality of the State of Delaware, existing pursuant to the Act.

"DSWA Facility" means any DSWA solid waste disposal or recyclable materials site, system or process and the operation thereof, including but not limited to personnel, equipment and buildings. Such facility includes any landfill, recycling project, including resource recovery projects such as waste to energy projects, collection station, transfer station, or other solid waste processing or disposal facility for projects operated by, on behalf of, or under contract with DSWA.

"Hazardous Waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, or chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible illness, or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes described in §§261.31, 261.32 and 261.33 of the Delaware Regulations Governing Hazardous Waste.

"Industrial Solid Waste" means solid waste produced by or resulting from industrial applications, processes or operations and includes, by way of example and not by way of limitation, sludges of chemical processes, waste treatment plants, water supply treatment plants, and air pollution control facilities and incinerator residues, but does not include the solid waste generated at an industrial facility which is comparable to municipal solid waste, such as cafeteria waste, cardboard, paper and pallets, crates or other containers constructed of and containing non-hazardous combustible material.

"Licensee" means a person holding a License issued by DSWA pursuant to Article III of these Regulations.

"License" means the License to collect, transport and/or deliver Solid Waste in the State of Delaware, issued by DSWA in accordance with the provisions of Article 3.0 of these Regulations.

"License Stickers" means the stickers which DSWA issues under the License identifying the Licensee's account number and a vehicle number, which shall be affixed to both sides of the vehicle.

"Municipality" means a county, city, town or other entity or public body of the State of Delaware including but not limited to any State agency, department, instrumentality, commission, board, school district, and publicly supported institution of higher learning.

"Permit" means the stickers which DSWA issues under the License identifying the Licensee's account number and a vehicle number, which shall be affixed to both sides of the vehicle.

"Person" means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or other entity.

"Recycling" means the process by which solid waste and other discarded materials are transformed into usable material, product, energy, or managed separately in an authorized manner to reduce adverse environmental impacts.

"Recycle Delaware Center" means a DSWA facility, established pursuant to 7 Del.C. §6450 et seq., to receive recyclable materials and includes the recycling containers marked for the specific recyclable materials which are to be deposited therein and the area immediately surrounding them necessary for the purposes of such recycling centers.

"Recyclable Materials" means any material or group of materials that can be and commonly are collected or separated from the waste stream and sold or used for beneficial purposes and in an authorized manner to reduce environmental impacts.

"Recycler" means a person in the business of collecting, transporting, and delivering recyclable materials.

"Solid Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under 7 Del.C., Ch. 60 as amended, or source, special nuclear, or by-product materials defined by the Atomic Energy Act of 1954, as amended, or materials separated on-site by the generator thereof for further use, service or value.

"Source Separation" or "Source Separated" means the process by which recyclable materials are segregated and kept apart from the waste stream by the generator thereof for the purpose of collection, disposition, or recycling or resource recovery.

"Special Solid Wastes" means those wastes that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial solid waste, municipal ash, septic tank pumpings, and sewage residues.

"Transfer Station" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling or disposal.

"Yard Waste" means plant material resulting from lawn maintenance or other horticultural gardening or landscaping activities and includes but is not limited to grass, leaves prunings, brush, shrubs, garden materials, Christmas trees, and tree limbs up to 4 inches in diameter.

5 DE Reg. 100 (7/1/01)

3.0 Collection and Licensing

- 3.1 No person shall collect, transport, and/or deliver solid waste, or dry waste, except recyclingable materials, in the State of Delaware without first having obtained a License from DSWA, provided, however, that:

- 3.1.1 persons transporting and delivering solid waste, or dry waste, that they created on their premises resulting from their activities shall not be required to obtain a License ~~therefor~~; and
- 3.1.2 persons collecting, transporting and/or delivering solid waste, or dry waste, in the course of their employment by a person holding a License ~~from DSWA~~ shall not be required to obtain a License ~~therefor~~.
- 3.1.3 persons who first became subject to this licensing requirement because of amendments to the regulations which require a License for the collection, transport, and/or delivery of dry waste, shall not be required to have such License for the 60 day period following the effective date of the regulations.
- 3.2 The CEO may designate a specific DSWA facility or facilities for delivery or disposal of solid waste, dry waste, or recyclable materials.
- 3.3 Each Licensee shall clearly display on both sides of the vehicle:
 - 3.3.1 the License ~~permit~~ Stickers provided by DSWA which is the property of DSWA and subject to cancellation, suspension and/or revocation. The License ~~permit~~ Stickers shall be legible at all times and shall be placed in an area of high visibility to allow immediate identification by DSWA Weighmasters and Compliance Officers. The License ~~permit~~ Stickers shall be not be placed on fuel or hydraulic tanks or reservoirs, or areas where the operation of mechanical parts would impair the visibility of the ~~permit~~ License Stickers;
 - 3.3.2 the Licensee's business name with letters at least three (3) inches high and of a color that contrasts with the color of the vehicle. No name other than the Licensee's business name shall be displayed. A regularly used business logo may also be displayed.
- 3.4 Licensees shall maintain business offices and phone numbers as follows:
 - 3.4.1 Licensees who collect on a yearly average 100 tons per month or more:
 - 3.4.1.1 each Licensee shall maintain a manned business office location or locations and designate a representative in responsible charge thereof;
 - 3.4.1.2 each Licensee shall provide a street address for the business office to which correspondence may be mailed;
 - 3.4.1.3 telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by a responsible and authorized person at the main office during normal business hours. Licensees may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. The exclusive use of an answering machine shall not satisfy this requirement; and
 - 3.4.1.4 notification regarding any change of business location or telephone number shall be provided to DSWA in writing within seven days of such change.
- 3.5 Licensees who collect on a yearly average less than 100 tons per month:
 - 3.5.1 each Licensee shall provide a street address for the business office or dwelling to which correspondence may be mailed. A Post Office Box shall not satisfy this requirement;
 - 3.5.2 telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by the Licensee during normal business hours. Licensees may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. The exclusive use of an answering service may be utilized. An answering machine shall not satisfy this requirement; and
 - 3.5.3 notification regarding any change of business location or telephone number shall be provided to DSWA in writing within seven days of such change.
- 3.6 Each Licensee shall maintain insurance at the following minimum amounts:
 - 3.6.1 Automobile liability: \$350,000 combined bodily injury and property damage per occurrence;
 - 3.6.2 General liability: bodily injury \$300,000 per occurrence; property damage: \$100,000 per occurrence; and
 - 3.6.3 Workman's Compensation as required by law.

PROPOSED REGULATIONS

- 3.6.4 Each Licensee shall provide to DSWA new certification of the coverages specified in Section 3.6 including a certification within ten (10) days of renewal. Each such certification of insurance shall provide that DSWA receive at least thirty (30) days advance notice of any canceled, discontinued, or diminished coverage.
- 3.7 Each DSWA permitted vehicle shall, at all times:
- 3.7.1 Be maintained to prevent fluids or other contents from spilling onto any surface;
 - 3.7.2 Be capable of being readily emptied;
 - 3.7.3 Be kept in as much of a sanitary condition as possible to control the presence of vectors;
 - 3.7.4 Be equipped so that it can be readily towed, and maintained in good operational condition for safe and stable operation and/or navigation in or about a DSWA facility; and
 - 3.7.5 Be subject at all times to inspection by DSWA, including the contents thereof.
- 3.8 Each Licensee shall comply with the following requirements while collecting, transporting and/or delivering solid waste or dry waste.
- 3.8.1 Solid waste, or dry waste, shall not be processed, scavenged, modified, or altered unless in compliance with applicable laws and regulations.
 - 3.8.2 Solid waste, or dry waste, in collection vehicles and/or containers shall be suitably enclosed or covered to prevent littering or spillage of solid waste or fluids.
 - 3.8.3 Solid waste shall not be stored in a collection vehicle for more than twenty-four (24) hours unless the solid waste is being delivered to a facility authorized to receive such waste and the facility is closed for the entire day when the twenty four hour period expires, in which case the collection vehicle may discharge the solid waste at the facility on the next day that the facility is open.
 - 3.8.4 Any spillage shall be immediately cleaned up and removed.
 - 3.8.5 No undue disturbance shall be caused in residential areas as a result of collection operations.
- 3.9 All collection vehicles shall be owned in the name of the Licensee or leased in the name of the Licensee. Upon submission of an application for a first time License, each applicant shall provide a copy of a valid motor vehicle registration card for each collection vehicle. If the collection vehicle is not owned by the applicant, a copy of a written motor vehicle lease agreement shall also be submitted with the application.
- 3.10 As a minimum each Licensee, except for municipalities with a written agreement with a licensed collector for such backup, shall own and/or lease, in the name of the licensee, at least two fully and continuously operational collection vehicles of like service, except for down time for routine maintenance
- 3.11 ~~With the exception of any municipality, each applicant for a License and each Licensee shall provide to DSWA and maintain a bond under which the Licensee shall be jointly and severally bound with a corporate surety qualified to act in the Courts of Delaware to DSWA for amounts due to DSWA for fees or charges for services. A Bond or Surety is not required if the Licensee pays at the time of solid waste delivery. DSWA may suspend or revoke a License if the Licensee's account with DSWA is past due. Each Licensee shall pay all amounts due and owing to the DSWA for services at the time such services are rendered, unless such Licensee has a charge account established and in good standing in accordance with DSWA policy and procedure respecting charge account privileges.~~
- ~~3.11.1 In lieu of corporate surety, the applicant or Licensee may provide security for its bond by depositing with DSWA, one of the following in an amount at least equal to the amount of the bond:~~
- ~~3.11.1.1 United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills; or~~
 - ~~3.11.1.2 bonds or notes of the State of Delaware; or~~
 - ~~3.11.1.3 bonds of any political subdivision of the State of Delaware; or~~
 - ~~3.11.1.4 certificates of deposit or irrevocable letters of credit from any state or national bank located within the United States; or~~
 - ~~3.11.1.5 United States currency, or check for certified funds from any state or national bank located within the United States.~~

~~3.11.2 The amount of the bond specified in Section 3.11 shall be based upon the total solid waste tonnage delivered by the Licensee at a DSWA facility during the month of November immediately preceding the License year for which the License is issued in accordance with the following schedule:~~

"TONNAGE CHARGED FOR PRIOR NOVEMBER"	AMOUNT OF BOND
Less than or equal to 750 tons	(minimum) \$5,000
Greater than 750 tons but less than or equal to 1,500 tons	\$25,000
Greater than 1,500 tons	\$50,000
Each additional 1000 tons over 1,500 tons	\$5,000

~~If the Licensee has expanded or acquired its business since the preceding November, then the total tonnage for November and Bond amount will be adjusted to account for such increase. By reference to the accounts, business, or assets acquired, an estimate will be made of what the charges in November would have been if the Licensee had been operating the newly acquired accounts, business, or assets at that time.~~

- 3.12 Any person desiring to collect, transport, and/or deliver solid waste or dry waste, except recyclable materials, in the State of Delaware shall submit a completed application for License to DSWA on forms provided by DSWA substantially in the form set forth in Attachment "A" of these Regulations. DSWA shall approve or deny License applications within thirty (30) days of receipt of a completed application.
- 3.13 DSWA may require information to supplement that requested in Attachment "A" in reviewing License applications.
- 3.14 The License period for municipalities shall be five years. The License period for all Licensees except municipalities shall be two years, or such other time period as determined by DSWA's CEO or COO. The License renewal application shall be submitted to DSWA at least thirty (30) calendar days prior to the expiration date of the existing License.
- 3.15 Before any additional collection vehicle or substitute collection vehicle is utilized for the collection, transportation, and/or delivery of solid waste or dry waste, the Licensee shall submit to DSWA the following:
 - 3.15.1 The name, address and telephone number of the owner of the vehicle.
 - 3.15.2 The state motor vehicle registration number.
 - 3.15.3 A description of chassis by year and manufacturer.
 - 3.15.4 A description of the body by year and manufacturer.
 - 3.15.5 The legal weight limit of the vehicle.
 - 3.15.6 The volume of the body of the vehicle in cubic yards.
 - 3.15.7 Evidence of the insurance coverage as required by Section 3.6.
- 3.16 Each License shall contain the following:
 - 3.16.1 Owners Name and/or trading name.
 - 3.16.2 Physical and/or mailing addresses.
 - 3.16.3 License period.
 - 3.16.4 Authorized signature.
 - 3.16.5 Special License conditions regarding collection, transportation, and/or delivery of solid waste or dry waste, as specified by DSWA.
- 3.17 The Licensee shall notify DSWA of any transfer of a License or title to a DSWA permitted vehicle within seven days of such transfer. Except for a municipality with a written agreement with a licensed collector for backup capacity, no person shall be entitled to collect, transport and/or deliver solid waste or dry waste under another person's License.

PROPOSED REGULATIONS

- 3.18 Notwithstanding anything to the contrary contained in these Regulations, a Licensee may operate a replacement vehicle on a temporary basis for a period of fifteen (15) days; provided further, that the licensee shall provide DSWA an original signed letter on company letterhead providing the information listed in §3.15 of these Regulations. An original letter must be submitted for each day of operation until DSWA License Stickers are properly displayed on the vehicle or the vehicle is removed from temporary service. Letters must be taken to the weighstation of the DSWA Solid Waste Facility. Only persons licensed by DSWA shall utilize properly complete letters of authorization. No other letters of authorization shall be accepted at DSWA facilities.
- 3.19 No License shall be issued to any person who:
- 3.19.1 has an charge account with DSWA that is past due in accordance with DSWA policies or
 - 3.19.2 is obligated to file a report in accordance with these Regulations and has not done so for the immediately preceding calendar year.
 - 3.19.3 holds or has held a License ~~from DSWA~~ which has been revoked;
 - 3.19.4 holds or has held a License ~~from DSWA~~ which has been suspended, for such period as the License is suspended;
 - 3.19.5 holds or has held an interest in any Licensee whose License ~~from DSWA~~ has been revoked;
 - 3.19.6 holds or has held an interest in any Licensee whose License ~~from DSWA~~ has been suspended, for such period as the License is suspended; and
 - 3.19.7 owns, in whole or in part, operating assets, including vehicles and routes, which were acquired from a Licensee whose License ~~from DSWA~~ was revoked or suspended and who acquired such assets from such Licensee for less than fair market value. Applicants for a License may be required to produce records and other information to demonstrate that they comply with this paragraph before a License will be issued.
- 3.20 Any person who first collects, transports, and/or delivers solid waste or dry waste, except recyclable materials, within the State of Delaware, without leaving first obtained a License under this Article, shall not be issued a License required under this Article, until the expiration of one hundred twenty (120) days after the last day on which such collection, transportation and delivery without a License occurred, as determined by the CEO, or his designee.
- 3.21 Any Licensee who does not maintain his principal place of business in Delaware shall designate an agent, by name and street address (box number not acceptable), for service of process within Delaware. The agent shall be either an individual resident in Delaware or a corporation authorized under Title 8 of the **Delaware Code** to transact business in Delaware.
- 3.22 Before a License application is approved or denied, DSWA shall determine whether the applicant is able and reasonably certain to comply with these Regulations. Such determination may take into account any relevant factors including, but not limited to, the prior conduct of the applicant or any person, as defined herein, who is employed by or is otherwise associated with the applicant and may significantly affect the applicant's performance as it is related to the licensed activities. If the application is denied, the determination shall be reduced to writing and include the rationale for denial. Any person denied a License shall be entitled to request a hearing on such determination before the Directors of DSWA in accordance with these Regulations.
- 3.23 A Licensee shall give written notice to DSWA within seven (7) days of any of the following:
- 3.23.1 sale or conveyance of a significant portion of its assets;
 - 3.23.2 sale or conveyance of a significant portion of the equity interest (e.g. stock) held in it;
 - 3.23.3 purchase or other acquisition of a significant portion of the assets of another Licensee;
 - 3.23.4 purchase or other acquisition of a significant portion of the equity interest in another Licensee. For purposes of this paragraph, a significant portion shall mean one-half. Fragmentation of a transfer into smaller portions shall not be used to avoid the requirements of this paragraph.
- 3.24 With respect to any vehicle which accesses a DSWA facility based on the extension of credit by DSWA, the vehicles shall use:
- 3.24.1 License ~~permit~~ Stickers ~~or charge account stickers~~;
 - 3.24.2 RF transponders;

- 3.24.3 barcode identification Cards; or
- 3.24.4 Other identification as permitted by DSWA.

By using one or more of the above required items, the originally assigned person is accepting responsibility for all charges to the person's account. The required identification items are the property of DSWA and must be removed, returned, and/or destroyed in accordance with existing DSWA policy upon selling or transferring a vehicle. The originally assigned person remains responsible for all charges to his account until DSWA receives written documentation from the person to confirm a change in the status of the account or the account vehicle. (For example: selling or trading a vehicle.)

- 3.25 Each Licensee shall submit a report for the preceding calendar year no later than February 1 of each year to DSWA stating, with respect to any waste collected in the State of Delaware and disposed of in the State of Delaware at a location other than a DSWA Solid Waste Facility, the quantities and types of waste disposed of, the names and address of the facility where it was disposed of, and any other information required on a form to be supplied by DSWA (See Attachment C).

5 DE Reg. 100 (7/1/01)

(Break in Continuity of Sections)

7.0 Operating in a DSWA Facility

- 7.1 All vehicles entering a DSWA facility to deliver solid waste, dry waste, or recyclable materials, shall proceed to the appropriate scale. Each vehicle shall come to a full stop before driving onto the scale, for weighing in or for weighing out. Quick stopping or starting on the scales will not be permitted. All personnel must remain in the vehicle unless directed by the Weighmaster to come to the scale bouse window. After weighing, the vehicle must not leave the scales until authorized to do so by the Weighmaster and must proceed to the designated area at the DSWA facility. In the event that an invoice generated from the charging of fees or user charges at a DSWA facility is not paid in accordance with DSWA credit policies the License may be revoked and/or the right to use DSWA facilities may be denied to the user. Before the License revocation and/or denial of use, the user may have a hearing before the Directors of DSWA, and the user shall be given at least fifteen (15) days notice of the hearing. The procedure for obtaining and holding the hearing shall be as set forth in these Regulations.
- 7.2 After weighing and at the direction of the Weighmaster or other DSWA representative, each vehicle shall proceed to the area designated. Spotters at the landfill face or on the tipping floor shall direct the vehicles to a special loading/unloading location. Vehicle drivers shall maintain safe distances from other vehicles at all times while at a DSWA facility. At small load facilities, waste shall be disposed only in the containers that have been provided. The contents of each vehicle shall be discharged as quickly as possible and the vehicle shall leave as directed by the operating contractor. Clean-up is allowed only at designated locations. No roll-off boxes will be dropped anywhere in a DSWA facility without the express approval from a DSWA representative.
- 7.3 Each vehicle operator shall exercise caution, due care, and safe procedures in all operations at all DSWA facilities. Vehicle drivers who disregard the posted speed limits on a DSWA facility may be denied access to any DSWA facility. Vehicle operators shall follow directions from the DSWA or its representative.
- 7.4 No hand sorting, picking over, or salvaging of solid waste, dry waste or recyclable materials will be permitted at any time, without specific DSWA approval.
- 7.5 All vehicle operators and other personnel proceed onto the delivery area or location at their own risk. DSWA shall not be liable for acts or omissions of its contractors, persons using a DSWA facility, or other third persons in or about a DSWA facility.
- 7.6 No loitering will be permitted in any DSWA facility.

PROPOSED REGULATIONS

- 7.7 DSWA reserves the right to redirect vehicles to alternate locations within the DSWA facility, if for any reason in the opinion of DSWA's representative, the original location cannot handle the load or type of material.
- 7.8 There shall be no smoking at any DSWA facility.
- 7.9 The DSWA from time to time may adopt and post other rules for DSWA facilities. It is the responsibility of Licensees and other persons using DSWA facilities to familiarize themselves with and to obey such rules.
- 7.10 Any vehicle that is immobile and obstructing facility operations may be moved to a nonconflicting area by DSWA representatives after notifying the Licensee's driver. The Licensee's driver will be given reasonable time to contact his office either through radio or telephone. If the blocking problem vehicle poses a safety or fire hazard, it will be removed immediately after giving notice to the driver. Licensee shall also give written instructions to drivers on proper procedures for towing.
- 7.11 To prevent material from falling off vehicles and to minimize litter, all vehicles, including but not limited to pick-up trucks, entering a DSWA facility shall be sufficiently secured through the use of tarpaulins or ropes or netting or enclosures sufficient to prevent the material from falling off the vehicles. Vehicles shall remain secured until reaching the designated untarpping area at the DSWA facility.
- 7.12 DSWA shall have the right to require unloading of the contents of any vehicle at a DSWA facility for the purpose of inspection.
- 7.13 If any prohibited wastes, hazardous wastes, explosives, toxic substance, pathological and infectious wastes, radioactive wastes are found, then the person delivering such waste to a DSWA facility shall be subject to the sanctions that may be imposed under Section 10.0 and other applicable laws and regulations and that person shall be notified and given an opportunity to properly remove all of the waste emptied from the solid waste collection vehicle at his expense. If that is not accomplished within four (4) hours (or the end of the facility business hours, whichever is greater) of such notice, which shall be either in person or by telephone, or, if the person cannot be reached immediately, either in person or by telephone, DSWA may proceed to arrange for removal and proper disposal of the entire load and the person who delivered such material to the DSWA facility shall be liable to DSWA for all costs incurred by DSWA in arranging for proper disposal, including, without limitation, DSWA's out-of-pocket expenses, contractor's fees, disposal costs, overhead supervisory costs, legal fees, testing costs, and transportation costs.

5 DE Reg. 100 (7/1/01)

(Break in Continuity of Sections)

Attachment A

To: Delaware Solid Waste Authority
P.O. Box 455
Dover, DE 19903-0455

I hereby apply for a Solid Waste Collectors License for the period of July 1, 20__ through June 30, 20__ in accordance with the Regulations of the Delaware Solid Waste Authority. Accordingly, the following is submitted:

Note: This application will not be processed unless all requested information is provided and deemed complete including;

- Proof of insurance as required by section 3.04;
- Minimum Bond or Surety, as required by Section 3.10; and,
- A copy of your Delaware Business License.

1. Applicant: (Individual or Firm Name) _____
2. Doing business as: (name to appear on License) _____

3. Business Office Information: (one phone number must be a Delaware number) OFFICE A:

Street

Area code - Phone number

City

State

Zip Code

Name of Individual having administrative responsibility at this location

OFFICE B:

Street

Area code - Phone number

City

State

Zip Code

Name of Individual having administrative responsibility at this location

4. Answering service if applicable:

Name of service

Street

Area code - Phone number

City

State

Zip Code

Name of Individual having administrative responsibility at this location

5. Registered Agents or Authorized Representatives:

A:

Name

Street

Area code - Phone number

City

State

Zip Code

B:

Name

Street

Area code - Phone number

City

State

Zip Code

6. Type of business: Sole Proprietorship Partnership Municipality Corporation*

* If Non-Delaware Corporation, provide proof of Delaware Registration

PROPOSED REGULATIONS

7. Date business was established: _____

8. Delaware Business License number: *(contact Division of Revenue)* _____

9. DNREC Waste Haulers License number: _____

10. Federal Taxpayer Identification number: _____

11. Owners or partners in unincorporated business. Indicate percentage of ownership:

A: _____

<i>Name</i>	<i>Percentage</i>
-------------	-------------------

Street	City	State	Zip Code
--------	------	-------	----------

B: _____

<i>Name</i>	<i>Percentage</i>
-------------	-------------------

Street	City	State	Zip Code
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C: _____

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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12. Officers, Directors, Shareholders holding in excess of 10% of issued Stock in incorporated business:

A: _____

<i>Name</i>	<i>Percentage</i>
-------------	-------------------

Street	City	State	Zip Code
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B: _____

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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C: _____

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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13. Indicate if any partnership or corporation other than applicant has any interest, direct or indirect, in the License applied for, or in the business conducted under such License. *(If so, state names, addresses, and interest of the partnerships, corporations, and principals involved, indicating the nature and extent of the interest.)*

- Not applicable Applicable, provide details:

14. Indicate if any individual, partnership or corporation other than applicant receives or will receive (by way of rent, salary, or otherwise) all or any portion of percentage of the gross or net profits or income derived from business conducted under License applied for:

- Not applicable*
- Applicable, provide details:*

15. Indicate if your company or parent company has ever been convicted of civil or criminal offences concerning waste transporting, processing, or disposal.

- No
- Yes *(Provide details: Use the back of this sheet or separate sheet if necessary)*

16. Indicate if the applicant, any person mentioned in this application, or any person having a beneficial interest in the application has ever been denied a License to collect solid waste.

- Not applicable
- Applicable, *provide details:*

17. State general area served by applicant:

18. Indicate days of the week collections are made:

- Mon
- Tue
- Wed
- Thu
- Fri
- Sat
- Sun

19. Daily average weight of Household solid waste collected: _____ Tons

20. Daily average weight of Municipal solid waste collected: _____ Tons

21. Daily average weight of Commercial/Industrial solid waste collected: _____ Tons

22. Other solid waste collected: _____ Tons.

23. Indicate location(s) where solid waste is being or will be delivered:

Type of Waste	Location Delivered

24. Statement of experience in solid waste collection, transportation, and/or disposal:

25. Consent to inspections:

PROPOSED REGULATIONS

The applicant hereby agrees and consents to the inspection at any time or place, by any employee of the Delaware Solid Waste Authority who presents identification of his/her status as an employee of DSWA, of any vehicle owned or operated on behalf of the applicant which displays a License ~~permit~~ Sticker issued by DSWA. Unless otherwise prohibited by law, the applicant also hereby agrees and consents to the inspection, by any employee of DSWA, of any container used for the deposit of any material which the applicant may transport with a vehicle which displays a License ~~permit~~ Sticker issued by DSWA.

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED HEREIN AND ATTACHED HERETO IS TRUE AND CORRECT AND THAT I HAVE READ AND AM FAMILIAR WITH THE REQUIREMENTS OF THE REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY.

I SPECIFICALLY UNDERSTAND AND AGREE TO BE BOUND BY SECTION 4.01, IF APPLICABLE, WHICH REQUIRES CONTRACTORS WHO COLLECT OR HAUL SOLID WASTE PURSUANT TO A CONTRACT WITH A MUNICIPALITY (INCLUDING TOWNS, CITIES, COUNTIES, STATE AGENCIES, ETC.) TO DELIVER SUCH SOLID WASTE TO A DSWA FACILITY.

Date	Signature of Applicant	Title
Printed or typed name of Applicant		

STATE OF _____ COUNTY OF _____

Before me appeared _____, who under oath certifies that the information
Print Name

provided in this application is true and correct.

Date	Notary Public
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ATTACHMENT B

TRANSFER STATION MONTHLY SOLID WASTE REPORT

Transfer Station Name: _____
 Transfer Station Number: _____
 Transfer Station Operator: _____

From: _____ Reporting Period: _____
 To: Delaware Solid Waste Authority Date: _____

TYPE OF WASTE	TONS RECEIVED	TONS DISPOSED	DISPOSAL FACILITY	
			Tons Address	Location (Name and Address)
SOLID WASTE				
a. Delaware			1.	

PROPOSED REGULATIONS

To: Delaware Solid Waste Authority

Date: _____

TYPE OF WASTE	TONS RECEIVED	TONS DISPOSED	DISPOSAL FACILITY	
			Tons	Location <u>Name</u> <u>Address</u>
SOLID WASTE				
a. Delaware			1.	
			2.	
			3.	
			4.	
b. Other			1.	
			2.	
			3.	
			4.	
TOTAL				
INDUSTRIAL PROCESS WASTE SPECIAL SOLID WASTE				
a. Delaware			1.	
			2.	
			3.	
			4.	
b. Other			1.	
			2.	
			3.	
			4.	
TOTAL				
DRY WASTE				
a. Delaware			1.	
			2.	
			3.	
			4.	

B. Other			1.	
			2.	
			3.	
			4.	
TOTAL				
GRAND TOTAL				

CERTIFICATION I hereby certify that the above information is true and correct, to the best of my knowledge, this _____ day of _____, A.D. 20____.

Notary Public

President Signature Owner's Representative

Notary Public Printed Name _____

Owners Representative Printed Name and Title: _____

ATTACHMENT D REGISTRATION STATEMENT – RECYCLING PROGRAM/FACILITIES

Name of Person or Entity (the Registrant):

Address and Phone Number of the Registrant:

Address(es) and Phone Number(s) of any and all recycling facilities located in the State of Delaware owned or operated by the Registrant:

Description of recycling activity engaged in by Registrant:

Annual Tons Recycled: _____

I hereby represent that I am authorized to file this statement on behalf of the Registrant, and certify that the above information is true and correct to the best of my knowledge, this ____ day of _____, A.D. 20__.

Notary Public

Signature

Printed Name and Title

12 DE Reg. 1192 (03/01/09)

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

[501 Regulations of the Delaware Solid Waste Authority](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 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 Effective and Needs Improvement for the Summative Evaluation Rating; 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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to teacher evaluation and should support improved student achievement as measured against state achievement standards.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to teacher evaluation and does not specifically address all 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 amendments do not change the authority or flexibility of decision making at the local board and school level.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not significantly change the method for teacher evaluation which is the purpose of the regulation.

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

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

1.0 Effective Date

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2011 with the 2011 - 12 school year and shall, at such time, replace the current 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

2.0 Definitions

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

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

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

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

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

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

"DSEA" shall mean the Delaware State Education Association.

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

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

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

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

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

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

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

"Student Achievement" shall mean

(a) For tested grades and subjects:

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

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

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures must be approved by the Department and developed in partnership with the local collective bargaining representatives.

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

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

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The

observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

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

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

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

3.0 Appraisal Cycles

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

4.0 DPAS II Guide for Teachers

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

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:
 - 5.1.1 Planning and Preparation
 - 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.

-
- 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.
- 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.
- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
- 5.1.1.5 Designing Student Assessments: Teacher creates and or selects assessments that are congruent with instructional goals, criteria and standards. The teacher plans for the use of formative and summative assessments of the teacher's students.
- 5.1.2 Classroom Environment
- 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
- 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
- 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.
- 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.
- 5.1.3 Instruction
- 5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.
- 5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.
- 5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.
- 5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.
- 5.1.3.5 Using Assessment in Instruction: Teacher makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
- 5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns.

- 5.1.4.2 ~~Developing~~ Recording student data in a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.
- 5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students.
- 5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.
- 5.1.5 Student Improvement
 - 5.1.5.1 Measuring Student Improvement: ~~Teacher's~~ Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
 - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher ~~demonstrates acceptable performance by meeting at least three (3) of the four (4)~~ has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components.
 - 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".
 - 6.2.1 **"Highly Effective"** shall mean that the teacher has earned a Satisfactory Component rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, ~~and including an Exceeds rating in the Student Improvement Component meaning that the teacher's students on average achieve high rates of student growth as defined in the DPAS II Revised Guide for Teachers, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation, that is, more than one grade level improvement in an academic year.~~
 - 6.2.2 **"Effective"** shall mean that:
 - 6.2.2.1 The teacher has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components including a Satisfactory rating in the Student Improvement Component, and
 - 6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.
 - 6.2.3 **"Needs Improvement"** shall mean that:
 - 6.2.3.1 The teacher has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
 - 6.2.3.2 The teacher has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.
 - 6.2.4 **"Ineffective"** shall mean that:
 - 6.2.4.1 The teacher has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
 - 6.2.4.2 The teacher has ~~received~~ earned an Unsatisfactory Component Rating in the Student Improvement Component.
 - 6.2.5 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."

6.2.6 Notwithstanding the provisions in 6.2.3.2, a teacher earning three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and an Unsatisfactory rating in the Student Improvement Component for the 2011-2012 Summative Evaluation shall receive an overall rating of "Effective".

6.2.7 Notwithstanding the provisions of 6.2.4.1, a teacher earning two (2) Satisfactory Components Ratings out of the five (5) Appraisal Components in accordance with 5.0, and an Unsatisfactory Component Rating in the Student Improvement Component for the 2011-2012 Summative Evaluation shall receive an overall rating of "Needs Improvement".

7.0 Pattern of Ineffective Teaching Defined

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

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

8.0 Improvement Plan and Evaluation Documentation

8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation. ~~or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.~~ A teacher with an overall rating of "Effective" but with less than four (4) Satisfactory Appraisal Components in 5.0 on the Summative Evaluation shall have clear and specific improvement expectations outlined in the teacher's written evaluation documentation.

8.1.1 An Improvement Plan shall also be developed if a teacher's overall performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
- 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
- 8.2.3 Specific professional development or activities to accomplish the goals;
- 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
- 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
- 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
- 8.2.7 Procedures for determining satisfactory improvement;
- 8.2.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, a lead teacher, or an instructional coach.

8.3 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect must be certified by the Department and must directly relate to areas identified as needing improvement.

- 8.4 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.5 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.6 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

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

10.0 Evaluator Credentials

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

11.0 Evaluation of Process

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

13 DE Reg. 1067 (02/01/10)

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 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 Effective and Needs Improvement for the Summative Evaluation Rating; 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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to specialist evaluation and should support improved student achievement as measured against state achievement standards.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to specialist evaluation and does not specifically address all 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 amendments do not change the authority or flexibility of decision making at the local board and school level.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not

significantly change the method for specialist evaluation which is the purpose of the regulation.

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

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

1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning ~~July 1, 2011~~, with the 2011-12 school year and shall, at such time, replace the current 14 **DE Admin. Code** 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II).

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

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

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

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

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

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

“DSEA” shall mean the Delaware State Education Association.

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

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

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

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

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

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

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

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

“Student Achievement” shall mean

- (a) For tested grades and subjects:
 - (1) A student’s score on the ~~DSTP or successor statewide assessment~~ DCAS; and, as appropriate,
 - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.
- (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).

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

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

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

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

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

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

3.0 Appraisal Cycles

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

4.0 DPAS II Guide for Specialists

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

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:
 - 5.1.1 Planning and Preparation
 - 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.
 - 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.
 - 5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.
 - 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
 - 5.1.1.5 Demonstrating Knowledge of How to Design or Use Student Assessments: Specialist creates and or selects assessments that are congruent with instructional goals, criteria and standards. The specialist plans for the use of formative and summative assessments of the specialist's students.
 - 5.1.2 Professional Practice and Delivery of Services
 - 5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
 - 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.
 - 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.
 - 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.
 - 5.1.3 Professional Collaboration and Consultation
 - 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.
 - 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.
 - 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.

5.1.3.4 ~~Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality. Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.~~

5.1.3.5 Use of Assessment in Planning and Delivery of Services: Specialist makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.

5.1.4 Professional Responsibilities

5.1.4.1 ~~Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns. Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.~~

5.1.4.2 ~~Developing Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.~~

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

5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.

5.1.5 Student Improvement

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

6.0 Summative Evaluation Ratings

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

6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist ~~demonstrates acceptable performance by meeting at least three (3) of the four (4)~~ has no more than one unacceptable rating on the Appraisal Criteria specified in each of the five (5) components set forth in 5.1.

6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.

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

6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, ~~and including a Exceeds rating in the Student Improvement Component meaning that the specialist's students on average achieve high rates of student growth, that is, more than one grade level improvement in an academic year as defined in the DPAS II Revised Guide for Specialists, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.~~

6.2.2 Effective shall mean that:

PROPOSED REGULATIONS

- 6.2.2.1 The specialist has ~~received~~ a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
- 6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.
- 6.2.3 Needs Improvement shall mean that:
- 6.2.3.1 The specialist has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The specialist has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 Ineffective shall mean that:
- 6.2.4.1 The specialist has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The specialist has ~~received~~ earned an Unsatisfactory Component Rating in the School Improvement Component.
- 6.2.4.35 a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".
- 6.2.6 Notwithstanding the provisions in 6.2.3.2, a specialist earning three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and an Unsatisfactory rating in the Student Improvement Component for the 2011-2012 Summative Evaluation shall receive an overall rating of "Effective".
- 6.2.7 Notwithstanding the provisions of 6.2.4.1, a specialist earning two (2) Satisfactory Components Ratings out of the five (5) Appraisal Components in accordance with 5.0, and an Unsatisfactory Component Rating in the Student Improvement Component for the 2011-2012 Summative Evaluation shall receive an overall rating of "Needs Improvement".

7.0 Pattern of Ineffective Practice Defined

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

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

8.0 Improvement Plan and Evaluation Documentation

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation. ~~or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.~~ A specialist with an overall rating of "Effective" but with less than four (4) Satisfactory Appraisal Components in 5.0 on the Summative Evaluation shall have clear and specific improvement expectations outlined in the specialist's written evaluation documentation.

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

9.0 Challenge Process

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

10.0 Evaluator Credentials

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

- 10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

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

13 DE Reg. 1445 (05/01/10)

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 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 Effective and Needs Improvement for the Summative Evaluation Rating; 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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to administrator evaluation and should support improved student achievement as measured against state achievement standards.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to administrator evaluation and does not specifically address all 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 amendments do not change the authority or flexibility of decision making at the local board and school level.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not significantly change the method for administrator evaluation which is the purpose of the regulation.

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

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

1.0 Effective Date

- 1.1 The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2014 with the 2011-12 school year, and shall, at such time, replace the current 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).
- 1.2 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

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

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

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

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

"DSEA" shall mean the Delaware State Education Association.

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

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

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

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

PROPOSED REGULATIONS

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

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

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

"Student Achievement" shall mean

(a) For tested grades and subjects:

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

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

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

Such alternative measures shall be approved by the Department and developed in partnership with the Delaware Association of School Administrators (DASA) and the Delaware School Boards Association (DSBA).

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

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

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

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

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

3.0 Appraisal Cycles

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

Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.

4.0 DPAS II Revised Guide for Administrators

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

5.0 Appraisal Components and Appraisal Criteria

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

5.1.3 Management

- 5.1.3.1 Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.
- 5.1.3.2 Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.
- 5.1.3.3 Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.
- 5.1.3.4 Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.

5.1.4 Professional Responsibilities

- 5.1.4.1 Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.
- 5.1.4.2 Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.
- 5.1.4.3 Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.
- 5.1.4.4 Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school or district.

5.1.5 Student Improvement

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

6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
 - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the components.
 - 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the administrator has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".
 - 6.2.1 **"Highly Effective"** shall mean that the administrator has a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, and including a Exceeds rating in the Student Improvement Component meaning that the administrator's students on average achieve high rates of student growth, that is, more than one grade level improvement in an

academic year as defined in the DPAS II Revised Guide for Administrators, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation

- 6.2.2 **"Effective"** shall mean that:
 - 6.2.2.1 The administrator has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components including a Satisfactory rating in the Student Improvement Component, and
 - 6.2.2.2 The administrator does not meet the requirement for a "Highly Effective" rating found in 6.2.1.
- 6.2.3 **"Needs Improvement"** shall mean that:
 - 6.2.3.1 The administrator has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
 - 6.2.3.2 The administrator has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0 and the administrator has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 **"Ineffective"** shall mean that:
 - 6.2.4.1 The administrator has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
 - 6.2.4.2 The administrator has ~~received~~ earned an Unsatisfactory Component Rating in the Student Improvement Component.
- 6.2.5 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the administrator's rating shall be re-categorized as "Ineffective".
- 6.2.6 Notwithstanding the provisions in 6.2.3.2, an administrator earning three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and an Unsatisfactory rating in the Student Improvement Component for the 2011-2012 Summative Evaluation shall receive the overall rating of "Effective".
- 6.2.7 Notwithstanding the provisions of 6.2.4.1, an administrator earning two (2) Satisfactory Components Ratings out of the five (5) Appraisal Components in accordance with 5.0, and an Unsatisfactory Component Rating in the Student Improvement Component for the 2011-2012 Summative Evaluation shall receive the overall rating of "Needs Improvement".

7.0 Pattern of Ineffective Administrative Performance

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

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

8.0 Improvement Plan and Evaluation Documentation

- 8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation. ~~or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating. An administrator with an overall rating of "Effective" but with less than four (4) Satisfactory Appraisal Components in 5.0 on the Summative Evaluation shall have clear and specific improvement expectations outlined in the administrator's written evaluation documentation.~~
- 8.1.1 An Improvement Plan shall also be developed if an administrator's overall performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
 - 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
 - 8.2.3 Specific professional development or activities to accomplish the goals;
 - 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience;
 - 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
 - 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
 - 8.2.7 Procedures for determining satisfactory improvement.
- 8.3 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect shall be certified by the Department and shall be directly related to areas identified as needing improvement.
- 8.4 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.5 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.6 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

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

10.0 Evaluator(s) Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is

renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

10.1.1 The Department of Education shall annually monitor evaluation implementation.

- 10.2 The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the DPAS II Revised Guide for Administrators. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

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

13 DE Reg. 1072 (02/01/10)

OFFICE OF THE SECRETARY

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

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

775 New Teacher Hiring Date Reporting

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code by adding a new regulation 775 New Teacher Hiring Date Reporting. This regulation is a result of Senate Bill No. 16 as amended by Senate Amendment No. 1 and House Amendment No. 1 passed by the 146th General Assembly and signed by the Governor. The legislation requires the Department to promulgate a regulation to ensure that hiring information collected and reported by the school districts uses uniform terminology.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 5, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to provide for uniform terminology and consistency in the collection of teacher hiring data, and not to specifically improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation is intended to provide for uniform terminology and consistency in the collection of teacher hiring data, and not to specifically 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 new regulation is intended to provide for uniform terminology and consistency in the collection of teacher hiring data, and not to specifically ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation is intended to provide for uniform terminology and consistency in the collection of teacher hiring data,

and not to specifically ensure all students' legal rights are respected.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The provisions are required pursuant to the legislation. The regulation is intended to be as non burdensome as possible.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no anticipated additional costs to the collection of these data.

775 New Teacher Hiring Date Reporting

1.0 Purpose

The purpose of this regulation is to outline the criteria and process related to new teacher hiring data collection and reporting by school districts as required by 14 Del.C. §1725.

2.0 Definitions

"Contract Offer Date" shall mean the date an authorized agent or representative of the district notifies the successful candidate of the intent to hire.

"Critical Curricular Area" shall mean an area identified as a critical area by the Department of Education and approved by the State Board of Education.

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

"Department" means the Delaware Department of Education.

"New Teacher Hiring Date" shall mean, for purposes of this regulation, the Contract Offer Date as defined herein.

"Position Availability Date" shall mean the date the district Human Resources Office knows the available position is released for a new full-time teacher hire.

"Position Title" shall mean the appropriate teaching position as offered to the teacher from the list of teacher position titles as provided in the Delaware Educator Data System (DEEDs).

"Position Type" shall mean the appropriate instructional level of the teacher or whether the teacher is in a critical curricular area.

3.0 New Teacher Hiring Data Report

- 3.1 On or before December 1st of each year, each District shall annually submit a New Teacher Hiring Date Report to the Department on a format approved by the Department that includes, but is not limited to, Contract Offer Date, Position Availability Date, and Position Title. The report shall reflect the district new teacher hiring activity from the "estimated unit count" as that term is defined pursuant to 14 Del.C. §1704 until November 15th of that same calendar year.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**PUBLIC NOTICE****Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 demonstration waiver.

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 July 31, 2011.

On July 15, 2011, a draft of the waiver amendment application will be available on the Division of Medicaid and Medical Assistance website <http://dhss.delaware.gov/dhss/dmma/>.

You may also obtain a copy by contacting Lisa Zimmerman at (302) 368-6610 or by e-mail to Lisa.Zimmerman@state.de.us or Beverly Weigand at (302) 255-9500 or by e-mail to Beverly.Weigand@state.de.us.

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 Delaware Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 demonstration waiver. Specifically, this waiver amendment integrates Nursing Facility (NF) services and Home and Community-Based Services (HCBS) into the existing managed care delivery system.

Statutory Authority

- 42 U.S.C. §1315, Demonstration projects
- Social Security Act §1115, Demonstration projects

Background

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit. These projects are intended to demonstrate and evaluate a policy or approach has not been demonstrated on a widespread basis. Some states expand eligibility to individuals not otherwise eligible under the Medicaid program, provide services that are not typically covered, or use innovative service delivery systems.

Under a waiver authority of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the Diamond State Health Plan are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) intends to amend its 1115 Demonstration Waiver to integrate primary, acute and long-term care (LTC) services for the elderly and persons with physical disabilities into the Diamond State Health Plan (DSHP) statewide program under the name "Diamond State Health Plan Plus." DMMA is proposing to leverage the existing DSHP 1115 demonstration waiver by expanding it to include full-benefit dual eligibles, individuals receiving institutional LTC (excluding the developmentally disabled population), and individuals enrolled in DMMA's Elderly and Disabled and AIDS section 1915(c) waivers.

DMMA is requesting public comment on the 1115 Demonstration Waiver amendment, "Diamond State Health Plan Plus" (DSHP). Operational implementation of DSHP Plus is projected for April 1, 2012.

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

Fiscal Impact Statement

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

State Residency

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual regarding State Residency.

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) 255-4454 by July 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 purpose and effect of this proposal is to amend the Division of Social Services Manual (DSSM) regarding State Residency.

Statutory Authority

- 42 CFR §435.403, State residence;
- State Medicaid Manual, Eligibility Requirements, Section 33230, State Residence

Background

Federal regulation at 42 CFR §435.403 says that a State agency must provide Medicaid services to eligible residence of that State. Specifically, a resident is someone who lives in Delaware with the intention to remain permanently or for an indefinite period of time, or someone living in Delaware, having entered with a job commitment or for the purpose of seeking employment, whether or not the individual is currently employed. The individual must live in Delaware and meet all other eligibility requirements in order to receive Medicaid benefits.

Summary of Proposal

Each State Medicaid agency has specific guidelines for determining whether an individual satisfies the Federal criteria defining eligibility and State residency.

As such, the Division of Medicaid and Medical Assistance (DMMA) is revising the appropriate sections of the Division of Social Services Manual (DSSM) to clarify that an individual must be a Delaware resident in order to receive Delaware Medicaid. A primary residence may be excluded from eligibility if the individual intends to return to the primary residence. An individual will not be considered a Delaware resident if they intend to return to a primary residence located in another state.

The proposed changes affect the following policy sections:

DSSM 14110.8.2, Exceptions

DSSM 20310.1, Intent to Return; and,

DSSM 20320.4.1, Intent to Return.

Fiscal Impact Statement

The proposed revisions impose no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #11-25

REVISIONS:

14110.8.2 Exceptions

When one of the following exists, it supersedes the general residency policy.

a. Exception for individuals receiving a State Supplementary Payment, the State of residence is the State making the payment.

b. Exception for individuals of any age who are receiving Federal payments for foster care under title IV-E of the Social Security Act, and individuals for whom there is an adoption assistance agreement in effect under title IV-E, the State of residence is the State where the individual is living.

c. Exception where a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

d. Exception when residency is disputed - When two or more States cannot resolve which State is the State of residence, the State in which the individual is physically located is the State of residence.

e. Exception when an institutionalized individual intends to return home to their principal place of residence located in another state, the individual will not be considered a Delaware resident since their intent is not to remain in Delaware.

(Break in Continuity of Sections)

20310.1.1 Intent to Return

The principal place of residence, if located in Delaware, may be excluded if the individual intends to return home after any length of time.

Temporary Institutionalization - If the attending physician has certified that a recipient is likely to return to his own home within a definite period (not to exceed 2 months) up to \$75.00 per month may be protected for maintenance of the home.

(Break in Continuity of Sections)

20320.4.1 Intent to Return

~~The individual intends to return home.~~ The applicant must be able to express the desire to return home to their principal place of residence located in Delaware. The record must include a written statement of intent to return to the home. ~~If applicant gives intent verbally to DSS social worker this should be noted as part of the case record. The case record must indicate if the applicant gives intent verbally to DMMA social worker.~~

~~If the statement is written by someone other than applicant~~ writes the statement, there must be an indication that this is in fact the intent of the applicant (i.e. signature or mark of applicant). If an institutionalized applicant/recipient is mentally capable of indicating that he intends to return to his principal place of residence in Delaware

PROPOSED REGULATIONS

(even if medical evidence indicates that he will never recover sufficiently to return home), then the home may be excluded as a resource. In no case can the family **declare** this **intent** for the applicant/recipient.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Gaming Control Board

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

PUBLIC NOTICE

101 Regulations Governing Bingo

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0 in 10 DE Admin. Code 101 should be amended. The rule relates to the definition of "cookie jar bingo" and to the manner of playing cookie jar bingo games. The Board proposes to make it clear that the fees collected for cookie jar bingo must be added to the jar before the first number is drawn, and if the added money makes the jar reach its maximum amount, that jar must be awarded at that night's event. In addition, the group conducting the event must announce the value of the cookie jar before play commences.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, August 4, 2011 at the meeting of the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before July 31, 2011 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

This regulation will make it clear that fees collected for a cookie jar bingo game must be added to the jar before the first number is drawn. If this added amount makes the jar reach its maximum value, the jar must be awarded during that night's event. In addition, the group conducting the bingo event must announce the value of the cookie jar, up to a maximum of \$1,000, before play commences.

101 Regulations Governing Bingo

1.0 Definitions

"Bingo" A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a-card.

"Bingo Statute" The statutory law concerning bingo, as contained in 28 Del.C., §1101 et. seq.

"Board" The Delaware Gaming Control Board.

"Color Coded" A different color for each of the five letters of the word "BINGO."

"Cookie Jar Bingo" A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to a chance to win the total funds in the cookie jar or container. At the start of the event, a bingo number shall be drawn which shall serve as the "cookie jar number." That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn,

the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn. The fee to play a cookie jar bingo game must be collected separately and such fee may not be included in the fee to play regular bingo games or in any other fee.

Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these rules. An organization may not have more than two cookie jar bingo pots at any one time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final game of the night, a special final bingo game of "full card" or "black out" bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.

The fees for cookie jar bingo shall be collected at the beginning of the event and added to the jar or jars before the first number is drawn. If at the beginning of an event when players pay their fee, one jar contains the maximum (up to \$1,000) and the second jar would go over the maximum if the fees are added, the fees shall be held and not placed in the second jar at that time. When the first jar is then won, the second jar shall be filled to a total of the maximum and the remaining fee moneys shall be placed in a new jar.

The organization conducting the bingo event may choose any amount up to \$1,000 for each cookie jar. The organization shall post the amount available to be won in the cookie jar and also clearly announce to the players the amount available to be won in the cookie jar.

"Districts" Those districts mentioned in Article II, 917A of the Delaware Constitution.

"Equipment" The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

"Game" The game of bingo.

"Instant Bingo" A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as "rip-offs" or "Nevada pull-tabs."

"Member in Charge" A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

"Occasion" A single gathering or session at which a series of successive bingo games (regular, special, or otherwise) is played, not to exceed forty (40) in number.

"Proceeds" The gross income received from all activities engaged in or on occasion when bingo is played, less only, such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

"Qualified Organization" A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

"Week" means a seven day period beginning on Sunday and ending on Saturday.

2 DE Reg. 1224 (01/01/99)

12 DE Reg. 357 (09/01/08)

13 DE Reg. 412 (09/01/09)

13 DE Reg. 1355 (04/01/10)

14 DE Reg. 486 (11/01/10)

PROPOSED REGULATIONS

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

[101 Regulations Governing Bingo](#)

DIVISION OF PROFESSIONAL REGULATION

Gaming Control Board

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

PUBLIC NOTICE

102 Regulations Governing Raffles

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the regulation

The Delaware Gaming Board will seek public comments on the issue of whether its current introduction to 10 DE Admin. Code 102 should be amended. The introduction relates to the applicability of the regulations to raffles. The Board proposes to change the introduction to state that only raffles in which the ticket price is more than \$5.00 for a single drawing and more than \$15.00 for a series of drawings are covered by the regulations, rather than the current requirement that tickets costing \$5.00 or more for a single drawing or \$15.00 or more for a series of drawings are covered.

Persons wishing to present their views regarding this matter may do so at a public hearing to be held on Thursday, August 4, 2011 at a meeting of the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit responses in writing by the close of business on or before July 31 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

Currently, the introduction to 10 DE Admin. Code 102 provides that the following regulations apply to raffles conducted under Title 28 of the Delaware Code in which the value of prizes is \$5,000 or more and the price of raffle tickets is \$5.00 or more for a single drawing and \$15.00 or more for a series of drawings. The Board proposes to change this section to state that only raffle tickets costing more than \$5.00 for a single drawing and more than \$15.00 for a series of drawings are covered by the regulations.

102 Regulations Governing Raffles

These regulations shall apply to any raffle conducted under 28 Del.C. §1130 in which the value of the prize or prizes to be awarded is \$5,000 or more or in which the ticket price is more than \$5.00 ~~or more~~ for a single drawing for prizes, or more than \$15.00 ~~or more~~ for a series of drawings for prizes occurring on a periodic schedule exceeding one month. These regulations are issued pursuant to the authority granted the Delaware Gaming Control Board in 28 Del.C. §1122(2).

2 DE Reg. 1224 (1/1/99)

1.0 Definitions

“**Board**” The Delaware Gaming Control Board.

“Prize” Any item or items chosen by a Sponsoring Organization as the subject of a raffle, which the organization announces it will award to a person selected by chance from among those purchasing tickets to the raffle.

“Qualified Member” For the purposes of eligibility to participate in managing or otherwise assisting in the operation of raffle, a person is a bona fide member of the licensed organization only when he or she:

Has become a member prior to the commencement of the function and such membership was not dependent upon, or in any way related to the payment or consideration to participate in, any gambling activity; and

Has held full and regular membership status in the licensed organization for a period of not less than three (3) consecutive months prior to the subject function; and

Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the licensed organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and

Has met all other conditions required by the licensed organization for membership and is in all respects a member in good standing at the time of the subject function; and

Is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her sponsoring organization, or to which his or her own organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own organization.

“Raffle” A form of lottery in which a number of persons buy one or more chances attempting to win the same prize. Any game such as so called "Nevada cards" or "pull cards" where the amount of the prize is determined by the contents of the ticket purchased are not raffles.

An organization may conduct a raffle which will not be completed in one night. An organization may sell a chance good for an extended period of time with a series of drawings, with a chance to win a prize multiple times during that period, provided all chances are sold at the same time. However, any such raffle must first be approved by the Board.

“Related Party” Includes:

An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.

A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in (a) above.

A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.

“Sponsoring Organization” Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

13 DE Reg. 1355 (04/01/10)

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

[**102 Regulations Governing Raffles**](#)

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

RESPIRATORY CARE ADVISORY COUNCIL OF THE DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE
Statutory Authority: 24 Delaware Code, Section 1775 (c)) (24 Del.C. §1775 (c))
24 DE Admin. Code 1770

PUBLIC NOTICE

1770 Respiratory Care Practice Advisory Council

The Respiratory Care Advisory Council of the Delaware Board of Medical Licensure and Discipline ("Council") in accordance with 24 Del.C. §1775(c) is proposing changes to Regulation 12.0 regarding the unlicensed practice of respiratory care. The rule as currently drafted only addresses unlicensed practice by home equipment personnel. The changes clarify that no unlicensed personnel may perform clinical assessments or provide patient care during the course of performing their job duties.

A public hearing will be held on August 10, 2011 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Respiratory Care Advisory Council, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Council at the above address. The final date to receive written comments will be at the public hearing.

Pursuant to 24 Del.C. §1775(c) the Council will consider forwarding the proposed regulations to the Board of Medical Licensure and Discipline for final approval following the public hearing.

1770 Respiratory Care Practice Advisory Council

(Break in Continuity of Sections)

12.0 ~~Unlicensed Home-Equipment Personnel (UP)~~

- 12.1 ~~Unlicensed personnel (UP) working for a home medical equipment company may only perform the following indirect respiratory care related services in the home setting or for the purposes of patient transfer to the home setting: in the State of Delaware may not perform any clinical assessments or provide patient care during the course of their job duties.~~
- 12.1.1 ~~Deliver durable medical equipment to patients including, but not limited to, ventilators and C-PAP/ Bi-PAP devices; and~~
- 12.1.2 ~~Assemble equipment and instruct in the safety and care of the equipment including C-PAP/Bi-PAP for sleep apnea.~~
- 12.2 ~~The UP shall not:~~
- 12.2.1 ~~Perform any clinical assessments including, but not limited to, pulse oximetry;~~
- 12.2.2 ~~Instruct in the use of the equipment delivered; or~~
- 12.2.3 ~~Have any clinical patient contact including touching the patient or placing any device upon the patient while engaged in the set up and instruction of the equipment.~~
- 12.32 ~~Any UP found to have violated the provisions of this section shall be prosecuted for the unlicensed practice of respiratory care.~~

13 DE Reg. 1223 (03/01/10)

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

[1770 Respiratory Care Practice Advisory Council](#)

DIVISION OF PROFESSIONAL REGULATION

Delaware Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 9.0, 10.0 and 14.0. The proposed revisions to this regulation are an attempt to better organize the regulation, come into compliance with statutory changes that have occurred since the regulation was enacted, and remove confusing out-dated language.

The Board will hold a public hearing on the proposed regulation change on August 10, 2011 at 01:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

1900 Board of Nursing

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

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))
24 **DE Admin. Code** 3700

PUBLIC NOTICE

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers has proposed revisions to its rules and regulations.

A public hearing will be held on August 16, 2011 at 2:15 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes revisions to Rule 11.0, which sets forth the list of crimes substantially related to the practice of speech/language pathology, audiology and hearing aid dispensing. Where an applicant has been convicted of a crime on the list, that conviction may impact whether the application is approved by the Board. Further, where a licensee has been convicted of a crime on the list, that conviction may lead to disciplinary proceedings. The proposed amendments expand the list of substantially related crimes to provide greater protection to the public.

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

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

(Break in Continuity of Sections)

11.0 Crimes substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.

- 11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing in the State of Delaware without regard to the place of conviction:
- 11.1.1 Assault in the second degree. 11 **Del.C.** §612.
 - 11.1.2 Assault in the first degree. 11 **Del.C.** §613.
 - 11.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
 - 11.1.4 Terroristic threatening; felony. 11 **Del.C.** §621
 - 11.1.45 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
 - 11.1.56 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
 - 11.1.67 Murder in the second degree. 11 **Del.C.** §635.
 - 11.1.78 Murder in the first degree. 11 **Del.C.** §636.
 - 11.1.9 Unlawful Sexual Contact in the first degree. 11 Del. C. 769
 - 11.1.810 Rape in the fourth degree. 11 **Del.C.** §770
 - 11.1.911 Rape in the third degree. 11 **Del.C.** §771
 - 11.1.4012 Rape in the second degree. 11 **Del.C.** §772
 - 11.1.4413 Rape in the first degree. 11 **Del.C.** §773
 - 11.1.4214 Sexual extortion. 11 **Del.C.** §776
 - 11.1.4315 Continuous sexual abuse of a child. 11 **Del.C.** §778
 - 11.1.16 Dangerous crime against a child. 11 **Del.C.** §777
 - 11.1.17 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A
 - 11.1.18 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778
 - 11.1.19 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 **Del.C.** §778A
 - 11.1.4420 Kidnapping in the second degree. 11 **Del.C.** §783
 - 11.1.4521 Kidnapping in the first degree. 11 **Del.C.** §783A
 - 11.1.4622 Identity theft. 11 **Del.C.** §854
 - 11.1.23 Forgery. 11 Del.C. §861
 - 11.1.4724 Insurance fraud. 11 **Del.C.** §913
 - 11.1.4825 Health care fraud. 11 **Del.C.** §913A
 - 11.1.4926 Dealing in children. 11 **Del.C.** §1100
 - 11.1.2027 Endangering the welfare of a child. 11 **Del.C.** §1102
 - 11.1.28 Crime against vulnerable adult. 11 Del.C. §1105
 - 11.1.2429 Sexual exploitation of a child. 11 **Del.C.** §1108
 - 11.1.2230 Unlawful dealing in child pornography. 11 **Del.C.** §1109
 - 11.1.31 Possession of child pornography. 11 **Del.C.** §1111
 - 11.1.32 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
 - 11.1.2333 Sexual solicitation of a child. 11 **Del.C.** §1112A
 - 11.1.34 Perjury in the first degree. 11 **Del.C.** §1223
 - 11.1.2435 Hate crimes (felony). 11 **Del.C.** §1304(a)

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- 11.1.36 Stalking; felony. 11 Del.C. §1312A
- 11.1.37 Duty to report child abuse or neglect. 16 Del.C. §903
- 11.1.2538 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 Del.C. §1136.
- 11.1.2639 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A
- 11.1.40 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 Del.C. §4767
- 11.1.41 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768
- 11.1.2742 Abuse, neglect, mistreatment or financial exploitation of an infirm adult. 31 Del.C. §3913
- 11.2 Crimes substantially related to the practice speech/language pathology, audiology, and hearing aid dispensing shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.
- 8 DE Reg. 1106 (02/01/05)**

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

[3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers](#)

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 2 Delaware Code, Sections 1802; 29 Delaware Code, Section 8404
(2 Del.C. §1802 and 29 Del.C. §8404)
2 DE Admin. Code 2287

PUBLIC NOTICE

2287 Public Carrier Regulations

The Division of Motor Vehicles of the Department of Transportation is proposing several changes to the current Public Carrier Regulations, relating to several distinct matters.

The first proposed change relates to the existing regulations requiring that the name of the lessee operating a taxi be displayed on every vehicle by painting or permanently affixing this information to the vehicle. When a split-lease is executed or a vehicle is substituted while it is being serviced, the respective name of the lessee is not affixed to the vehicle as required.

This proposed change is in response to several members of the industry that have made a request that a temporary magnetic sign be allowed to post the name of the lessee each time a change is made.

The second proposed change relates to the existing regulations requiring a unique DeIDOT number to be assigned to all charter buses, medical transports, and taxis.

The third proposed change relates to the definition of ambulances that the Division believes should be exempt from the Public Carrier regulation, as these vehicles are already regulated by another state agency.

Public Comment Period

The Department will take written comments on the proposed Amendment to its Standards and Regulations for Public Carriers from July 1, 2011 through July 31, 2011. The proposed Regulations appear below.

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

Russell D. Holleger

Chief of Transportation Services
DelDOT DMV Transportation Services
Phone (302) 744-2729
Cell Phone (302) 632-8497
Fax (302) 739-2143
Email: russelld.holleger@state.de.us

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

[2287 Public Carrier Regulations](#)

DIVISION OF PLANNING AND POLICY

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

PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Background

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to provisions concerning Traffic Signal Agreements and the process of funding the work needed to install such signals.

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

One aspect of this regulatory process involves traffic signal agreements, required to establish the conditions under which such signals will be installed. The current process calls for the funds derived from these agreements to cover the cost for the installation of traffic signals associated with new developments, at such time as the signals are warranted under the Department's standards. However, this process can be onerous for developers, because it presents them with unknown costs that may be outstanding for undetermined periods of time. Further, where applied to residential subdivision entrances, the agreements often remain outstanding after the developer has completed the project, in which case it can be difficult for the Department to collect on them.

The proposed regulation would create a Traffic Signal Revolving Fund to address these concerns and provides a regulatory funding method that is more consistent, predictable and fair than the current arrangement.

Public Comment Period

The Department will take written comments on the proposed provisions concerning Traffic Signal Agreements and the process of funding the work needed to install such signals from July 1, 2011 through July 31, 2011. The proposed Regulations appear below.

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

Cleon L. Cauley, Sr., Deputy Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)

(302) 739-2895 (fax)

cleon.cauley@state.de.us

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

[2309 Standards and Regulations for Subdivision Streets and State Highway Acces](#)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to statutory authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005) 3 **DE Admin. Code** 501, the Delaware Harness Racing Commission issues this Final Order adopting nonsubstantive changes to correct technical errors to the Commission's Rules 8.3.7.1 and 8.3.7.3.1 by deleting the words "and ridgelings" and inserting the word "and" before the word "geldings" in both Rules 8.3.7.1 and 8.3.7.3.1.

At its public meeting on June 14, 2011, the Commission approved nonsubstantive changes to correct technical errors in Rule 8.3.7.1 as follows:

8.3.7.1 With respect to nandrolone, boldenone, stanozolol and testosterone in fillies, mares, and geldings and ridgelings (testosterone and nandrolone in stud horse samples are treated separately in 8.3.7.2):

and in Rule 8.3.7.3.1 as follows:

8.3.7.3.1 First Offense: The horse will be placed on the Vets List and cannot race again until it tests below 100 picograms for Boldenone, Stanozolol, Nandrolone and Testosterone in fillies, mares, and geldings and ridgelings and 2000 picograms for Testosterone and 500 picograms for Nandrolone in intact males. Any and all purse money is forfeited. The trainer is notified for a hearing and a fine not to exceed \$1,500.00 and 15 days full suspension will be assessed absent mitigating circumstances.

As corrected Rule 8.3.7.1 reads:

8.3.7.1 With respect to nandrolone, boldenone, stanozolol and testosterone in fillies, mares, and geldings (testosterone and nandrolone in stud horse samples are treated separately in 8.3.7.2):

and as corrected Rule 8.3.7.3.1 reads:

8.3.7.3.1 First Offense: The horse will be placed on the Vets List and cannot race again until it tests below 100 picograms for Boldenone, Stanozolol, Nandrolone and Testosterone in fillies, mares, and geldings and 2000 picograms for Testosterone and 500 picograms for Nandrolone in intact males. Any and all purse money is forfeited. The trainer is notified for a hearing and a fine not to exceed \$1,500.00 and 15 days full suspension will be assessed absent mitigating circumstances.

IT IS SO ORDERED THIS 14TH DAY OF June, 2011.

Beverly H. Steele, Chairwoman

Robert Brown, Vice Chairman/ Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

Patricia Wagner, Commissioner

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

8.0 Veterinary Practices, Equine Health Medication

(Break in Continuity of Sections)

8.3 Medications and Foreign Substances

(Break in Continuity of Sections)

8.3.7 Anabolic/Androgenic Steroids

8.3.7.1 With respect to nandrolone, boldenone, stanozolol and testosterone in fillies, mares, and geldings ~~and geldings~~ (testosterone and nandrolone in stud horse samples are treated separately in 8.3.7.2):

8.3.7.1.1 Any test result at plasma concentrations below 100 picograms per milliliter will be considered a negative test.

8.3.7.1.2 Any test result at plasma concentration levels at or above 100 picograms per milliliter will be considered a positive test result and subject to sanctions as described in Section 8.3.7.3.

8.3.7.2 With respect to nandrolone and testosterone levels determined in intact male horses:

8.3.7.2.1 Nandrolone

8.3.7.2.1.1 Any test result at plasma concentrations below 500 picograms per milliliter will be considered a negative test.

8.3.7.2.1.2 Any test result at and above plasma concentrations of 500 picograms per milliliter will be considered a positive test and subject to sanctions as described in Section 8.3.7.3.

8.3.7.2.2 Testosterone

8.3.7.2.2.1 Any test result at plasma concentrations below 2000 picograms per milliliter will be considered a negative test.

8.3.7.2.2.2 Any test result at and above plasma concentrations of 2000 picograms per milliliter will be considered a positive test and subject to sanctions as described in Section 8.3.7.3.

8.3.7.3 Sanctions

8.3.7.3.1 First Offense: The horse will be placed on the Vets List and cannot race again until it tests below 100 picograms for Boldenone, Stanozolol, Nandrolone and Testosterone in fillies, mares and geldings ~~and geldings~~ and 2000 picograms for Testosterone and

- 500 picograms for Nandrolone in intact males. Any and all purse money is forfeited. The trainer is notified for a hearing and a fine not to exceed \$1,500.00 and 15 days full suspension will be assessed absent mitigating circumstances.
- 8.3.7.3.2 Second Offense: All sanctions for First Offense, plus trainer may be fined not in excess of \$2,500.00 and subject to 30 days full suspension absent mitigating factors.
 - 8.3.7.3.3 Third Offense: All sanctions for First Offense, plus trainer may be fined \$10,000.00 and/or up to the amount of the purse of the race and subject to revocation of their DHRC License absent mitigating factors.
 - 8.3.7.3.4 Should a horse be claimed from a race where positive findings are confirmed, the claimant has the right to void the claim.

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

[501 Harness Racing Rules and Regulations](#)

THOROUGHBRED RACING COMMISSION

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

PUBLIC NOTICE

Pursuant to 3 Del.C. §4815(b)(3)c. and 3 Del.C. §10103(c), the Delaware Jockey's Health & Welfare Benefit Board issues this Order adopting proposed amendments to the Board's Rules. These rule changes were proposed to amend retired member eligibility and defined for permanently disabled members. The rule changes amend Rules 2.1.2.2 and 2.1.3.1 by removing the existing language and replacing it with new language. Following notice and a public hearing on June 21, 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 June 1, 2011 *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*.
2. These rule changes are proposed to amend retired member eligibility and eligibility defined for permanently disabled members. The rule changes amend Rules 2.1.2.2 and 2.1.3.1 by removing the existing language and replacing it with new language.
3. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on June 21, 2011, at the public hearing on the proposed amendments to the Board's Rules.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on June 21, 2011, at the public hearing. No comments were received by writing. No comments were received by testimony.
2. The Board concludes that the proposal should be adopted to Rules 2.1.2.2 and 2.1.3.1 by removing the existing language and replacing it with new language.
3. The effective date of this Order will be ten (10) days from the publication of this Final Order in the *Register of Regulations* on July 1, 2011.

IT IS SO ORDERED this 21st day of June 2011.

Edward J. Stegemeier, Chairman
Bernard J. Daney, Ex-Officio

Bessie Gruwell, DTHA Board Member
William Hollick, Jockey Board Member
John E. Mooney, DRA Board Member
Heriberto Rivera, Jr., Jockey's Guild Board Member
Esteban Unsihuay, Jockey Board Member

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

1.0 Introduction

- 1.1 These regulations are authorized pursuant to 3 **Del.C.** §10171 and 29 **Del.C.** §4815(b)(3)c which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").
- 1.2 The Delaware Jockeys' Health and Welfare Benefit Board shall consist of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 1010 of **Title 3** or Chapter 4 of **Title 28**, 1 member of the Delaware Horsemen's Association, 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Thoroughbred Racing Commission shall serve as an *ex officio* member, and vote on matters in the event of a tie vote on any issue. All members shall be appointed by the Thoroughbred Racing Commission, and shall serve a two year term.
- 1.3 The Board shall elect a Chairperson from among the appointed members of the Board. The Chairperson shall serve a two year term and may serve consecutive terms. The Chairperson shall be the presiding officer at all meetings of the Board.
- 1.4 The Board shall administer the Fund pursuant to these regulations and other reasonable criteria for benefit eligibility.
- 1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 **Del.C.** §4815(b)(3)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.
- 1.6 The Fund will be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned by the Fund will be reinvested in the Delaware Jockeys' Health and Welfare Benefit Fund.
- 1.7 The Board shall use the Fund to provide for jockeys who regularly ride in Delaware, health benefits for active, disabled and retired jockeys. The Board may also expend usual and customary expenses for administrative purposes from the Fund.
- 1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.
- 1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

2.0 Eligibility Criteria for Health Coverage

- 2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
 - 2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had twenty-five (25) mounts in a Delaware Park season at Delaware Park; and
 - 2.1.1.1 If the jockey's Delaware Park mounts are less than 100 in a Delaware Park season, then 50% or more of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.

- 2.1.1.2 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.
- 2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:
 - 2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or
 - 2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years ~~and had at least 5,000 career mounts at any track.~~
- 2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:
 - 2.1.3.1 ~~Qualification as an active Delaware jockey as defined by 2.1.1 for at least three years preceding determination of permanent disability. The jockey was an active participant in the Delaware Jockeys' Health and Welfare Fund benefit program at the time of the on-track accident that resulted in total and permanent disability; and~~
 - 2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.
- 2.2 A jockey and/or the jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage beginning on the first of the month after it can be determined the eligibility requirement has been met, and continuing until December 31st of the next calendar year.
- 2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
 - 2.3.1 Eligibility for coverage for dependants will be determined by the company providing the insurance coverage.

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

13 DE Reg. 1536 (06/01/10)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 505

REGULATORY IMPLEMENTING ORDER

505 High School Graduation Requirements and Diplomas

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas to add specific course names. The addition of the specific course names is aligning the graduation requirements to the Delaware Comprehensive Assessment System (DCAS) end-of-course exams.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 3, 2011 in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities related to sentence structure and more clearly defining the World Language assessment related to speaking to better accommodate American Sign Language.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to align the graduation requirements to the Delaware Comprehensive Assessment System (DCAS) end-of-course exams.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas to add specific course names attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on June 16, 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 16th day of June 2011.

Department of Education

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

Approved this 16th day of June 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.

505 High School Graduation Requirements and Diplomas**1.0 Definitions:**

"Career Pathway" means the three (3) credits of pre planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area. The Career Pathway shall be included in the Student Success Plan.

"Core Course Credit" means a credit in an English Language Arts, Mathematics, Science or Social Studies course.

"Credit" means the acquisition of skills and knowledge at a satisfactory level as determined by the district and charter school boards through 135 hours (a Carnegie Unit) of actual classroom instruction or through locally approved options contained in Section 8.0.

"Credit for Computer Literacy" means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.

"Department" means the Delaware Department of Education.

"English Language Arts" means those components of reading, writing and oral communication that are included in the State Content Standards for high school English Language Arts as required in 14 DE Admin. Code 501.

"Health Education" means those components that are included in the State Content Standards for high school health education as required in 14 DE Admin. Code 501.

"High School" means grades 9 through 12.

"Mathematics" means those components of number sense, algebra, geometry, statistics and probability combined with problem solving, reasoning, communicating, and making connections that are included in the State Content Standards for high school mathematics as required in 14 DE Admin. Code 501 either through integrated courses or in courses titles such as Algebra I, Algebra II, Geometry, Trigonometry, Pre-Calculus, Calculus, Discrete Mathematics, Statistics, and Probability.

"Physical Education" means those components that are included in the State Content Standards for high school physical education as required in 14 DE Admin. Code 501.

"Science" means those components of the nature of science which include inquiry, materials and their properties, energy and its effects, Earth in space, Earth's dynamic systems, life processes, diversity and continuity of living things, and ecology that are included in the State Content Standards for high school science as required in 14 DE Admin. Code 501 either through integrated courses or in course titles such as Earth Science, Biology, Chemistry and Physics.

"Social Studies" means those components of civics, economics, geography, and history that are included the State Content Standards for high school social studies as required in 14 DE Admin. Code 501 either through integrated courses or in course titles such as United States History, World History, Geography, Economics, and Civics.

"Student Success Plan (SSP)" means a plan encompassing a minimum of five years including one year beyond high school developed and updated at least annually by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver. The student's plan includes courses needed in preparation for immediate entry into the work force or opportunities in post secondary education. The plan also includes the support services necessary for the student to graduate from high school. An additional year of high school may be an option for inclusion in the Student Success Plan.

"Support Services" means those educational interventions such as tutoring; extra time before school, in school, or after school; summer school, an extra year(s) of high school or any other strategy to provide student educational assistance.

"World Languages" RESERVED

10 DE Reg. 1802 (06/01/07)

12 DE Reg. 934 (01/01/09)

~~2.0 Current Graduation Requirements~~

~~2.1 A public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two credits in order to graduate including: 4 credits in English Language Arts, 3 credits in mathematics, 3 credits in science, 3 credits in social studies, 1 credit in physical education, 1/2 credit in health, 1 credit in computer literacy, 3 credits in a Career Pathway, and 3 1/2 credits in elective courses.~~

~~40 DE Reg. 1802 (06/01/07)~~

~~32.0 Graduation Requirements Beginning with the Class of 2011 (Freshman Class of 2007-2008) Credit Requirements for the Graduation Class of 2011 (Freshman Class of 2007-2008) through the Graduation Class of 2014 (Freshman Class of 2010-2011)~~

~~32.1 [Beginning with For] the graduating class of 2011, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two (22) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in~~

Mathematics; three (3) credits in Science, three (3) credits in Social Studies, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.

- ~~32.1.1~~ Students shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.
- ~~32.1.2~~ Scientific investigations related to the State Science Standards shall be included in all three science course requirements.
- ~~32.1.3~~ During the senior year students shall maintain a credit load each semester that earns them at least a majority of credits that could be taken that semester ~~including one (1) of the four credits required in Mathematics. A credit in Mathematics shall be earned during the senior year.~~
- ~~32.1.3.1~~ Senior year credits shall include regular high school course offerings, the options available in 8.0, or a combination of both.
 - ~~3.1.3.1.1~~ Options for the senior year in 3.1.3.1 that the districts and charter schools provide shall be submitted to the Department with a copy to the office of the State Board of Education for review.

53.0 Credit Requirements Beginning with the Graduation Class of 2015 (Freshman Class of 2011-2012)

- ~~53.1~~ **[Beginning with For]** the graduating class of 2015, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.
 - ~~3.1.1~~ The student shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.
 - ~~3.1.2~~ Scientific investigations related to the State Science Standards shall be included in all three science course requirements.
 - ~~3.1.3~~ During the senior year the student shall maintain a credit load each semester that earns the student at least a majority of credits that could be taken that semester. A credit in Mathematics shall be earned during the senior year.
 - ~~3.1.3.1~~ Senior year credits shall include regular high school course offerings, the options available in 8.0, or a combination of both.
- ~~53.2~~ World Language: ~~(RESERVED)~~ Students may fulfill the two (2) credit World language requirement by either:
 - ~~3.2.1~~ Earning a minimum of two (2) World Language credits in the same language or,
 - ~~3.2.2~~ Demonstrating Novice-high or higher proficiency level on a nationally recognized assessment of language proficiency, except English, in the skill areas of **[speaking oral or signed expressive and receptive communication]**, reading and writing, that uses the levels of proficiency as identified by the American Council for the Teaching of Foreign Language, or as approved for use by the Delaware Department of Education.

10 DE Reg. 1802 (06/01/07)
 12 DE Reg. 934 (01/01/09)

4.0 Credit Requirements Beginning with the Graduation Class of 2016 (Freshman Class of 2012-2013)

- ~~4.1~~ Beginning with the graduating class of 2016, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.

- 4.1.1 The student shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses. The student shall complete an Algebra II or Integrated Mathematics III course as one of the Mathematics credits.
- 4.1.2 Scientific investigations related to the State Science Standards shall be included in all three science course requirements. The student shall complete a Biology course as one of the Science credits.
- 4.1.3 The student shall complete an English II course as one of the English Language Arts credits.
- 4.1.4 The student shall complete a U. S. History course as one of the Social Studies credits.
- 4.1.5 During the senior year the student shall maintain a credit load each semester that earns the student at least a majority of credits that could be taken that semester. A credit in Mathematics shall be earned during the senior year.
 - 4.1.5.1 Senior year credits shall include regular high school course offerings, the options available in 8.0, or a combination of both.

54.2 World Language; (RESERVED) Students may fulfill the two (2) credit World language requirement by either:

- 4.2.1 Earning a minimum of two (2) World Language credits in the same language or,
- 4.2.2 Demonstrating Novice-high or higher proficiency level on a nationally recognized assessment of language proficiency, except English, in the skill areas of **[speaking oral or signed expressive and receptive communication]**, reading and writing, that uses the levels of proficiency as identified by the American Council for the Teaching of Foreign Language, or as approved for use by the Delaware Department of Education.

45.0 Monitoring Student Progress (Personalizing the High School Experience)

- 45.1 Beginning with the 2007-2008 school year, every eighth and ninth grade student shall have a Student Success Plan (SSP) developed by the student, the student's advisor, at least one other school staff member and the student's parent(s), guardian(s) or relative caregiver. Each school year thereafter a grade shall be added so that by the 2011-2012 school year, every student in grades 8 through 12 shall have a Student Success Plan. [For a student with an Individualized Education Program (IEP) the Student Success Plan (SSP) shall also incorporate the other aspects of the transition plan required by 14 DE Admin. Code 925.
- 45.2 Each local school district and charter school shall establish a process for developing Student Success Plans that includes:
 - 45.2.1 Actively monitoring student progress, on an ongoing basis and, at a minimum, by the end of each marking period in those courses required for graduation,
 - 45.2.2 Providing support services if a student is failing or in danger of failing courses required for graduation, and
 - 45.2.3 Annual updating of the Student Success ~~plans~~ Plan by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver] and others as appropriate.
 - 45.2.4 Following the guidelines for Career and Technical Education (CTE) programs of study outlined in the CTE State Plan.
 - 45.2.5 Reviewing each student's transcript at the end of the first and second year of high school to determine if the student is on track to graduate based on the following criteria:
 - 45.2.5.1 At the end of the first year of high school the student has earned at least three (3) core course credits and two (2) other course credits for a total of five (5) course credits; and
 - 45.2.5.2 At the end of the second year of high school the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits.
 - 45.2.5.3 For a student with an Individualized Education Program (IEP), on track to graduate shall be consistent with 45.2.5.1 and 45.2.5.2 unless otherwise determined by the student's IEP Team.

10 DE Reg. 1802 (06/01/07)

12 DE Reg. 934 (01/01/09)

6.0 Career Pathway

- 6.1 Local school districts and charter school boards shall establish policies concerning the purpose, content, development, and approval of Career Pathways.

10 DE Reg. 1802 (06/01/07)

7.0 Additional Credit Requirements

- 7.1 District and charter school boards may establish additional credit requirements for graduation above the minimum number of credits required by the Department.

10 DE Reg. 1802 (06/01/07)

8.0 Options for Awarding Credit Toward High School Graduation

- 8.1 District and charter school boards are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.

8.1.1 Courses taken at or through an accredited community college, two or four year college.

8.1.2 Voluntary community service as defined in 14 **Del.C.** §§8901A and 8902A.

8.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.

8.1.4 Independent study.

8.1.5 Correspondence Courses.

8.1.6 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.

8.1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district or to a charter school.

8.1.8 Course credit transferred from another high school.

8.1.9 Course credit earned through summer or evening school classes, as a member of the military service or as part of the James H. Groves Adult High School.

8.1.10 Tutoring programs taught by a teacher certified in the subject being taught.

8.1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.

9.0 High School Diplomas and the Certificate of Performance

- 9.1 A State sanctioned diploma shall be granted to students who meet the state and local district or charter school requirements for graduation pursuant to 14 **Del.C.** §152.

9.2 A State sanctioned Certificate of Performance shall be granted to students who meet the requirements of 14 **Del.C.** §152.

9.3 Diplomas from one school year shall not be issued after December 31 of the next school year.

9.4 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not

have the records then the student should contact the Department in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).

- 9.5 State High School Diploma for World War II Veterans Pursuant to 14 **Del.C.** §159
- 9.5.1 “World War II Veteran” means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.
- 9.5.2 The Department shall provide a high school diploma to any World War II veteran who:
- 9.5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.
- 9.5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,
- 9.5.2.3 Was discharged from the armed forces under honorable circumstances.
- 9.5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 9.5.2.1 through 9.5.2.3.
- 9.5.4 Applications for this high school diploma shall be made on forms designated by the Department and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate’s honorable discharge papers attached to the application.

4 DE Reg. 995 (12/01/00)

5 DE Reg. 625 (09/01/01)

7 DE Reg. 1344 (04/01/04)

10 DE Reg. 547 (09/01/06)

12 DE Reg. 934 (01/01/09)

14 DE Reg. 1155 (05/01/11)

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

701 Unit Count

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 701 Unit Count. The changes are because of House Bill No. 1 of the 146th General Assembly related to needs based funding. Additionally, an amendment was made to be consistent with the repeal of 14 **DE Admin. Code** 940 Early Admission To Kindergarten for Gifted Students.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 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 endorsing the amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count in order to make changes for the needs based legislation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 701 Unit Count attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 701 Unit Count

hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 701 Unit Count amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 701 Unit Count in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on June 16, 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 16th day of June 2011.

Department of Education

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

Approved this 16 day of June 2011

701 Unit Count

***Please note that no changes were made to the regulation as originally proposed and published in the May 2011 issue of the *Register* at page 1161 (14 DE Reg. 1161). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[701 Unit Count](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1006

REGULATORY IMPLEMENTING ORDER**1006 Delaware Interscholastic Athletic Association (DIAA)****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** 1006 Delaware Interscholastic Athletic Association (DIAA). The amendments include: language intended to clarify the types of schools that may join DIAA; establish new minimum criteria for participation in state tournaments; authorization for the DIAA Executive Director to utilize special investigators/committees and delegate authority in the event of a conflict of interest; language intended to clarify the powers and duties of the administrative head of school and require that practices and contests be conducted in a safe manner; revisions to procedures relating to the investigation and reporting of violations to allow for an expedited or alternative process when warranted; and, revisions to required documentation for waiver requests; and other changes intended to be editorial in nature.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 3, 2011, in the form hereto attached as *Exhibit "A"*. The State Board of Education made comment during their working session on May 19th. Changes were made in this implementing order to address the State Board of Education concerns. The Department did not receive any other comments. The changes to this regulation include the addition of "headmaster" to the definition of "Administrative Head of School" and word order in section 2.0.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) 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** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) 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** 1006 Delaware Interscholastic Athletic Association (DIAA) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) 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 June 16, 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 16th day of June 2011.

Department of Education

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

Approved this 16th day of June 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.

1006 Delaware Interscholastic Athletic Association (DIAA)

1.0 Organization Name, Purpose, and Definitions

1.1 The organization shall be known as the Delaware Interscholastic Athletic Association (DIAA) and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's Rules and Regulations governing the conduct of interscholastic athletics.

1.2 Definitions

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

"Administrative Head of School" means the chief or head individual in charge of the school traditionally referred to or generally known as the principal **[or headmaster]**.

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Chapter 3.

"Department" means the Delaware Department of Education.

"Guardian or Legal Guardian" means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and shall must

be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

“**Individualized Education Program**” or “**IEP**” means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

“**Legally in attendance**” means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

“**Member school**” means a full or associate member school of the DIAA.

“**Principal**” or “**Headmaster**” means the Administrative Head of School and includes but is not limited to Head of School, Administrator, Executive Director, or Charter Head.

“**School day(s)**” shall mean actual school attendance days during the regular academic school year including a partial day that children are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

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

11 DE Reg. 1632 (06/01/08)

2.0 Membership in DIAA

2.1 Full Member Schools: Any **[middle and]** secondary ~~**[and middle]**~~ school located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, including nonpublic, private, and public, career technical, and charter schools, as authorized by Title 14 of the Delaware Code ~~Ch. 5~~, may become a full member school of DIAA. Membership requires the ~~by~~ payment of dues and a signed affirmation of the obligations of membership.

2.1.1 A full member school is a non voting member of DIAA and does not participate in its day to day governance. A full member school may at any time make appropriate recommendations for policy action to the DIAA Board of Directors for its consideration.

2.1.2 Membership shall include all **[middle and]** secondary ~~**[and middle]**~~ and middle public schools participating in interscholastic athletics and such nonpublic schools that may elect to become full or associate members.

2.2 Associate Member School: Any school, not a full member school, located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, may apply for status as an associate member school provided the applicant sets forth good cause and sufficient justification why such school cannot become a full member school. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.

2.2.1 Associate Membership Criteria: The membership application shall contain a statement that the school will abide by the Rules and Regulations of the Department of Education and the Delaware Interscholastic Athletic Association and in those cases wherein the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate member school competes with a full member school of DIAA or a comparable state association; participates in DIAA sanctioned tournaments and meets in cross country, indoor track, wrestling (except dual team tournaments), outdoor track, and golf involving the aforementioned full member schools; or participates in a state championship event.

2.2.2 Such associate member schools, after initial approval, shall be reviewed each year by the DIAA Board of Directors for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

2.3 Membership Dues Schedule: Yearly dues for full member and associate member schools shall be as follows:

2.3.1 \$500 for middle schools.

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- 2.3.1.1 If a middle school and high school are located in the same administrative unit and the combined student enrollment of grades 6th through 12th is 499 or less then the school shall pay only the high school fee and be exempt from the middle school fee.
- 2.3.2 \$750 for high schools with enrollments of 499 or less.
- 2.3.3 \$1,000 for high schools with enrollments of 999 or less.
- 2.3.4 \$1,250 for high schools with enrollments of 1,499 or less.
- 2.3.5 \$1,500 for high schools with enrollments of 1,999 or less.
- 2.3.6 \$1,750 for high schools with enrollments of 2,000 or more.
- 2.3.7 Enrollment figures are based on the September 30 enrollment count from the prior school year as verified by the Department of Education.
- 2.3.78 Membership dues shall be paid each year by October 1st. Member schools which have not paid dues by January 1st shall be assessed a 10% late fee. Full member and associate member schools which fail to comply may be subject to penalties as determined by the DIAA Board of Directors.
- 2.4 Participation in State Championship Tournaments and Meets: ~~Any member high school in good standing, is sponsoring a team in a given sport, and is in compliance with all applicable DIAA Rules and Regulations shall be eligible for the DIAA approved state championship tournament and meet in that sport. Member schools must meet all the following criteria to be eligible to participate in the DIAA approved state championship tournament and meet:~~
- 2.4.1 Be in compliance with all DOE and DIAA regulations.
- 2.4.2 Be a DIAA member school in good standing including but not limited to paying all fees.
- 2.4.3 Sponsor a team in the given sport.
- 2.4.4 Be in compliance with and meet all requirements of the tournament manual for that sport.
- 2.4.5 Sponsor one varsity sport per season, co-ed schools must sponsor at least one varsity sport per gender per season.
- 2.4.6 Sponsor a minimum of two grades, one of which must be the eleventh grade, and
- 2.4.7 Has been a DIAA member school for a minimum of two full school years (eligible in the 3rd year).
- 2.5 Compliance with Regulations: Member schools shall comply with the regulations of the Delaware Interscholastic Association and acceptance of membership shall be construed as an agreement to that effect.
- 11 DE Reg. 1632 (06/01/08)**

***Please note that no additional changes were made to the regulation as originally proposed and published in the May 2011 issue of the *Register* at page 1166 (14 DE Reg. 1166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1006 Delaware Interscholastic Athletic Association \(DIAA\)](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1007

REGULATORY IMPLEMENTING ORDER

1007 DIAA Sportsmanship

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 1007 DIAA Sportsmanship. The amendments include: creating and implementing athletic policies relating to

bullying, hazing and taunting; provision to allow an expedited investigation for violations of the sportsmanship code when warranted; clarifying language prohibiting suspended athletes and coaches from being present at athletic contests during their suspension; provision to appeal a suspension resulting from a game ejection and stipulating those decisions may not be appealed to the Board of Directors; and other changes intended to be editorial in nature.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 3, 2011, in the form hereto attached as *Exhibit "A"*. The State Board of Education made comment during their working session on May 19th. Changes were made in this implementing order to address the State Board of Education concerns. The Department did not receive any other comments. The changes to this regulation include the addition of "headmaster" to the definition of "Administrative Head of School"; adding the words "of Delaware" in the definition of "State Board"; and adding post season play to the provisions related to the process for investigations.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship 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** 1007 DIAA Sportsmanship. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1007 DIAA Sportsmanship attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1007 DIAA Sportsmanship 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** 1007 DIAA Sportsmanship amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1007 DIAA Sportsmanship 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 June 16, 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 16th day of June 2011.

Department of Education

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

Approved this 16th day of June 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.

1007 DIAA Sportsmanship

(Break in Continuity)

2.0 Processing Violations

2.1 Procedures

- 2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.
- 2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.
- 2.1.2.1 However, investigations involving contest ejections or altercations involving students or coaches may require an expedited procedure and must be reported to the Executive Director within 24 hours. The Executive Director is authorized to expedite the procedure in order to assure a ruling prior to the next contest played at that level of competition [including post season play].

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2011 issue of the *Register* at page 1177 (14 DE Reg. 1177). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1007 DIAA Sportsmanship](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1008

REGULATORY IMPLEMENTING ORDER

1008 DIAA Junior High and Middle School Interscholastic Athletics

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 1008 DIAA Junior High and Middle School Interscholastic Athletics. The amendments include: language intended to clarify the process to appeal for a forfeit; language intended to clarify scrimmage rules and restrictions regarding grade levels of opponents; a new definition of "Attendance Zone"; language intended to clarify residency requirements for students with shared placement or no placement order; striking change of course of study as an exemption to the transfer rule; addition of the "internet and other forms of media" to amateur eligibility rules; provisions to allow four semesters of eligibility for students attending schools competing in non-weight classified football; language intended to clarify member school and executive director responsibilities for determining eligibility; establishing April 1 as the earliest date for a preparticipation physical evaluation (PPE), students without a PPE are ineligible athletes and language intended to clarify who may act as a qualified healthcare professional; establishing a concussion protocol; relaxing requirements for the first 3 days of football practice and an expanded definition of a "practice" incorporating additional health and safety protective measures for student-athletes; adding the definition of a week; clarifying when two sports are different; moving language from an FAQ to regulation regarding who may participate in "open gym" and "conditioning" programs; revisions to coaching out of season regulations; revisions regarding use of influence for athletic purposes; and other changes intended to be editorial in nature.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 3, 2011, in the form hereto attached as *Exhibit "A"*. The State Board of Education made comment during their working session on May 19th. Changes were made in this implementing order to address the State Board of Education concerns. The Department did not receive any other comments. The changes to this regulation include the addition of "headmaster" to the definition of "Administrative Head of School" and adding the words "of Delaware" in the definition of "State Board" and changes to the concussion policy.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 1008 DIAA Junior High and Middle

School Interscholastic Athletics in order 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** 1008 DIAA Junior High and Middle School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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 1008 DIAA Junior High and Middle School Interscholastic Athletics** amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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 June 16, 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 16th day of June 2011.

Department of Education

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

Approved this 16th day of June 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.

1008 DIAA Junior High and Middle School Interscholastic Athletics

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

[1008 DIAA Junior High and Middle School Interscholastic Athletics](#)

OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1009

REGULATORY IMPLEMENTING ORDER**1009 DIAA High School Interscholastic Athletics****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** 1009 DIAA High School Interscholastic Athletics. The amendments include: language intended to clarify the process to appeal for a forfeit; language intended to clarify scrimmage rules and restrictions regarding grade levels

of opponents; a new definition of "Attendance Zone"; language intended to clarify residency requirements for students with shared placement or no placement order; expanding the number exemptions to the transfer rule, adding language regarding transfers for athletic advantage and striking change of course of study as an exemption to the transfer rule; addition of the "internet and other forms of media" to amateur eligibility rules; language intended to clarify member school and executive director responsibilities for determining eligibility; establishing April 1 as the earliest date for a preparticipation physical evaluation (PPE), students without a PPE are ineligible athletes and language intended to clarify who may act as a qualified healthcare professional; establishing a concussion protocol; updating the wrestling weight control program; relaxing requirements for the first 3 days of football practice and an expanded definition of a "practice" incorporating additional health and safety protective measures for student-athletes; clarifying when two sports are different; moving language from an FAQ to regulation regarding who may participate in "open gym" and "conditioning" programs; revisions to coaching out of season regulations; revisions regarding use of influence for athletic purposes; and other changes intended to be editorial in nature.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 3, 2011, in the form hereto attached as *Exhibit "A"*. The State Board of Education made comment during their working session on May 19th. Changes were made in this implementing order to address the State Board of Education concerns. The Department did not receive any other comments. The changes to this regulation include the addition of "headmaster" to the definition of "Administrative Head of School" and adding the words "of Delaware" in the definition of "State Board" and changes to the concussion policy.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics 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** 1009 DIAA High School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics 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** 1009 DIAA High School Interscholastic Athletics amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics 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 June 16, 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 16th day of June 2011.

Department of Education

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

Approved this 16th day of June 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

Gregory Coverdale

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan
Barbara B. Rutt

James L. Wilson, Ed.D.

1009 DIAA High School Interscholastic Athletics

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

[1009 DIAA High School Interscholastic Athletics](#)

PROFESSIONAL STANDARDS BOARD

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

REGULATORY IMPLEMENTING ORDER

1598 Delaware Professional Development Standards

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt regulation 14 **DE Admin. Code** 1598 Delaware Professional Development Standards. The Department of Education has encouraged the adoption of this regulation in order to establish State-wide expectations for professional development and to meet the Delaware *Race To The Top* pledge of ensuring that all professional development and supports are effective, by creating a statewide professional development certification system for professional development, measuring student and participant outcomes, and continuously improving programs. This regulation sets forth the standards for educator's professional development in Delaware.

Notice of the proposed adoption of the regulation was published in the *Delaware Register of Regulations* on May 1, 2011. The Publication invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens who expressed concern about the lack of explicit charter school references and the use of the terms 'adult' and 'educator'. The Professional Standards Board took notice of these concerns, but determined that a change was not necessary. The Board notes that the standards are adopted verbatim and amending the terms would be inappropriate.

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1598 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF JUNE, 2011

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

IT IS SO ORDERED the 16th day of June, 2011.

Department of Education

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

Approved this 16th day of June, 2011.

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	James L. Wilson, Ed.D.
Barbara B. Rutt	

1598 Delaware Professional Development Standards

1.0 Content

The National Staff Development Counsel (NSDC[, 2001]) Standards for Staff Development connect professional development and student learning, and acknowledge that all educators have a responsibility to learn in order to improve student performance.

In accordance with 14 Del.C. §1205(b), the NSDC [2001] Standards are adopted as Delaware's Professional Development standards. The NSDC Standards shall serve as the foundation for professional development for Delaware educators.

2.0 Context Standards

2.1 Professional Development that improves the learning of all students:

- 2.1.1 Organizes adults into learning communities whose goals are aligned with those of the school and district.
- 2.1.2 Requires skillful school and district leaders who guide continuous instructional improvement.
- 2.1.3 Requires resources to support adult learning and collaboration.

3.0 Process Standards

- 3.1 Professional Development that improves the learning of all students:
 - 3.1.1 Uses disaggregated student data to determine adult learning priorities, monitor progress, and help sustain continuous improvement.
 - 3.1.2 Uses multiple sources of information to guide improvement and demonstrate its impacts.
 - 3.1.3 Prepares educators to apply research to decision making.
 - 3.1.4 Uses learning strategies appropriate to the intended goal.
 - 3.1.5 Applies knowledge about human learning and change.
 - 3.1.6 Provides educators with the knowledge and skills to collaborate.

4.0 Content Standards

- 4.1 Professional Development that improves the learning of all students:
 - 4.1.1 Prepares educators to understand and appreciate all students, create safe, orderly, and supportive learning environments, and hold high expectations for their academic achievement.
 - 4.1.2 Deepens educators' content knowledge, provides them with research-based instructional strategies to assist students in meeting rigorous academic standards, and prepares them to use various types of classroom assessments appropriately.
 - 4.1.3 Provides educators with knowledge and skills to involve families and other stakeholders appropriately.

14 DE Reg. 1187 (05/01/11)

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

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))
16 DE Admin. Code 3201

ORDER

3201 Skilled and Intermediate Care Nursing Facilities

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Skilled and Intermediate Care Nursing Facilities. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code, Section 10114, with authority prescribed by 29 Delaware Code, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 Delaware Code, Section 10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 1, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposal amends existing Regulation 3201 – Skilled and Intermediate Nursing Care Facilities. The proposed change will amend the regulation relative to the tuberculin testing for employees and newly admitted residents.

Statutory Authority

16 Del.C. Chapter 11, Nursing Facilities and Similar Facilities

Background

DLTCRP identified the need to update various components of the existing regulation governing the tuberculin testing for employees and newly admitted residents to mirror, and adapt with changes to, the Centers for Disease Control requirements.

Summary of Proposed Amendment

This regulatory proposal amends the existing regulations as outlined below:

- Clarify the type of residents whose test results must be on file.
- Clarifies the type of testing required for employees.
- Requires an evaluation of any person having a positive skin test but a negative x-ray

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

Both entities endorsed the proposed revisions to the regulations.

Response: No response is required.

FINDINGS OF FACT:

The Department finds that the proposed changes set forth in the May 2011 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3201 Skilled and Intermediate Care Nursing Facilities is adopted and shall be final effective August 1, 2011.

Rita Landgraf, Secretary, DHSS

3201 Skilled and Intermediate Care Nursing Facilities

***Please note that no changes were made to the regulation as originally proposed and published in the May 2011 issue of the *Register* at page 1189 (14 DE Reg. 1189). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[3201 Skilled and Intermediate Care Nursing Facilities](#)

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 **Del.C.** §7903(10))
16 **DE Admin. Code** 3225

ORDER

3225 Assisted Living Facilities

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Assisted Living Facilities. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114, with authority prescribed by 29 **Del.C.** §7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Del.C.** §10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 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 PROPOSED CHANGE

Statutory Authority

16 **Del.C.** Ch. 11, Nursing Facilities and Similar Facilities

Background

DLTCRP identified the need to update various components of the existing regulation governing the tuberculin testing for employees and newly admitted residents to mirror, and adapt with changes to, the Centers for Disease Control requirements. Additionally, we identified the need to clear up some minor technical items.

Summary of Proposal

This regulatory proposal amends the existing regulations as outlined below:

- Clarify the type of residents whose test results must be on file.
- Clarifies the type of testing required for employees.
- Requires an evaluation of any person having a positive skin test but a negative x-ray.
- Minor technical changes in three other areas; Glossary, Resident Waivers and Medication Management.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor’s Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

First was a recommendation that §6.6 be amended by substituting “the resident will be adversely affected” for “residents will be adversely affected.”

Response: The Division concurs that this is appropriate because the focus of this regulation is on an individual resident, not the residents in general. The section will be amended.

Second was the recommendation that § 6.6 be amended by substituting “transfer and discharge” for “transfer.”

Response: The Division concurs that this is appropriate because the statute referenced in the regulation [Title 16 Del.C. §1121(18)] addresses both transfer and discharge. The section will be amended.

FINDINGS OF FACT:

The Department finds that the proposed changes set forth in the May 2011 *Register of Regulations* should be adopted, subject to the modifications set forth above which are not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3225 Assisted Living Facilities, with the modifications indicated herein, is adopted and shall be final effective August 1, 2011.

Rita Landgraf, Secretary, DHSS

3225 Assisted Living Facilities

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

[3225 Assisted Living Facilities](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XIX Medicaid State Plan Program Integrity

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 Program Integrity, specifically, *Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 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 amends the Title XIX Medicaid State Plan regarding General Program Administration. Specifically, this plan amendment implements a Medicaid payment provision entitled, *Prohibition on Payments to Institutions or Entities Located Outside of the United States*.

Statutory Authority

Patient Protection and Affordable Care Act (PPACA), P.L. 111-148

Background

Section 6505 of the Affordable Care Act amends section 1902(a) of the Social Security Act (the Act), and requires that a State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States (U.S.).

For purposes of implementing this provision, section 1101(a)(2) of the Act defines the term "United States" when used in a geographical sense, to mean the "States." Section 1101(a)(1) of the Act defines the term "State" to include the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, when used under Title XIX.

The phrase, "items or services provided under the State plan or under a waiver" refers to medical assistance for which the State claims Federal funding under section 1903(a) of the Act. Tasks that support the administration of the Medicaid State plan that may require payments to financial institutions or entities located outside of the U.S. are not prohibited under this statute. For example, payments for outsourcing information processing related to plan administration or outsourcing call centers related to enrollment or claims adjudication are not prohibited under this statute.

However, payments for items or services provided under the State plan to financial institutions or entities such as provider bank accounts or business agents located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are prohibited by this provision. Further, this provision prohibits payments to telemedicine providers located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Additionally, payments to pharmacies located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are not permitted.

States will need to submit a State plan amendment (SPAs) to provide a statement of compliance with this prohibition on payments to any financial institution or entity located outside of the U.S. for any items or services provided under the State plan or under a waiver. States shall submit a SPA no later than June 30, 2011, with an effective date of June 1, 2011.

Summary of Proposed Change

The proposed changes to Section 4 (new Section 4.4), General Program Administration, with regard to compliance of 1902(a)(80) of the Social Security Act, P.L. 111-148 (section 6505) which ensures that Delaware shall not provide any payments for items or services provided under the State Plan or under a waiver to any financial institution or entity located outside of the United States.

The provisions of this amendment are effective June 1, 2011 and subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

GACEC and SCPD endorse the proposed regulation. Based on a change in federal law, federal Medicaid funds cannot be paid to institutions or entities outside the United States. This includes pharmacy providers. CMS is requiring states to submit a conforming plan amendment by June 30, 2011.

Agency Response: DMMA thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding General Program Administration, specifically, *Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States* is adopted and shall be final effective July 10, 2011.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the May 2011 issue of the Register at page 1191 (14 DE Reg. 1191). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Title XIX Medicaid State Plan Program Integrity](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Estate Recovery

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 and the Division of Social Services Manual (DSSM) regarding *Estate Recovery – Exempt Medicare Cost Sharing Benefits Paid*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 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 amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the *Prohibition of Estate Recovery of Medicare Cost Sharing* in compliance with Section 115 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

Statutory Authority

Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), P.L. 110-275

Background

Section 115 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) changed federal estate recovery provisions. Effective January 1, 2010, MIPPA requires States to exempt Medicare cost sharing benefits (Part A and Part B premiums, deductibles, coinsurance and copayments) paid under the Medicare Savings Programs (MSPs) from estate recovery under 1917(b)(1) of the Social Security Act

The intent of this provision is to encourage dual eligible beneficiaries to more fully utilize Medicare cost sharing benefits available through the MSPs and allay concerns that Medicaid estate recovery will, after their death, lay claim to recover the value of these cost sharing benefits from their estates.

The exemption applies to the following groups of dual eligibles: qualified Medicare beneficiaries (QMB), specified low-income Medicare beneficiaries (SLMB), qualified individuals (QI), and qualified disabled and working individuals (QDWI).

MIPPA does not exempt MSP-eligible individuals from all estate recovery. The service which is exempted from estate recovery is the MSP cost sharing benefit, as indicated above. Benefits not related to MSP cost sharing are still subject to estate recovery for MSP.

Summary of Proposal

Effective with dates of service on or after January 1, 2010, this plan amendment revises estate recovery for certain Medicare cost sharing expenses for duly eligible individuals who were over age 55 when the expense was incurred. To comply with section 115 of MIPPA, this state plan amendment provides that medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligible individuals: QMB, SLMB, QI and QDWI. This protection extends to medical assistance for four Medicare cost sharing benefits including Part A and B premiums, deductibles, coinsurance and co-payments.

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

Fiscal Impact Statement

This plan amendment imposes no increase in cost on the General Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

Federal legislation (§115 of MIPPA) was enacted to exempt Medicare cost sharing benefits (paid with Medicaid funds) from estate recovery. This state plan amendment provides that medical assistance for Medicare cost sharing is protected from estate recovery for certain categories of dual eligible individuals. The rationale is as follows:

The intent of this provision is to encourage dual eligible beneficiaries to more fully utilize Medicare cost sharing benefits available through the MSPs and allay concerns that Medicaid estate recovery will, after their death, lay claim to recover the value of these cost sharing benefits from their estates.

The GACEC and the SCPD endorse the proposed regulation.

Agency Response: DMMA thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding *Estate Recovery – Exempt Medicare Cost Sharing Benefits Paid* is adopted and shall be final effective July 10, 2011.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the May 2011 issue of the *Register* at page 1191 (14 DE Reg. 1191). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Estate Recovery](#)

FINAL REGULATIONS

DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM: Fair Hearing Practices and Procedures

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to *Fair Hearing Practices and Procedures*. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the January 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 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 PROPOSED CHANGE

The proposed changes described below amend administrative policies in the Division of Social Services Manual (DSSM) regarding *Fair Hearing Practices and Procedures*.

Statutory Authority

- 7 CFR §273.15, *Fair Hearings*
- 7 CFR §271.7, *Allotment reduction procedures*
- 42 CFR §431.206, *Informing applicants and recipients*
- 42 CFR §431.213, *Exceptions from advance notice*
- 42 CFR §431.220, *When a hearing is required*
- 42 CFR §431.221, *Request for a hearing*
- 42 CFR §431.223, *Denial or dismissal of request for hearing*
- 42 CFR §431.230, *Basis and purpose*
- 42 CFR §431.241, *Matters to be considered at hearing*
- 42 CFR §431.242, *Procedural rights of the applicant or recipient*
- 42 CFR §431.243, *Parties in cases involving an eligibility determination*
- 42 CFR §431.244, *Hearing decisions*
- 42 CFR §431.245, *Notifying the applicant or recipient of a State agency decision*
- 42 CFR §438.408, *Resolution and notification: Grievances and appeals*
- 45 CFR §205.10, *Hearings*

Summary of Proposed Changes

These rule changes are being made to simplify language and re-order content for clarity and ease of use. Specifically, the following policy sections are reformatted and reworded for clarity with no change in content:

DSSM 5001, *Fair Hearing General Practices*

DSSM 5100, *Legal Base*

DSSM 5200, *Statewide Fair Hearings*

DSSM 5300, *Notices*

DSSM 5301, *Adequate and Timely Notice to Recipients*

DSSM 5302, *Exemptions: TANF, GA, Medicaid, EA, Child Care*
DSSM 5303, *Mass Review Actions*
DSSM 5304, *Jurisdiction*
DSSM 5304.1, *Jurisdiction for PASRR Hearings*
DSSM 5304.3, *Jurisdiction for Medicaid Managed Care Cases*
DSSM 5304.4, *Energy Assistance Program Hearings*
DSSM 5304.5, *Jurisdiction for Hearings over Medicaid Program Services*
DSSM 5305, *Time Limits*
DSSM 5307, *Dismissal of Requests*
DSSM 5308, *Prohibition Against Termination*
DSSM 5309, *Timely Action on Food Stamp Benefit Hearings*
DSSM 5310, *Clarification Conference*
DSSM 5311, *Notification of Time and Place of Hearing*
DSSM 5312, *Responses to Hearing Requests*
DSSM 5400, *Fair Hearing Requirements*
DSSM 5401, *Hearing on Actions*
DSSM 5402, *Hearing on Decisions*
DSSM 5403, *Availability of Documents and Records*
DSSM 5404, *Appellant's Opportunities at a Hearing*
DSSM 5405, *Fair Hearing Procedures*
DSSM 5406, *Powers and Duties*
DSSM 5407, *Presenter's Role*; and,
DSSM 5500, *Decisions by the Final Hearing Authority.*

In addition:

1. DSSM 5100, *Legal Base*: citations were added to specific sections so the section on *Legal Base* is no longer needed.
2. DSSM 5301, *Adequate and Timely Notice to Recipients*: combined with section DSSM 5300, *Notices*.
3. DSSM 5303, *Mass Review Actions*: combined with section DSSM 5302, *Exemptions: TANF, GA, Medicaid, EA, Child Care*; where out dated information about monthly reporting was removed from DSSM 5302.
4. DSSM 5405, *Fair Hearing Procedures* and DSSM 5407, *Presenter's Role*: removed and will be re-issued in a separate document that will be posted on the agency web page.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

First, DSS is deleting parenthetical language in existing §5001 which clarifies that a hearing may be requested based on suspension, reduction, overpayment, sanctions, delays, and terminations. This was a useful clarification and we recommend that it be inserted in new §5001, Par. 1.

Agency Response: The revised policy incorporates the parenthetical language by stating that we will provide an opportunity for a fair hearing to any individual requesting a hearing who is dissatisfied with a decision of the Division of Social Services or the Division of Medicaid and Medical Assistance. There is no restriction on the type of decision therefore there is no need to list the possible decision types.

Also, after further inquiry and subsequent analysis by staff, the introductory language at §5001 and the verbiage in §5001(2)(C) are revised to clarify that the Fair Hearing policy only applies to potential adverse actions

taken by DSS or DMMA and that no new rights of appeal are created nor are any other existing rights restricted. The regulation at §5001 and §5001(2)(C) is amended and indicated by **[Bracketed Bold Text]**.

Second, in §5300, DSS should consider adding a reference to disclosure of agencies providing free legal representation as a feature of an “adequate” notice. Cf. 7 C.F.R. 273.15(f).

Agency Response: DSS appreciates your suggestion however we decline to add the references. This information is currently provided on the fair hearing notices as required by 7 CFR 273.15(f).

Third, §5300, Par. 2.A.6 is not literally accurate. It categorically recites “(i) if the agency action is upheld, that such assistance must be repaid.” Repayment is discretionary and the State or MCO can decide to not pursue recovery. The analogous federal regulation [42 C.F.R. 431.230(b)] states that the agency “may institute recovery”. Moreover, a beneficiary can elect to not continue benefits during the pendency of appeal. See §5308, Par. 2.A and §5300, Par. 2.C. Finally, this section would literally impose a mandatory repayment duty for benefits received prior to issuance of the notice and during the minimum 10-day notice period.

Agency Response: DSS and DMMA thank you for your comment. The regulation is amended and indicated by **[Bracketed Bold Text]**. See §5300, Par. 2.A.6.

Fourth, in §5300, Par. 2.C., the Councils recommend inserting “potential” prior to “liability”. As noted in the preceding paragraph, pursuing repayment is discretionary with the State or MCO. “Benefits are subject to recovery” [§5308, Par. 1] but the agency has discretion to not impose retroactive liability.

Agency Response: DSS and DMMA thank you for your comment. The regulation is amended and indicated by **[Bracketed Bold Text]**. See §5300, Par. 2.C.

Fifth, §5302, Par. H, Councils ask that the redundant ‘when’ be removed.

Agency Response: The regulation is amended and indicated by **[Bracketed Bold Text]**. §5302, Par. H.

Sixth, §§5304, Par. 2 and 5305, Par. 1 categorically require hearing requests to be in writing. Food Supplement Program hearing requests can be submitted orally. See 7 C.F.R. 273.15(h). The Division may wish to revise this regulation to include that exception.

Agency Response: DSS and DMMA thank you for your comment. Regarding §5304, Par. 2, this section already includes that an exception to the written request applies for the Food Supplement Program. However, the proposed rule is amended for clarity. The amended regulation is indicated by **[Bracketed Bold Text]**. See §§5304, Par. 2 and 5305, Par. 1.

Seventh, §5304.1 contemplates PASARR decisions being issued by DDDS and DSAMH. Proposed DMMA regulations would change the decision-making to DMMA. See 14 DE Reg. at 615, 618 (1/1/11).

Agency Response: The regulation is amended and indicated by **[Bracketed Bold Text]**. See §5304.1.

Eighth, in §5304.1, substitute “effect” for “affect”.

Agency Response: Thank you for the correction. The amended regulation is indicated by **[Bracketed Bold Text]**. See §5304.1.

Ninth, in §5305, Par. D.1, the description of “timely notice period” is inaccurate since it categorically states it is a 10-day period. A notice can be provided which gives more than a 10-day notice. The 10 days is a “minimum” which an agency or MCO may exceed. See, e.g., 42 C.F.R. 431.211 and §5300, Par. B. If an MCO mailed out a notice with an effective date of 15 days from notice date, the “timely notice period” would be 15 days, not 10 days. Reduction or termination of benefits would be barred within that 15 day period, not a 10 day period.

Agency Response: DSS and DMMA agree that a notice can be provided which gives more than a 10-day notice. However, with few exceptions, notices are not considered timely if mailed with less than 10 days between

the date a notice is mailed and the date a proposed action is to take effect. No change to the regulation was made as a result of this comment.

Tenth, §5305, Par. 3, literally gives the hearing officer no authority to accept a fair hearing request beyond the 90-day period beginning with the effective date of action regardless of cause. Thus, even if a beneficiary does not receive a notice of action based on the MCO mailing it to a wrong address or wrong person, the beneficiary is without a remedy. In contrast, a hearing officer has authority to extend hearing timelines for “good cause”. See §5311, Par. 3, Subsection 3 and §5308, Par. 2.C.1. The hearing officer should be authorized to allow an untimely fair hearing request based on “good cause”.

Agency Response: 7 CFR 273.15, 42 CFR 431.221, 45 CFR 205.10 specifically limit the time within which an appellant may request a hearing. No allowance is made for a good cause extension.

Eleventh, the interplay between §5311, Par. 2 (contemplating mailing of hearing notice 12 days prior to hearing) and §5403, Par. 2 (giving staff 5 working days to respond to a beneficiary’s request for documents) is problematic. By the time the beneficiary receives the notice of hearing disclosing the right to access “the record”, there is no time to arrange for copies prior to hearing. Hearing notices should be issued more than 12 days prior to hearing.

Agency Response: DSS and DMMA thank you for your comment. The agencies have considered your suggestion and will work with the Hearing Office to bring about a change in the timing of the notification.

Twelfth, §5311 should be amended to specifically require that notices be sent to both the appellant and his/her attorney or representative. For example, Par. 3., Subsection 1, literally authorizes mailing of the notice to the appellant with no notice to the attorney. This ultimately results in delayed receipt by counsel. When coupled with only a 12 day advance notice period, the regulation promotes last-minute requests for continuances and undermines effective representation.

Agency Response: DSS and DMMA appreciate your comment. However, it is the responsibility of the appellant to notify any parties he or she wishes to inform of the hearing. As mentioned above the agencies will work to extend the notification period. Any perceived burden will be lessened by the increase in notification before the hearing. No change is made to the regulation.

Thirteenth, in §5311, Par. 3, it would be preferable to include a disclosure of right to access “case records” apart from the documents the agency or MCO has submitted as part of the Fair Hearing summary (the “record”). For example, an agency or MCO may not submit documents which undermine its position to the hearing officer but they may be in its case records. Access is a beneficiary’s right and should be disclosed in the hearing notice. See §5403, Par. 2.

Agency Response: The 6 items in §5311 make up the hearing notice. Item 6 currently reads “Explain that the appellant or representative may examine the record prior to or during the hearing.” This statement encompasses your request.

Fourteenth, in §5312, the introduction recites that the policy applies to decisions made by DSS or DMMA. There is no comparable provision covering MCOs which also issue appealable decisions. The regulation covers “Medicaid Managed Care Cases” [§5304, Par. 1.B; §5401, Par. C.6]. We believe the superseded version of §5312 contained references such as “if completed by DSS” because it contemplated MCOs responding to hearing requests in addition to the State. The new version solely contemplates “State Agency” preparation of the hearing summary, etc. which has not been the historical practice for appeals from MCO decisions. MCOs have traditionally been required to prepare their own Fair Hearing summaries.

Agency Response: We believe the revised language at §5312 more accurately captures the requirements for responding to Fair Hearing requests. In fact, the previous language, “If completed by DSS...” was specific to that Division. DMMA’s procedures were never specified. Because the MCOs are a contractual arm of DMMA for purposes of service delivery, we believe the reference to DMMA inherently includes the requirements for MCO Fair Hearing responsibilities.

Fifteenth, §5312, Par. 2.E, is inadequate since it only requires citation to “State rules”. The agency is required to disclose “(t)he specific regulations that support, or change in Federal or State law that requires, the action” [42 C.F.R. 431.210]. The hearing decision is based on “State and federal laws and regulations.” See §5500, Par. 3.

Agency Response: The regulation is amended and indicated by **[Bracketed Bold Text]**. See §5312, Par. 2.E.

Sixteenth, superseded §5312, Par 4, contained the following consumer-oriented guidance: “The document must be easily read and understood (abbreviations should be avoided).” It would be preferable to retain this guidance in the new version.

Agency Response: Paragraph 4 is strictly procedure. Procedure is being removed from the manual so as not to be confused with policy. This information will be issued in a separate document that will be posted on the agency web page.

Seventeenth, §5401 contains the following limitation for Food Supplement Program appeals:

DSS is not required to hold fair hearings unless the request for a fair hearing is based on a household’s belief that:

- A. Its benefit level was computed incorrectly
- B. The rules were misapplied or misinterpreted

This is not accurate. For example, failure to timely process an application is appealable. Parenthetically, it is unfortunate that the recitation in the superseded regulation [clarifying that “failure to act with reasonable promptness” is appealable] is being deleted. The recital should preferably be retained. It is retained in the Medicaid context. See §5401, Par. C.1. It is retained in the cash assistance context. See §5401, Par. B.1. Moreover, the USDA discourages such categorical limitations on appeals:

If it is unclear from the household’s request what action it wishes to appeal the State agency may request that the household clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

7 C.F.R. 273.15(h). [emphasis supplied]

Agency Response: The above comment is an exception to the rule that “DSS will provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program.” In addition, the exception is required by 7 CFR 271.7(f).

The phrase “aggrieved by any action” encompasses the right to appeal based on failure to act with reasonable promptness. The phrase is retained in the Medicaid and cash assistance context as it is specifically listed in the CFRs (42 CFR 431.220 and 45 CFR 205.10(a)(5)).

Eighteenth, the grammar in §5401, Par. C could be improved. Subparts 1-4 are sentences while Subparts 5-7 are not sentences and literally state that a “hearing is received”. It reads, in pertinent part, as follows:

The State agency must grant an opportunity for a hearing when:

5. Received from prepaid ambulatory plan...
6. Received from any managed care organization...
7. Received from any enrollee...

The comparable federal regulation [42 C.F.R. 431.220] does not reflect the same deficiency and should be reviewed.

Agency Response: The regulation is amended and indicated by **[Bracketed Bold Text]**. See §5401, Par. C.

Nineteenth, in §5402, Par. 1.F, the grammar merits correction. It reads as follows:

The Hearing Officer will conduct hearings regarding decisions on:

- F. Food Supplement Program households may appeal decisions concerning expedited service.

Agency Response: The regulation is amended and indicated by **[Bracketed Bold Text]**. See §5402, Par. 1.F.

Twentieth, in §5404, Par. G, the word “handicaps” is disfavored. Consider substituting “limitations” or “impairments”.

Agency Response: The regulation is amended and indicated by [**Bracketed Bold Text**]. See §5404, Par. G.

Twenty-first, §5405 is being deleted with no substitute. It should be retained. It is important to have standardized hearing procedures and to clarify the burden of proof. The “Summary of Proposed Changes” section of the regulation does not indicate that this is a section which will be revised in the future. It is simply being deleted.

Agency Response: DSS apologizes for the oversight. All procedures will be issued in a separate document and posted on the agency website.

Twenty-second, the DHSS approach to resident hearings to contest a discharge or transfer from a nursing home remains extremely problematic. CMS regulations require DMMA, as the State’s “Medicaid agency” to provide a compliant hearing for residents who contest nursing home discharges and transfers:

(a) The Medicaid agency must be responsible for maintaining a hearing system that meets the requirements of this subpart.

(b) The State’s hearing system must provide for -

(1) A hearing before the agency;...

42 C.F.R. §431.205.

The State agency must grant an opportunity for hearing to the following:

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged.

42 C.F.R. 431.220. See also 42 C.F.R. §206(c)(3).

Despite the above regulations, and Council objection, DSS discontinued offering such hearings in August, 2008:

The rule is deleted from the Division of Social Services Manual as the Division of Long-Term Care Residents Protection (DLTCRP) now has jurisdiction over these types of hearings. Reference is made to DLTCRP’s Patient’s Bill of Rights, Appendix A of Regulation 3201, Nursing Home Regulation for Skilled Care and Regulation No. 3205, Nursing Home Regulations for Intermediate Care.

12 DE Reg. 243 (August 1, 2008)

The current proposed regulation still contains multiple sections contemplating application of the DSS regulation to nursing home discharge/transfer disputes:

Section 5001. Providing an Opportunity for a Fair Hearing

This policy applies to all applicants and recipients of DSS and DMMA services.

2. Staff Inform Clients in Writing of Their Hearing Rights

C. At the time a skilled nursing facility or a nursing facility notifies a resident that he or she is to be transferred or discharged.

Section 5401. Conducting Hearings on State Actions

This policy applies to DSS hearing officers any time an appellant/claimant requests a hearing due to an agency action.

C. Medical Assistance Hearings

The State agency must grant an opportunity for a hearing when:

3. A resident believes a nursing facility has erroneously determined that he or she must be transferred or discharged.

At the same time, attempting to locate DLTCRP regulations defining procedures to receive and process resident challenges to nursing home discharge/transfer is, at best, a daunting endeavor. DSS cited to “DLTCRP’s Patient’s Bill of Rights, Appendix A of Regulation No. 3201” at 12 DE Reg. 243 (August 1, 2008). However, Appendix A has ostensibly never been published as a regulation. It does not appear in the Delaware Administrative Code. It does not even appear on the DLTCRP’s Website. The DLTCRP incorporated some federal standards by reference into its regulations last year [13 DE Reg. 1322, 1323 (April 1, 2010)]. However, those

regulations contain no hearing procedures and only require facilities to notify residents facing discharge/transfer of the general "right to appeal the action to the State". 42 C.F.R. §483.12(a)(6)].

Since the State Medicaid agency is required to maintain a hearing system with specific standards conforming to 42 C.F.R. Part 431, Subpart E, the Councils recommend that DSS maintain regulations for processing challenges to nursing home discharges/transfers, at least for "recipients of DSS and DMMA services" to whom the regulations apply [§5001]. Literally, the CMS regulations do not permit delegation of the hearing system by the Medicaid agency to another State agency. See above excerpts from 42 C.F.R. §§431.205- 431.206.

Agency Response: We believe it is important to clarify that the Fair Hearing policy applies to all applicants and recipients of DSS and DMMA services regardless of how the services are actually delivered. Therefore, we will modify § 5001's prefacing statement to read as follows: "*This policy applies to all applicants and recipients of DSS and DMMA for services provided directly by the Agencies or through agreements with other State or contracted entities.*"

However, we do not believe that the CMS regulations requiring a Medicaid fair hearing system preclude the delegation of hearing responsibilities to other State agencies. DMMA maintains its fair hearing system through a combination of fair hearing processes within the Division itself and as part of delegated responsibilities to other State agencies which approve and deliver care. We believe DLTCRP's responsibility for conducting fair hearings is equivalent to the "local level" evidentiary hearings permitted under the regulations.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend administrative policies regarding *Fair Hearing Practices and Procedures* is adopted and shall be final effective July 10, 2011.

Rita M. Landgraf, Secretary, DHSS

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

[DSSM: Fair Hearing Practices and Procedures](#)

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Cooperating with Child Support*. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 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 PROPOSED CHANGE

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

Statutory Authority

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

Summary of Proposed Change

DSSM 11003.4, *Cooperating with Child Support*. The purpose of this change is to clarify and consolidate all child support sections. There are several policy sections devoted to child support. Consolidating various sections will make the policy more concise and promote better understanding and improve readability of child support rules.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The Councils main concern with the proposal is the anemic approach to exempting caretakers from cooperating with the DCSE to secure child support. The Council previously addressed this issue in the context of Food Supplement Program child support cooperation standards. See attached January 30 and April 11, 2008 memos to DSS and final regulation published at 11 DE Reg. 1243 (March 1, 2008).

The current regulation contains the following standards which are being deleted:

11003.4.1 ...Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren).

§11003.4.4. It is the responsibility of the Division of Child Support Enforcement (DCSE) to determine if there is an acceptable reason for refusing to cooperate. ...

Agency Response: DSS disagrees that we are taking an "anemic approach to exempting caretakers from cooperating with DCSE". To the contrary, we state that we will presume cooperation until notified otherwise by the Division of Child Support Enforcement (DCSE). DSSM 11003.4.1 is deleted from the DSS policy manual because that is DCSE policy which is explained to applicants by the child support agency. DSSM 11003.4.4 was not deleted; rather it was reworded for clarity. No change to the regulation was made as a result of this comment.

It would be preferable to include an embellished "good cause" for failure to cooperate section akin to that adopted in the above 2008 Food Supplement Program regulation [subsequently repealed by 13 DE Reg. 1336 (April 1, 2010)]. See attachment. The proposed regulation does not even mention the possibility of good cause for refusing to cooperate. It limits consideration (albeit by DCSE) of whether there is "good faith effort" to cooperate.

Moreover, DSS should advise beneficiaries of the right to invoke the "good cause" exemption. The 2008 regulation contained the following salutary recital:

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Agency Response: Subsequent conversations with DCSE specify that they do not determine "good cause" for failure to cooperate. DCSE does determine if the applicant has made a "good faith effort" to secure child support for

the children. As long as a good faith effort has been made on the part of the caretaker DCSE determines that the caretaker has cooperated. DCSE is skilled in conducting interviews to gather this information. They inform the applicant of their rights regarding refusal to cooperate. Because there are a myriad of reasons applicants may be unwilling to disclose information about the absent parent it is more likely that this information will come out during the interview with DCSE. In addition, since DSS has no standing to exempt an applicant from cooperating with the child support agency; it may create frustration if the applicant opens up to DSS then has to repeat the story again to DCSE. Moreover, the majority of our child care clients are not seen in the office and do not have a consistent caseworker. They may be unwilling to disclose sensitive information of this type. No change to the regulation was made as a result of this comment.

Finally, consistent with the Council's 2008 recommendations, it would be preferable for DSS to retain the ultimate authority to determine if "good cause" for failure to cooperate exists. Compare the revised 2008 standard:

When DSCE does not determine there is good cause for refusing to cooperate, DSS will review the case to ensure that good cause does not exist before sanctioning the individual

Agency Response: Since 2008, DSS and specifically the Division of Child Support Enforcement (DCSE) has taken into consideration that domestic violence is a major barrier to cooperating with child support and has taken into account the wider criteria which establishes valid reasons for exemptions from cooperation. DCSE is the division charged with making determinations of what criteria is adequate to determine whether a care taker or child may be in danger from the absent parent. They have certain rules that must be adhered to prior to letting DSS know if enough information or cooperation has been collected. No change to the regulation was made as a result of this comment. No change to the regulation was made as a result of this comment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2011 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Cooperating with Child Support* is adopted and shall be final effective July 10, 2011.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the May 2011 issue of the *Register* at page 1203 (14 DE Reg. 1203). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Child Care Subsidy Program](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Chapter 47 (7 Del.C., Ch. 47)
7 DE Admin. Code 9202

Secretary's Order No.: 2011-P-0031

9202 Regulations Governing Natural Areas and Nature Preserves

Date of Issuance: June 15, 2011

Effective Date of the Amendment: July 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 proposed regulations to amend 7 **DE Admin. Code** 9202, Regulations Governing Natural Areas and Nature Preserves. The Department's Division of Parks and Recreation commenced the regulatory development process with Start Action Notice 2010-18. The Department published its initial proposed regulation Amendments in the November 1, 2010 *Delaware Register of Regulations*, and held a public hearing on December 1, 2010. Public comment was received by the Department during both the pre-hearing phase of this promulgation and at the time of the public hearing, and the Department responded fully and thoroughly to all questions from the public regarding this proposed promulgation.

A "natural area" in Delaware is defined by DNREC as an area, consisting of land and water, that provides the best example of our State's diverse natural heritage. Marshes, forests, waterways, plant and animal communities, and important geological and/or archaeological sites, such as the Great Cypress Swamp, Trussum Pond, Blackbird Delmarva Bays, Doe Bridge, and Island Field Site, are all examples of such areas. Current DNREC regulations provide no definitions with regard to natural areas, and are often unclear to the reader, as they are somewhat convoluted and demonstrate confusion with regard to the terms "natural preserve" and "natural area". The Department needs to better explain how the Natural Areas Program is managed. The proposed regulatory changes provide (1) more clarity regarding the management of DNREC's Natural Areas Program; (2) information on dedicating a natural area as a nature preserve; and (3) provide a process for both nominating and delisting a site as a State-registered natural area.

Any person or entity may nominate a site to be a State-registered natural area, and may also request an existing site to be delisted as such. Forms for either action can be obtained by contacting the Office of Nature Preserves. All requests require site visits to consider the ecological, geological, and/or archaeological significance of a nominated site, or a site proposed for delisting. The Department's guidelines define criteria and standards necessary in selecting a State-registered natural area, and are based on vegetation communities, species' rarity, and geological and/or archeological features.

In contrast, the dedication of a natural area as a "natural preserve" is a voluntary action taken by the land owner. The purpose of dedicating a natural area as a nature preserve is to protect the conservation values located on the site in perpetuity. Tax benefits may be realized by the land owner. All nature preserves are dedicated through Articles of Dedication, a legal document that dictates the activities that may or may not take place within the nature preserve through the development of management guidelines.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 1, 2011 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

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

I find that the Department's experts in the Division of Parks and Recreation fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will provide (1) clarity regarding the management of DNREC's Natural Areas Program; (2) information on dedicating a natural area as a nature preserve; and (3) a process for both nominating and delisting a site as a State-registered natural area

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on December 1, 2010;
- 3.) The Department held a public hearing on December 1, 2010 in order to consider public comment before making any final decision;

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

5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) provide clarity regarding the management of DNREC's Natural Areas Program; (2) offer information on dedicating a natural area as a nature preserve; (3) provide a process for both nominating and delisting a site as a State-registered natural area; and, lastly, because (4) the amendments are well supported by documents in the record;

6.) 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

9202 Regulations Governing Natural Areas and Nature Preserves

1.0 Purpose of the Regulations

- 1.1 The purpose of the Regulations contained herein is to further the implementation of Delaware's Natural Areas Preservation System set forth in 7 Del.C. Ch 73.
- 1.2 The Natural Areas Preservation System law and Natural Areas Program is a voluntary State land protection program which shall not usurp any land use authority at the State/County/Municipal level. The Program is intended solely for the purpose of identifying Natural Areas and promoting voluntary protection of said Areas.

2.0 General Definitions

As used in these Regulations, the following terms shall have the meanings set forth here:

"Articles of Dedication" means the writing by which any estate, interest or right in an area is formally dedicated as a Nature Preserve as permitted by 7 Del.C. §7306. Articles of Dedication are legally recorded documents that permanently preserve the property.

"Conservation Values" means natural, geological, or archaeological features specific to each Nature Preserve which are protected and preserved through Articles of Dedication.

"Council" means the Natural Areas Advisory Council – a Governor-appointed advisory body as established by 7 Del.C. §7305 to advise the Secretary of the Department on the preservation of Natural Areas and on the administration of Nature Preserves.

"Dedication" means the transfer to the Department, for and on behalf of the State, of an estate, interest or right in an area in any manner permitted by 7 Del.C. §7306.

"Delisting" means a process whereby the landowner or the ONP [a person or entity] can [submit a delisting form provided by the ONP to] request a specific site for removal from the State Registry of Natural Areas. ~~[Using a form obtained from the ONP.]~~

"Department" means the Department of Natural Resources and Environmental Control.

"Guidelines for Natural Area Selection" defines criteria and standards necessary in selecting a State-registered Natural Area based on vegetation community, species rarity, and geological and/or archaeological features. These Guidelines are periodically reviewed by the NAAC and ONP and are available for review from the ONP.

"Management Practices" means activities that may or may not take place within a Nature Preserve ~~[to carry out consistent with]~~ the uses and purposes for which the land is dedicated.

"Nature Preserve" means a Natural Area, any estate, interest or right in which has been formally dedicated under 7 Del.C. §7306. Dedicating Natural Areas as a Nature Preserve is a voluntary process entered into by the landowner or, in the case of public lands, by voluntary act of the agency having jurisdiction over said lands.

"Nature Preserve Management Guidelines" means a list of Management Practices considered when crafting Articles of Dedication for a Nature Preserve as permitted by 7 Del.C. §7306. The Management

Guidelines are periodically reviewed by the NAAC and ONP and are available for review from the ONP.

“Natural Area” means an area of land or water, or of both land and water, whether in public or private ownership, which either retains or has reestablished its natural character (although it need not be undisturbed), or has unusual flora or fauna, or has biotic, geological, scenic or archaeological features or scientific or educational value.

“Nomination” means a process whereby a person or entity can submit a nomination form provided by the ONP to request a specific site for consideration as a State-registered Natural Area.

“ONP” means the Office of Nature Preserves, located within the Department and authorized to implement the Natural Areas Preservation System law.

“Registration” means the act of accepting a site ~~[as a State-registered Natural Area by the Secretary onto the State Registry of Natural Areas].~~

“Secretary” means the Secretary of the Department of Natural Resources and Environmental Control.

“[State Registry of Natural Areas]” means a list identifying all State-registered Natural Areas accompanied by a map on file at the ONP.

3.0 Natural Areas.

3.1 Any site located in the State may be nominated as a Natural Area by a person or entity.

[3.2 Any person or entity may request a site be delisted from the Registry.]

3.[23] Request for nomination or delisting of a site as a State-registered Natural Area shall be made to the ONP on a nomination/delisting form provided by the Department. The form requires, at a minimum, the following information:

- Name, address and phone number of the property owner;
- The location of the site;
- A description of the site characteristics;
- A description of the significance, or lack thereof, of the site;
- The person or entity proposing the nomination/delisting.

[3.4 All nomination/delisting requests require site visits to consider the ecological, geological, and/or archaeological significance of a nominated site or a site proposed for delisting.]

3.[35] It is the responsibility of the ONP to notify the landowner if an application for nomination or delisting of a site for the State Registry of Natural Areas is submitted to the Department. The ONP will notify the landowner as to when the Council and the Secretary of the Department will consider the nomination/delisting request so as to provide the landowner opportunity to participate in the nomination/delisting process.

3.[46] The ONP shall consider the ecological, geological, and archeological significance of a nominated site or a site proposed for delisting according to Guidelines for Natural Area Selection developed by the Department and in consultation with a Technical Committee comprised of, but not limited to, resource professionals from the following, or their successor:

3.[46].1 Division of Fish & Wildlife’s Natural Heritage and Endangered Species Program;

3.[46].2 Department of State’s Division of Historical and Cultural Affairs;

3.[46].3 Delaware Geological Survey.

3.[57] The Technical Committee shall be convened by the ONP. The composition of the Committee may change as various sites are considered for registration on or removal from the State Registry of Natural Areas.

3.[68] Within one hundred and twenty (120) days after receipt of any nomination or delisting form and any other information that may be required by the ONP, the Technical Committee will provide its analysis of the attributes of the site to the ONP. The ONP shall then advise the Council whether a **[nominated]** site is appropriate for inclusion on or delisting from the State Registry of Natural Areas.

3.[79] The Council and the ONP shall provide their respective recommendations to the Secretary as to whether the site should be included on or delisted from the Registry.

- 3.~~[810]~~ After the Secretary determines that a site may be placed on or removed from the State Registry of Natural Areas, he/she will sign ~~[a Registration the Nomination]~~ form or Delisting form.
- 3.~~[911]~~ For purposes of implementing the Natural Areas Preservation System law, the existing State Registry of Natural Areas, and the associated map approved by the Secretary of the Department dated September 26, 2006 is in full effect and considered to be the State Registry of Natural Areas at the time of adoption of these regulations.
- 3.~~[4912]~~ Only sites on the State Registry of Natural Areas shall be considered for Nature Preserve dedication.

4.0 **Nature Preserves**

- 4.1 Using Nature Preserve Management Guidelines, the ONP, in cooperation with the landowner, shall determine the Management Practices **[that allow]** for the long term preservation of a Nature Preserve. ~~[such as physical alteration, introduction of exotic plant/animal species, passive recreational activities, and public access.]~~
- 4.2 The ONP shall submit the Management Practices identified in the Articles of Dedication for a specific Nature Preserve to the Council for review.
- 4.3 If a Natural Area is dedicated as a Nature Preserve through Articles of Dedication, approved Management Practices developed pursuant to 7 Del.C. §7306(d) shall be identified therein.
- 4.4 If a need arises to have a Management Practice for a specific Nature Preserve amended, the ONP may recommend in writing to the Council that the Articles of Dedication for that Nature Preserve be amended. Said recommendations shall state the reasons why the amendment is needed, the status of the Nature Preserve before such amendment, the purpose of the amendment, and the expected effect of the amendment on the Nature Preserve. The Council and ONP shall provide their respective recommendations to the Secretary. The Secretary will accept, reject, or modify the amendment.
- 4.5 Enforcement of the Articles of Dedication shall be the responsibility of the Department.
- 4.5.1 In the event that a violation of the Articles of Dedication comes to the attention of the Department, the Department shall give written notice to the landowner of such violation and demand corrective action sufficient to cure the violation and restore the Nature Preserve.
- 4.5.2 If the violation is not cured within thirty (30) calendar days of the receipt of written notice from the Department, or where the required corrective action cannot be completed within thirty (30) calendar days and the landowner fails to commence such cure within said thirty (30) calendar day period and fails to continue diligently to cure the violation until finally cured, then the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of the legal agreement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages for the loss of Conservation Values, and to require the restoration of the Nature Preserve to its prior condition.
- 4.5.3 Such enforcement timelines are in effect from the date of the approval of these regulations. Where this provision is inconsistent with the provisions of existing Articles of Dedication signed prior to the effective date of these regulations, enforcement provisions of those Articles of Dedication shall control.
- 4.6 The Articles of Dedication shall be signed by the landowner and the Secretary and shall be recorded at the appropriate county Office of the Recorder of Deeds.

5.0 **Severability**

If any section, subsection, sentence, phrase or word of these regulations shall be declared unconstitutional under the Constitution of the State of Delaware or of the United States or otherwise invalidated by a State or Federal Court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2501 (24 Del.C. §2500)
24 DE Admin. Code 2500

ORDER

2500 Board of Pharmacy

Pursuant to 29 Del.C. §10118 and 24 Del.C. §2501, the Delaware Board of Pharmacy issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on May 18, 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 April 1, 2011 *Register of Regulations* and for two consecutive weeks in the *Delaware News Journal* and *Delaware State News*. The Board proposed to change rule 5.1.13.6 to expand the use of electronically transmitted prescriptions beyond just via facsimile.

2. The Board received one written comment during the comment period. Walgreens addressed a letter dated May 11, 2011 to the Board supporting the change. The Board held a public hearing on May 18, 2011 and received no public comment.

FINDINGS OF FACT AND CONCLUSIONS

3. 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 amendment to the Board's Rules.

4. The Board has considered the public comments at the May 18, 2011 hearing. The Board does not find those comments require further revisions of the proposed rules. The Board finds that the new rule 5.1.13.6 is appropriate and allows for the use of electronically transmitted prescription by more than just facsimile.

5. The new rule will read as follows:

5.1.13.6 Controlled substance prescriptions may be electronically transmitted.

The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on July 1, 2011.

IT IS SO ORDERED this 18th of May, 2011

BY THE BOARD OF PHARMACY:

2500 Board of Pharmacy

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

2500 Board of Pharmacy

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b); 29 Delaware Code, Sections 10003(b), and 10113(b) (5 **Del.C.** §121(b); 29 **Del.C.** §§10003(b), and 10113(b))
5 DE Admin.Code §103

**Order Adopting Amendments to Regulation 103, Sections 4.2 and 4.3
(Freedom of Information Act Requests)**

IT IS HEREBY ORDERED on this 2nd day of June 2011, that Sections 4.2 and 4.3 of Regulation 103 (Freedom of Information Act Requests) are amended as rules of practice and procedure that will be used by the Office of the State Bank Commissioner. A copy of the amendments to Sections 4.2 and 4.3 of Regulation 103 are attached hereto and incorporated herein by reference, with deleted language struck through and added language underlined. The amendments are being adopted to conform Sections 4.2 and 4.3 to the provisions of 78 **Del. Laws** Ch.10 amending Section 10003 of Title 29 of the **Delaware Code**. The remaining provisions of Regulation 103 are not affected by the amendments.

The effective date of the amendments is July 11, 2011. The amendments are adopted by the State Bank Commissioner in accordance with Title 5 and Section 10003 of Title 29 of the **Delaware Code**, and pursuant to the requirements of Chapter 11 and Section 10113(b) of Title 29 of the Delaware Code. A copy of this order and the amendments to Section 4.2 and 4.3 of Regulation 103 are to be filed with the Registrar of Regulations.

Robert A. Glen, State Bank Commissioner
June 2, 2011

103 Freedom of Information Act Requests

Effective Date: November 12, 2010

1.0 Definitions

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

“**FOIA**” shall mean the Delaware Freedom of Information Act, 29 **Del.C.** Ch. 100, as amended.

“**Office**” shall mean the Office of the State Bank Commissioner for the State of Delaware.

“**Public record**” shall mean the same as that term is defined in 29 **Del.C.** §10002(g) and shall not include records deemed non-public pursuant to that section or records deemed confidential pursuant to the Delaware Banking Code, Title 5 of the Delaware Code.

“**Standard size**” shall mean 8.5” x 11”; 8.5” x 14”; and 11” x 17”.

2.0 General

- 2.1 This Regulation establishes the policy, procedures, charges and fees for responding to requests seeking to inspect public records of the Office under FOIA.
- 2.2 The Office shall provide reasonable access for reviewing public records during the Office’s regular business hours.
- 2.3 Notwithstanding the scope or nature of the request, only existing public records in the possession of the Office will be provided under FOIA.
- 2.4 The Office has no obligation under FOIA to answer written questions, analyze data, create records not already in its possession or compile information in any way.

3.0 Requests

- 3.1 Persons seeking to inspect public records pursuant to FOIA shall send an original and one copy of a written request addressed to:
Office of the State Bank Commissioner
555 East Loockerman Street
Dover, Delaware 19901
- 3.2 A FOIA request shall:
 - 3.2.1 clearly state the name, address and telephone number of the person making the request;
 - 3.2.2 indicate that the request is being made pursuant to FOIA; and
 - 3.2.3 describe the records sought in sufficient detail to enable the Office to determine their identity and location with reasonable effort.
- 3.3 FOIA requests by electronic mail will not be accepted.
- 3.4 FOIA requests that do not comply with this Regulation may be denied in whole or in part.
- 3.5 Records may not be produced to any person who has an outstanding balance to the Office relating to a pending or prior FOIA request.

4.0 Responses

- 4.1 Upon receipt of a FOIA request, the Office shall review the records in its possession to identify those that are public records.
- 4.2 ~~Within ten (10) working~~ No later than fifteen (15) business days after a FOIA request is received, the Office shall send a written response to the person making the request using the address specified in the request. Additional reasonable time shall be allowed for granting or denying access to the requested records when the request is for voluminous records, requires legal advice or a record is in storage or archived.
- 4.3 The response may require inspection of requested records; may indicate when, where and under what conditions the requested records may be inspected; may include copies of requested records; may deny the request in whole or in part ~~and stating~~ stating the reasons therefor; or may indicate that additional time is required for a further response in accordance with § 4.2 of this Regulation. If the response indicates that additional time is required, an expected date for the further response shall be specified.
- 4.4 Public records may be inspected only during the Office's regular business hours.

5.0 Administrative Fees, Photocopying Charges, and Other Costs.

- 5.1 Administrative Fees. The Office may assess the person making a FOIA request administrative fees incurred pursuant to the request.
 - 5.1.1 Administrative fees include personnel time associated with processing the request, including but not limited to, time spent locating and reviewing records; monitoring record reviews; photocopying paper records; generating paper copies of microfilm, microfiche and electronic records; review by legal counsel; and any other work necessitated by the request.
 - 5.1.2 Administrative fees will be charged per quarter hour at the current, hourly pay rate plus benefits of the personnel performing the work, pro-rated in quarter hour increments.
 - 5.1.3 Administrative fees will be in addition to all photocopy charges and other costs.
- 5.2 Photocopy Charges. The Office may assess the person making a FOIA request the following photocopy charges:
 - 5.2.1 Standard Size or Smaller Paper Records. The charge for copying public records maintained on standard size or smaller paper will be \$0.50 per printed page for black and white copies and \$2.00 per printed page for color copies.
 - 5.2.2 Large Size Paper Records. For black and white copies, the charge for copying public records maintained on paper that is larger than standard size will be \$2.00 per 24" x 26" printed page, \$3.00 per 24" x 36" printed page, \$5.00 per 30" x 42" printed page, and \$1.00 per square foot of printed page for all other oversized records. For color copies, an additional \$1.50 per printed page will be charged.

- 5.2.3 Microfilm and Microfiche Records. The charge for copying public records maintained on microfilm or microfiche will be \$1.00 per printed page. All such records will be copied to standard size paper in black and white.
- 5.2.4 Electronic Records. The charge for copying public records maintained electronically will be the same as standard size paper records if the requested records are copied to paper. Standard size paper will be used for all such copies. If the requested records are copied to an electronic storage device or media (such as magnetic tape, diskette, compact disc, thumb drive, etc.), the charge will be the cost of the device or media.
- 5.3 Other Costs. The Office may assess the person making a FOIA request any other costs incurred pursuant to the request, including charges assessed by an outside vendor to copy the requested records.
- 5.4 Payment for all fees, charges and costs is due at the time records are provided. The Office may also require payment prior to sending copies of records.

6.0 Effective Date

These regulations shall 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.

14 DE Reg. 487 (11/01/10)

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 3001

IN THE MATTER OF THE ADOPTION OF RULES AND |
REGULATIONS TO IMPLEMENT THE PROVISIONS OF |
26 DEL.C. CH. 10 RELATING TO THE CREATION OF A |
COMPETITIVE MARKET FOR RETAIL ELECTRIC |
SUPPLY SERVICE (OPENED APRIL 27, 1999; RE- |
OPENED JANUARY 7, 2003; RE-OPENED |
SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER 7, |
2010) |

PSC REGULATION DOCKET NO. 49

ORDER NO. 7984

This 7th day of June, 2011, the Commission determines and Orders the following:

I. Background

1. Since 1999, Delaware law has directed electric suppliers and Commission-jurisdictional electric distribution utilities to allow consumers to use customer-sited renewable generation to offset, through “net metering,” their electric consumption. 26 **Del.C.** §1014(d)-(k). As required by that law, this Commission adopted regulations to implement (and in some instances to interpret) the various statutory “net metering” directives. And with each statutory expansion of the net metering regime over the years, the Commission has responded with changes to its rules to reflect the further legislative dictates. See 26 **Del. Admin. Code** § 3001-8.0 “Net Metering” (“net metering rules”).¹

1. The net metering rules are contained as a section in the Commission’s “Rules for Certification and Regulation of Electric Suppliers.”

2. This particular proceeding - to once again revise the net metering rules – was triggered by the legislative changes related to net metering enacted in July, 2010. 77 **Del. Laws** ch. 453 §§ 1-11 (July 28, 2010) *amending* 26 **Del.C.** §§1001, 1014(d) & (e), *and adding* § 1014(i)-(k) (“Chapter 453”). As the synopsis to the original bill outlined, the main purposes of these new changes were two fold:

This bill will further strengthen net energy metering provisions by providing customers the opportunity to aggregate individual meters for the purpose of allocating net metering credits to electricity accounts other than the account that hosts an energy generating facility. The bill also provides community choice aggregation provisions for community-owned energy generating facilities that are established by a group of customers. Recognizing that not all customers own properties that are favorable for energy generating facilities, the community-owned net metering provisions of this bill will allow a group of customers to invest and participate in distributed renewable energy facilities.

3. The Commission originally proposed revisions to its net metering rules to incorporate the Chapter 453 changes in September, 2010. PSC Order No. 7832 (Sept. 7, 2010). Those proposed revisions engendered responsive comments not only from Delmarva Power & Light Company (“DP&L”) but from other participants with interests in expanding renewable energy facilities. In light of those comments, and upon Staff’s recommendation, the Commission cancelled a hearing on the originally proposed revisions and committed the participants to workshops to further develop the issues identified in the comments. PSC Order No. 7875 (Dec. 7, 2010).²

4. From the workshops and further comments, Staff then advanced a revised, “second-cut” of net metering rule revisions to implement the Chapter 453 statutory changes. The Commission proposed these second-cut changes for consideration and adoption in April, 2011. The April proposal superseded the earlier revisions offered in September, 2010. PSC Order No. 7946 (April 19, 2011).

5. Notice of these further proposed net metering revisions was officially published in the Register of Regulations (14 DE Reg. 1241 (May 1, 2011)) and also advertised in the *The News Journal* and *Delaware State News* newspapers (May 6, 2011). The publications included notice that the Commission would consider the revised regulation on June 7, 2011. Only the Interstate Renewable Energy Council (“IREC”) filed written comments in response to these notices. Those comments are discussed below. No objections to the proposed rules were raised at the June 7, 2011 public hearing.

II. Discussion and Decision to Adopt Proposed Rule Revisions

6. The Commission clearly has the power to implement by rule the statutory directives announced in Chapter 453. See 26 **Del.C.** §1014(d), (e), & (k).

7. The Commission continues to believe that the rule revisions proposed in Order No. 7946 reasonably track the detailed, but still sometimes clouded, statutory directives set forth in Chapter 453. Like the statutory amendments, the rule revisions expand the opportunities for net metering from the original single customer/single account scenario (Condition 1) to single customers with multiple accounts (Condition 2) and multiple customers and multiple accounts served by community energy generation facilities (Condition 3). The revised rules also answer the new statutory command (26 **Del.C.** §1014(e)(3)) that calls for the Commission to provide, for optional use by the net metering supplier or utility, a direct payment alternative for dealing with net excess generation produced by a community generating facility during a billing period. See new rules §§ 8.4.3, 8.5.5 (as now adopted).

A. IREC Comments

8. As referenced above, IREC submitted written comments in response to the second revised proposed revisions. Those comments focused on the details of various provisions in the proposed rules. Thus, IREC asserted that certain provisions in the proposed revised rules deviate from the governing statutory directives:

2. A listing of the participants, and a summary of each’s positions on the proposed revisions (as they emerged through the comments and workshops), is set forth in Staff’s memorandum to the Commission dated April 19, 2011. Because most of those positions are not now being pressed against the later, “second-cut” proposed rule revisions, the Commission sees no need to go into more detail on the information underlying those positions.

- a. by limiting the value of monthly carry-over excess generation credits available to residential customers to the volumetric components of delivery and supply charges rather than the full sum of delivery and supply service charges;
- b. by creating a distinction in the single customer contexts (Conditions 1 & 2) between meters on the same distribution feeder as the customer's generator and those on a different feeder and, in the latter scenario, allowing carry-over net excess generation to be credited only against volumetric supply charges on the "other-feeder" accounts; and
- c. by allowing the net metering supplier or utility to impose customer charges and other non-volumetric charges which might recover otherwise applicable supply, transmission, and distribution delivery costs on "stand-alone" community generation facilities.

IREC also urged other changes. In particular, IREC asked:

- a. that, in the context of the alternative direct payment scheme for community generation (Condition 3), the monthly payment to the host should encompass only the retail supply charge amount for the net excess kwh (as a proxy for the utility's avoided costs) *plus* a value for the REC generated (as determined by Commission); and
- b. that the notice times for alerting the net metering supplier or utility that the customer wished to net meter several aggregated accounts or that customers wished to institute community generation aggregation be shortened from 90 to 60 days.

9. After the submission of the IREC comments, Staff prepared a third set of revised rules and circulated them to the identified participants. This "third" revision accepted IREC's challenge to the on-the-same feeder/off-feeder distinction for net excess generation crediting in Conditions 1 and 2 and deleted that provision. However, Staff's final version rejected some of the IREC challenges and added clarifications or corrections to address the other IREC challenges. In a memorandum dated June 7, 2011, Staff outlined the reasons for its actions.

10. After the circulation of Staff's third revision to the active participants, IREC informed Staff that Staff's changes had adequately addressed IREC's concerns and that IREC had no further objection to the proposed "third" revised rules. No other participant in the proceeding voiced any other objection to the proposed rules, as revised with Staff's latest changes. Thus, they appear to have gained support among the participants. Given all this, the Commission sees no need to respond in detail to the issues raised by IREC's June 1, 2011 comments.

11. However, one challenge calls for some response. As indicated, IREC argued that in the optional direct payment scenario for community generation, the monthly payment amount for any monthly net excess generation should reflect the sum of the volumetric retail supply charges applied to the net excess generation kilowatt-hours, plus a dollar value amount for the REC generated by the facility. The Commission need not get into any protracted discussion of what is the most "correct" method for calculating an alternative payment. It is enough to note that this State's net metering law explicitly says that the RECs generated by a net metering customer remain with the customer. 26 **Del.C.** § 1014(e)(1), (2). The proposed revised rules repeat that allocation. The alternative payment calculation set forth in the revised rules respects these directives: it "values" the alternative payment amount solely in terms of the net excess *energy* produced. The community generator retains control over the REC, and its value.

B. Adoption

12. As indicated, Staff's third revision of the proposed rules appears to have support (or at least no objection) from all those who have participated in this docket. In light of that, the Commission adopts Staff's third revision (attached hereto as Exhibit A) as the final rule revisions in this matter.

13. The third revised rules set forth in Exhibit A reflect several administrative changes that correct several cross-references and numbering sequences in the proposed rules noticed in Order No. 7946. In addition, as noted above, the Exhibit A rules do reflect other additional changes made in response to the comments filed by IREC. While these latter rewrites go beyond clerical detail, the Commission does not believe that any of the changes reflect a substantive alteration from the rules proposed by Order 7946. Neither the administrative nor the IREC-driven changes trigger 26 **Del.C.** §10118(c) so as to call for republication and further comments and hearings.

14. Chapter 453 set a deadline of July 1, 2011 for the Commission to adopt revised regulations for the expanded net metering regime of aggregated accounts (Condition 2) and aggregated customers served by community generation facilities (Condition 3). While the directives in Chapter 493 were detailed, they still had their ambiguities. The Commission has endeavored to meet the deadline and thus promptly expand the net metering opportunities provided under the Chapter 453 statutory changes. In doing so, the Commission readily

acknowledges that as the new net metering opportunities are implemented “in the field” practical and technical difficulties might arise that are not addressed adequately, if at all, in the rule revisions now being adopted. So too, actual experience in the new metering levels might provide further insights on how to best read the statutory directives of Chapter 453. In either case, the Commission stands ready to revisit its net metering rules to consider how to deal with later difficulties, while still adhering to the statutory net metering framework, as amended by Chapter 453.

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

1. That, pursuant to 26 **Del.C.** §§209(a) & 1014(d), (e), (k), and 29 **Del.C.** §10113, the amendments and revisions to Sections 1 and 8 of the Commission’s “Rules for Certification and Regulation of Electric Suppliers” (26 **Del. Admin. Code** §3001-8.0 “Net Metering”) as set forth in Exhibit A to this Order are hereby adopted. Such revisions, and the consequently amended “Rules for Certification and Regulation of Electric Suppliers” shall become effective, pursuant to 29 **Del.C.** §10118(g), ten days after the final publication of this Order and the revised rules in the *Delaware Register of Regulations*.

2. That, pursuant to 29 **Del.C.** §§10113 & 10118, the Secretary shall forthwith transmit to the Registrar of Regulations a copy of this Order and Exhibit A for publication of the latter as final rules in the next issue of the *Delaware Register of Regulations*. This Order and Exhibit A shall also be posted to the Commission’s website.

3. That any differences in the rules set forth in Exhibit A from those published at 14 DE Reg. 1241 are found not to be substantive changes for purposes of 29 **Del.C.** §10118(c).

4. That Delmarva Power & Light Company shall file with the Commission revised tariffs, applicable Interconnection Standards for Generators, and such other forms as may be necessary to comply with this Order within 30 days of publication of these final rules in the *Delaware Register of Regulations*.

5. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

~~3001 Regulations Governing Service Supplied by Electrical Corporations~~ Rules for Certification and Regulation of Electric Suppliers

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

[3001 Rules for Certification and Regulation of Electric Suppliers](#)

**DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS**

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

ORDER**2402 Delaware Manual on Uniform Traffic Control Devices**

Under Title 17 of the Delaware Code, Sections 134 and 141, as well as 21 Delaware Code Chapter 41, the Delaware Department of Transportation (DelDOT) sought to adopt a revised Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). This revision of the Delaware MUTCD will supersede any previous versions and is required by revisions to the Federal version of the MUTCD.

The Department accepted written comments on the draft changes to the Delaware MUTCD from April 1, 2011 through April 30, 2011. Copies of the Draft Delaware MUTCD were obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/register/april2011/proposed/MUTCD.pdf>.

Summary of the Evidence and Information Submitted

A single comment was received regarding these proposed changes to the MUTCD. In addition, the Department staff determined that certain other changes, non-substantive in nature, should also be made to the Draft.

The table accompanying this Order summarizes the official public comments that were submitted to DeIDOT based on the Draft Delaware MUTCD proposed regulation in the April 2011 edition of the Delaware Register. Each of these suggested changes are listed in the table below, along with the proposed action taken by DeIDOT.

Findings of Fact

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

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

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended MUTCD, as set forth in the version attached hereto, to be effective on July 10, 2011.

IT IS SO ORDERED this 14th day of June, 2011.

Cleon L. Cauley, Sr., Deputy Secretary
Delaware Department of Transportation

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

[2402 Delaware Manual on Uniform Traffic Control Devices](#)

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council to the Division of Substance Abuse and Mental Health	Ms. Carol A. Harman	05/05/2014
	Mr. George B. Meldrum, Jr.	05/05/2014
	Ms. Susan S. Phillips	05/05/2014
Authority on Radiation Protection	David W. Smith, Ph.D.	07/01/2014
Board of Accountancy	Ms. Judith M. Scarborough	05/05/2014
	Mr. Michael D. Wollaston	05/05/2014
Board of Dietetics/Nutrition	Ms. Carol C. Giesecke	05/05/2014
	Ms. Christy A. Vanderwende	05/05/2014
Board of Examiners in Optometry	Jeffrey P. Hilovsky, D.O.	05/05/2014
Board of Examiners of Physical Therapists and Athletic Trainers	Ms. Laura A. Schmitt	05/05/2014
Board of Examiners of Private Investigators and Private Security Agencies	Mr. Kline G. Kemp, Jr.	05/05/2014
	Ms. Heather M. Shupe	05/05/2014
Board of Landscape Architecture	Ms. Rachel L. Dunning	05/05/2014
Board of Massage and Bodywork	Ms. Lora M. Bryner	05/05/2014
	Ms. Rachel L. Dunning	05/05/2014
	Ms. Sandra Jachimowski	05/05/2014
Board of Nursing	Mr. David S. Salati	05/25/2014
Board of Occupational Therapy Practice	Mr. Victor F. Kennedy	05/05/2014
	Ms. Kimberly S. Pierson	05/05/2014
Board of Pharmacy	Mr. Ronald J. Sherman	09/04/2012
Board of Podiatry	Ms. Amy Kratz	08/31/2013
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Ms. Mary W. Davis	05/05/2014
	Mr. Gregg E. Drevno	08/27/2012
Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers	Mr. Wilbert L. Miller	04/18/2014
Board of Veterinary Medicine	Ms. Patricia C. Ennis	05/05/2014
Cash Management Policy Board	Ms. Margaret A. Iorii	04/06/2014
	Mr. Manubhai C. Karia	06/29/2013
Child Placement Review Board-Kent	Ms. Catherine Mebane	05/05/2014
	Mr. Michael T. Rezac	05/05/2014

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Child Placement Review Board-Sussex	Ms. Patricia R. Lyons	05/05/2014
	Mr. Raymond L. Moore, Sr.	05/05/2014
	Ms. Virginia VanSciver	05/05/2014
	Mr. James J. Westhoff	05/05/2014
Clean Water Advisory Council	Mr. David B. Baker	04/06/2014
	Mr. Jeffrey M. Bross	04/13/2014
	Mr. Josef A. Burger	04/13/2014
Community Involvement Advisory Council	The Honorable Bethany Hall-Long, Ph.D.	05/05/2014
	Ms. Pamela Meitner	05/05/2014
	Ms. La Vaida J. Owens-White	05/05/2014
	Mr. Harold L. Truxon	05/05/2014
Council on Services for Aging and Adults With Physical Disabilities	Mr. Bobby B. Brown	05/05/2014
	Ms. Patsy J. Bennett-Brown	05/05/2014
	Ms. Suzanne A. Howell	05/05/2014
	Mr. Milton A. Saves	05/05/2014
	Ms. La Vaida J. Owens-White	05/05/2014
	Ms. Debra A. Veenema	05/05/2014
Council on Social Services	Sister Jeanne F. Cashman	05/05/2014
	Mr. James A. Villarreal	05/05/2014
Court of Common Pleas	The Honorable Rosemary M. Beauregard, Esq.	05/24/2023
Delaware Bicycle Council	Ms. Fran M. Cardaci	05/05/2014
	Mr. Michael R. Tyler	05/05/2014
Delaware Commission on Italian Heritage and Culture	Louis A. Arena, Ph.D.	05/05/2014
Delaware Health Care Commission	Kathleen S. Matt	08/23/2011
Delaware Health Resources Board	Ms. Sheila Grant	05/02/2014
	Ms. Linda S. Heller	05/02/2014
	Mr. William E. Love	12/31/2011
	Mr. Brian L. Posey	05/06/2014
	Veronica F. Rempusheski, Ph.D.	05/02/2014
	Ms. Bettina L. Riveros	05/02/2014
	Mr. John G. Walsh	05/02/2014
Delaware Mentoring Council	Ms. Elinza D. Cain	Pleasure of the Governor
	Ms. Mary P. Fox	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Mentoring Council	Mr. Richard Kapolka	Pleasure of the Governor
	Mr. James A. Purcell	Pleasure of the Governor
	Ms. Linda B. Rogers	Pleasure of the Governor
	Mr. Craig A. Warrington	Pleasure of the Governor
	Ms. Maryann D. Younger	Pleasure of the Governor
Delaware Nutrient Management Commission	Mr. Francis J. O'Neill, III	05/15/2014
Delaware Open Space Council	Mr. Paul H. Boswell	05/20/2015
	Ms. Lorraine M. Fleming	05/20/2015
	Mr. D. Wayne Holden	05/20/2015
	The Honorable John R. Schroeder	05/20/2015
Delaware River Basin Commission	Ms. Kathleen M. Stiller	01/21/2012
Delaware Solid Waste Authority	Ms. Tonda L. Parks	05/11/2014
	Mr. Theodore W. Ryan	05/11/2014
	The Honorable Timothy P. Sheldon	05/11/2014
Delaware Statewide Interoperability Executive Council	The Honorable Carlton E. Carey	Pleasure of the Governor
	Chief William D. Carrow	Pleasure of the Governor
	Mr. James E. Cole	Pleasure of the Governor
	Mr. Gene S. Donaldson	Pleasure of the Governor
	Mr. Joseph F. Dudlek	Pleasure of the Governor
	Mr. Colin Faulkner	Pleasure of the Governor
	Mr. Warren F. Jones	Pleasure of the Governor
	The Honorable Lewis D. Schiliro	Pleasure of the Governor
	Mr. Timothy D. Sexton	Pleasure of the Governor
	Eric S. Wagner	Pleasure of the Governor
Lt. Colonel Dallas A. Wingate	Pleasure of the Governor	
Developmental Disabilities Council	Ms. Marie-Anne E. Aghazadian	05/05/2017

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Developmental Disabilities Council	Ms. Carol E. Barnett	Pleasure of the Governor
	Ms. Lorraine Y. Loera	05/05/2013
Enhanced 911 Emergency Reporting System Service Board	Mr. James E. Turner, III	05/11/2014
Environmental Appeals Board	Mr. Andrew J. Aerenson	05/11/2014
Family Court	The Honorable Kenneth M. Millman	04/06/2023
Governor's Commission on Community and Volunteer Service	Ms. Amanda D. Cleary	04/07/2014
	Ms. Kanani T. Hines	04/07/2014
Justice of the Peace	Ms. Beatrice A. Freel	04/06/2017
	Mr. James R. Hanby, Sr.	04/08/2017
	The Honorable John R. Hudson	04/07/2017
	The Honorable Thomas M. Kenney	04/06/2017
	The Honorable Marilyn Letts	04/06/2017
	The Honorable Stanley J. Petraschuk	04/25/2017
	The Honorable Marcealeate S. Ruffin	04/09/2017
Organ and Tissue Donor Awareness Board	Ms. Mary Sue Jones	05/05/2014
	Ms. Jan Weinstock	05/05/2014
Ozone Transport Commission	Mr. Ali Mirzakhaili	Pleasure of the Governor
Parks and Recreation Council	Ms. Brenda J. Bramble	05/05/2014
Pesticide Advisory Committee	Mr. John Barndt	05/05/2014
	Mr. Paul M. Kaercher	05/05/2014
	Mr. Thomas V. May	05/05/2014
	Mr. Jacob J. Vukich	05/05/2014
Public Advocate	Mr. Michael D. Sheehy	Pleasure of the Governor
Riverfront Development Corporation, Board of Directors	The Honorable Jeffrey Bullock	Pleasure of the Governor
	Donald D. Hutchison	Pleasure of the Governor
State Coastal Zone Industrial Control Board	Mr. Robert D. Bewick, Jr.	05/11/2016
	Mr. John S. Burton, Sr.	05/11/2016
	Mr. Richard A. Legatski	05/11/2016
State Employee Benefits Advisory Council	Ms. Mary L. Cooke	04/08/2014

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Employee's Charitable Campaign Steering Committee	Ms. Karen A. Garrison	Pleasure of the Governor
	Ms. Kathleen B. Krishnamurthy	Pleasure of the Governor
State Public Integrity Commission	Jeremy D. Anderson	06/30/2017
State Rehabilitation Council	Mr. Charles D. Moore	05/05/2014
	Mr. Vibert Sahadatalli	05/05/2014
	Ms. Vickie D. Tully	05/05/2014
Superior Court	The Honorable Richard F. Stokes	04/15/2023
Unemployment Insurance Appeal Board	Mr. Elmer L. Newlin	05/01/2017
University of Delaware Board of Trustees	Mr. Stuart M. Grant	05/11/2017
Violence Against Women Act Implementation Committee	Ms. Josephine E. MacLaine	Pleasure of the Governor

DELAWARE SOLID WASTE AUTHORITY
501 Regulations of the Delaware Solid Waste Authority
PUBLIC NOTICE

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Regulations of the Delaware Solid Waste Authority (the "Regulations") adopted by DSWA Board in March, 2009.

A public hearing will be held Monday, July 25, 2011, at 6:00 p.m. at the Delaware Solid Waste Authority Administrative Office 1128 S. Bradford Street, Dover, Delaware 19903. The hearing is to provide an opportunity for public comment on the proposed amendments. The public record will close at the close of business, August 1, 2011.

The DSWA will receive written comments, suggestions briefs or other written material until the close of business, August 1, 2011. Written comments, suggestions, compilations of data, briefs or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

The proposed amendments will make certain non-substantive changes to the regulations, and will amend current provisions dealing with the extension of credit in payment for the use of DSWA facilities and services.

The proposed amendments to the Regulations are intended to: (i) make non-substantive clarifications to words and phrases used in the text, (ii) clarify the purpose of the sticker to be affixed to vehicles using DSWA facilities in connection with permitting, and (iii) remove provisions respecting the extension of credit, which shall hereafter be addressed through a policy document.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, July 21, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 demonstration waiver.

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 July 31, 2011.

On July 15, 2011, a draft of the waiver amendment application will be available on the Division of Medicaid and Medical Assistance website <http://dhss.delaware.gov/dhss/dmma/>.

You may also obtain a copy by contacting Lisa Zimmerman at (302) 368-6610 or by e-mail to Lisa.Zimmerman@state.de.us or Beverly Weigand at (302) 255-9500 or by e-mail to Beverly.Weigand@state.de.us.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

State Residency PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual regarding State Residency.

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) 255-4454 by July 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.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION Gaming Control Board 101 Regulations Governing Bingo PUBLIC NOTICE

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0 in 10 **DE Admin. Code** 101 should be amended. The rule relates to the definition of "cookie jar bingo" and to the manner of playing cookie jar bingo games. The Board proposes to make it clear that the fees collected for cookie jar bingo must be added to the jar before the first number is drawn, and if the added money makes the jar reach its maximum amount, that jar must be awarded at that night's event. In addition, the group conducting the event must announce the value of the cookie jar before play commences.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, August 4, 2011 at the meeting of the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before July 31, 2011 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

This regulation will make it clear that fees collected for a cookie jar bingo game must be added to the jar before the first number is drawn. If this added amount makes the jar reach its maximum value, the jar must be awarded during that night's event. In addition, the group conducting the bingo event must announce the value of the cookie jar, up to a maximum of \$1,000, before play commences.

DIVISION OF PROFESSIONAL REGULATION Gaming Control Board 102 Regulations Governing Raffles PUBLIC NOTICE

The Delaware Gaming Board will seek public comments on the issue of whether its current introduction to 10 **DE Admin. Code** 102 should be amended. The introduction relates to the applicability of the regulations to raffles. The Board proposes to change the introduction to state that only raffles in which the ticket price is more than \$5.00 for a single drawing and more than \$15.00 for a series of drawings are covered by the regulations, rather than the current requirement that tickets costing \$5.00 or more for a single drawing or \$15.00 or more for a series of drawings are covered.

Persons wishing to present their views regarding this matter may do so at a public hearing to be held on Thursday, August 4, 2011 at a meeting of the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit responses in writing by the close of business on

or before July 31 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

Currently, the introduction to 10 **DE Admin. Code** 102 provides that the following regulations apply to raffles conducted under Title 28 of the Delaware Code in which the value of prizes is \$5,000 or more and the price of raffle tickets is \$5.00 or more for a single drawing and \$15.00 or more for a series of drawings. The Board proposes to change this section to state that only raffle tickets costing more than \$5.00 for a single drawing and more than \$15.00 for a series of drawings are covered by the regulations.

DIVISION OF PROFESSIONAL REGULATION

RESPIRATORY CARE ADVISORY COUNCIL OF THE DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE
1770 Respiratory Care Practice Advisory Council
PUBLIC NOTICE

The Respiratory Care Advisory Council of the Delaware Board of Medical Licensure and Discipline ("Council") in accordance with 24 **Del.C.** §1775(c) is proposing changes to Regulation 12.0 regarding the unlicensed practice of respiratory care. The rule as currently drafted only addresses unlicensed practice by home equipment personnel. The changes clarify that no unlicensed personnel may perform clinical assessments or provide patient care during the course of performing their job duties.

A public hearing will be held on August 10, 2011 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Respiratory Care Advisory Council, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Council at the above address. The final date to receive written comments will be at the public hearing.

Pursuant to 24 **Del.C.** §1775(c) the Council will consider forwarding the proposed regulations to the Board of Medical Licensure and Discipline for final approval following the public hearing.

DIVISION OF PROFESSIONAL REGULATION

Delaware Board of Nursing
PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 9.0, 10.0 and 14.0. The proposed revisions to this regulation are an attempt to better organize the regulation, come into compliance with statutory changes that have occurred since the regulation was enacted, and remove confusing out-dated language.

The Board will hold a public hearing on the proposed regulation change on August 10, 2011 at 01:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers has proposed revisions to its rules and regulations.

A public hearing will be held on August 16, 2011 at 2:15 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes revisions to Rule 11.0, which sets forth the list of crimes substantially related to the practice of speech/language pathology, audiology and hearing aid dispensing. Where an applicant has been convicted of a crime on the list, that conviction may impact whether the application is approved by the Board. Further, where a licensee has been convicted of a crime on the list, that conviction may lead to disciplinary proceedings. The proposed amendments expand the list of substantially related crimes to provide greater protection to the public.

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

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
2287 Public Carrier Regulations
PUBLIC NOTICE

The Division of Motor Vehicles of the Department of Transportation is proposing several changes to the current Public Carrier Regulations, relating to several distinct matters.

The first proposed change relates to the existing regulations requiring that the name of the lessee operating a taxi be displayed on every vehicle by painting or permanently affixing this information to the vehicle. When a split-lease is executed or a vehicle is substituted while it is being serviced, the respective name of the lessee is not affixed to the vehicle as required.

This proposed change is in response to several members of the industry that have made a request that a temporary magnetic sign be allowed to post the name of the lessee each time a change is made.

The second proposed change relates to the existing regulations requiring a unique DeIDOT number to be assigned to all charter buses, medical transports, and taxis.

The third proposed change relates to the definition of ambulances that the Division believes should be exempt from the Public Carrier regulation, as these vehicles are already regulated by another state agency.

The Department will take written comments on the proposed Amendment to its Standards and Regulations for Public Carriers from July 1, 2011 through July 31, 2011. The proposed Regulations appear below.

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

Russell D. Holleger
Chief of Transportation Services
DeIDOT DMV Transportation Services
Phone (302) 744-2729
Cell Phone (302) 632-8497
Fax (302) 739-2143
Email: russelld.holleger@state.de.us

DIVISION OF PLANNING AND POLICY
2309 Standards and Regulations for Subdivision Streets and State Highway Access
PUBLIC NOTICE

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to provisions concerning Traffic Signal Agreements and the process of funding the work needed to install such signals.

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

One aspect of this regulatory process involves traffic signal agreements, required to establish the conditions under which such signals will be installed. The current process calls for the funds derived from these agreements to cover the cost for the installation of traffic signals associated with new developments, at such time as the signals

are warranted under the Department's standards. However, this process can be onerous for developers, because it presents them with unknown costs that may be outstanding for undetermined periods of time. Further, where applied to residential subdivision entrances, the agreements often remain outstanding after the developer has completed the project, in which case it can be difficult for the Department to collect on them.

The proposed regulation would create a Traffic Signal Revolving Fund to address these concerns and provides a regulatory funding method that is more consistent, predictable and fair than the current arrangement.

The Department will take written comments on the proposed Regulations Establishing Policies and Procedures for Acquisition of Certain Real Property Interests from July 1, 2011 through July 31, 2011. The proposed Regulations appear below.

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

Cleon L. Cauley, Sr., Deputy Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)
(302) 739-2895 (fax)
cleon.cauley@state.de.us