
Delaware Register of Regulations

Issue Date: July 1, 2012

Volume 16 - Issue 1, Pages 1 - 147



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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, 2012.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 17	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.

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Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

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

PUBLIC NOTICE**Fair Hearing Practice and Procedures - Expedited Fair Hearings****NATURE OF THE PROCEEDINGS**

This emergency regulation is being promulgated to amend the Division of Social Services Manual (DSSM) to codify the existing expedited hearing process for managed care clients as required by federal regulations. This emergency regulation adoption is necessary while the proposed rulemaking process is being completed because current regulations do not reflect existing policy for an expedited fair hearing process for managed care clients as required by 42 CFR §431.244(f)(2). Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) finds that federal law for receipt of federal funds requires immediate adoption of these rule revisions to ensure access to quality healthcare. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

NATURE OF PROPOSED AMENDMENT

Public entitlement programs, including Medicaid are secured by "due process procedures." That is, once public entitlements are enacted into law, they are considered rights with safeguards to protect individuals. Grievances, appeals, notices and fair hearings provide significant protections for Medicaid applicants and beneficiaries. When an individual's application has been denied or a recipient's benefits have been or will be discontinued, reduced, or suspended, the individual can appeal.

Federal regulations provide a 3 working-day timeframe for resolution of an expedited appeal (an appeal where

a delay could seriously jeopardize the enrollee's life or health) and require States to have expedited fair hearings for expedited appeals when the issue is the denial of authorization for a service.

SUMMARY OF THE PROPOSED AMENDMENT

The Centers for Medicare and Medicaid Services (CMS) reviewed the Division of Medicaid and Medical Assistance (DMMA) recently approved waiver amendment request submitted under the authority of Section 1115 of the Social Security Act to include additional populations in a mandatory managed care program. During the waiver review process, DMMA became aware that certain federal due process requirements that the agency follows are not reflected in the fair hearing regulations. These rules have long been in practice but have not heretofore been expressly set forth in the Division of Social Services Manual (DSSM).

DMMA is proposing this action as an Emergency Regulation as the most expedient way to reflect the appeals procedures currently in use and to conform the descriptions of these procedures to federal requirements.

The effects of these rules will be to reflect accurately the procedural safeguards described in the Code of Federal Regulations. The following sections of the DSSM are amended to codify the existing expedited hearings process for managed care clients as required by federal regulations:

DSSM 5000, Definitions
DSSM 5001, Providing an Opportunity for a Fair Hearing
DSSM 5300, Providing Adequate and Timely Notices
DSSM 5304.3, Presiding Over Medicaid DMMA Managed Care Hearings
DSSM 5312, Responding to Fair Hearing Requests
DSSM 5403, Providing Documents to Appellants; and,
DSSM 5500, Issuing Fair Hearing Decisions.

This emergency regulation is also published concurrently herein under "Proposed Regulations" to allow for public comment.

FINDINGS OF FACT

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of these rule amendments to codify the existing expedited hearing process for managed care clients as required by federal regulations. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, to assure compliance with relevant Federal Medicaid rules, that the proposed revisions to the Division of Social Services Manual (DSSM) regarding Fair Hearing Practice and Procedures, specifically, Expedited Fair Hearings be adopted on an emergency basis without prior notice or hearing.

Rita M. Landgraf, Secretary, DHSS

DMMA EMERGENCY ORDER REGULATION #12-26 REVISIONS:

5000 Definitions

Abandonment	When the claimant fails without good cause, to appear (by himself or by authorized representative) at his or her scheduled hearing.
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Adequate Notice	A written notice that includes: <ol style="list-style-type: none"> 1. A statement of what action the agency intends to take 2. The reasons for the intended agency action 3. The specific regulations supporting such action 4. An explanation of the individual's right to request a State agency hearing 5. The circumstances under which assistance is continued if a hearing is requested 6. If the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.
Advance Notice Period	The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Timely Notice Period.)
Appellant	Anyone who requests a hearing. (Also called Claimant.)
Benefits	Any kind of assistance, payments or benefits made by TANF, GA, Medicaid, <u>Delaware Healthy Children Program (DHCP)</u> , <u>Delaware Prescription Assistance Program (DPAP)</u> , <u>Chronic Renal Disease Program (CRDP)</u> , Child Care, Refugee, Emergency Assistance or Food Supplement programs.
Claimant	Anyone who requests a hearing. (Also called Appellant.)
DSS	The Division of Social Services (or "the Division.")
DHSS	The Department of Health and Social Services, including: <ol style="list-style-type: none"> 1. The Division of Social Services (DSS), in connection with economic, medical, vocational or child care subsidy assistance 2. The Division of Medicaid & <u>and</u> Medical Assistance (DMMA) or a managed care organization (MCO) under contract with DHSS to manage an operation of the Medicaid Program, in connection with medical assistance 3. The Division of State Service Centers (DSSC) in connection with the Emergency Assistance Program 4. The Division of Developmental Disabilities Services (DDDS) in connection with Medicaid Program services 5. The Division of Public Health in connection with Medicaid Program services 6. The Division of Services for the Aging and Adults with Physical Disabilities (DSAAPD) in connection with Medicaid Program services
<u>Expedited Fair Hearing</u>	<u>An administrative hearing for Medicaid and DHCP which provides for a decision to be issued within 3 working days from the receipt of the request for an appeal of a decision to terminate, reduce, or suspend previously authorized services or a decision to deny or limit a new service request where the standard decision time frame of 45 days could seriously jeopardize the claimant's life or health or ability to attain, maintain, or regain maximum function.</u>
Fair Hearing	An administrative hearing held in accordance with the principles of due process which include: <ol style="list-style-type: none"> 1. Timely and adequate notice 2. The right to confront and cross-examine adverse witnesses 3. The opportunity to be heard orally 4. The right to an impartial decision maker 5. The opportunity to obtain counsel, represent him or herself, or use any other person of his or her choice.
Fair Hearing Summary	A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.

Good Cause	May include, but is not limited to the following: <ol style="list-style-type: none">1. Death in the family2. Personal injury or illness3. Sudden and unexpected emergencies4. Failure to receive the hearing notice
Group Hearing	A series of individual requests for a hearing consolidated into a single group hearing. A group hearing is appropriate when the sole issue involved is one of State or federal law, regulation, or policy. The policies governing hearings will be followed in all group hearings. The individual appellant in a group hearing is permitted to present his or her case or be represented by an authorized representative.
Hearing Decision	The decision in a case appealed to the State hearing officer. The decision includes: <ol style="list-style-type: none">1. The substance of what transpired at the hearing2. A summary of the case facts3. Supporting evidence4. Pertinent State or federal regulations5. The reason for the decision <p>In Food Supplement Program disqualification cases, the hearing decision must also respond to reasoned arguments by the appellant.</p> <p>EXAMPLE: At a Food Supplement Program Intentional Program Violation Hearing involving a failure to report a change promptly, an appellant may argue that a failure to report does not constitute "clear and convincing evidence" of intent to defraud. The hearing officer's decision must respond to this argument.</p>
Hearing Officer	The individual responsible for conducting the hearing and issuing a final decision on issues of fact and questions of law.
Hearing Record	A verbatim transcript of all evidence and other material introduced at the hearing, the hearing decision, and all other correspondence and documents which are admitted as evidence or otherwise included for the hearing record by the hearing officer.
Hearing Summary	A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.
Hearsay Evidence	Testimony about a statement made by a third party that is offered as fact without personal knowledge
Individual Hearing	A hearing in which an individual client disagrees with the action taken by the Department on the facts of his or her case.
MCO	A Managed Care Organization under contract with DHSS to administer the delivery of medical services to recipients of Medicaid and CHIP through a network of participating providers.
Party	A party to a hearing is a person or an administrative agency or other entity who has taken part in or is concerned with an action under appeal. A party may be composed of one or more individuals.
Privilege	Appellants may decline to present testimony or evidence at a fair hearing under claim of privilege. Privilege may include the privilege against self-incrimination or communication to an attorney, a religious advisor, a physician, etc.
Request for a Fair Hearing	Any clear expression (oral or written) by the appellant or his authorized agent that the individual wants to appeal a decision to a higher authority. Such request may be oral in the case of actions taken under the Food Supplement Program.
Relevance	Refers to evidence. Evidence is relevant if an average person believes that the evidence makes a significant fact more probable.

Remand	To send back for further action.
Rule of Residuum	Findings of fact must be supported by at least some evidence which is admissible in a court of law.
Timely Notice Period	The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Advance Notice Period.)

5001 Providing an Opportunity for a Fair Hearing

7 CFR 273.15(f), 42 CFR 431.206, 45 CFR 205.10, 42 CFR 438.402, 42 CFR 457.1120

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 where the applicant or recipient claims that he/she has been adversely impacted by a specific action taken by DSS or DMMA. This policy does not create any new right of appeal outside DSS or DMMA, nor does it restrict an existing right to any other fair hearing process to which the applicant or recipient may be entitled.

1. Staff Offer Clients an Opportunity to be Heard

An opportunity for a fair hearing will be provided, subject to the provisions of this section, 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.

The agency will promptly inform a claimant in writing if assistance is to be discontinued under any circumstance pending a hearing decision.

2. Staff Inform Clients in Writing of Their Hearing Rights

Every applicant and recipient will be informed in writing of his or her right to a fair hearing as provided under this section:

- A. At the time of application
- B. At the time of any action affecting the applicant's or recipient's claim
- C. At the time a skilled nursing facility or a nursing facility notifies DSS or DMMA of a Medicaid applicant's or recipient's potential transfer or discharge, which may adversely affect the applicant's or recipient's Medicaid eligibility
- D. At the time an individual receives an adverse determination by the State with regard to the preadmission screening resident review PASRR requirements.

(Break in Continuity of Sections)

5300 Providing Adequate and Timely Notices

~~45 CFR 205.10~~, 7 CFR 273.15(f), 42 CFR 431.210, 42 CFR 438.404, 42 CFR 457.340, 45 CFR 205.10

This policy applies to every applicant and recipient under any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

1. DSS and DMMA Provide Written Notice of Agency Actions

Written notice of an agency action will contain:

- A. A statement of the client's right to a fair hearing as provided under this section.
- B. The method by which he or she may request a fair hearing.
- C. A statement that he or she may represent him/herself or that he or she may be represented by counsel or by another person.

2. DSS and DMMA Take Action Only Under Certain Conditions

No action may be taken unless the following conditions are met:

A. Written notice is provided to the client that is "adequate."

An adequate notice is a written notice that includes

1. A statement of what action the agency intends to take
2. The reasons for the intended agency action
3. The specific regulations supporting such action
4. Explanation of the individual's right to request a State agency hearing
5. The circumstances under which assistance is continued if a hearing is requested
6. If the agency action is upheld, that such assistance must be repaid
 - i. Must be repaid under Title IV-A
 - ii. Must be repaid under Titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payment
 - iii. May be repaid under Title XIX

B. Written notice is provided to the client that is "timely."

A timely notice is one that is mailed at least 10 days before the date of action

Exception: For TANF, notice is timely if mailed at least 5 days before the action would become effective when DSS learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources.

C. Each recipient is advised of his or her [potential] liability for repayment of benefits received while awaiting a fair hearing if the agency's decision is upheld.

Continue benefits if the hearing request form is unclear as to whether the recipient wants continued benefits or not. Provide continued benefits within 5 working days of the date the agency received the household's request.

Exception: Food Supplement Program households do not have a right to a continuation of benefits while waiting for the fair hearing when the recipient is disputing a reduction, suspension or cancellation of benefits as a result of an order issued by FNS.

During the fair hearing period, the agency will adjust allotments to take into account reported changes except for the factor(s) on which the hearing is based.

D. Each notice contains information needed for the claimant to determine from the notice alone, the accuracy of the Division's action or intended action.

All notices will:

Indicate the action or proposed action to be taken (i.e., approval, denial, reduction, or termination of assistance);

- a. Provide citation(s) to the regulation(s) supporting the action being taken;
- b. Provide a detailed individualized explanation of the reason(s) for the action being taken which includes, in terms understandable to the claimant:
 - i. An explanation of why the action is being taken, and
 - ii. An explanation of what the claimant was required by the regulation to do and why his or her actions fail to meet this standard (if the action is being taken because of the claimant's failure to perform an act required by a regulation)
- c. Provide:
 - i. eExplanations of what income and/or resources the agency considers available to the claimant

- ii. ~~¶~~The source or identity of these funds,
- iii. ~~¶~~The calculations used by the agency,
- iv. ~~¶~~The relevant eligibility limits and maximum benefit payment levels for a family or assistance unit of the claimant's size.

(Break in Continuity of Sections)

5304.3 Presiding Over Medicaid DMMA Managed Care Hearings

42 CFR 438.408(f), 42 CFR 438.410

This policy applies to recipients enrolled in a managed care organization.

Recipients of medical services from the Division of Medicaid and Medical Assistance may appeal an adverse decision of a Managed Care Organization (MCO) to the Division. The decision of the DSS Hearing Officer is a final decision of the Department of Health and Social Services and is binding on the MCO.

The MCO is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case. The MCO is subject to the rules, practices, and procedures detailed herein.

These rules do not prevent an MCO from offering conciliation services or a grievance hearing prior to the fair hearing conducted by DSS.

1. Recipients Are Entitled to an Expedited Resolution in Cases of Emergency

The MCO is responsible for establishing and maintaining an expedited review process for appeals when the MCO determines or the provider indicates that taking the time for standard resolution could seriously jeopardize the claimant's life or health or ability to attain, maintain, or regain maximum function. The expedited review can be requested by the claimant or the provider on the claimant's behalf.

The MCO must issue an expedited resolution within 3 working days after receiving the appeal. Expedited appeals must otherwise follow all other standard appeal requirements.

If the MCO denies a request for an expedited resolution of an appeal, it must:

- i. resolve the appeal within the standard time frame of 45 days.
- ii. make reasonable efforts to provide prompt oral notice of the denial and provide written notice of the denial to the claimant within 2 calendar days.

(Break in Continuity of Sections)

5312 Responding to Fair Hearing Requests

45 CFR 205.10

This policy applies anytime anyone requests a fair hearing due to a decision made by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA) for a program administered by DSS or DMMA.

1. The Agency Prepares a Hearing Summary

Within 5 working days of receipt of a request for a fair hearing, the agency (or MCO or other Contractor) will prepare a hearing summary and submit the summary to the Hearing Office.

Exception: For expedited hearings see DSSM 5304.3.

2. Staff Ensure the Summary Contains Pertinent Information

The hearing summary will contain enough information for the appellant to prepare his or her case. The summary must contain:

A. Identifying information - Give the client's name, the client's address, and the DCIS identification number.

- B. Action taken – Indicate the basis of the client's appeal (rejection, reduction, closure, amount of benefits, etc.)
- C. Reason for action - Describe the specific action taken by the agency, as well as the factual basis for its decision.
- D. Has assistance continued? - Indicate whether or not the appellant's assistance was restored because the appellant filed a request for a hearing within the timely notice period.
- E. Policy basis - Cite the specific State [and federal] rules supporting the action taken.
- F. Persons expected to testify - This section lists the names and addresses (if any) of persons that the agency expects to call to testify.

3. The Hearing Office Notifies the Appellant

Upon receipt of the hearing summary, the Hearing Office will:

- A. Set a prompt date for the hearing.
- B. Send a notice conforming to the requirements of §5311. The notice will include the hearing summary.
- C. Notify all parties, including witnesses, of the date, time, and place of the hearing.

(Break in Continuity of Sections)

5403 Providing Documents to Appellants

This policy applies anytime an appellant or his or her representative requests a fair hearing.

1. Appellants May Examine Case Records and Documents

Prior to the hearing, the appellant and his or her representative will have adequate opportunity to examine all documents and records to be used by the State agency or its agent at the hearing. He or she may also examine his or her case records.

2. Staff Must Provide Case Records in a Timely Manner

Staff must make case records available to the appellant within 5 working days of the request. If copies of documents are requested for the hearing, they will be provided at no cost. For expedited resolution requests, case records must be made available within 3 working days of the receipt of the appeal.

Exception: Staff must not release confidential information, such as

- 1. the names of individuals who have disclosed information about the household without its knowledge
- 2. the nature or status of pending criminal prosecutions

(Break in Continuity of Sections)

5500 Issuing Fair Hearing Decisions

7 CFR 273.15(c), (q); 42 CFR 431.244, 431.245; 45 CFR 205.10(16)

This policy applies to applicants and recipients of any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

1. Hearing Decisions Are Made Promptly

The Hearing Officer has sole authority to make hearing decisions. The Hearing Officer must take prompt, definitive, and final administrative action within ~~ninety (90)~~ 90 days from the date the appeal is filed. The decision must be in writing and must be sent to the appellant as soon as it is made.

Exception: Food Supplement Program decisions must be made within 60 days from the date the appeal is filed.

Exception: Expedited hearing decisions for medical assistance must be made within 3 working days from receipt of the appeal which meets the criteria for an expedited appeal process. See Section 5304.3

2. Decisions Are Binding on the Department of Health and Social Services

3. Decisions Comply with Laws and Regulations

The Hearing Officer's decision will comply with State and federal laws and regulations and are based on the hearing record.

4. Decisions Must Contain Specific Information

The written decision will contain, at a minimum, the following information.

- A. Information to enable a reader to understand how the decision was reached.
- B. Supporting evidence
- C. Food Supplement Program cases will state whether benefits will be issued or terminated.

The decision contains:

- ~~A.~~ 1. A statement of the appellant's right to judicial review
- ~~B.~~ 2. The identity of the individual
- ~~C.~~ 3. A summary of evidence
- ~~D.~~ 4. Findings of fact
- ~~E.~~ 5. A discussion or analysis of facts and arguments presented at the hearing
- ~~F.~~ 6. A discussion of how the applicable rules apply to the facts in the case
- ~~G.~~ 7. The resulting conclusions
- ~~H.~~ 8. The hearing officer's decision and/or order
- ~~I.~~ 9. Applicable rules involved in reaching the decision

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES Surface Water Discharges Section

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

SECRETARY'S ORDER
Pursuant to 29 Del. C. §10119
Order No. 2012-W-0021

Regulations Governing the Discharges from the Application of Pesticides to Waters of the State

Re: Sixty- (60) day renewal to Order No. 2012-W-0006 enacting emergency regulations, *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*

AUTHORITY AND FINDINGS

Secretary's Order No. 2012-W-0006 was adopted in February 2012 to temporarily enact a new regulatory requirement, *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State* under revision of 7 **Del.C.**, Chapter 60, Section 9.0. This notification acts to renew Order No. 2012-W-0006 for an additional 60 days after the initial 120-day effective period pursuant to 29 **Del.C.** §10119 (3).

In 2009, the Court (National Cotton Council, et al. v. Environmental Protection Agency ([EPA]) vacated EPA's 2006 Final Rule on Aquatic Pesticides, which determined that National Pollutant Discharge Elimination System

(NPDES) permits were not required for applications of pesticides to United States' (U.S.) waters. As a result of the court's decision, discharges to waters of the U.S. from the application of pesticides will require NPDES permits when the court's mandate takes effect. On March 28, 2011, the Court granted EPA's request for an extension to allow more time for pesticide operators to obtain permits for pesticide discharges into U.S. waters from April 9, 2011, to October 31, 2011.

The State of Delaware has delegated authority from EPA for administration of the NPDES and issuance of the State's own NPDES permits. Delaware must, therefore, promulgate regulations to address the new NPDES permitting requirement for the application of pesticides on or near water bodies of the state.

The Department of Natural Resources and Environmental Control's (DNREC) Division of Water (DW) has been working to draft regulations to address the new NPDES permitting requirements. However, the required court date of October 31, 2011, was not met by Delaware due to the time-intensive nature of the undertaking combined with staff shortages/turnover in addition to EPA's final rule not having been completed prior to the October 31 deadline. Development of the final regulation is currently underway; however, it is unlikely the final regulations will be promulgated prior to the expiration of the emergency regulations. Without the 60-day extension of the emergency regulations, DNREC will be in violation of the federal requirements to have an NPDES program in place for the application of aquatic pesticides in or near Delaware Waters. The emergency regulations, *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*, has allowed pesticide applicators to obtain the required NPDES permits to apply aquatic pesticides from March-June where extension of such regulations will allow for such coverage until September 2012.

Much of the aquatic pesticide spraying during this timeframe is concentrated on eliminating mosquito populations, which pose a significant risk to human health and welfare due to their ability to transmit diseases and other blood-borne vectors. The best known mosquito-borne diseases are West Nile Virus, Malaria, and Yellow Fever. Others, such as Dengue Fever and Encephalitis, are common within America but not as well-known throughout the general populous. Historically, such diseases have been at very low levels as the result of our Nation's progressive and intensive mosquito-control effort; however, for the first time in nearly 50 years, such diseases have been documented in the U.S. mostly as a direct result of the declining vector control programs combined with an increase in immigrants who transport such blood-borne diseases into the U.S.

For this reason, it is vital to renew emergency regulations under Order No. 2012-W-0006 within Delaware to not allow the lapse in Delaware's Mosquito Control Program offered through the DNREC's Division of Fish and Wildlife. The DNREC's DW will continue to work with stakeholders toward completion of the full regulations through the normal regulatory process with a target promulgation of September 2012. Additionally, pursuant to 29 **Del.C.** §10119(4), DW will receive, consider, and respond to petitions by any interested person(s) for the reconsideration or revision of this emergency order.

EFFECTIVE DATE OF ORDER

This Secretary's Order will renew the above-referenced order No. 2012-W-0006 and emergency regulations for an additional 60 days after the initial 120-day effective period pursuant to 29 **Del.C.** §10119. This emergency order shall take effect upon publication in the *Delaware Register* and shall remain in effect for 60 days from date of publication.

ORDER

It is hereby ordered that the *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State* under the original Secretary's Order No. 2012-W-0006 remain in effect for an additional 60 days pursuant to 29 **Del.C.** §10119(3).

Collin P. O'Mara, Secretary

7201 Regulations Governing the Control of Water Pollution

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

<http://regulations.delaware.gov/register/july2012/emergency/16 DE Reg 14 07-01-12.htm>

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 STATE FIRE PREVENTION COMMISSION

16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))

1 **DE Admin. Code** 701, 702, 703, 704, 705 & 706

PUBLIC NOTICE

701 Administration and Enforcement

702 Fire Protection in Building Construction

703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers

704 Hazardous Processes and Operations

705 General Fire Safety

706 Specific Occupancy Requirements

In accordance with procedures set forth in 29 **Del.C.** ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Delaware State Fire Prevention Commission is proposing to adopt changes and updates to these regulations.

The Delaware State Fire Prevention Commission will hold a public hearing at which members of the public may present comments on the proposed regulations on August 21, 2012 at 10:00 a.m. in the Delaware State Fire Prevention Chamber at the Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments must be received on or before August 7, 2012. Members of the public may receive a copy of the proposed regulations at no charge by United States Mail by writing Ms. Sherry Lambertson at the address of the Delaware State Fire Prevention Commission set forth above.

***Please Note: Due to the size of the proposed regulations, they are not being published here. A copy of the regulations are available at:**

Delaware State Fire Prevention Commission Regulations 701 through 706

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

PUBLIC NOTICE

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 6.2.2.1.10, 6.2.2.2 & 8.2.2.4. The Commission will hold a public hearing on the proposed rule changes on August 14, 2012. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on July 1, 2012.

The proposed changes are for the purpose of updating Rule 3 and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml

A copy is also available for inspection at the Harness Racing Commission office.

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

6.0 Types of Races

(Break in Continuity Within Section)

6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

- 6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;
- 6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;
- 6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;
- 6.2.2.1.4 sex;
- 6.2.2.1.5 number of starts during a specified period of time;
- 6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;
- 6.2.2.1.7 horse's race condition in a specified number of previous races or during a specified period of time;
- 6.2.2.1.8 claiming price in a horse's last one to three previous races;
- 6.2.2.1.9 Delaware-owned or bred races as specified in 3 **Del.C.** §10032; or
- 6.2.2.1.10 Delaware Owned or Bred Preferred.
- 6.2.2.1.101 any one or more combinations of the qualifications herein listed.

6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules except when written Delaware Owned or Bred Preferred. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

PROPOSED REGULATIONS

- 6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.
- 6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the Association, the one more favorable to the declarer shall govern.
- 6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.
- 6.2.2.6 Records, time bars shall not be used as a condition of eligibility.
- 6.2.2.7 Horses must be eligible when declarations close subject to the provision that:
 - 6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;
 - 6.2.2.7.2 Age allowances and eligibility shall be according to the age of the horse on the date the race is contested.
 - 6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.
- 6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.
- 6.2.2.9 In overnight events, on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse. At least eight feet per horse must be provided the starters in the front tier.
- 6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

(Break in Continuity of Sections)

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

8.2 Veterinary Practices

8.2.1 Veterinarians Under Authority of Chief DHRC Veterinarian

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the Chief DHRC Veterinarian and the State Steward. Without limiting the authority of the Presiding Judge to enforce these Rules, the Chief DHRC Veterinarian may recommend to the Presiding Judge or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

8.2.2 Treatment Restrictions

- 8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

- 8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:
- 8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;
 - 8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or
 - 8.2.2.2.3 a non-injectable non-prescription medication or substance.
- 8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the Board of Judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the Board of Judges and/or the Commission.
- 8.2.2.4 Therapeutic Electronic Devices, Shockwave Therapy/Instruments
- 8.2.2.4.1 The use of Therapeutic Electronic Devices or shock wave therapy shall not be permitted unless the following conditions are met:
 - 8.2.2.4.1.1 No licensee is permitted to possess or to use Therapeutic Electronic Devices or shock wave therapy machines/instruments on association premises.
 - 8.2.2.4.1.2 Any horse treated with shock wave therapy shall not be permitted to race for a minimum of ten (10) days following treatment (the day of treatment shall be considered the first day in counting the number of days). Any horse treated with Therapeutic Electronic Devices or shock wave therapy shall be placed on the Commission Veterinarian's list.
 - 8.2.2.4.1.3 All Therapeutic Electronic Devices or shock wave therapy treatments must be reported by the trainer of record to the official Commission veterinarian on the prescribed form not later than the time prescribed by the official Commission veterinarian.
 - 8.2.2.4.2 A Trainer, Veterinarian, or other person, who has been found to have violated any of the above provisions of this Rule shall be subject to appropriate disciplinary action by the Judges and/or Commission.
 - 8.2.2.4.3 Definitions: The following terms and words used in this Rule are defined as:
 - 8.2.2.4.3.1 Therapeutic Electronic Devices shall mean any device that requires electricity or battery power, including but not limited to: therapeutic ultrasound, therapeutic laser or other similar devices. Shock Wave Therapy shall mean all Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments and any other treatments determined to pose similar risks by the Commission Veterinarian.

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

501 Harness Racing Rules and Regulations

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 815

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

815 Health Examinations and Screening

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 815 Health Examinations and Screening related to the 9th grade health examination. The amendments change the requirement for a 9th grade health examination to be effective beginning with the 2013-2014 school year. The 9th grade health examination will be strongly recommended in the 2012-2013 school year. The delay for required implementation is to provide additional time for parents and guardians to be advised and to prepare for the new requirement. Districts and charters schools have already embarked on communicating information to parents and guardians related to the new 9th grade health examination.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2012 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments are related to the 9th grade health examination and not specifically related to the state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amendments are related to the 9th grade health examination and not specifically related to students receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments continue to address the health and safety of students.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments are related to the 9th grade health examination and not specifically related to students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the necessary authority and flexibility of decision making at the local board and school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments do not place unnecessary reporting or administrative requirements or an additional mandate upon decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority does not change with 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 related to the 9th grade health examination and consistent with other state policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The districts and charter schools will need to notify parents and guardians of the 9th grade health examination provisions.

815 Health Examinations and Screening

1.0 Definitions

"**Delaware School Health Examination Form**" means the age appropriate form developed by the Delaware Department of Education for documenting information from the parent, guardian or Relative Caregiver and healthcare provider on the student's health status.

"**Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation**" means the form approved by the DIAA.

"**Healthcare Provider**" means a currently licensed physician, advanced practice nurse, nurse practitioner, or physician's assistant.

"**Health Examination or Health Evaluation**" means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.

15 DE Reg. 838 (12/01/11)

2.0 Health Examinations

2.1 All public school students shall have two health examinations, as provided in this section, that have been administered by a healthcare provider. The first health examination shall have been done within the two years prior to entry into school. Beginning in school year 2012-2013, the second health examination shall be required strongly recommended and not required for entering grade 9 students. Beginning in school year 2013-2014, the second health examination shall be required for entering grade 9 students. The required health examination ~~and~~ shall be done within the two years prior to entry into grade 9. Within thirty calendar days after entry, new enterers and grade 9 students who have not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a licensed health care provider for the health examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the ~~2012-2013~~ 2013-2014 school year shall not be required to have the second health examination or evaluation.

2.1.1 The requirement for the health examination may be waived for students whose parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.

2.1.2 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.

2.1.3 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results on medical testings and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.

2.1.4 The school nurse shall record all findings within the student's electronic medical record (see 14 DE Admin. Code 811) and maintain the original copy in the child's medical file.

10 DE Reg. 1807 (06/01/07)

15 DE Reg. 838 (12/01/11)

Non regulatory note: See 14 DE Admin. Code 1008.3 and 14 DE Admin. Code 1009.3 for physical or health examination requirements associated with participation in sports.

3.0 Screening

3.1 Vision and Hearing Screening

3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.

3.1.1.1 In addition to the screening requirements in ~~2-4-4~~ 3.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.

3.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in car driving hours.

3.1.2 The school nurse shall record the results within the student's electronic medical record and shall notify the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.

3.2 Postural and Gait Screening

3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.

3.2.2 The school nurse shall record the findings within the student's electronic medical record (see 14 **DE Admin. Code** 811) and shall notify the parents, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.

3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an on site follow up evaluation or a referral to the student's health care provider.

3.3 Lead Screening

3.3.1 Children who enter school at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 **Del.C.** Ch. 26.

3.3.1.1 For children enrolling in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.

3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 **Del.C.** §2603.

3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 **Del.C.**, Ch. 26, requires all health care providers to order lead screening for children at or around the age of 12 months of age.

3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 **DE Admin. Code** 811.

DEPARTMENT OF FINANCE

DIVISION OF UNCLAIMED PROPERTY

Escheator of the State of Delaware

Statutory Authority, 12 Delaware Code, Section 1155 (12 **Del.C.** §1155)

PUBLIC NOTICE

Regulation on Practices and Procedures for Records Examinations by the State Escheator

Nature of Proceedings Synopsis of the Subject and Substance of the Proposed Regulation

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Department

of Finance is proposing to adopt a regulation on practices and procedures for records examinations by the State Escheator as described in 12 **Del.C.** §1155. The proposed regulation sets forth the rules governing the historical periods for which the State Escheator will examine historical records to determine whether the person whose records are being examined has complied with any provision of 12 **Del.C.** Ch. 11.

Statutory Basis and Legal Authority to Act

12 Delaware Code, § 1154; 12 Delaware Code, § 1155; 12 Delaware Code, § 1208.

Other Regulations Affected

None.

How to Comment on the Proposed Regulation

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Mr. Mark Udinski, Department of Finance, Escheator of the State of Delaware, Carvel State Building, 820 North French Street, P.O. Box 8763, Wilmington, Delaware 19899-8763, phone (302) 577-8260, or facsimile (302) 577-8565. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Mark Udinski at the address of the Delaware Department of Finance as set forth above. Written comments must be received on or before July 31, 2012.

Regulation on Practices and Procedures for Records Examinations by the State Escheator

1.0 Construction of Rules of Practice and Procedure

- 1.1 Unless otherwise provided, these Rules of Practice govern examinations of records of any person or business association or organization to determine whether the person has complied with any provision of 12 **Del.C.** Ch. 11.
- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

2.0 Length of Examination Periods.

- 2.1 There is no provision of Delaware law that now limits the historical period for which the State Escheator may examine records under 12 **Del.C.** §1155 to determine whether the person under examination has complied with any provision of 12 **Del.C.** Ch. 11.
- 2.2 As a matter of policy, in previous examinations the State Escheator has not examined records created before January 1, 1981 to determine whether the person under examination has complied with any provision of 12 **Del.C.** Ch. 11.
- 2.3 As a part of a larger revenue stabilization initiative, the State Escheator has determined that in order to encourage compliance with 12 **Del.C.** Ch. 11, the following starting periods for examinations will be observed:
 - 2.3.1 For all persons who are now the subject of a records examination under 12 **Del.C.** §1155, or who become the subject of an examination before the effective date of this regulation, no records created before January 1, 1986 will be included in the determination of compliance with the provisions of 12 **Del.C.** Ch. 11, provided that the examination is completed by June 30, 2015.
 - 2.3.2 For all persons who become the subject of examinations on or after the effective date of this regulation, and for all other persons whose examinations are not completed by the close of business on June 30, 2015, the State Escheator will continue his existing policy of examining records created on or after January 1, 1981 to determine whether the person under examination has complied with any provision of 12 **Del.C.** Ch. 11.

PROPOSED REGULATIONS

OFFICE OF THE STATE LOTTERY

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

PUBLIC NOTICE

204 Sports Lottery Rules and Regulations

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the regulation

The Delaware State Lottery will seek public comments on the issue of whether its current rules should be amended. 10 DE Admin. Code 204 will be amended to establish rules for sports betting under new legislation authorizing various changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 31, 2012 at the State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address.

C. Summary of Proposal

These amendments will update regulations. They will rewrite the section on licensing of agents to allow sports betting to take place at retail establishments other than casinos. The amendments will substantially rewrite section 6 regarding the duties of agents and will substantially rewrite the licensing procedure of section 12. The amendments will eliminate section 13 regarding self-excluded persons, as that section will not be applicable.

204 Sports Lottery Rules and Regulations

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

204 Sports Lottery Rules and Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1101 (16 Del.C. §1101)

PUBLIC NOTICE

3102 Long Term Care Transfer, Discharge and Readmission Procedures

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a complete revision of the previously proposed Regulation 3102 for the establishment of Long Term Care Transfer, Discharge and Readmission Hearing Procedures.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 by Wednesday August 1, 2012.

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

SUMMARY OF PROPOSED CHANGES

Background

DLTCRP has a statutory obligation to implement regulations governing impartial hearings on discharge matters, 16 Del.C. Subchapter II, (18).

Summary of Proposal

This regulatory proposal implements regulations on the governance of impartial hearings on contested discharges from long term care facilities.

Statutory Authority

16 Del.C. §1124, "Staff training; issuance of regulations."

29 Del.C. §7971(d)(1) "Division of Long Term Care Residents Protection."

3102 Long Term Care Transfer, Discharge and Readmission Procedures

1.0 Purpose

This regulation governs the impartial hearings on contested discharges from long term care facilities.

2.0 Definitions

"DHSS" means the Department of Health and Social Services

"Division" means the Division of Long Term Care Residents Protection

"Party" means the resident or resident's representative and the facility.

"Resident" means resident or patient.

"Transfer and discharge" includes movement of a resident to a bed outside of the licensed facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same licensed facility

3.0 Transfer, discharge and readmission rights of residents in a certified skilled nursing facility or a certified nursing facility as defined in 42 CFR §483.5. See 42 CFR §483.12

3.1 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

3.1.1 The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

3.1.2 The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

3.1.3 The safety of individuals in the facility is endangered;

3.1.4 The health of individuals in the facility would otherwise be endangered;

3.1.5 The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

3.1.6 The facility ceases to operate.

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- 3.2 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs 3.1.1 through 3.1.5 of this section, the resident's clinical record must be documented. The documentation must be made by:
- 3.2.1 The resident's physician when transfer or discharge is necessary under paragraph 3.1.1 or paragraph 3.1.2 of this section; and
 - 3.2.2 A physician when transfer or discharge is necessary under paragraph 3.1.4 of this section.
- 3.3 Notice before transfer. Before a facility transfers or discharges a resident, the facility must—
- 3.3.1 Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
 - 3.3.2 Provide a copy of the notice to the Division, the State LTC ombudsman, and if applicable, the agency responsible for the protection and advocacy of developmentally disabled individuals and/or the agency responsible for the protection and advocacy of mentally ill individuals.
 - 3.3.3 Record the reasons in the resident's clinical record; and
 - 3.3.4 Include in the notice the items described in paragraph 3.5 of this section.
- 3.4 Timing of the notice.
- 3.4.1 Except as specified in paragraphs 3.4.2 and 3.8 of this section, the notice of transfer or discharge required under paragraph 3.3 of this section must be made by the facility at least 30 days before the resident is transferred or discharged.
 - 3.4.2 Notice may be made as soon as practicable before transfer or discharge when:
 - 3.4.2.1 The safety of individuals in the facility would be endangered under paragraph 3.1.3 of this section;
 - 3.4.2.2 The health of individuals in the facility would be endangered, under paragraph 3.1.4 of this section;
 - 3.4.2.3 The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph 3.1.2 of this section;
 - 3.4.2.4 An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph 3.1.1 of this section.
- 3.5 Contents of the notice. The written notice specified in paragraph 3.3 of this section must include the following:
- 3.5.1 The reason for transfer or discharge;
 - 3.5.2 The effective date of transfer or discharge;
 - 3.5.3 The location to which the resident is transferred or discharged;
 - 3.5.4 A statement that the resident has the right to appeal the action to the State;
 - 3.5.5 The name, address and telephone number of the State long term care ombudsman;
 - 3.5.6 For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
 - 3.5.7 For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
- 3.6 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 3.7 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the Secretary, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at 42 CFR §483.75(r).

- 3.8 Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in 42 CFR §483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.
- 3.9 Notice of bed-hold policy and readmission.
 - 3.9.1 Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies:
 - 3.9.1.1 Notice of State bed-hold. The duration of the bed-hold policy under the State plan, if any during which the resident is permitted to return and resume residence in the nursing facility. See DHSS Long Term Care Institutional Provider Specific Policy Manual at Section 4.5; and
 - 3.9.1.2 Facility policies. The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph 3.9.3 of this section, permitting a resident to return.
 - 3.9.2 Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which explains the bed-hold policy described in paragraph 3.9.1.1 of this section.
 - 3.9.3 Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:
 - 3.9.3.1 Requires the services provided by the facility; and
 - 3.9.3.2 Is eligible for Medicaid nursing facility services.
- 3.10 Readmission to a composite distinct part. When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in 42 CFR§483.5(c)), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

4.0 Transfer, discharge and readmission rights of residents of a Nursing Facility and Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1121.

- 4.1 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility except for:
 - 4.1.1 Medical needs which cannot be met in the facility;
 - 4.1.2 The resident's own welfare;
 - 4.1.3 The welfare of the other individuals in the facility;
 - 4.1.4 Nonpayment of justified charges, after appropriate notice;
 - 4.1.5 Termination of facility operation.
- 4.2 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs 4.1.1 or 4.1.2 of this section, the resident's clinical record must be documented. The documentation must be made by:
 - 4.2.1 The resident's physician when transfer or discharge is necessary under paragraph 4.1.1 or paragraph 4.1.2 of this section; and
 - 4.2.2 A physician when transfer or discharge is necessary under paragraph 4.1.3 of this section.
- 4.3 Notice before transfer. Before a facility transfers or discharges a resident, the facility must:
 - 4.3.1 Notify the resident and, if known, a family member or legal representative, of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
 - 4.3.2 Record the reasons in the resident's clinical record; and
 - 4.3.3 Include in the notice the items described in paragraph 4.5 of this section.

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- 4.4 Timing of the notice. (i) Except as specified in paragraphs 4.4.2 and 4.8 of this section, the notice of transfer or discharge required under paragraph 4.3 of this section must be made by the facility at least 30 days before the resident is transferred or discharged.
- 4.4.2 Notice may be made as soon as practicable before or after transfer or discharge when:
- 4.4.2.1 The welfare of individuals in the facility would be endangered under paragraph 3.1.3 of this section;
- 4.4.2.2 An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph 3.1.1. of this section; or
- 4.5 Contents of the notice. The written notice specified in paragraph 3.3 of this section must include the following:
- 4.5.1 The reason for transfer or discharge;
- 4.5.2 The effective date of transfer or discharge;
- 4.5.3 The location to which the resident is transferred or discharged;
- 4.5.4 A statement that the resident has the right to appeal the action to the State;
- 4.5.5 The name, address and telephone number of the State long term care ombudsman;
- 4.5.6 For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
- 4.5.7 For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
- 4.6 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 4.7 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to Division, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents.
- 4.8 Room changes.
- 4.8.1 Room changes in a facility must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another location.
- 4.8.2 The facility must give reasonable notice before the resident's room or roommate is changed, except in emergencies.
- 4.8.3 The facility shall endeavor to honor roommate requests whenever possible.
- 4.9 Notice of bed-hold policy and readmission:
- 4.9.1 Notice before transfer. When a nursing facility transfers a resident out of a facility to an acute care facility it must provide written information to the resident and a family member or legal representative that specifies that the facility must accept the patient or resident back into the facility when the resident no longer needs acute care and there is space available in the facility. If no space is available, the resident shall be accepted into the next available bed.
- 4.9.2 Permitting resident to return to facility. A nursing facility must establish and follow a written policy for implementing its obligation to immediately offer the first available bed to a resident who is entitled to be readmitted to the facility when acute care is no longer required.

5.0 Fair Hearing Practice and Procedures which pertain to grievances under either Section 3.0 or 4.0 of this regulation.

- 5.1 Right to hearing. An impartial hearing may be requested by a resident who believes a facility has erroneously determined that he or she must be transferred or discharged.
- 5.1.1 The hearing request must:
- 5.1.1.1 Be in writing;

- 5.1.1.2 Be received by the facility within 30 days from the date that the discharge notice is received by the resident or the resident's legal representative;
 - 5.1.1.3 Be copied to the Division and the State LTC ombudsman.
 - 5.2 DHSS may deny or dismiss a request for a hearing if:
 - 5.2.1 The resident withdraws the request in writing; or
 - 5.2.2 The resident or his or her legal representative fails to appear at a scheduled hearing without good cause.
 - 5.3 Impartial hearing must be conducted:
 - 5.3.1 At a reasonable time, date and place;
 - 5.3.2 After adequate written notice of the hearing;
 - 5.3.3 By an impartial fact-finder who has not been directly involved in the initial determination of the action in question;
 - 5.3.4 If the hearing involves medical issues as the basis for the transfer or discharge and if the impartial fact finder considers it necessary to have a medical assessment other than that of the facility involved in making the transfer or discharge decision, such a medical assessment must be obtained at State expense and made part of the record.
 - 5.3.5 With appropriate translation services available to parties or witnesses as needed to be provided at State expense.
 - 5.4 Procedural rights. The parties must be given the opportunity to:
 - 5.4.1 Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by either party at the hearing;
 - 5.4.2 Bring witnesses;
 - 5.4.3 Establish all pertinent facts and circumstances;
 - 5.4.4 Present an argument without undue interference; and
 - 5.4.5 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
 - 5.5 Hearing decisions must be based exclusively on evidence introduced at the hearing.
 - 5.6 The record must consist only of:
 - 5.6.1 The transcript or recording of testimony and exhibits;
 - 5.6.2 All papers and requests filed in the proceeding; and
 - 5.6.3 The decision of the hearing officer.
 - 5.7 The parties must have the access to the record at a convenient place and time in order to review or to secure a transcript at the party's expense.
 - 5.8 The impartial decision must:
 - 5.8.1 Summarize the facts; and
 - 5.8.2 Identify the statutes and/or regulations pertinent to the decision
 - 5.8.3 Specify the reasons for the decisions; and
 - 5.8.4 Identify the supporting evidence and apply the relevant legal principles.
 - 5.9 The impartial fact-finder must:
 - 5.9.1 Notify the parties of the decision, in writing.
 - 5.9.2 Notify the parties that this is the final decision of DHSS with the right to an appeal pursuant to the Administrative Procedures Act, Title 29, Chapter 101.
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PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 5000, 5001, 5300, 5304, 5312, 5403 and 5500

PUBLIC NOTICE

Fair Hearing Practice and Procedures – Expedited Fair Hearings

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual regarding Fair Hearing Practice and Procedures specifically, *Expedited Fair Hearings*.

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, 2012.

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

SUMMARY OF PROPOSAL

The purpose of this proposal is to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing Practice and Procedures, specifically, *Expedited Fair Hearings*.

Statutory Authority

- 42 CFR Part 431, Subpart E, *Fair Hearings for Applicants and Recipients*
- 42 CFR Part §§435.911 - .920, *Determination/Redetermination of Medicaid Eligibility*
- 42 CFR Part 438, Subpart F, *Grievance System*
- 42 CFR §457.340, *Application for and enrollment in a separate child health program*
- 42 CFR §457.1120, *State plan requirement; Description of review process*

Background

Public entitlement programs, including Medicaid are secured by “due process procedures.” That is, once public entitlements are enacted into law, they are considered rights with safeguards to protect individuals. Grievances, appeals, notices and fair hearings provide significant protections for Medicaid applicants and beneficiaries. When an individual’s application has been denied or a recipient’s benefits have been or will be discontinued, reduced, or suspended, the individual can appeal.

Agency Appeals Process

Medicaid applicants and beneficiaries are entitled to adequate notice of state agency actions and a meaningful opportunity for a hearing to review those decisions whenever their claim for benefits is denied or not acted upon with reasonable promptness. This includes any action, or inaction, that affects *either* the person’s eligibility to be enrolled in Medicaid *or* the person’s receipt of a particular medical service covered by the program. The administrative agency hearings in the Medicaid appeals system are called “fair hearings.”

MCO Appeals Process

In addition to the state fair hearing process, Medicaid Managed Care Organizations (MCOs) must establish both internal appeal procedures for enrollees to challenge the denial of coverage or payment for medical assistance and a grievance process.

Expedited Fair Hearings

Federal regulations provide a 3 working-day timeframe for resolution of an expedited appeal (an appeal where a delay could seriously jeopardize the enrollee's life or health) and require States to have expedited fair hearings for expedited appeals when the issue is the denial of authorization for a service.

Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) reviewed the Division of Medicaid and Medical Assistance (DMMA) recently approved waiver amendment request submitted under the authority of Section 1115 of the Social Security Act to include additional populations in a mandatory managed care program. During the waiver review process, DMMA became aware that certain federal due process requirements that the agency follows are not reflected in the fair hearing regulations. These rules have long been in practice but have not heretofore been expressly set forth in the Division of Social Services Manual (DSSM).

DMMA is proposing this action as an Emergency Regulation as the most expedient way to reflect the appeals procedures currently in use and to conform the descriptions of these procedures to federal requirements.

The effects of these rules will be to reflect accurately the procedural safeguards described in the Code of Federal Regulations. The following sections of the DSSM are amended to codify the existing expedited hearings process for managed care clients as required by federal regulations:

DSSM 5000, *Definitions*

DSSM 5001, *Providing an Opportunity for a Fair Hearing*

DSSM 5300, *Providing Adequate and Timely Notices*

DSSM 5304.3, *Presiding Over ~~Medicaid~~ DMMA Managed Care Hearings*

DSSM 5312, *Responding to Fair Hearing Requests*

DSSM 5403, *Providing Documents to Appellants; and,*

DSSM 5500, *Issuing Fair Hearing Decisions.*

This proposed regulation is also published concurrently herein under "Emergency Regulations".

Fiscal Impact Statement

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

DMMA PROPOSED REGULATION #12-27

REVISIONS:

5000 Definitions

Abandonment	When the claimant fails without good cause, to appear (by himself or by authorized representative) at his or her scheduled hearing.
Adequate Notice	A written notice that includes: <ol style="list-style-type: none">1. A statement of what action the agency intends to take2. The reasons for the intended agency action3. The specific regulations supporting such action4. An explanation of the individual's right to request a State agency hearing5. The circumstances under which assistance is continued if a hearing is requested6. If the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

PROPOSED REGULATIONS

Advance Notice Period	The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Timely Notice Period.)
Appellant	Anyone who requests a hearing. (Also called Claimant.)
Benefits	Any kind of assistance, payments or benefits made by TANF, GA, Medicaid, <u>Delaware Healthy Children Program (DHCP)</u> , <u>Delaware Prescription Assistance Program (DPAP)</u> , <u>Chronic Renal Disease Program (CRDP)</u> , Child Care, Refugee, Emergency Assistance or Food Supplement programs.
Claimant	Anyone who requests a hearing. (Also called Appellant.)
DSS	The Division of Social Services (or "the Division.")
DHSS	The Department of Health and Social Services, including: <ol style="list-style-type: none"> 1. The Division of Social Services (DSS), in connection with economic, medical, vocational or child care subsidy assistance 2. The Division of Medicaid & <u>and</u> Medical Assistance (DMMA) or a managed care organization (MCO) under contract with DHSS to manage an operation of the Medicaid Program, in connection with medical assistance 3. The Division of State Service Centers (DSSC) in connection with the Emergency Assistance Program 4. The Division of Developmental Disabilities Services (DDDS) in connection with Medicaid Program services 5. The Division of Public Health in connection with Medicaid Program services 6. The Division of Services for the Aging and Adults with Physical Disabilities (DSAAPD) in connection with Medicaid Program services
<u>Expedited Fair Hearing</u>	<u>An administrative hearing for Medicaid and DHCP which provides for a decision to be issued within 3 working days from the receipt of the request for an appeal of a decision to terminate, reduce, or suspend previously authorized services or a decision to deny or limit a new service request where the standard decision time frame of 45 days could seriously jeopardize the claimant's life or health or ability to attain, maintain, or regain maximum function.</u>
Fair Hearing	An administrative hearing held in accordance with the principles of due process which include: <ol style="list-style-type: none"> 1. Timely and adequate notice 2. The right to confront and cross-examine adverse witnesses 3. The opportunity to be heard orally 4. The right to an impartial decision maker 5. The opportunity to obtain counsel, represent him or herself, or use any other person of his or her choice.
Fair Hearing Summary	A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.
Good Cause	May include, but is not limited to the following: <ol style="list-style-type: none"> 1. Death in the family 2. Personal injury or illness 3. Sudden and unexpected emergencies 4. Failure to receive the hearing notice
Group Hearing	A series of individual requests for a hearing consolidated into a single group hearing. A group hearing is appropriate when the sole issue involved is one of State or federal law, regulation, or policy. The policies governing hearings will be followed in all group hearings. The individual appellant in a group hearing is permitted to present his or her case or be represented by an authorized representative.

Hearing Decision	<p>The decision in a case appealed to the State hearing officer. The decision includes:</p> <ol style="list-style-type: none">1. The substance of what transpired at the hearing2. A summary of the case facts3. Supporting evidence4. Pertinent State or federal regulations5. The reason for the decision <p>In Food Supplement Program disqualification cases, the hearing decision must also respond to reasoned arguments by the appellant.</p> <p>EXAMPLE: At a Food Supplement Program Intentional Program Violation Hearing involving a failure to report a change promptly, an appellant may argue that a failure to report does not constitute "clear and convincing evidence" of intent to defraud. The hearing officer's decision must respond to this argument.</p>
Hearing Officer	The individual responsible for conducting the hearing and issuing a final decision on issues of fact and questions of law.
Hearing Record	A verbatim transcript of all evidence and other material introduced at the hearing, the hearing decision, and all other correspondence and documents which are admitted as evidence or otherwise included for the hearing record by the hearing officer.
Hearing Summary	A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.
Hearsay Evidence	Testimony about a statement made by a third party that is offered as fact without personal knowledge
Individual Hearing	A hearing in which an individual client disagrees with the action taken by the Department on the facts of his or her case.
MCO	A Managed Care Organization under contract with DHSS to administer the delivery of medical services to recipients of Medicaid and CHIP through a network of participating providers.
Party	A party to a hearing is a person or an administrative agency or other entity who has taken part in or is concerned with an action under appeal. A party may be composed of one or more individuals.
Privilege	Appellants may decline to present testimony or evidence at a fair hearing under claim of privilege. Privilege may include the privilege against self-incrimination or communication to an attorney, a religious advisor, a physician, etc.
Request for a Fair Hearing	Any clear expression (oral or written) by the appellant or his authorized agent that the individual wants to appeal a decision to a higher authority. Such request may be oral in the case of actions taken under the Food Supplement Program.
Relevance	Refers to evidence. Evidence is relevant if an average person believes that the evidence makes a significant fact more probable.
Remand	To send back for further action.
Rule of Residuum	Findings of fact must be supported by at least some evidence which is admissible in a court of law.
Timely Notice Period	The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Advance Notice Period.)

5001 Providing an Opportunity for a Fair Hearing

7 CFR 273.15(f), 42 CFR 431.206, 45 CFR 205.10, 42 CFR 438.402, 42 CFR 457.1120

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 where the applicant or recipient claims that he/she has been adversely impacted by a specific action taken by DSS or DMMA. This policy does not create any new right of appeal outside DSS or DMMA, nor does it restrict an existing right to any other fair hearing process to which the applicant or recipient may be entitled.

1. Staff Offer Clients an Opportunity to be Heard

An opportunity for a fair hearing will be provided, subject to the provisions of this section, 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.

The agency will promptly inform a claimant in writing if assistance is to be discontinued under any circumstance pending a hearing decision.

2. Staff Inform Clients in Writing of Their Hearing Rights

Every applicant and recipient will be informed in writing of his or her right to a fair hearing as provided under this section:

- A. At the time of application
- B. At the time of any action affecting the applicant's or recipient's claim
- C. At the time a skilled nursing facility or a nursing facility notifies DSS or DMMA of a Medicaid applicant's or recipient's potential transfer or discharge, which may adversely affect the applicant's or recipient's Medicaid eligibility
- D. At the time an individual receives an adverse determination by the State with regard to the preadmission screening resident review PASRR requirements.

(Break in Continuity of Sections)

5300 Providing Adequate and Timely Notices

~~45 CFR 205.10, 7 CFR 273.15(f), 42 CFR 431.210, 42 CFR 438.404, 42 CFR 457.340, 45 CFR 205.10~~

This policy applies to every applicant and recipient under any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

1. DSS and DMMA Provide Written Notice of Agency Actions

Written notice of an agency action will contain:

- A. A statement of the client's right to a fair hearing as provided under this section.
- B. The method by which he or she may request a fair hearing.
- C. A statement that he or she may represent him/herself or that he or she may be represented by counsel or by another person.

2. DSS and DMMA Take Action Only Under Certain Conditions

No action may be taken unless the following conditions are met:

- A. Written notice is provided to the client that is "adequate."

An adequate notice is a written notice that includes

1. A statement of what action the agency intends to take
2. The reasons for the intended agency action
3. The specific regulations supporting such action
4. Explanation of the individual's right to request a State agency hearing
5. The circumstances under which assistance is continued if a hearing is requested
6. If the agency action is upheld, that such assistance must be repaid
 - i. Must be repaid under Title IV-A
 - ii. Must be repaid under Titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payment
 - iii. May be repaid under Title XIX

- B. Written notice is provided to the client that is "timely."

A timely notice is one that is mailed at least 10 days before the date of action

Exception: For TANF, notice is timely if mailed at least 5 days before the action would become effective when DSS learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources.

- C. Each recipient is advised of his or her [potential] liability for repayment of benefits received while awaiting a fair hearing if the agency's decision is upheld.

Continue benefits if the hearing request form is unclear as to whether the recipient wants continued benefits or not. Provide continued benefits within 5 working days of the date the agency received the household's request.

Exception: Food Supplement Program households do not have a right to a continuation of benefits while waiting for the fair hearing when the recipient is disputing a reduction, suspension or cancellation of benefits as a result of an order issued by FNS.

During the fair hearing period, the agency will adjust allotments to take into account reported changes except for the factor(s) on which the hearing is based.

- D. Each notice contains information needed for the claimant to determine from the notice alone, the accuracy of the Division's action or intended action.

All notices will:

Indicate the action or proposed action to be taken (i.e., approval, denial, reduction, or termination of assistance);

- a. Provide citation(s) to the regulation(s) supporting the action being taken;
- b. Provide a detailed individualized explanation of the reason(s) for the action being taken which includes, in terms understandable to the claimant:
 - i. An explanation of why the action is being taken, and
 - ii. An explanation of what the claimant was required by the regulation to do and why his or her actions fail to meet this standard (if the action is being taken because of the claimant's failure to perform an act required by a regulation)
- c. Provide:
 - i. ~~e~~Explanations of what income and/or resources the agency considers available to the claimant
 - ii. ~~t~~The source or identity of these funds,
 - iii. ~~t~~The calculations used by the agency,
 - iv. ~~t~~The relevant eligibility limits and maximum benefit payment levels for a family or assistance unit of the claimant's size.

(Break in Continuity of Sections)

5304.3 Presiding Over ~~Medicaid~~ DMMA Managed Care Hearings

42 CFR 438.408(f), ~~42 CFR 438.410~~

This policy applies to recipients enrolled in a managed care organization.

Recipients of medical services from the Division of Medicaid and Medical Assistance may appeal an adverse decision of a Managed Care Organization (MCO) to the Division. The decision of the DSS Hearing Officer is a final decision of the Department of Health and Social Services and is binding on the MCO.

PROPOSED REGULATIONS

The MCO is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case. The MCO is subject to the rules, practices, and procedures detailed herein.

These rules do not prevent an MCO from offering conciliation services or a grievance hearing prior to the fair hearing conducted by DSS.

1. Recipients Are Entitled to an Expedited Resolution in Cases of Emergency

The MCO is responsible for establishing and maintaining an expedited review process for appeals when the MCO determines or the provider indicates that taking the time for standard resolution could seriously jeopardize the claimant's life or health or ability to attain, maintain, or regain maximum function. The expedited review can be requested by the claimant or the provider on the claimant's behalf.

The MCO must issue an expedited resolution within 3 working days after receiving the appeal. Expedited appeals must otherwise follow all other standard appeal requirements.

If the MCO denies a request for an expedited resolution of an appeal, it must:

- i. resolve the appeal within the standard time frame of 45 days.
- ii. make reasonable efforts to provide prompt oral notice of the denial and provide written notice of the denial to the claimant within 2 calendar days.

(Break in Continuity of Sections)

5312 Responding to Fair Hearing Requests

45 CFR 205.10

This policy applies anytime anyone requests a fair hearing due to a decision made by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA) for a program administered by DSS or DMMA.

1. The Agency Prepares a Hearing Summary

Within 5 working days of receipt of a request for a fair hearing, the agency (or MCO or other Contractor) will prepare a hearing summary and submit the summary to the Hearing Office.

Exception: For expedited hearings see DSSM 5304.3.

2. Staff Ensure the Summary Contains Pertinent Information

The hearing summary will contain enough information for the appellant to prepare his or her case. The summary must contain:

- A. Identifying information - Give the client's name, the client's address, and the DCIS identification number.
- B. Action taken – Indicate the basis of the client's appeal (rejection, reduction, closure, amount of benefits, etc.)
- C. Reason for action - Describe the specific action taken by the agency, as well as the factual basis for its decision.
- D. Has assistance continued? - Indicate whether or not the appellant's assistance was restored because the appellant filed a request for a hearing within the timely notice period.
- E. Policy basis - Cite the specific State [and federal] rules supporting the action taken.
- F. Persons expected to testify - This section lists the names and addresses (if any) of persons that the agency expects to call to testify.

3. The Hearing Office Notifies the Appellant

Upon receipt of the hearing summary, the Hearing Office will:

- A. Set a prompt date for the hearing.

- B. Send a notice conforming to the requirements of §5311. The notice will include the hearing summary.
- C. Notify all parties, including witnesses, of the date, time, and place of the hearing.

(Break in Continuity of Sections)

5403 Providing Documents to Appellants

This policy applies anytime an appellant or his or her representative requests a fair hearing.

1. Appellants May Examine Case Records and Documents

Prior to the hearing, the appellant and his or her representative will have adequate opportunity to examine all documents and records to be used by the State agency or its agent at the hearing. He or she may also examine his or her case records.

2. Staff Must Provide Case Records in a Timely Manner

Staff must make case records available to the appellant within 5 working days of the request. If copies of documents are requested for the hearing, they will be provided at no cost. For expedited resolution requests, case records must be made available within 3 working days of the receipt of the appeal.

Exception: Staff must not release confidential information, such as

- 1. the names of individuals who have disclosed information about the household without its knowledge
- 2. the nature or status of pending criminal prosecutions

(Break in Continuity of Sections)

5500 Issuing Fair Hearing Decisions

7 CFR 273.15(c), (q); 42 CFR 431.244, 431.245; 45 CFR 205.10(16)

This policy applies to applicants and recipients of any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

1. Hearing Decisions Are Made Promptly

The Hearing Officer has sole authority to make hearing decisions. The Hearing Officer must take prompt, definitive, and final administrative action within ~~ninety (90)~~ 90 days from the date the appeal is filed. The decision must be in writing and must be sent to the appellant as soon as it is made.

Exception: Food Supplement Program decisions must be made within 60 days from the date the appeal is filed.

Exception: Expedited hearing decisions for medical assistance must be made within 3 working days from receipt of the appeal which meets the criteria for an expedited appeal process. See Section 5304.3

2. Decisions Are Binding on the Department of Health and Social Services

3. Decisions Comply with Laws and Regulations

The Hearing Officer's decision will comply with State and federal laws and regulations and are based on the hearing record.

4. Decisions Must Contain Specific Information

The written decision will contain, at a minimum, the following information.

- A. Information to enable a reader to understand how the decision was reached.
- B. Supporting evidence
- C. Food Supplement Program cases will state whether benefits will be issued or terminated.

PROPOSED REGULATIONS

The decision contains:

- A. 1. A statement of the appellant's right to judicial review
- B. 2. The identity of the individual
- C. 3. A summary of evidence
- D. 4. Findings of fact
- E. 5. A discussion or analysis of facts and arguments presented at the hearing
- F. 6. A discussion of how the applicable rules apply to the facts in the case
- G. 7. The resulting conclusions
- H. 8. The hearing officer's decision and/or order
 - I. 9. Applicable rules involved in reaching the decision

14 DE Reg. 618 (01/01/11)

15 DE Reg. 86 (07/01/11)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Nursing Facility Quality Assessment

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *Nursing Facility Quality Assessment*.

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, 2012.

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

SUMMARY OF PROPOSAL

The proposed amends the Title XIX Medicaid State Plan to implement a nursing facility quality assessment fee, also known as a nursing facility provider tax, effective June 1, 2012.

Statutory Authority

- Social Security Act §1902(a)(13)(A), *Public process for determination of rates of payment*;
- 42 CFR §§433.55 through 433.74, *Health Care-Related Taxes*;
- 42 CFR §440, Subpart A, *Definitions*;
- 42 CFR Part 447, Subpart C – *Payment for Inpatient Hospital and Long-Term Care Facility Services*;
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

Background

Congress passed the Medicaid Voluntary Contribution and Provider Specific Tax Amendments (P.L. 102-234) in 1991, amending Section 1903(w) of the Social Security Act (42 USC §1396b(w)). Those laws were later revised through the Tax Relief and Health Care Act of 2006 (P.L. 109-432). These laws, along with corresponding federal regulations (42 CFR §§433.54 through 433.74), provide the authority and guidelines that states must follow in order to fund a portion of the state share of Medicaid program costs by assessing/taxing health care providers or services. The federal authority for health care-related taxes is the Centers for Medicare and Medicaid Services (CMS).

Federal law permits states to collect revenues or “health care-related taxes” from nineteen (19) specified classes of health care providers or services. Revenues collected from health care-related taxes can be used to raise provider rates, fund other costs of the Medicaid program or be used for other non-Medicaid purposes, such as depositing the funds into the state’s general treasury. States must meet strict federal requirements when implementing health care-related taxes, including taxing all providers or services in a class (i.e., the tax cannot be limited to Medicaid providers only) and applying a methodology that is similar for all providers or services in that class (i.e., same rate or amount of tax is applied).

Health care-related taxes are fees, assessments or other mandatory payments related to:

- (1) Health care items or services;
- (2) Provision of, or authority to provide, health care items or services; and,
- (3) Payment for health care items or services.

In order to be permissible under federal law, any provider tax enacted by a state must be (1) broad based, (2) uniformly imposed and (3) cannot violate hold harmless provisions.

Summary of Proposal

Nursing facility services are a mandatory Medicaid state plan service. Delaware Medicaid’s reimbursement policy establishes eight levels of care within nursing facilities based on patient acuity with up to three “add-ons” for additional services required by nursing facility residents as determined by Division of Medicaid and Medical Assistance (DMMA) nurses. Facility-specific per diem rates are computed annually based on annual facility cost reports. Because of potential budget shortfalls caused by the nation’s poor economy, nursing facility Medicaid rates have been frozen since April 1, 2009 at the level they were as of December 31, 2008.

With approval of the Centers for Medicare and Medicaid Services (CMS) of a Title XIX State Plan amendment that will be submitted before June 30, 2012, effective for services provided on or after June 1, 2012, DMMA intends to modify reimbursement for nursing facility services provided under the Medicaid program by increasing the nursing facility per diem amounts for each facility by an amount computed annually that will use proceeds of a nursing facility provider tax to fund the state share of the increased per diem rates. The implementation of this increase in per diem payments is contingent upon passage by the Delaware General Assembly of legislation that defines the applicability of the Nursing Facility Quality Assessment provider tax.

In compliance with 42 CFR §447.205, Public Notice was published before the proposed effective date of the change on May 30, 2012 in the *News Journal* and on May 31, 2012 in the *Delaware State News*.

Fiscal Impact Statement

DMMA estimates that the proposed amendment to the Medicaid State Plan is expected to increase payments to nursing facilities by approximately \$29 million in State Fiscal Year 2013 but will require no increase in spending from the General Fund because the state share of the increased claims will be funded by the proceeds of the Nursing Facility Quality Assessment Fund currently under consideration by the Delaware General Assembly.

DMMA PROPOSED REGULATION #12-28**REVISIONS:**

ATTACHMENT 4.19-D

Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

PROPOSED REGULATIONS

STATE: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
PROSPECTIVE REIMBURSEMENT SYSTEM
FOR LONG TERM CARE FACILITIES

Payment Methodology for Rate Periods Beginning January 1, 2009:

- A. Notwithstanding any other provision of this section, the following adjustments will apply to reimbursement rates for all long term care facilities, except for state owned and operated facilities.
- B. Effective for dates of service on or after April 1, 2009, per diem rates for long term care facilities will be adjusted to the rates that were in effect on December 31, 2008. However, if Delaware has in effect a nursing facility quality assessment fee applicable to assessment periods beginning on June 1, 2012 and thereafter, the per diem rates for long term care facilities computed for the period ending December 31, 2008 shall be increased by a Quality Assessment Rate Adjustment Amount as follows: Except as excluded in section (c) below, each nursing facility's rates shall be increased for dates of service beginning on or after June 1, 2012 by a per day dollar amount equal to the sum of:
- (a) a per day dollar amount equal to the per day dollar amount of the Nursing Facility Quality Assessment Fee that will be owed for the upcoming rate year by each facility as specified in Delaware Code Title 30, Chapter 65 section 6502 (b) and (d), plus
- (b) a per day dollar amount computed as follows:
- Step 1. Obtain the total annual Medicaid patient days for all participating nursing facilities from the Delaware Medicaid nursing facility cost reports for the fiscal year ending June 30 of the previous year for each facility, excluding government-operated and pediatric nursing facilities. Sum the Medicaid patient days for each facility to compute the total aggregate statewide Medicaid patient days.
- Step 2. For each facility identified in Step #1, multiply the per day dollar amount of the Nursing Facility Quality Assessment Fee that will be owed per paragraph B. (a) above by each facility times the number of Medicaid patient days for each facility from Step #1. Sum the dollar amounts for all facilities to compute the aggregate statewide total annual assessment amount to be paid to the facilities.

ATTACHMENT 4.19-D

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
PROSPECTIVE REIMBURSEMENT SYSTEM
FOR LONG TERM CARE FACILITIES

- Step 3. Obtain the Total annual patient days and non-Medicare patient days for the fiscal year specified in Step 1 from each of the facilities that will be subjected to the quality assessment specified in paragraph (a) above for the upcoming State fiscal year for both Medicaid and non-Medicaid nursing facilities licensed to operate in Delaware.
- Step 4. For each facility identified in Step #3, multiply the per day dollar amount of the nursing facility quality assessment fee that will be owed by each facility as specified in Delaware Code Title 30, Chapter 65 section 6502 (b) and (d) times the number of non-Medicare patient days for each facility from Step #3. Sum the dollar amounts for all facilities to compute the statewide total aggregate annual dollar amount of the assessment.
- Step 5. Multiply the aggregate assessment computed in Step #4 by 0.9.

Step 6. Determine the total computable funding amount using the assessment amount from Step 5 as the state share at the applicable FMAP (and any other allowable Federal match) for the payment period.

Step 7. Subtract the Medicaid portion of the assessment computed in Step #2 from the total computable payment amount computed in step #6.

Step 8. Divide the dollar amount computed in step #7, by the statewide aggregate patient days from Step #1 to compute a per day dollar amount to be added to (a) above.

(c) The following Long Term Care nursing facilities are excluded from the quality assessment rate adjustment amounts computed in (a) and (b) above:

- government-owned nursing facilities,
- facilities that exclusively serve children,
- facilities with no Medicaid patients,
- facilities that are subject to penalties under Delaware Code Title 30, Chapter 65 section 6503 for dates of service in the months that penalties apply,
- facilities not located within the State of Delaware,
- all nursing facilities are excluded from this Quality Assessment Rate Adjustment Amount if the State of Delaware does not implement or if implemented, subsequently terminates, a nursing facility quality assessment fee

C. Future rate adjustments will be suspended until further notice.

ATTACHMENT 4.19-D

Page 1b

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
PROSPECTIVE REIMBURSEMENT SYSTEM
FOR LONG TERM CARE FACILITIES

I. General Provisions

A. Purpose

This plan establishes a reimbursement system for long-term care facilities that complies with federal requirements, including but not limited to:

- Requirements of the Omnibus Reconciliation Act of 1981 that nursing facility provider reimbursements be reasonable and adequate to assure an efficient and economically operated facility.
- The requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.
- Limitations on the revaluation of assets subsequent to a change of ownership since July 18, 1984.
- Requirements of the Omnibus Reconciliation Act of 1987 to establish one level of nursing care, i.e., Nursing Facility Care, to eliminate the designation of Skilled and Intermediate Care, and to provide sufficient staff to meet these requirements.
- The requirement to employ only nurse aides who have successfully completed a training and competency evaluation program or a competency evaluation program.

B. Reimbursement Principles

1. Providers of nursing facility care shall be reimbursed prospectively determined per diem rates based on a patient based classification system. Providers of ICF-MR and ICF-IMD services shall be reimbursed prospectively determined per diem rates.

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

State Survey Agency State Long-Term Care Ombudsman Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Delaware Medicaid State Plan regarding *State Survey Agency* specifically, *a change in the administrative authority of the State Long-Term Care Ombudsman Program*.

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

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding State Survey Agency, specifically, *a change in the administrative authority of the State Long-Term Care Ombudsman Program*.

Statutory Authority

- Social Security Act §1919(g)(1)(C), *Survey and Certification Process*
- Older Americans Act, Title VII
- 146th General Assembly, Senate Bill 102, *An Act to Amend Title 16 of the Delaware Code Relating to the Long-Term Care Ombudsman*

Background

The State Long-Term Care Ombudsman program was established by Title III of the Older Americans Act (OAA) in 1978 as a demonstration program and was transferred to a new Title VII of the OAA (which also includes other programs) in 1992. With enactment States are required to establish and operate an Office of the State Long-Term Care Ombudsman, headed by the State Long-Term Care Ombudsman. The Ombudsman Program identifies, investigates and resolves complaints made by or on behalf of residents of nursing, board and care and similar adult care homes; addresses major issues which affect residents; works to educate residents, nursing home personnel and the public about residents rights and other matters affecting residents; and performs other functions specified in the Act to protect the health, safety, welfare and rights of residents.

Today, the Ombudsman Program exists in all states, the District of Columbia, Puerto Rico and Guam, under the authorization of the Older Americans Act. Each state has an Office of the State Long-Term Care Ombudsman, headed by a full-time state ombudsman assisting residents and their families and providing a voice for those unable to speak for themselves.

Delaware's Ombudsman Program has received Medicaid funding since 1990 and was previously administered through the Delaware Division of Services for Aging and Adults with Physical Disabilities (DSAAPD).

Summary of Proposal

What Prompted the Change?

Delaware Health and Social Services (DHSS) received authorization in State Fiscal Year 2011 Budget Bill to consolidate the three (3) long-term care facilities, Delaware Hospital for the Chronically Ill (DHCI), Emily P. Bissell Hospital (EPBH), and Governor Bacon Health Center (GBHC) into the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The consolidation was implemented to improve access to services as the needs of the residents of the three facilities are similar to the needs of DSAAPD's overall target population. The perception of a conflict of interest would have been created if the same Division Director supervised the three facilities and supervised the Long Term Care Ombudsman Program (LTCOP), which is charged with monitoring clients' rights of the residents who live there. Federal regulations require the Ombudsman program be in a Division separate from long-term care facilities.

Authorized by Senate Bill 102 (146th General Assembly) and signed into law by the Governor on July 13, 2011, this change was not only to enhance crucial constituent services consistent with the Secretary's focus on client advocacy and protections and to elevate their visibility across the Department and State Government, but also to address the possible perception of a conflict of interest which would exist if the program remained within the DSAAPD, which now houses the long term care facilities. The effective date of the transition was January 1, 2011.

Summary of Proposed Amendment

As referenced above, the Medicaid State plan will be amended at General Program Administration, 4.40(d), *Survey & Certification Process* to identify a change in the administrative authority over the State Long-Term Care Ombudsman Program from the DSAAPD to the Office of the Secretary, Delaware Health and Social Services (DHSS). DHSS is the designated single State agency responsible for the administration of Delaware Medicaid.

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.

DMMA PROPOSED REGULATION #12-29

REVISION:

79u

Revision: HCFA-PM-92-3
APRIL 1992

(HSQB)

OMB No.:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory/ DELAWARE

<u>Citation</u>	<u>4.4</u> <u>0</u>	<u>Survey & Certification Process</u>
Sections 1919(g)(1) thru (2) and 1919(g)(4) thru (5) of the Act; P.L. 100-203 (Sec. 4212(a))	(a)	The State assures that the requirement of 1919(g)(1)(A) through (C) and section 1919(g)(2) (A) through (E)(iii) of the Act which relate to the survey and certification on non-State owned facilities based on the requirements of section 1919(b), (c) and (d) of this Act are met.
1919(g)(1)(B) of the Act	(b)	The State conducts periodic education programs for staff and residents (and their representative). <u>Attachment 4.40-A</u> describes the survey and certification education program.

PROPOSED REGULATIONS

- 1919(g)(1)(C) of the Act (c) The State provides for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aid of a resident in a nursing facility or by another individual used by the facility. Attachment 4.40-B describes the State's process.
- 1919(g)(1)(C) of the Act (d) The State agency responsible for surveys and certification of nursing facilities or an agency delegated by the State survey agency conduct the process for the receipt and timely review and investigation, of allegations of neglect and abuse and misappropriation of resident property. If not the State survey agency, what agency? Ombudsman - Division of Aging State Long Term Care Ombudsman - Delaware Health and Social Services.
- 1919(g)(1)(C) of the Act (e) The State assures that a nurse aide, found to have neglected or abused a resident of Act misappropriated resident property in a facility, is notified of the finding. the name and finding is placed on the nurse aide registry.**
- 1919(g)(1)(C) of the Act (f) The State notifies the appropriate licensure authority of any licensed individual found to have neglected or abused a resident or misappropriated resident property in a facility. Allegations are investigated by the Delaware Attorney General's Office. Results are reported to the Delaware Board of Licensure and Discipline.
**The Delaware Attorney General's Office sends reports of all adjudicated Nurses Aides to the Delaware Office of Health Facilities Licensing and Certification who notifies the Delaware Nurse Aide Registry.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Telemedicine

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Delaware Medicaid State Plan *to allow for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid.*

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, 2012.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX State Plan *to allow for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid.*

Statutory Authority

- 42 CFR Part 440, *Services*
- 42 CFR §410.78, *Telehealth services*

Background

For the purposes of Medicaid, telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment. This definition is modeled on Medicare's definition of telehealth services (42 CFR §410.78).

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) does not recognize telemedicine as a distinct service. CMS does note, however, that "telemedicine is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

States may seek a State Plan amendment to allow the use of telemedicine as a delivery system.

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) proposes to amend the Medicaid State plan to allow for Medicaid reimbursement for medically necessary telemedicine services, a mode of delivery of health care services for covered services rendered to Medicaid eligible recipients by enrolled Delaware Medicaid providers.

DMMA's objectives in recognizing telemedicine-provided services include:

- Improved access to health care services and behavioral health services with no loss in quality, safety or access to existing medical services; and
- Improved access to medical subspecialties not widely available in a service area; and
- Improved recipient compliance with treatment plans; and
- Medical and behavioral health services rendered at an earlier stage of disease; and
- Improved health outcomes for patients; and
- Reduced Delaware Medical Assistance Program (DMAP) costs for covered services such as hospitalizations and transportation.

The proposed plan amendment, when approved, would allow the following telemedicine services, including delivery of consultation services, office visit evaluation and management services, individual psychotherapy services, pharmacologic management, psychiatric diagnostic interview examinations, end stage renal disease related services, and individual medical nutrition therapy via an interactive telecommunications system. For these services, an interactive telecommunications system is considered to meet the requirements of a face-to-face encounter.

The appropriate State plan pages will be amended and the appropriate DMAP provider manuals will be updated with applicable coverage parameters and billing guidelines.

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

Fiscal Impact Statement

- The fiscal impact of adding telemedicine cannot be estimated.

- The projected number of telemedicine-provided services cannot be determined at this time as the actual number will depend on the number of Medicaid practitioners and beneficiaries who choose to use the technology, as appropriate.
- The coverage and limitations for telemedicine-provided services will mirror the respective service delivered face-to-face to eliminate the possibility of any financial impact on Medicaid.
- Providers who wish to deliver telemedicine-provided services will have to invest in the necessary interactive telecommunications equipment.

DMMA PROPOSED REGULATIONS #12-30

REVISION:

ATTACHMENT 3.1-A

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: **DELAWARE**
LIMITATIONS ON AMOUNT, DURATION, AND SCOPE OF MEDICAL AND
REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

27. TELEMEDICINE SERVICES

The Delaware Medical Assistance Program (DMAP) covers medically necessary health services furnished to eligible DMAP members as specified in the Medicaid State Plan. To facilitate the ability of recipients to receive medically necessary services, DMAP allows for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid.

Telemedicine services under DMAP are subject to the specifications, conditions, and limitations set by the State. Telemedicine is the practice of health care delivery by a practitioner who is located at a site, known as the distant site, other than the site where the patient is located, known as the originating site, for the purposes of consultation, evaluation, diagnosis, or recommendation of treatment.

Providers rendering telemedicine must be able to use interactive telecommunications equipment that includes, at a minimum, audio and video equipment permitting two-way, real time, interactive communication between the recipient and the practitioner to provide and support care when distance separates participants who are in different geographical locations.

Telephone conversations, chart reviews, electronic mail messages, facsimile transmissions or internet services for online medical evaluations are not considered telemedicine.

All equipment required to provide telemedicine services is the responsibility of the providers.

PROVIDER QUALIFICATIONS

In order to provide telemedicine under DMAP, providers at both the originating and distant site must be enrolled with DMAP or have contractual agreements with the managed care organizations (MCOs) and must meet all requirements for their discipline as specified in the Medicaid State Plan.

In order for services delivered through telemedicine technology from DMAP or MCOs to be covered, healthcare practitioners must:

- within their scope of practice;
- Be licensed (in Delaware, or the State in which the provider is located if exempted under Delaware State law to provide telemedicine services without a Delaware license) for the service for which they bill DMAP;
- Be enrolled with DMAP/MCOs;
- Be located within the continental United States.

COVERED SERVICES

DMAP covers medically necessary telemedicine services and procedures covered under the Title XIX State Plan for the diagnosis and treatment of an illness or injury as indicated by the eligible recipient's condition. All telemedicine services must be furnished within the limits of provider program policies and within the scope and practice of the provider's professional standards as described and outlined in DMAP Provider Manuals which can be found at: <http://www.dmap.state.de.us/downloads/manuals.html>

NON-COVERED SERVICES

If a service is not covered in a face-to-face setting, it is not covered if provided through telemedicine. A service provided through telemedicine is subject to the same program restrictions, limitations and coverage which exist for the service when not provided through telemedicine.

(Break in Continuity of Sections)

ATTACHMENT 4.19-B

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES (Continued)

27. TELEMEDICINE SERVICES

Payment for services delivered at the distant site via telemedicine is made according to the standard Delaware Medical Assistance Program (DMAP) payment methodology for the comparable in-person service and provider type.

In addition to the payment for the actual service rendered, qualifying originating patient sites are reimbursed 98% of the Medicare rate for the facility fee for dates of services on or after July 1, 2012.

Fee schedules for telemedicine-provided services are available on the DMAP website at: <http://www.dmap.state.de.us/downloads>.

Except as otherwise noted in the Medicaid State Plan, State-developed fee schedule rates are the same for both government and private providers.

Separate reimbursement is not made for the use of technological equipment and systems associated with a telemedicine application to render the service.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512th)
16 **DE Admin. Code** 11003

PUBLIC NOTICE

Child Care Subsidy Program: Determining Technical Eligibility for Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Technical Eligibility for Child Care*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North Doyon Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2012.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Summary of Proposed Changes

DSSM 11003, *Eligibility Requirements Determining Technical Eligibility for Child Care*: The name of the section is changed to more accurately indicate the content of the policy. This policy section is reformatted and clarifying language is also provided to make the rules easier to understand and follow. Specifically, this regulatory action adds the eligibility requirement that parents/caretakers must be Delaware residents. The applicable federal citation is also added to the policy section.

DSS PROPOSED REGULATION #12-25

REVISION:

11003 ~~Eligibility Requirements~~ Determining Technical Eligibility for Child Care

45 CFR 98.20

PRWORA 401 and 402

~~DSS provides child care services to eligible Delaware families with a child(ren) who resides in the home and who is under the age of 13, or children 13 to under 19 who are physically or mentally incapable of caring for themselves or are active with the Division of Family Services.~~

~~Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, a special immigrant, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.~~

~~The Division will provide Child Care services for eligible families where there is at least one U.S. citizen or legal alien in the family. If one member of the family is a U.S. citizen or legal alien and they meet both technical and financial eligibility criteria Child Care Services can be provided. The Division will evaluate non-U.S. citizen cases on an individual basis.~~

~~Non-US citizens referred to the Child Care subsidy program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.~~

~~A family needs service when parents/ caretakers are required to be out of the home, or are reasonably unavailable (may be in the home but cannot provide supervision, such as a parent works a third shift, is in the home, but needs to rest), and no one else is available to provide supervision.~~

~~A. Parents/caretakers need service to:~~

~~1. accept employment,
2. keep employment,
3. participate in a training component, as part of one of the DSS Employment and Training programs, leading to employment,~~

~~4. participate in an education component, as part of one of the DSS Employment and Training programs,
5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,
6. have someone care for the children because of a parent/caretaker special need.~~

~~B. A children) needs service to:~~

~~1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);~~

~~2. provide protective supervision in order to prevent abuse or neglect.~~

~~In addition to having an eligible child and a child care need, certain DSS Child Care programs require parents/ caretakers to meet income limits. Under certain other Child Care programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category. Categories relate to the funding sources used by DSS to pay for Child Care services. The following sections discuss the technical requirements for child care services based on category and need.~~

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

1. Parents/Caretakers Must Meet Certain Criteria

To be technically eligible parents/caretakers must have a need that requires them to be out of the home or reasonably unavailable to provide supervision (e.g., a medical condition, needing rest because of working a third shift, etc.).

A. Parents/Caretakers must be Delaware residents

B. Parents/Caretakers need services to meet one of the following:

1. Accept or keep a job
2. Participate in a DSS Employment and Training program
3. Participate in the Transitional Work Program
4. Participate in job search
5. Have a break in education/training
6. Prevent child abuse or neglect as referred by DFS
7. Provide care for the children) when the parents/caretakers have a special need

2. Children Must Meet Certain Criteria

Children may be eligible if they:

A. Live in the home and are under the age of 13

B. Live in the home and are age 13 to 18 **and** are physically or mentally incapable of caring for themselves

C. Are active with and referred by the Division of Family Services

3. Non-Citizens May Qualify for Child Care

Non-citizens may qualify if both parents/caretakers meet technical and financial eligibility criteria and they meet at least one of the following criteria.

A. At least one U.S. citizen or legal alien lives in the household

B. They are aliens admitted as permanent residents who have worked 40 qualifying quarters

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C. They, their spouses or unmarried dependent children are honorably discharged veterans or on active military duty.

Qualified aliens may qualify for a period of five years from the date of:

- A. Obtaining status as a refugee
- B. Obtaining status as a a sy lee
- C. Their deportation being withheld

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

Surface Water Discharges Section

Statutory Authority: 7 Delaware Code, Section 6000 (7 Del.C. §6000)
7 DE Admin. Code 7201

REGISTER NOTICE

SAN #2010-25

1. TITLE OF THE REGULATIONS:

Regulations Governing Discharges from the Application of Pesticides to Waters of the State

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

The proposed regulatory revision of Section 9.0, *General Permit Program*, to add Subsection 9.8, *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*, is being promulgated as a result of the 2009 decision by the U.S. Sixth Circuit Court, whereby the Court determined that the application of biological pesticides and chemical pesticides with residuals to waters regulated under the provisions of the federal Clean Water Act must be regulated by a National Pollutant Discharge Elimination Program (NPDES) permit. Being an NPDES-delegated state (except for federal facilities) the State of Delaware through DNREC is required to issue its own NPDES permits and develop regulations that align with the federal Pesticide General Permit (PGP) issued on October 31, 2011.

In order to allow aquatic pesticide application through the summer months of 2012, the Delaware Department of Natural Resources and Environmental Control (DNREC) Division of Water issued emergency regulations, the *Emergency Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*, which were effective March 1– August 31, 2012. The DNREC is authorized, pursuant to 29 Del.C. §10119, to adopt emergency regulations if an agency determines that an imminent peril to human health, safety, or welfare requires adoption, amendment, or repeal of a regulation with less than the notice required by 29 Del.C. §10115. Much of the aquatic pesticide spraying during that timeframe was concentrated on eliminating mosquito populations, which are a significant risk to human health and welfare due to their ability to transmit diseases and other blood-borne vectors.

The final *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State* will allow pesticide applicators to obtain the required permits coverage for applying aquatic pesticides, as required, from this point forward.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NA

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Being an NPDES-delegated state (except for federal facilities), the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) must issue its own NPDES permits for this activity pursuant to 40 CFR §123 and 7 **Del.C.** Chapter 60. In order to accommodate the potentially large universe of operators, DNREC is issuing a general permit regulation based on the U.S. EPA's Pesticides General Permit (PGP) issued on October 31, 2011.

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

NA

6. NOTICE OF PUBLIC COMMENT:

Public workshops were held in March, 2012, notifying the public about the emergency regulatory requirements. These workshops were also held to obtain public comment/feedback toward development of the final regulations. The final regulation were subject to the requirements in 29 **Del.C.** §10115. A public hearing is scheduled from 6:00 p.m. - 8:00 p.m. on July 30, 2012, to be held at the DNREC Auditorium (R&R Building), 89 Kings Hwy., Dover, DE 19901.

7. PREPARED BY:

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7201 Regulations Governing the Control of Water Pollution

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

7201 Regulations Governing the Control of Water Pollution

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3606 (24 **Del.C.** §3606)
24 **DE Admin. Code** 3600

PUBLIC NOTICE

3600 Board of Registration of Geologists

The Delaware Board of Geologists (Board) pursuant to 24 **Del.C.** §3606 (a)(1) proposes to amend its rules and regulations. The proposed revisions update the regulations by clarifying provisions related to lapsed and expired licenses, adding online courses and web seminars to courses acceptable for continuing education in place of home study, and updating the list of sponsored organizations that receive automatic approval of continuing education programs offered to licensees to meet the continuing education requirements. The revisions also add manslaughter to the list of crimes the Board has determined to be substantially related to the practice of geology. Finally, the proposal corrects several grammatical errors.

The Board will hold a public hearing on the proposed rule change on August 10, 2012 at 10:15 a.m., Second floor conference room B, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Sandra Wagner, Administrative Specialist, Delaware Board of Geologists, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. The final date to receive written comments will be at the public hearing.

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

3600 Board of ~~Registration~~ of Geologists

1.0 Definitions

“**Board**” shall mean the State Board of Geologists established in 24 ~~Del. C., Ch. 36~~, §3603.

“**Continuing Education Unit**” shall mean one contact hour (60 minutes), subject to the Board’s review.

“**Five Years of Experience**” shall mean:

Experience acquired in geological work as described in the 24 ~~Del. C., Ch. 36~~, §3602 (5) and (6) and after completion of academic requirements as stated in §3608(a)(1). The Board may discount experience obtained more than ten (10) years prior to the submission of an application. Part-time experience will be granted proportional to full-time credit. Three (3) of the five (5) years of experience must be in a position of responsible charge as defined below.

Experience references must be provided by a person knowledgeable and having a background of geological work.

The Board will only consider years of experience documented by references.

“**Geologist**” shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.

“**Practice of Geology**” shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluation, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, buildings, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds ~~himself or herself~~ him/herself out as able to perform or who does perform geologic services or work.

“**Responsible Charge**” shall mean the individual control and direction, by the use of initiative, skill and individual judgment, of the practice of geology.

2.0 Procedures for Licensure

2.1 Application - Initial Licensure

An applicant who is applying for licensure as a geologist shall submit evidence showing that he/she meets the requirements of 24 ~~Del. C.~~ §3608. The applicant must submit the following documentation:

2.1.1 An application for licensure, which shall include:

2.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 ~~Del. C.~~ §3608(a)(1).

2.1.1.2 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from an agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board.

2.1.1.3 Five professional references on forms provided by the Board. The references must attest that the Applicant has completed at least five (5) years of work experience in Geologic

work satisfactory to the Board. A minimum of three (3) years of work experience must be in a responsible position.

2.1.1.4 Evidence that the applicant has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor.

2.1.1.5 Letters of good standing from all jurisdictions in which the applicant is licensed or registered.

2.2 Application - By Reciprocity

An applicant who is applying for licensure as a geologist by reciprocity shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3609. The applicant must submit the following documentation:

2.2.1 An application for licensure, which shall include:

2.2.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3608(a)(1).

2.2.1.2 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from an agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board.

2.2.1.3 Evidence that the applicant is currently licensed or certified in the jurisdiction from which he/she is applying and the applicant has practiced for a minimum of two (2) years after licensure in the jurisdiction from which he/she is applying including two (2) professional references on forms provided by the Board. An applicant may not obtain reciprocity on a lapsed or expired license or certification. The references must attest that the Applicant has completed at least two (2) years of work experience in geologic work satisfactory to the Board. The required two years of geologic work experience attested to by the referees must have been performed in the jurisdiction from which the applicant is seeking reciprocity.

2.2.1.4 Evidence that the applicant has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor.

2.2.1.4.1 Applicants, who were originally licensed in another jurisdiction after June 17, 1998, will be required to have a passing score (70%) on each part of the ASBOG examination.

2.2.1.5 Letters of good standing from all jurisdictions in which the applicant is licensed or registered.

3.0 Stamp/Seal Requirements

3.1 The stamp or seal authorized by the Delaware State Board of Geologists shall be of the design shown here and shall not be less than one and one-half (1 ½) inches in diameter. It may be purchased by the licensee from any convenient source.

3.2 All reports, drawings, maps, or similar technical submissions involving the practice of geology that have been prepared, or reviewed and approved, by a licensed geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the licensee has accepted responsibility for the work.

3.3 Any licensee who affixes, or allows to be affixed, his/her seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.

3.4 No person shall stamp or seal any plans, reports, specifications, plats or similar technical submissions with the stamp or seal of a geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 **Del.C.** Ch. 36.

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- 3.5 No person shall stamp or seal any plans, specifications, plats, reports, or a similar document with the stamp or seal of a licensed geologist if his/her license has been suspended, revoked or has expired.
- 3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:

This submission is made in compliance with 24 **Del.C.**, Ch. 36 by (name) _____, P.G., DE license number ____ on this date _____.



4.0 Licensing Exemption

- 4.1 Any person who claims exemption from the provisions of 24 **Del.C.** ~~Ch. 36~~ under §3617(a), shall be entitled to such exemption so long as his/her remuneration from the practice of geology is solely related to a teaching function. If such remuneration is processed through his/her academic unit, it shall be considered prima facie evidence of the fact that such work is related to his/her teaching. Any person claiming such exemption shall, in a conspicuous manner at the conclusion of any report or study bearing his/ her name, include the statement:

"I hereby claim exemption from the requirements of 24 **Del.C.** Ch. 36 (Delaware Professional Geologist Act) and am not subject to the provisions of that Act and the standards and regulations adopted pursuant thereto."

Such a disclaimer shall not be required on reports or studies submitted solely to refereed professional journals for publications.

Any other geologic work, including consulting, not directly related to educational activities, shall not be considered exempt.

5.0 Issuance and Renewal of License

- 5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 **Del.C.** Ch. 36.
- 5.2 Renewal may be effected by:
- 5.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov;
 - 5.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
 - 5.2.3 attesting on the renewal application to the completing of continuing education as required by Rule 6.0;
 - 5.2.4 payment of fees as determined by the Division of Professional Regulation.
- 5.3 Failure of a licensee to renew his/her license shall cause his/her license to ~~expire~~ lapse. A geologist whose license has ~~expired~~ lapsed may renew his/her license within ~~one year~~ three (3) months after the

expiration date upon fulfilling items 5.2.1 - 5.2.4 above, after providing a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has expired ~~been lapsed~~, and paying the renewal fee and a late fee which shall be 50% of the renewal fee ~~as determined by the Division of Professional Regulation.~~

5.3.1 Late or lapsed license renewals shall be audited for satisfactory completion of the continuing education requirements.

5.3.2 No geologist shall practice geology in the State of Delaware during the period of time that his/her license is lapsed.

~~5.4 No geologist will be permitted to renew his/her license once the period has expired. Failure of a licensee to renew his/her lapsed license within the three (3) month period in item 5.3 above shall cause his/her license to expire.~~

5.4.1 A geologist whose license has expired may re-apply under the same conditions that govern applicants for new licensure under 24 Del.C. Ch. 36, and must provide a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has been expired.

5.4.2 Reapplication for expired licenses shall be audited for satisfactory completion of the continuing education requirements described below:

5.4.2.1 Expired status for one (1) year or less: 12 CE hours and will automatically be audited.

5.4.2.2 Expired status for more than one (1) year: 24 CE hours and will automatically be audited.

~~5.5 The former licensee may re-apply under the same conditions that govern applicants for licensure under 24 Del.C. Ch. 36.~~

~~5.65 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has expired.~~

6.0 Continuing Education

6.1 The Board will require continuing education as a condition of license renewal.

6.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.

6.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

6.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3.

6.2 Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.

6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.

6.5 Continuing education shall be prorated for new licensees in the following manner:

6.5.1 If at the time of renewal, a licensee has been licensed for less than one (1) year, no continuing education is required; if he/she has been licensed for more than one (1) year, but less than two (2)

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- years, twelve (12) of the twenty-four (24) hours will be required; if he/she has been licensed for two (2) years or more the full twenty-four (24) hours is required.
- 6.6 In his/her personal records, each licensee must keep proof of attendance for each activity for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.
- 6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.
- 6.8 Categories of Continuing Education & Maximum Credit Allowed:
- 6.8.1 Courses/Workshops – 24 CEUs Total
 Academic – 24 CEUs
 Professional Development – 24 CEUs
 Documentation – Proof of Completion
- 6.8.2 Professional Activities – 12 CEUs Total
 Meetings – 12 CEUs
 Field Trips – 12 CEUs
 Documentation – Proof of Attendance and Duration
- 6.8.3 Peer Reviewed Publications– 12 CEUs Total
 Composition – 12 CEUs
 Review – 12 CEUs
 Documentation – Proof of Participation
- 6.8.4 Presentations/Seminars – 12 CEUs Total
 Presentation – 12 CEUs (1 hour prep time per hour presented)
 Attendance – 12 CEUs
 Documentation – Proof of Attendance and Duration
- 6.8.5 Research/Grants – 12 CEUs Total
 Documentation – Proof of Submission
- 6.8.6 Specialty Certifications – 12 CEUs Total
 Documentation – Proof of Completion
- 6.8.7 ~~Home Study Courses~~ Online courses and Web seminars – 12 CEUs Total
 Documentation – Proof of Completion
- 6.8.8 Teaching – 12 CEUs Total
 Documentation – Verification from Sponsoring Institution
- 6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs Total
 Documentation – Proof of Appointment
- 6.8.10 Regulatory Based Activities – 12 CEUs Total
 Certifications/Training – 12 CEUs Total
 Documentation – Proof of Completion
- 6.8.11 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.
- 6.9 Automatic Approval for course work sponsored by the following Professional Societies:
- 6.9.1 American Association of Petroleum Geologists (AAPG)
 6.9.2 American Association of Stratigraphic Palynologists (AASP)
 6.9.3 American ~~Geological~~ Geosciences Institute (AGI)

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- 6.9.4 American Geophysical Union (AGU)
 - 6.9.5 American Institute of Hydrology (AIH)
 - 6.9.6 American Institute of Professional Geologists (AIPG)
 - 6.9.7 American Rock Mechanics Association (AMRA)
 - 6.9.8 American Water Resources Association (AWRA)
 - 6.9.9 Association for the Sciences of Limnology and Oceanography (ASLO)
 - 6.9.10 Association of American Geographers (AAG)
 - ~~6.9.7~~11 Association of American State Geologists (AASG)
 - ~~6.9.8~~12 Association of Earth Science Editors (AESE)
 - ~~6.9.9~~13 Association of Environmental and Engineering Geologists (AEG)
 - ~~6.9.4~~14 Association of Ground Water Scientists & Engineers (AGWSE)
 - ~~6.9.44~~15 Association of Women Geoscientists (AWG)
 - ~~6.9.42~~16 Clay Mineral Society (CMS)
 - ~~6.9.43~~17 Council for on Undergraduate Research-Geology Geosciences Div. (CUR)
 - 6.9.18 Environmental and Engineering Geophysical Society (EEGS)
 - 6.9.19 Friends of Mineralogy (FOM)
 - 6.9.20 Geochemical Society (GS)
 - 6.9.21 Geo-Institute of the American Society of Civil Engineers (GI)
 - ~~6.9.44~~22 Geologic Society of America (GSA)
 - 6.9.23 Geological Society of London (GSL)
 - ~~6.9.45~~24 Geoscience Information Society (GIS)
 - 6.9.25 History of Earth Sciences Society (HESS)
 - 6.9.26 International Medical Geology Association (IMGA)
 - ~~6.9.46~~27 International Association of Hydrogeologists/US National Committee (IAH)
 - 6.9.28 Karst Waters Institute (KWI)
 - ~~6.9.47~~29 Mineralogical Society of America (MSA)
 - ~~6.9.48~~30 National Association of Black Geologists and Geophysicists (NABGG)
 - ~~6.9.49~~31 National Association of Geoscience Teachers (NAGT)
 - ~~6.9.20~~32 National Association of State Boards of Geology (ASBOG)
 - 6.9.33 National Cave and Karst Research Institute (NCKRI)
 - ~~6.9.21~~34 National Earth Science Teachers Association (NESTA)
 - 6.9.35 National Ground Water Association (NGWA)
 - ~~6.9.22~~36 National Speleological Society (NSS)
 - 6.9.37 North American Commission on Stratigraphic Nomenclature (NACSN)
 - 6.9.38 Paleobotanical Section of the Botanical Society of America (PSBSA)
 - ~~6.9.23~~39 Paleontological Research Institution (PRI)
 - ~~6.9.24~~40 Paleontological Society (PS)
 - 6.9.41 Palynological Society (AASP)
 - 6.9.42 Petroleum History Institute (PHI)
 - ~~6.9.25~~43 Seismological Society of America (SSA)
 - ~~6.9.26~~44 Society of Economic Geologists (SEG)
 - ~~6.9.27~~45 Society of Exploration Geophysicists (SEG)
 - ~~6.9.28~~46 Society of Independent Professional Earth Scientists (SIPES)
 - 6.9.47 Society of Mineral Museum Professionals (SMMP)
 - ~~6.9.29~~48 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
 - ~~6.9.30~~49 Society for Organic Petrology (TSOP)

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6.9.3450 Society for Sedimentary Geology (SEPM)

6.9.3251 Society of Vertebrate Paleontology (SVP)

6.9.3352 Soil Science Society of America (SSSA)

6.9.52 United States Permafrost Association (USPA)

6.9.3453 Other professional or educational organizations as approved periodically by the Board.

- 6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.

Note: Since regulation 6.9 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.10, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.9. Furthermore, one CEU = one Contact Hour.

- 6.11 Audit. Each biennium, the Division of Professional Regulation shall select from the list of potential renewal licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.12 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 6.13 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of geology, pursuant to 24 **Del.C.** §3612(a)(7). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Board may impose any of the additional penalties specified in 24 **Del.C.** §3612.
- 6.14 Noncompliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.
- 6.15 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

7.0 ASBOG Examination

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- 7.1 An applicant wishing to sit for any portion for the ASBOG examination required for a license as a Geologist shall make application in writing, on forms provided by the Board.
- 7.1.1 An applicant wishing to sit for the ASBOG Fundamentals of Geology (FG) Exam may do so provided they meet the minimum educational requirements set forth in 24 **Del.C.** §3608(a)(1). To apply, the applicant must fill out the request to sit for the fundamentals application and submit their transcripts [to date] to the Board for approval. Once taken, the applicants score will be held on file indefinitely by ASBOG.
- 7.1.2 An applicant wishing to sit for the ASBOG Practice of Geology (PG) Exam must have acquired five (5) years of professional work experience as defined in Rule 1.0 and must submit a full application for licensure to the Board for review. Approval to sit for the PG Exam will be dependent upon the applicant providing sufficient evidence, satisfactory, to the Board that he/she meets the qualifications for licensure set forth in 24 **Del.C.** §3608.
- 7.2 An applicant for licensure must have satisfactorily passed each part of the ASBOG examination with a scaled score of not less than 70%.
- 7.3 An applicant's approval to sit for either part of the ASBOG exam shall be valid for a period not to exceed two years.

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of the Division of Professional Regulation or his/her ~~designate~~ designee of the report. If the Director of the Division of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's ~~designate or designates~~ designee(s).
- 8.2 The chairperson of the regulatory Board or that chairperson's ~~designate or designates~~ designee(s) shall, within seven (7) days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within thirty (30) days following notification to the professional by the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s).
- 8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her ~~designate~~ designee may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her ~~designate~~ designee and the chairperson of the participating Board or that chairperson's ~~designate~~ designee for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of the Division of Professional Regulation and the chairperson of the participating Board.
- 8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her ~~designate~~ designee in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s) shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.

PROPOSED REGULATIONS

- 8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
 - 8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's ~~designate or designates~~ designee(s) or to the Director of the Division of Professional Regulation or his/her ~~designate~~ designee at such intervals as required by the chairperson of the participating Board or that chairperson's ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her ~~designate~~ designee, and such person making such report will not be liable when such reports are made in good faith and without malice.
 - 8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
 - 8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
 - 8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her ~~designate or designates~~ designee(s) or designates or to the Director of the Division of Professional Regulation or his/ her ~~designate~~ designee by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
 - 8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 8.8 The participating Board's chairperson, his/her ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

9.0 Crimes substantially related to the practice of geology:

- 9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of geology in the State of Delaware without regard to the place of conviction:
- 9.1.1 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
 - 9.1.2 Assault in the first degree. 11 **Del.C.** §613.
 - 9.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
 - 9.1.4 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
 - 9.1.5 Murder in the second degree. 11 **Del.C.** §635.
 - 9.1.6 Murder in the first degree. 11 **Del.C.** §636.
 - 9.1.7 Manslaughter. 11 **Del.C.** §632.
 - 9.1.78 Rape in the third degree. 11 **Del.C.** §771.
 - 9.1.89 Rape in the second degree. 11 **Del.C.** §772.
 - 9.1.910 Rape in the first degree. 11 **Del.C.** §773.
 - 9.1.101 Continuous sexual abuse of a child. 11 **Del.C.** §778.
 - 9.1.142 Dangerous crime against a child. 11 **Del.C.** §779.
 - 9.1.123 Kidnapping in the first degree. 11 **Del.C.** §783A.
 - 9.1.134 Burglary in the first degree. 11 **Del.C.** §826.
 - 9.1.145 Robbery in the first degree. 11 **Del.C.** §832.
 - 9.1.156 Carjacking in the first degree. 11 **Del.C.** §836.
 - 9.1.167 Identity theft. 11 **Del.C.** §854.
 - 9.1.178 Forgery; felony. 11 **Del.C.** §861.
 - 9.1.189 Possession of forgery devices. 11 **Del.C.** §862.
 - 9.1.4920 Tampering with public records in the first degree. 11 **Del.C.** §876.
 - 9.1.201 Offering a false instrument for filing. 11 **Del.C.** §877.
 - 9.1.242 Issuing a false certificate. 11 **Del.C.** §878.
 - 9.1.223 Unlawful use of credit card; felony. 11 **Del.C.** §903.
 - 9.1.234 Reencoder and scanning devices. 11 **Del.C.** §903A.
 - 9.1.245 Criminal impersonation. 11 **Del.C.** §907
 - 9.1.256 Criminal impersonation, accident related. 11 **Del.C.** §907A.
 - 9.1.267 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
 - 9.1.278 Sexual exploitation of a child. 11 **Del.C.** §1108.
 - 9.1.289 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
 - 9.1.2930 Bribery. 11 **Del.C.** §1201.
 - 9.1.301 Receiving a bribe. 11 **Del.C.** §1203.
 - 9.1.342 Improper influence. 11 **Del.C.** §1207.
 - 9.1.323 Official misconduct. 11 **Del.C.** §1211.
 - 9.1.334 Profiteering. 11 **Del.C.** §1212.
 - 9.1.345 Perjury in the second degree. 11 **Del.C.** §1222.
 - 9.1.356 Perjury in the first degree. 11 **Del.C.** §1223.
 - 9.1.367 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
 - 9.1.378 Bribing a witness. 11 **Del.C.** §1261.
 - 9.1.389 Bribe receiving by a witness. 11 **Del.C.** §1262.
 - 9.1.3940 Tampering with a witness. 11 **Del.C.** §1263.
 - 9.1.401 Bribing a juror. 11 **Del.C.** §1264.
 - 9.1.442 Bribe receiving by a juror. 11 **Del.C.** §1265.

- 9.1.423 Tampering with physical evidence. 11 **Del.C.** §1269.
 - 9.1.434 Escape after conviction; Class B felony. 11 **Del.C.** §1253.
 - 9.1.445 Assault in a detention facility; Class B felony. 11 **Del.C.** §1254.
 - 9.1.456 Hate Crimes; Class A or B felony. 11 **Del.C.** §1304.
 - 9.1.467 Adulteration; Class A felony. 11 **Del.C.** §1339.
 - 9.1.478 Possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447.
 - 9.1.489 Possession of a firearm during the commission of a felony. 11 **Del.C.** §1447A.
 - 9.1.4950 Wearing body armor during the commission of a felony. 11 **Del.C.** §1449.
 - 9.1.501 Organized crime and racketeering. 11 **Del.C.** §1504.
 - 9.1.542 Victim or witness intimidation. 11 **Del.C.** §§3532 & 3533.
 - 9.1.523 Prohibited acts A [delivery/manufacture/possession with intent to deliver narcotics (death); Class B. 16 **Del.C.** §4751.
 - 9.1.534 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §47513A.
- 9.2 Crimes substantially related to the practice of geology 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.

10.0 Code of Ethics

10.1 General Provisions:

- 10.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.
- 10.1.2 A geologist shall not knowingly permit the publication or use of his/her work or name in association with any unsound or illegitimate venture.
- 10.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.
- 10.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he/ she makes which will be used to induce participation in a venture. He/she shall not make sensational, exaggerated, or unwarranted statements. He/she shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.
- 10.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.
- 10.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in plagiarism in oral and written communications.
- 10.1.7 A geologist, having knowledge of the unethical or incompetent practice of another geologist, shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he/she shall submit the evidence to the Board.
- 10.1.8 A geologist shall not use the provisions of 24 **Del.C.**, Ch. 36 or the Board's regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.
- 10.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge especially when it is in the public interest.
- 10.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the action of others.

- 10.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.
- 10.1.12 A geologist shall not aid any person in the unauthorized practice of geology.
- 10.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.
- 10.2 Provisions Concerning Monetary Matters
- 10.2.1 A geologist having, or expecting to have, any interest in a project or property on which he/she performs work, must make full disclosure of the interest to all parties concerned with the project or property.
- 10.2.2 A geologist's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
- 10.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;
 - 10.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;
 - 10.2.2.3 the fee customarily charged in the area for similar geological services;
 - 10.2.2.4 the total value of the project and the results obtained;
 - 10.2.2.5 the time limitations imposed by the client or by the circumstances;
 - 10.2.2.6 the nature and length of the professional relationship with the client;
 - 10.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and
 - 10.2.2.8 whether the fee is fixed or contingent.
- 10.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing services.
- 10.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.
- 10.2.5 A division of fee between geologist and other professionals who are not associated may be made only if:
- 10.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client. Each geologist or professional assumes joint responsibility for the services performed;
 - 10.2.5.2 the client is advised of and does not object to the participation of the geologist and/or other professionals involved; and
 - 10.2.5.3 the total fee is reasonable.
- 10.2.6 A geologist shall not accept a concealed fee for referring an employer or client to a specialist or for recommending geological services other than his/her own. A geologist who engages or advises a client or employer to engage collateral services shall use his/her best judgement to ensure the collateral services are used prudently and economically.
- 10.3 Provisions Concerning The Relationship With The Client
- 10.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he/she is not familiar or competent by reason of lack of training or experience unless he/she makes full disclosure of his/her lack of training or experience to the appropriate parties prior to undertaking the work.
- 10.3.2 A geologist shall protect to the fullest extent the employer or client's interest, so far, as is consistent with the public welfare and professional obligations and ethics.
- 10.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.

PROPOSED REGULATIONS

- 10.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.
- 10.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his/her own personal profit unless he/she is given written permission to do so or until the employer, client, or their successor's interest in such information has changed in such a way that the information is valueless to him/her or of no further interest to him/her.
- 10.3.6 A geologist shall not divulge confidential information. This does not relieve a licensed geologist from the duty to report conditions required by law or regulation.
- 10.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interests of the two clients.
- 10.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.
- 10.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination; however, the geologist may terminate services under any of the following circumstances:
- 10.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received for services performed;
 - 10.3.9.2 when continued employment will result in a violation of 24 **Del.C.**, Ch. 36 or other illegality;
 - 10.3.9.3 when continued employment will result in sickness or injury to the geologist or his/her dependents.
- 10.3.10 A geologist shall not use ~~or abuse drugs, narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician~~ illegal drugs. A geologist shall also not abuse alcoholic beverages, drugs, narcotics, or controlled substances with or without a prescription such that it impairs his/ her ability to perform his/her work.
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Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

501 Harness Racing Rules and Regulations

ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on June 12, 2012, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 3.5.1 in the May 1, 2012 *Register of Regulations* (Volume 15, Issue 11) and for two consecutive weeks in May, 2012 in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 3.5.1 in its entirety after Rules Committee review.

2. The Commission received no written comments. The Commission held a public hearing on June 12, 2012, in which no public comments were made.

FINAL REGULATIONS

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendment to the Commission's Rules.

4. After considering the rule change as proposed, the Commission hereby adopts the rule change as proposed. The Commission believes that this rule change will allow the Delaware Harness Racing Commission rule to more accurately reflect current policy and procedures.

5. 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, 2012.

IT IS SO ORDERED this 12th day of June, 2012.

Beverly H. Steele, Chairwoman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

Patt Wagner, Commissioner

501 Harness Racing Rules and Regulations

***Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1532 (15 DE Reg. 1532). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

501 Harness Racing Rules and Regulations

PLANT INDUSTRIES

Statutory Authority: 3 Delaware Code, Section 2402(b) (24 Del.C. §2402(b))
3 DE Admin. Code 801

ORDER

801 Regulations for Noxious Weed Control

Pursuant to the authority provided by 3 Del.C. §2402(b) (24 Del.C. §2402(b)) and 3 DE Admin. Code 801, the Delaware Department of Agriculture (DDA) issues this Order adopting amendments to the 801 Noxious Weed Control Regulations. Following public notice of the proposed regulation amendments, the DDA makes the following findings and conclusions.

BACKGROUND AND PROCEDURAL HISTORY

This Order considers the proposed Noxious Weed Control Regulations, and would add the following two weeds to DDA's Noxious Weed List: *Amaranthus palmeri* S. Watson, commonly known as "Palmer's Amaranth" and *Uruchloa texana* Buckl., commonly known as "Texas Panicum. *Amaranthus palmeri* (Palmer Amaranth) has become an increasing problem in agricultural fields due to its high rate of seed production and development of resistance to herbicides used in corn and soybean production. *Uruchloa texana* (Texas Panicum) has become an increasing problem in agricultural fields due to the seeds' ability to germinate throughout the growing season. With this growth habit, an additional herbicide application or tillage is required for late season control.

The DDA published the proposed regulations in the May 1, 2012 Delaware *Register of Regulations*. A press release about the changes was widely distributed, and articles about the change appeared in *The News Journal*,

Daily Times/Delaware Wave, Delaware State News and the *Sussex Countian*. Stories were aired on WBOC 16 and WGMD 92.7 FM. It also was picked up by the Associated Press, with a short AP item running in USA Today. The public comment period remained open from May 1 to May 31, 2012. No written public comments were received. A public hearing was not held.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and opportunity to provide the DDA with comments in writing concerning the proposed regulation.
2. After considering the regulation amendments as proposed, the Department hereby adopts the regulations (attached) as final.
3. The effective date of the Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on July 1, 2012.

So ordered as of June 8, 2012
Ed Kee, Secretary
Delaware Department of Agriculture

801 Regulations for Noxious Weed Control

***Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1533 (15 DE Reg. 1533). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[801 Regulations for Noxious Weed Control](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 294

REGULATORY IMPLEMENTING ORDER

294 Data Governance

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 DE Admin. Code 294 Data Governance. This regulation was developed in consultation with a working group designated by the members of the P-20 which includes representatives of the Interagency Resource Management Committee. The regulation is adopted pursuant to legislation passed in the 146th General Assembly and specifically 14 Del.C., §122(b)(24). This regulation provides for the criteria and process for interagency data governance and the conduction of evaluations, audits and studies. The *Delaware P-20 Council Data Governance Handbook*, approved by the P-20 Council in January 2012 is a companion document to this regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 4, 2012, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities generally supporting the regulation while asking the Department to consider some observations. The first is related to the definition of "educational record"

and whether the regulation would omit private elementary, secondary, post-secondary, and trade schools which do not receive federal funds but may be subject to DOE regulation. The Department believes the definition of "educational record" applies to any education agency or institution. The personally identifiable student information that makes up the educational record is defined and guided by FERPA, the IDEA and similar federal and State privacy and confidentiality laws. Commas have been added to the definition to clarify it. The second observation is related to conducting research. As written, the Department believes the concern expressed by Councils is addressed. The regulation provides the mechanism for disclosure of personally identifiable information without consent where it is permitted.

II. Findings of Facts

The Secretary finds that it is appropriate to adopt a new regulation 14 **DE Admin. Code** 294 Data Governance pursuant to legislation passed in the 146th General Assembly and specifically 14 **Del.C.**, §122(b)(24). This regulation was developed in consultation with a working group designated by the members of the P-20 which includes representatives of the Interagency Resource Management Committee. This regulation provides for the criteria and process for interagency data governance and the conduction of evaluations, audits and studies. The *Delaware P-20 Council Data Governance Handbook*, approved by the P-20 Council in January 2012 is a companion document to this regulation.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt a new regulation 14 **DE Admin. Code** 294 Data Governance. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 294 Data Governance attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 294 Data Governance 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 14 **DE Admin. Code** 294 Data Governance adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 294 Data Governance 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 21, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of June 2012.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21st day of June 2012

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes

294 Data Governance

1.0 Purpose

The purpose of this regulation is to outline the criteria and process for interagency data governance and the conduction of evaluation, audits and studies pursuant to 14 Del.C. §§121, 122 and 4111.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Educational Record" shall mean personally identifiable student information, maintained by an education agency or institution, as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations, and other applicable federal and state privacy and confidentiality laws.

"Longitudinal Data System" means a structure and mechanism for the storage, description, management and reporting of discrete data elements and bodies of information over time.

"Personally Identifiable Information" refers to information which, alone or in combination with other information, can be used to distinguish or trace an individual's identity and shall include, but not be limited to, the names and addresses of students, parents or other family members, and personal identifiers such as social security or student numbers.

"P-20 Council" means the council established by 14 Del.C., §107 to coordinate educational efforts of publicly-funded programs from early care through higher education and to foster partnerships among groups concerned with public education.

"Research Agenda" means a roster of research questions that require shared data elements and subject to periodic review and revision. Research questions may reflect federal and state reporting requirements or may be discretionary.

3.0 Longitudinal Data System Governance

The Longitudinal Data System developed and administered by the Department is governed by the Delaware P-20 Council Data Governance Handbook, initially approved by the P-20 Council on January 10, 2012, and as may be amended from time to time.

4.0 Acquisition, Use and Disposal of Data

4.1 The Department shall collect and maintain data, including Personally Identifiable Information, in compliance with its rights and obligations under federal and state laws.

4.2 The Department shall provide data, including Personally Identifiable Information, to implement applicable Research Agendas established by the P-20 Council.

4.3 When a Research Agenda is established by the P-20 Council which requires the use of Personally Identifiable Information from data collected and maintained or to be collected and maintained by the Department, a written agreement in the form prescribed by the Department shall be entered into.

4.3.1 If the Research Agenda is to conduct a study for or on behalf of school, school district or postsecondary institutions it must be for the purpose of: improving instruction; developing, validating, or administering predictive tests; or administering student aid programs. In the case of such a study, the written agreement shall, at a minimum, do the following:

4.3.1.1 Specify the purpose, scope and duration of the study and the information to be disclosed; and

4.3.1.2 Require the organization to: use Personally Identifiable Information only to meet the purpose(s) of the study; limit access to Personally Identifiable Information to those with

legitimate interests; and destroy any Personally Identifiable Information upon completion of the study and specify the time period in which the information must be destroyed.

- 4.3.2 If the Research Agenda is to conduct an audit or evaluation of a Federal or State supported education program or to enforce or comply with Federal legal requirements that relate to those education programs, as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99, the written agreement shall, at a minimum, do the following:
- 4.3.2.1 Designate an authorized representative; and
 - 4.3.2.2 Specify what Personally Identifiable Information will be disclosed and for what purpose, which purpose shall be one allowable under the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99; and
 - 4.3.2.3 Describe the activity to make clear it falls within an allowable purpose; and
 - 4.3.2.4 Require the authorized representative to destroy Personally Identifiable Information upon completion of the evaluation and specify the time period in which the information must be destroyed; and
 - 4.3.2.5 Include policies and procedures to protect Personally Identifiable Information from further disclosure and unauthorized use.
- 4.4 Any written agreement entered into under this regulation shall prohibit modification or amendment except by written agreement duly executed by the parties to that agreement.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1597

REGULATORY IMPLEMENTING ORDER

1597 Delaware Professional Teaching 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 amend regulation 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards shall serve as the common principles and foundations of teaching practice for Delaware public school educators in accordance with 14 **Del.C.** §§1201 and 1205 (b). The standards outline what educators should know and be able to do to ensure every K-12 student reaches the goal of being ready to enter college or the workforce in today's world. Delaware Professional Teaching Standards would reflect the Council of Chief State School Officers' Interstate Teacher Assessment and Support Consortium Model Core Teaching Standards.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on May 1, 2012. The notice invited written comments, but none were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1597 of the *Administrative Code of Regulations* of the Professional Standards Board.

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 7th DAY OF JUNE, 2012

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 21st day of June, 2012.

Department of Education

Michael Murphy, Secretary of Education

Approved this 21st day of June, 2012

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	Randall L. Hughes
Barbara B. Rutt	

1597 Delaware Professional Teaching Standards

*Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1536 (15 DE Reg. 1536). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1597 Delaware Professional Teaching Standards

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Title XIX Medicaid State Plan, Medicaid Eligibility Conditions and Requirements****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Delaware Title XIX Medicaid State Plan to align Medicaid eligibility conditions and requirements with current practice. 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 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan to align Medicaid eligibility conditions and requirements with current practice.

Statutory Authority

- Social Security Act §1115, *Demonstration Projects*
- Social Security Act §1931, *Assuring Coverage for Certain Low-Income Families*
- 42 CFR §435.222, *Individuals under age 21 who meet the income and resource requirements of AFDC*

Background

In determining eligibility for Medicaid, the Agency’s rules and regulations are governed by the Social Security Act, applicable sections of the Code of Federal Regulations and, the Title XIX Medicaid State Plan.

Section 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances. Under the more liberal policies permitted by section 1902(r)(2), states may modify their Medicaid eligibility process to make more liberal the review of certain resource and income elements in determining financial eligibility.

Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) reviewed the recently approved waiver amendment request submitted under the authority of Section 1115 of the Social Security Act to include additional populations in a mandatory managed care program. During the waiver review process, CMS noted that certain pages in the Title XIX Medicaid State Plan required updates.

The proposed modifications are intended to update the income standard used in eligibility determinations for low income families with children under Section 1931 of the Social Security Act, and for children under age 21 under 42 CFR §435.222 for whom public agencies are assuming full or partial financial responsibility (e.g. foster children). The income standard used in the eligibility determination is 75% of the Federal poverty level (FPL).

The rule has long been in practice but has not heretofore been expressly set forth in the Medicaid State plan in *Supplement 8a to Attachment 2.6-A, Page 1* and *Supplement 12 to Attachment 2.6-A, Page 2*. This amendment clarifies requirements already in effect operationally.

No one will lose eligibility as a result of this amendment. There is no change to the eligibility determination process for these populations. Individuals who were qualifying for Medicaid before this amendment takes effect will continue to qualify for Medicaid after this amendment takes effect.

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

Fiscal Impact Statement

Other than conforming state plan to current practice, 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 summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

The Summary of Proposal recites that the changes are being prompted by the Centers for Medicare and Medicaid Services (CMS) commentary noting that the existing sections contain outdated standards. DMMA emphasizes that "(n)o one will lose eligibility as a result of this amendment." At 1549. The GACEC and the SCPD **endorses** the proposed changes since they are prompted by CMS and will revise outdated standards.

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 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan to align the Plan with current practice regarding *Medicaid Eligibility Conditions and Requirements – 75% FPL* is adopted and shall be final effective July 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #12-31**REVISION:**

*Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1548 (15 DE Reg. 1548). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Title XIX Medicaid State Plan, Medicaid Eligibility Conditions and Requirements

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)c (16 Del.C., §122(3)c)
16 DE Admin. Code 4462

ORDER**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Public Drinking Water Systems. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Del.C. 101 and authority as prescribed by 16 Del.C. §122(3)c.

On April 1, 2012 (Volume 15, Issue 10), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 2012, or be presented at a public hearing on April 25, 2012, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

STATE OF DELAWARE REGULATIONS GOVERNING PUBLIC DRINKING WATER SYSTEMS

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Public Drinking Water Systems were published in the Delaware State News, the News Journal and the Delaware Register of Regulations.

Written and verbal comments were received on the proposed regulations during the public comment period (April 1, 2012 through April 30, 2012). Entities offering comments included:

- Mr. Gene Dvornick, Town Manager for the Town of Georgetown
- Ms. Sharon Fillmann, Water Quality Manager, United Water Pennsylvania & Delaware

Public comments and the DHSS (Agency) responses are as follows:

Gene Dvornick, Town Manager for the Town of Georgetown

- The Town of Georgetown wishes to go on record that we are in full support of the reduction in the levels for tetrachloroethylene, vinyl chloride, and trichloroethylene. We work with the Department of Public Health, Office of Drinking Water, in making sure that, when the standards drop for those water systems during the process of bringing the necessary requirements and improvements to their treatment to comply, would be effective January 1st of 2015. And we appreciate all the efforts on behalf of the Office of Drinking Water to work with us on that.

Agency Response: The Agency appreciates and acknowledges your comment.

United Water Delaware intends to submit the following comments in lieu of oral testimony at the Public Hearing held April 25, 2012 to address the proposed State of Delaware Regulations Governing Public Drinking Water Systems and amendments.

Our comments and recommendations are below:

- A Table of Contents would facilitate location of specific drinking water regulations and requirements.

Agency Response: The Agency appreciates and acknowledges your comment. The Office of Drinking Water will produce a copy with the table of contents after these regulations are published as final.

- Section 2.0 Definitions

"Residual Disinfectant Concentration (C)" means the concentration of disinfectant measured in mg/L in a representative sample of water. For purposes of calculations disinfectant levels of <0.04 mg/L shall be considered non-detectable."

United Water appreciates the department's numerical definition of < 0.04 mg/L as a non-detectable residual but recommends that "for purposes of calculation" be removed from the definition as a non-detectable chlorine residual in a water sample in the distribution system requires that an HPC sample and HPC analysis be conducted in conjunction with a total coliform analysis per the Surface Water Treatment Rule (section 10.3.3 and 10.5.3); the non-detectable chlorine residual has additional compliance implication not just in calculation.

Agency Response: The Agency appreciates and acknowledges your comment. The suggested change has been accepted and added.

- **Section 3.2.4 and 5.2.4**

"Sanitary surveys must be performed by the Division or an agent approved by the Division. The system is responsible for ensuring the survey takes place."

United Water requests clarification/definition on the word “responsible” and the implied responsibility of the public water system in meeting the sanitary survey requirements. Is the system responsible to ensure the Division completes a sanitary survey or responsible to assist the Division with the survey and for providing information and data as/when requested?

Agency Response: The Agency appreciates and acknowledges your comment. Under the Safe Drinking Water Act the water system is responsible to ensure that the Division completes the sanitary survey within the proper time frame. The water system is also responsible for providing information and data when requested.

- **Section 4.2 Public Notification**

Section 4.2.1.1.1.3: Reference to section 6.1.2.11 which does not exist or is not the correct reference.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. The reference as identified is correct. No change made.

Section 4.2.1.1.2.2: Typographical error on 5th line, “les” should be “less”.

Agency Response: The Agency appreciates and acknowledges your comment. The error has been corrected.

- **Section 4.3 Consumer Confidence Reports**

4.3.3.3.1.4 Maximum Residual Disinfectant Level has no acronym listed; “MRDL” should be added.

Agency Response: The Agency appreciates and acknowledges your comment. The acronym has been added.

4.3.3.4.4.10 “Community water systems that detect TTHM above 0.080 mg/L....in accordance with section 6.2.3”. Section 6.2.3 is likely an incorrect reference as it refers to BAT for Organic Chemicals.

Agency Response: The Agency appreciates and acknowledges your comment. The reference as identified is correct. No change made.

- **Section 5.0 Microbiological Requirements**

5.2.1.1.4.2 Maintenance of a disinfect residual throughout the distribution system.

United Water requests that ODW consider changing the “maintenance” residual to a “detectable” residual to be consistent with SWTR requirements cited above.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. No change is being made to this section.

5.4.3 Ground Water source microbial monitoring and analytical requirements

Agency Response: The Agency appreciates and acknowledges your comment.

5.4.3.1.2 Sampling Requirements

“...at least one ground water source sample from each...”

United Water recommends that the sample analysis be specified here for clarity and ease of understanding. Such that it might read “...at least one ground water source sample from each be collected and analyzed for fecal indicator...” Otherwise the reference for ground water source analysis is in section 5.4.3.3.1.

Agency Response: The Agency appreciates and acknowledges your comment. No change is being made to this section because it copies the EPA regulatory language and the analytical methods are detailed in section 5.4.3.3.1 as noted by the commenter.

- **Section 6.0 Inorganic and Organic Requirements**

6.1.1.1 Table of PMCLs.

United Water suggests that the old Arsenic MCL of 0.05 mg/L and the footnote be removed, if possible, and that the table be updated with the current MCL of 0.010 mg/L.

Agency Response: The Agency appreciates and acknowledges your comment. The recommended changes have been made.

6.1.1.4 Arsenic

United Water suggests that the MCL of 0.05 be updated to the new MCL of 0.010 mg/L in sections 6.1.1.4.1 and 6.1.1.4.2 and the reference to ‘January 23, 2006’ be removed for clarity.

Agency Response: The Agency appreciates and acknowledges your comment. The recommended changes have been made.

- 6.1.3.5 Monitoring for asbestos and IOCs

Reference to section 6.1.7, 6.1.8 and 6.1.11 appear to be incorrect references. Likely these sections should reference 6.1.4, 6.1.5 and 6.1.7 respectively.

Agency Response: The Agency appreciates and acknowledges your comment. Section 6.1.3.5 does not exist. No change made.

- Sections 6.1.3 through 6.1.5

6.1.3 Fluoride – incorrect numerical formatting as 6.1.3 previously used IOC Monitoring Requirements. This section may be better numerically renumbered as 6.1.14.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. No change is being made to this section.

6.1.4 Sodium- This section may be better numerically renumbered as 6.1.15.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. No change is being made to this section.

6.1.5 Inorganic Compliance Determination- This section may be better numerically renumbered as 6.1.16.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. No change is being made to this section.

6.1.5.1.1 PMCL analyses... typographical error as “hall” should be “shall”.

Agency Response: The Agency appreciates and acknowledges your comment. Change has been made.

6.1.5.1.5 If the result of analysis...exceeds the PMCL...supplier...shall report ...and initiate three (3) additional analyses at the same sampling point with one (1) month.

United Water requests clarification and questions if this conflicts with section 6.1.5.7 (previously cited 2 pages ahead of this section) which requires “systems which exceed the MCL...shall monitor quarterly...”

Agency Response: The Agency appreciates and acknowledges your comment. Section 6.1.5.1.5 has been deleted. This is an old section that has been superseded by more recent regulations.

- **6.1.7 Lead and Copper**

6.1.7.3.3.2 Typographical error as “rig/loop” tests should be “ring/loop” tests.

Agency Response: The Agency appreciates and acknowledges your comment. Correction has been made.

- **6.2.2.3 DBP sampling/monitoring requirements/and compliance determinations**

Sections 6.2.2.3.6 and 6.2.2.3.7 reference subsections 6.2.3.5, 6.2.3.2, 6.2.3.3 and 6.2.3.4 which are numerically incorrect and likely should be changed to 6.2.2.3.5, 6.2.2.3.2, 6.2.2.3.3 and 6.2.2.3.4.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. No change is being made to this section.

Section 6.2.2.3.9.5 “Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modification.”

United Water requests definition or clarity and a numerical value for the word “active”. For example, does “active” refer to a detectable disinfectant residual of at least 0.04 mg/L?

Agency Response: The Agency appreciates and acknowledges your comment. We have added the numerical value to clarify the intent of this section.

- **8.4 Sampling, Analytical Requirements, and Compliance Determinations for Disinfectant Residuals, Disinfection Byproducts, and Disinfection Precursors (Stage 1)**

8.4.7.1.1 Monitoring Requirements for disinfection byproducts in table format appears to be redundant with the Stage 1 DBP monitoring requirements of section 6.2.1.2 where DBP requirements are listed under Organic Chemical Requirements.

United Water recommends that the Stage 1 DBPs remain in section 8.4 and be removed from section 6.2.1.2 for clarity.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. Section 6.2.1.2 identifies the Maximum Contaminant Levels and no change is being made to this section.

- **8.4.8.1.1 Routine Monitoring for Disinfectant Residual**

Reference to disinfection residual sampling requirements in the distribution system refers to sections 5.0, 10.3.3 and 10.5.3 of the Surface Water Treatment Rule in reference to HPC analyses.

United Water suggests that all of these sections contain the same language in reference to a non-detectable chlorine residual, measured as less than 0.04 mg/L, for consistency.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. The Agency feels the current definitions are sufficient and no changes will be made to the referenced sections.

- **8.5.4 through 8.7.3.2.1 Disinfection Byproduct Precursors**

Section 8.5.4 refers to section 8.7.3.1.4 regarding Step 1 TOC removal ratio of 1.00, however, section 8.7.3.2.1 refers to assigning a monthly value of 1.0 when calculating compliance under section 8.7.3.1. Use of significant figures should be consistent.

United Water requests that the number of significant figures in the sections above be consistent so the monthly or quarterly compliance ratio should be either 1.00 or 1.0.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully disagrees. The current language and values are consistent with the Code of Federal Regulations and no changes will be made.

- **8.9 Stage 2 Disinfection Byproducts**

Section 8.9.2 Routine Monitoring listed in 8.9.2.1.2

United Water requests clarification and flexibility on footnote 2 which refers to “dual sample sets every 90 days”. United Water appreciates the purpose of defining a set sampling schedule for protecting public health; however, we also understand that some water systems may have a limited number of personnel or even one person that performs the sampling to meet these requirements. We, therefore, recommend that the Division define some appropriate time frame for quarterly sampling to allow sampling personnel to have vacation, sick time or to assist with other high priority issues or emergencies. We suggest something such as “approximately every 90 days” or “second week of the second month of the quarter” (as referenced in the EPA IDSE guidance) or “every 90 days +/- 2 days”. The latter scenario would allow sampling on any day within a previously determined week per the EPA IDSE guidance.

Agency Response: The Agency appreciates and acknowledges your comment. The language in the referenced section is consistent with the Code of Federal Regulations and cannot be changed. The Agency will implement the rule in accordance with the EPA IDSE guidance and provide for a window for sampling rather than a strict 90 day timeframe.

- **General Comments and suggestion pertaining to the proposed State of Delaware Regulations Governing Public Drinking Water Systems and amendments:**

Numerical formatting system is difficult to follow and to locate specific regulatory language.

The numerical numbering system should be addressed as some numerical sections are used more frequently than once; and the system should be checked for accuracy of references for the proposed regulations in its entirety and not just for the new proposed regulations (Stage 2, LT 2, GWR, LCR STR). There are many references throughout the proposed regulations that appear to be incorrect.

The format of the regulations for Stage 1 DBPs and Stage 2 DBPs (section 6.2.2.3 and 8.9) appears to be an easier read with more clarity as sampling requirements, frequency of sampling, and compliance determinations are shown in a logical procession. The other regulations might be easier to track and understand if the format was similar to that of the DBP regulation formats.

United Water is in full support of the Division of Public Health’s, Office of Drinking Water, adoption of the proposed regulations: LT 2 ESWTR, Stage 2 DBPR, GWR and the LCR STR.

United Water supports the reduction of the MCLs for PCE, TCE and Vinyl Chloride; clarification of the distribution non-detectable disinfectant level, and reporting of Action Level exceedances to the ODW as MCL exceedances are reported.

United Water is in support of calculating compliance with the proposed reduced MCLs for PCE, TCE and Vinyl Chloride after 4 consecutive quarters of sampling have been completed such that the effective date will be fourth quarter 2013 calculated as a RAA.

Agency Response: The Agency appreciates and acknowledges your comments.

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

FINDINGS OF FACT:

Based on public comments received, non-substantive changes were made to the proposed regulations. Additionally, minor technical amendments and some grammatical corrections were made to further clarify the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Public Drinking Water Systems are adopted and shall become effective July 11, 2012, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

4462 Public Drinking Water Systems

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

4462 Public Drinking Water Systems

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11002.9

ORDER**Child Care Subsidy Program Definitions and Explanation of Terms****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Definitions and Explanation of Terms*. 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 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced May 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Definitions and Explanation of Terms*.

Statutory Authority

45 CFR Part 98, *Child Care and Development Fund*

Background

The Child Care and Development Fund (CCDF) program is authorized by the Child Care and Development Block Grant Act and Section 418 of the Social Security Act and assists low-income families in obtaining child care so that they can work or attend training and/or education activities. The program also improves the quality of child care and promotes coordination among early childhood development and afterschool programs.

Every two years, states and territories receiving CCDF funds must prepare and submit to the federal government a CCDF state plan detailing how these funds will be allocated and expended (45 CFR Part 98).

Summary of Proposed Changes

Federal regulation at 45 CFR §98.44 provides that states must give priority for child care services to children from very low income families. States have the flexibility to define “children in families with very low income”.

As a result of recent federal guidance, **DSSM 11002.9**, *Definition and Explanation of Terms*, is amended to add a definition of “children from low income families” as required by the Administration of Children and Families (ACF). During preparation of Delaware’s Child Care and Development Fund State Plan for 2012 - 2013, ACF required the definition be placed in the State’s policy manual.

DSSM 11002.9 is also being reformatted to alphabetize the definitions for clarity and ease of readability.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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 Summary of Proposed Changes section recites that the rationale for the amendments is twofold: 1) federal prompting to add a definition of “children in families with very low income”; and 2) the desire to reformat and alphabetize the existing list of definitions. The proposed regulation was published as 15 DE Reg. 1551 in the May 1, 2012 issue of the *Register of Regulations*. We have the following observations and recommendations.

First, the new definition of “children from low income families” is acceptable. It adopts a “200% of the Federal Poverty Limit” standard which mirrors the existing standard reflected in the definition of “income limit”.

Agency Response: DSS acknowledges your concurrence.

Second, in the definition of “Child”, we recommend the following amendment: “...or are in need of protective services.”

Agency Response: DSS agrees. The proposed amendment is indicated by bold, bracketed type.

Third, in the definition of “Child Care Category, 41”, amend the example to read as follows: “(Example: One child is a citizen and one is not. The citizen child is a 41).” This would then be identical to the superseded version. At 1553.

Agency Response: DSS agrees. The proposed amendment is indicated by bold, bracketed type.

Fourth, in the definition of “Child Care Certificate”, second sentence, substitute “parents who wish” for “a parent who wishes” since the following pronoun (“their”) is plural.

Agency Response: DSS agrees. The proposed amendment is indicated by bold, bracketed type.

Fifth, in the definition of “Educational Program”, the semicolons are omitted and the word “or” is omitted after Par. “4”. Compare the current definition. At 1553-1554.

Agency Response: DSS agrees. The proposed amendment is indicated by bold, bracketed type.

Sixth, in the definition of “Physical or Mental Incapacity”, DSS deleted the term “dysfunctional”. Compare the existing definition. At 1555. This conforms to Title 29 **Del.C.** §608 and merits endorsement.

Agency Response: DSS apologizes. The term “dysfunctional” was inadvertently omitted and has been reinstated.

The Councils endorse the proposed regulation subject to adopting the above technical corrections.

Agency Response: DSS thanks the Councils for their endorsement.

FINDINGS OF FACT:

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

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

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #12-15
REVISION**

11002.9 Definitions and Explanation of Terms

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

A. ~~TANF—Temporary Assistance for Needy Families, a program established by Title IV A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).~~

B. ~~Authorization—Form 618d is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.~~

C. ~~Caregiver/Provider—The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.~~

D. ~~Caretaker—The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non relative placement or remove the child.~~

E. ~~CCDBG—Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:~~

- ~~1. provide child care to low income families,~~
- ~~2. enhance the quality and increase the supply of child care,~~
- ~~3. provide parents the ability to choose their provider, and~~
- ~~4. increase the availability of early childhood programs and before and after school services.~~

~~Under the Division's DCIS II Child Care Sub-system, CCDBG is part of Categories 31 and 41.~~

F. ~~GFR—Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.~~

G. ~~GCMIS—Child Care Management Information System, the name used to describe the Division's payment system for child care.~~

H. ~~Child—A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.~~

I. ~~Child Care Category—The DCIS II Child Care Sub-system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:~~

- ~~11—Participants receiving TANF and not working, but participating in TANF E&T;~~
- ~~12—Participants receiving TANF and working;~~

~~21—Participants receiving Food Benefits who are mandatory or voluntary participants in E&T and not receiving TANF;~~

~~31—SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;~~

~~41—A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.)~~

~~51—A participant is coded category 51 when s/ he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.~~

~~J. Child Care Certificate—A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.~~

~~K. Child Care Parent Fee—The amount the parent/ caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.~~

~~L. Child Care Services—Those activities that assist eligible families in the arrangement of child care for their children.~~

~~M. Child Care Centers—A place where licensed or license exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.~~

~~N. Child Care Type—Refers to the setting or place where child care is provided. The four types of care are:~~

- ~~1. Center based (under DCIS II Child Care Sub system Site #17 or 18);~~
- ~~2. Large Family Home (under DCIS II Child Care Sub system Site #16);~~
- ~~3. Family Home (under DCIS II Child Care Sub system Site #15), and~~
- ~~4. In Home (under DCIS II Child Care Sub system Site #19).~~

~~O. DCIS II—Delaware Client Information System, the automated client information system for the Department of Health and Social Services.~~

~~P. Educational Program—A program of instruction to achieve:~~

- ~~1. a basic literacy level of 8-9;~~
- ~~2. instruction in English as a second language;~~
- ~~3. a GED, Adult Basic Education (ABE), or High School Diploma;~~
- ~~4. completion of approved special training or certificate courses; or~~
- ~~5. a post-secondary degree where the degree is part of an approved DSS Employment and Training program.~~

~~The above definition excludes the pursuit of a graduate degree or second four year college degree. A second associate's degree may be attained if it leads to a bachelor's degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.~~

~~Q. Employment—Either part time or full time work for which the parent/caretaker receives wages equal to the federal minimum wage or an equivalent. It also includes periods of up to three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.~~

~~R. Family Size—The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.~~

~~S. Family Child Care Home—A private residence other than the child's residence, where licensed care is provided for one to six children who are not related to the caregiver.~~

~~T. TANF Child Care—The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub-system, this is Category 11 and 12.~~

~~U. Food Benefit Employment and Training—The program by which certain unemployed mandatory and/or voluntary Food Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Benefit Employment & Training (FS E&T). Under the Division's DCIS II Child Care Sub-system, this is Category 21.~~

~~V. In Home Care—Care provided for a child in the child's own home by either a relative or non relative, other than the parent/caretaker, where such care is exempt from licensing requirements. Care is limited to the child(ren) residing in the household. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements and is also limited to the children of one household.~~

~~It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.~~

~~W. Income—Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.~~

~~X. Income Eligible—A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.~~

~~Y. Income Limit—The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.~~

~~Z. Job Training/Training—A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Benefit Employment & Training (FB E&T) contracted programs, WIA sponsored training programs, recognized school vocational programs, and on the job training programs.~~

~~AA. Large Family Child Care Home—A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver.~~

~~BB. Legal Care—Care which is either licensed or exempt from licensing requirements.~~

~~CC. Parent—The child's natural mother, natural legal father, adoptive mother or father, or step parent.~~

~~DD. Parental Choice—The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.~~

~~EE. Protective Services—The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.~~

~~FF. Physical or Mental Incapacity—A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.~~

~~GG. Reimbursement Rates—The maximum dollar amount the State will pay for child care services.~~

~~HH. Relative—Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.~~

~~II. Residing With—Living in the home of the parent or caretaker.~~

~~JJ. SSBG—Social Services Block Grant. Under the DCIS II Child Care Sub-system, this is Category 31 child care.~~

~~KK. Seamless Services—To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.~~

~~LL. Self-Arranged Care — Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.~~

~~MM. Self-Initiated — Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Benefit Employment & Training (FB E&T) TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.~~

~~NN. Special Needs Child — A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the authority to do so.~~

~~OO. Special Needs Parent/Caretaker — An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.~~

~~PP. Technical Eligibility — Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.~~

~~QQ. Verification — Written or oral documentation, demonstrating either need for service or sources of income.~~

~~RR. Purchase of Care Plus (POC+) — Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee if applicable, and any additional provider determined co-pay.~~

~~SS. Work Force Investment Act (WIA) — Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.~~

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

<u>Authorization</u>	<u>Form 618d or 626 is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.</u>
<u>Caregiver/Provider</u>	<u>The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.</u>
<u>Caretaker</u>	<u>The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.</u>
<u>CCDBG</u>	<u>Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without state match to:</u> <ol style="list-style-type: none"><u>1. Provide child care to low income families</u><u>2. Enhance the quality and increase the supply of child care</u><u>3. Provide parents the ability to choose their provider</u><u>4. Increase the availability of early childhood programs and before and after school services. Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41</u>

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<u>CFR</u>	<u>Code of Federal <i>Regulations</i>. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.</u>
<u>CCMIS</u>	<u>Child Care Management Information System, the name used to describe the Division's payment system for child care.</u>
<u>Child</u>	<u>A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or [are] in need of protective services.</u>
<u>Child Care Category</u>	<u>The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:</u> <ul style="list-style-type: none"> <u>11 - Participants receiving TANF and not working, but participating in TANF E&T</u> <u>12 - Participants receiving TANF and working</u> <u>21 - Participants receiving Food Stamps Benefits who are mandatory or voluntary participants in E&T and not receiving TANF</u> <u>31 - SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary</u> <u>41 - A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or non-qualified alien to receive child care services. (Example: One child is a citizen and one is not a citizen child is a 41 One child is a citizen and one is not. The citizen child is a 41.)</u> <u>51 - A participant is coded category 51 when s/he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41</u>
<u>Child Care Centers</u>	<u>A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.</u>
<u>Child Care Certificate</u>	<u>A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes parents who wish to select a non-contracted provider of their choice cannot get care unless the provider completes one.</u>
<u>Child Care Parent Fee</u>	<u>The amount the parent/caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.</u>
<u>Child Care Services</u>	<u>Those activities that assist eligible families in the arrangement of child care for their children.</u>
<u>Child Care Type</u>	<u>Refers to the setting or place where child care is provided. The four types of care are:</u> <ul style="list-style-type: none"> <u>1. Center based (under DCIS II Child Care Sub system Site #17 or 18)</u> <u>2. Large Family Home (under DCIS II Child Care Sub system Site #16)</u> <u>3. Family Home (under DCIS II Child Care Sub system Site #15)</u> <u>4. In-Home (under DCIS II Child Care Sub system Site #19)</u>
<u>Children From Low Income Families</u>	<u>Children in families whose income is less than 200% of the Federal Poverty Limit (FPL).</u>
<u>DCIS II</u>	<u>Delaware Client Information System, the automated client eligibility system for the Department of Health and Social Services.</u>

<u>Educational Program</u>	<u>Educational Program - A program of instruction to achieve:</u> <ol style="list-style-type: none"><u>1. A basic literacy level of 8.9[;]</u><u>2. Instruction in English as a second language[;]</u><u>3. A GED, Adult Basic Education (ABE), or High School Diploma[;]</u><u>4. Completion of approved special training or certificate courses[;]</u><u>5. A post-secondary degree where the degree is part of an approved DSS Employment and Training program.</u> <p><u>The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associate's degree may be attained if it leads to a bachelor's degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.</u></p>
<u>Employment</u>	<u>Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to minimum wage or an equivalent. It also includes periods of up to three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.</u>
<u>Family Child Care Home</u>	<u>A private residence other than the child's residence, where licensed care is provided for one to six children who are not related to the caregiver.</u>
<u>Family Size</u>	<u>The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.</u>
<u>Food Benefit Employment and Training</u>	<u>The program by which certain unemployed mandatory and/or voluntary Food Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Benefit Employment & Training. Under the Division's DCIS II Child Care Sub system, this is Category 21.</u>
<u>Income</u>	<u>Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.</u>
<u>Income Eligible</u>	<u>A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.</u>
<u>Income Limit</u>	<u>The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.</u>
<u>In-Home Care</u>	<u>Care provided for a child in the child's own home by either a relative or non-relative, other than the parent/caretaker, where such care is exempt from licensing requirements. Care is limited to the child(ren) residing in the household. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements and is also limited to the children of one household.</u>
<u>Job Training/Training</u>	<u>A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Benefit Employment & Training (FB E&T) contracted programs; WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.</u>
<u>Large Family Child Care Home</u>	<u>A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver.</u>

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<u>Legal Care</u>	<u>Care which is either licensed or exempt from licensing requirements.</u>
<u>Parent</u>	<u>The child's natural mother, natural legal father, adoptive mother or father, or step-parent.</u>
<u>Parental Choice</u>	<u>The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.</u>
<u>Physical or Mental Incapacity</u>	<u>A [dysfunctional] condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.</u>
<u>Protective Services</u>	<u>The supervision/placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.</u>
<u>Purchase of Care Plus (POC+)</u>	<u>Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee, if applicable, and any additional provider-determined co-pay.</u>
<u>Reimbursement Rates</u>	<u>The maximum dollar amount the State will pay for child care services.</u>
<u>Relative</u>	<u>Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.</u>
<u>Residing With</u>	<u>Living in the home of the parent or caretaker.</u>
<u>Seamless Services</u>	<u>To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.</u>
<u>Self-Arranged Care</u>	<u>Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.</u>
<u>Self-Initiated</u>	<u>Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Benefit Employment & Training (FB E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.</u>
<u>Special Needs Child</u>	<u>A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the authority to do so.</u>
<u>Special Needs Parent/Caretaker</u>	<u>An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the authority to do so.</u>
<u>SSBG</u>	<u>Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.</u>
<u>TANF</u>	<u>Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).</u>
<u>TANF Child Care</u>	<u>The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.</u>

<u>Technical Eligibility</u>	<u>Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.</u>
<u>Verification</u>	<u>Written or oral documentation, demonstrating either need for service or sources of income.</u>
<u>Work Force Investment Act (WIA)</u>	<u>Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.</u>

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 29 Delaware Code, Section 10003(d)
(18 Del.C. §§311 and 29 Del.C. §10003(d))

ORDER

700 Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of July, 2012, in accordance with 18 Del.C. §311 and 29 Del.C. §10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations (as shown by strike through) and promulgating new regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing agencies to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive order. In accordance with 29 Del.C. §10113(b)(1) the Department of Insurance is repealing its prior regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Insurance pursuant to 29 Del.C. Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Insurance has developed new procedures for responding to requests from the public for information as set forth in 29 Del.C. Ch. 100, the Freedom of Information Act. These regulations are substantially similar to the form attached to the Governor's Executive Order. The regulations reflect these procedures.

2. The Department of Insurance has statutory authority to promulgate regulations pursuant to 18 Del.C. §311 and 29 Del.C. §10003(d).

3. Pursuant to 29 Del.C. §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirement of 29 Del.C. Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Insurance Commissioner of the State of Delaware does hereby ORDER that the regulations be, and they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Karen Weldin Stewart, CIR-ML
Insurance Commissioner
Delaware Department of Insurance

700 Policies and Procedures Regarding FOIA Requests

4.0 Definitions

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

“Commissioner” means the Commissioner of the Delaware Insurance Department.

“Department” means the Delaware Department of Insurance.

“FOIA” means The Freedom of Information Act as established pursuant to Chapter 100 of Title 29 of the Delaware Code Annotated.

“FOIA Coordinator” is defined as an individual designated by a public body to accept and process requests for public records under the act. The Commissioner shall designate the individual who shall be the FOIA Coordinator. The FOI Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.

“Public record” is information of any kind, owned, made, used, retained received, produced, composed, drafted or otherwise compiled or collected by the Department relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced and not protected from disclosure by law.

“Writing” is defined as “handwriting, typewriting, printing, photo stating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

“Written request” is defined as “a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.”

2.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Chapter 100.

3.0 Records Request, Response Procedures and Access

- 3.1 All FOIA Requests shall be made in writing to the Department, addressed to: FOIA Coordinator, Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall provide reasonable assistance to the public in identifying and locating records to which they are entitled access.

- ~~3.2 The Department shall respond, in writing, within ten working days of the receipt of a FOIA Request. Such response shall specify the name and telephone number of a contact person with respect to the FOIA Request and shall state whether:~~
- ~~3.2.1 the Department will permit inspection of the public records;~~
 - ~~3.2.2 the Department requires additional time beyond the 10 business days for circumstances to include but not limited to, the request is for voluminous records, requires legal advice, for the public record is in storage or archived. In the event the Department is unable to make the requested public records available for inspection with the 10 business day period, the Department shall provide an expected time at which they will be made available; or~~
 - ~~3.2.3 if it does not permit such inspection, the reason or reasons for such refusal.~~
- ~~3.3 Prior to disclosure, records will be reviewed to ensure that those records or portions of records deemed non public pursuant to 29 **Del.C.** §10002(g) are removed. In reviewing the records, all documents shall be considered public records unless subject to one of the exceptions set forth in 29 **Del.C.** §10002(g).~~
- ~~3.4 After receiving the response of the Department to a FOIA Request, the requesting party shall contact the person specified in the written response thereto to schedule a mutually convenient date, time and place for the inspection of the public records.~~
- ~~3.5 All FOIA Requests shall be coordinated by the FOIA Coordinator.~~
- ~~3.6 The Department shall provide reasonable access for reviewing public records during regular business hours. The Department shall make the requested public records available unless the records or portions of the records are determined to be excluded from the definition of a "public record" pursuant to 29 **Del.C.** §10002(g).~~

4.0 Fees

- ~~4.1 Administrative Fees~~
- ~~4.1.1 Charges for administrative fees include:~~
 - ~~4.1.1.1 Staff time associated with processing FOIA Requests will include:~~
 - ~~4.1.1.1.1 Locating and reviewing files;~~
 - ~~4.1.1.1.2 Monitoring file reviews;~~
 - ~~4.1.1.1.3 Generating computer records (electronic or print outs);~~
 - ~~4.1.1.1.4 Review of request by legal counsel~~
 - ~~4.1.1.1.5 Other work items as necessary per request.~~
 - ~~4.1.2 Calculation of Administrative Charges:~~
 - ~~4.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro rated for quarter hours increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.~~
 - ~~4.1.2.1 Appointment Rescheduling/Cancellation — Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Department in preparing the requested records. The Department shall prepare an itemized invoice of these charges and mail to the requestor for payment.~~
- ~~4.2 Photocopying Fees — The following are charges for photocopies of public records made by Department personnel:~~
- ~~4.2.1 Standard Sized, Black and White Copies:~~
 - ~~4.2.1.1 The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:~~
 - ~~4.2.1.1.1 8.5" x 11"~~

~~4.2.1.1.28.5" x 14" and~~

~~4.2.1.1.311" x 17"~~

~~4.2.2 Oversized Copies/Printouts.~~

~~4.2.2.1 The charge for copying oversized public records shall be as follows:~~

~~4.2.2.1.118" x 22" \$2.00 each~~

~~4.2.2.1.224" x 36" \$3.00 each~~

~~4.2.3 Color Copies/Printouts~~

~~4.2.3.1 The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:~~

~~4.2.3.1.18.5" x 11"~~

~~4.2.3.1.28.5" x 14 and~~

~~4.2.3.1.311" x 17"~~

~~4.2.4 Microfilm and /or Microfiche Printouts.~~

~~4.2.4.1 Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.50 per printed page.~~

~~4.3 Electronically Generated Records.~~

~~4.3.1 Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.~~

~~4.3.2 In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.~~

~~4.4 Payment~~

~~4.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.~~

~~4.4.2 The Department may require pre payment of copying and administrative charges prior to mailing copies of requested records.~~

~~5.0 **Effective Date of this Regulation.**~~

~~This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.~~

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Department employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any Information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Department and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"Commissioner" means the Delaware Insurance Commissioner.

"Department" means the Delaware Insurance Department.

"FOIA" means the Freedom of Information Act as established pursuant to 29 Del.C. Ch. 100.

“FOIA Coordinator” shall mean the person designated by the Commissioner to receive and process FOIA Requests.

“FOIA Request” or “Request” means a request to inspect or copy Public Records pursuant to 29 Del.C. §10003 and in accordance with the policy hereunder.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General, and available on the Department’s home page, upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 Del.C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Department in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Department’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Department to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Department in locating the requested records, the Department may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at FOIA Coordinator, Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904, by email to DOI_Legal@state.de.us, by fax at 302-739-5566; or via online request form, which may be found on the Department’s home page at <http://delawareinsurance.gov/>.

3.3 FOIA Coordinator

3.3.1 The Commissioner shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Department’s responses thereto. The FOIA Coordinator shall be identified on the Department’s website. The FOIA Coordinator may designate other Department employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Department employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Department in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Department and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Department may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Department shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 In addition to the foregoing responsibilities, beginning on January 1, 2012, the FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party’s contact information; the date the Department received the Request; the Department’s response deadline pursuant to §3.4; the date of the Department’s response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of

correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Department pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Department Response to Requests

3.4.1 The Department shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Department shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Department denies a request in whole or in part, the Department's response shall indicate the reasons for the denial. The Department shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Department from its own records, if doing so can be accomplished by the Department with reasonable effort. If the Department determines that it cannot fulfill all or any portion of such request, the Department shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Department. Upon receipt from DTI, the Department may review the email records in accordance with § 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Department shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Department but that are either not within its possession or cannot otherwise be fulfilled by the Department with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Department shall promptly request that the relevant public body provide the Non-Custodial Records to the Department. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Department, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Department.

3.6.2 Before requesting any Non-Custodial Records, the Department shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Department

3.7.1 Prior to disclosure, records may be reviewed by the Department to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Department from disclosing or permitting access to Public Records if the Department determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Department shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees**4.1 Photocopying Fees**

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Department's legal review of whether any portion of the requested records is exempt from FOIA. The Department shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Department shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Department shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Department may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 The Department may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Department may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject

to the charges incurred by the Department in preparing the requested records. The Department shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Effective Date

This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF FISH AND WILDLIFE

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

Secretary's Order No.: 2012-F-0018

3552 Spanish Mackerel Size Limit and Creel Limit

Date of Issuance: June 8, 2012

Effective Date of the Amendment: July 11, 2012

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

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3552 regarding Spanish mackerel. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-02. The Department published the proposed amendments in the March 1, 2012 *Delaware Register of Regulations* and held a public hearing on April 19, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 10, 2012 (Report). The Report recommends certain findings, as well as the adoption of the proposed regulation amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed regulation amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. It should be noted that at no time during this promulgation process did the Department receive public comment, nor were any members of the public in attendance at the public hearing of April 19, 2012, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3552 as final, Delaware will be consistent with the Atlantic States Marine Fisheries Commission Omnibus Amendment to the Interstate Fisheries Management Plans for Spanish Mackerel and Spotted Sea Trout, and will bring the plans under

the authority of the Atlantic Coastal Fisheries Cooperative Management Act of 1993, providing for more efficient and effective management and changes to management for the future.

In conclusion, the following findings and conclusions are entered:

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

2.) The Department provided adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments, including at a public hearing;

3.) The Department held a public hearing on the proposed amendments to this regulation on April 19, 2012, in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;

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

5.) Promulgation of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3552 would enable Delaware to remain in compliance and consistent with the Atlantic States Marine Fisheries Commission Omnibus Amendment to the Interstate Fisheries Management Plans for Spanish mackerel and Spotted Sea Trout, which will bring the plans under the authority of the Atlantic Coastal Fisheries Cooperative Management Act of 1993;

6.) With regard to the proposed amendments to Delaware's regulations concerning Spanish mackerel, the restrictions for 2012 would establish (1) a 12" fork length (FL) or 14" total length (TL) minimum size limit; (2) the creel limit at fifteen (i.e., fifteen fish per day); and (3) requiring that all Spanish mackerel be landed with head and fins intact. Additionally, Delaware must establish for its commercial fishery a 12" fork length (FL) or 14" total length (TL) minimum size limit and a trip limit (per vessel, per day) of 3,500 pounds;

7.) The recommended amendments to this regulation do not result in any substantive change from the proposed amendments as originally published in the March 1, 2012, *Delaware Register of Regulations*;

8.) The recommended amendments to this regulation satisfy the aforementioned federal requirements with regard to Delaware's management of Spanish mackerel, and thus will provide for more efficient and effective management and changes to management for the future;

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

Collin P. O'Mara, Secretary

3552 Spanish Mackerel Size Limit and ~~Creel Limit~~ Possession Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 Unless otherwise authorized, it shall be unlawful for any person to possess any Spanish mackerel, (*Scomberomorus maculatus*), that measure less than fourteen (14) inches total length.
- 2.0 Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to have in possession more than ~~ten (10)~~ fifteen (15) Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging.
- 3.0 Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to possess any Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging without the head and fins intact.
- 4.0 Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess or land more than 3,500 pounds of Spanish mackerel per vessel, per day.
- 5.0 Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any Spanish mackerel without the head and fins intact prior to selling, trading or bartering said Spanish mackerel.

FINAL REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10)
(24 Del.C. §706(a)(1) and (10))
24 DE Admin. Code 700

ORDER

700 Board of Chiropractic

Pursuant to 29 Del.C. §10113(b)(4) and 24 Del.C. §706(a)(1), the Delaware Board of Chiropractic issues this Order adopting the below amendment to the Board's Rules to correct a technical error in the previously published rule. Specifically, pursuant to 29 Del.C. §10113(b)(4), regulation 2.2.1 of the Board of Chiropractic must be changed without prior publication as it incorrectly states the amount of pro-rated continuing education required of new licensees depending on their licensure date. This was the result of a scrivener's error prior to submission for publication that must be corrected.

SUMMARY OF THE EVIDENCE

1. Rule 2.2.1 now states:

2.2 New Licensee Exception:

- 2.2.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. For these individuals only, the continuing education hours will be pro-rated based on when the license was issued.
- 2.2.1.1 If the new license was issued during the first year of the renewal period, July 1 - December 31 of the odd year, the licensee must complete 24 CE hours.
- 2.2.1.2 If the new license was issued during the first year of the renewal period, January 1 - June 30 of the even year, the licensee must complete 18 CE hours.
- 2.2.1.3 If the new license was issued during the second year of the renewal period, July 1 - December 31 of the even year, the licensee must complete 12 CE hours.
- 2.2.1.4 If the new license was issued during the second year of the renewal period, January 1 - June 30 of the odd year, the licensee must complete 24 CE hours.

2. The Board proposed the following change to its regulations (additions are underlined, removals are stricken through):

2.2 New Licensee Exception:

- 2.2.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. For these individuals only, the continuing education hours will be pro-rated based on when the license was issued.
- 2.2.1.1 If the new license was issued during the first year of the renewal period, July 1 - December 31 of the ~~odd~~ even year, the licensee must complete 24 CE hours.
- 2.2.1.2 If the new license was issued during the first year of the renewal period, January 1 - June 30 of the even ~~odd~~ year, the licensee must complete 18 CE hours.
- 2.2.1.3 If the new license was issued during the second year of the renewal period, July 1 - December 31 of the ~~even~~ odd year, the licensee must complete 12 CE hours.

2.2.1.4 If the new license was issued during the second year of the renewal period, January 1 - June 30 of the ~~odd~~ even year, the licensee must complete 24 ~~0~~ CE hours.

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, 2012.

IT IS SO ORDERED this 14th day of June, 2012.

Arthur Travis, D.C., President

700 Board of Chiropractic

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

700 Board of Chiropractic

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1775(a)(c) and
29 Delaware Code, Section 10113(b)
(24 Del.C. §1775(c) & 29 Del.C. §10113(b))
24 DE. Admin. Code 1770
1770 Respiratory Care Practice Advisory Council

ORDER

The Respiratory Care Practice Advisory Council (Council) has determined that a technical clarification is needed to Regulation 8.1.5 with regard to the proration of continuing education for new licensees. The Council with the approval of the Board of Medical Licensure and Discipline (Board) is amending the regulation to provide explanatory language that informs new licensees with more than one year but less than two years remaining in the licensure cycle that all ten (10) of the required contact hours must be taken in traditional programs as defined in Regulation 8.1.1. In addition, six (6) of the ten (10) contact hours must be in a field related to the science and practice of respiratory care. The remaining four (4) contact hours may be in elective courses. These technical corrections conform the ten (10) hours to the category ratios required for other licensees. The Council and Board are amending the regulation with the new language shown in underline as follows:

8.1.5 Contact hours shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires - 20 hours

One year remaining in the licensing cycle requires- 10 hours

(Note: All ten (10) contact hours must be taken in traditional programs as defined in Regulation 8.1.1. Six (6) of the ten (10) must be in a field of related to the science and practice of respiratory care. The four (4) remaining may be taken in any category.)

Less than one year remaining in the licensing cycle- exempt

Summary of the Evidence

None required.

Findings of Fact

The Council and Board finds that the clarification is a technical clarification only and does not substantively change the regulation or requirements of licensees. This regulation is exempted from the procedures for notice and public comment set forth in 29 **Del.C.** ch 100 pursuant to 29 **Del.C.** §10113(a)(b)(4) and (5).

Text and Citation

The text and citation for Regulation 8.1.5 is as shown in underline above.

Decision and Effective Date

The Council and Board hereby adopt the Regulation 8.1.5 as amended effective 10 days following publication of this Order in the *Register of Regulations*.

Recommendation

It is the recommendation of the undersigned members of the Council to the Board that the Board approve these technical changes to the Rules and Regulations of the Council.

Respectfully submitted this 9th day of May, 2012:

Thomas Blackson, RRT, Vice Chairperson

Christina Cipolla, RRT

Joel M. Brown, II, RRT

Joseph M. Parise, D.O., Physician Council Member

Juanita Bernard, RRT

ORDER

The Board has considered the recommendation of Council and approves the technical amendment to Regulation 8.1.5.

SO ORDERED this 5th day of June, 2012.

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Stephen Cooper, M.D., President

Raymond Moore, Public Member

Gregory Adams, M.D., Vice-President

Joseph Parise, D.O.

Garrett H. Colmorgen, M.D.

Karyl Rattay, M.D.

Thomas Desperito, M.D.

Anthony M. Policastro, M.D.

George Brown, Public Member

Vonda Calhoun, Public Member

Vincent Lobo, D.O.

Malvine Richard, Ed.D., Public Member

1770 Respiratory Care Practice Advisory Council
(Break in Continuity of Sections)

8.0 Continuing Education

8.1 Contact Hours Required for Renewal

- 8.1.1 The respiratory care practitioner shall be required to complete twenty (20) contact hours of continuing education biennially. At least ten (10) of the required twenty (20) contact hours shall be from traditional programs attended either in person or remotely by the use of telecommunication technology that allows the attendee to interact with and ask questions of the presenter during the presentation. The remaining ten (10) hours may be obtained in non-traditional programs in which the participant learns the material at their own pace and place of choosing and demonstrates their mastery of the course content by examination in order to earn contact hours or by participating in the activities described in rules 8.3.1.8 or 8.3.1.9 below.
- 8.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 8.0.
- 8.1.3 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
- 8.1.3 Licensees selected for random audit will be required to supplement the attendance verification pursuant to Rule 8.1.4.
- 8.1.4 The respiratory care practitioner shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.
- 8.1.5 Contact hours shall be prorated for new licensees in accordance with the following schedule:
- | | |
|---|----------|
| Two years remaining in the licensing cycle requires - | 20 hours |
| One year remaining in the licensing cycle requires - | 10 hours |
| <u>(Note: All ten (10) contact hours must be taken in traditional programs as defined in Regulation 8.1.1. Six (6) of the ten (10) must be in a field of related to the science and practice of respiratory care. The four (4) remaining may be taken in any category.)</u> | |
| Less than one year remaining in the licensing cycle - | exempt |

(Break in Continuity Within Section)

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

1770 Respiratory Care Practice Advisory Council

DIVISION OF PROFESSIONAL REGULATION

Real Estate Commission

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 DE Admin. Code 2900

2900 Real Estate Commission

ORDER

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on May 10, 2012 at a scheduled meeting of the Delaware Real Estate Commission (“the Commission”) to receive comments regarding proposed amendments to the Commission’s Rules and Regulations. The Commission has proposed revisions to Rule 13.0, pertaining to continuing education requirements. Specifically, pursuant to the revisions, 21 hours of continuing education will be required for each licensure renewal period. Currently, the Commission requires 15 hours. The revised rules state that the required hours must be taken in specified subject

matters, or modules. In addition, new licensees, other than licensees already licensed in another state, will be required to take 12 hours of continuing education relevant to the skills required for new practitioners. Those 12 hours will be applied to the required 21 hours and pro-rated accordingly. The Commission also proposes revisions to certain rules addressing administrative issues.

Pursuant to the Administrative Procedures Act, 29 Del.C. §10115, notice of the proposed amendments to the Rules and Regulations was published on April 1, 2012 in the *Delaware Register of Regulations*, Volume 15, Issue 10 at 15 DE Reg. 1449.

Summary of the Evidence and Information Submitted

The Commission received written and verbal comments at the public hearing on May 10, 2012. The following notices, written comments and documents were admitted as exhibits and made part of the record:

Exhibit 1: May 4, 2012 letter from Trina Joyner, President, Sussex County Association of Realtors, concerning proposed Rule 13.0. Ms. Joyner commented that the proposed amendments, requiring 21 hours of continuing education, do not consider licensees with significant experience and education. She expressed concern about the monitoring of compliance with the requirements for new licensees.

Exhibit 2: May 10, 2012 letter from Todd Stonesifer, President, Delaware Association of Realtors, supporting the proposed amendments to the Rules and Regulations.

Exhibit 3: *News Journal* Affidavit of Publication.

Exhibits 4 and 5: *Delaware State News* Affidavits of Publication.

Exhibit 6: Letter from Carol Burns, President, Kent County Association of Realtors, supporting the changes to the education requirements for licensees.

Exhibit 7: May 8, 2012 letter from Thomas J. Hanna, Vice President, Harvey Hanna & Associates, requesting that the Commission delay action on proposed expansion of continuing education requirements, commenting that there is insufficient information warranting more education and stating that there is an economic cost to requiring a 40% increase in continuing education requirements.

Exhibit 8: May 10, 2012 letter from Dick Brogan supporting the proposed changes to the Rules and Regulations.

The following individuals provided verbal comment at the public hearing:

The first witness to address the Commission was Doug Doyle. Mr. Doyle has been licensed since 1995 and is the current chair of the Education Committee. He has served on the Education Committee for two years. Mr. Doyle testified that, two years ago, the Education Committee began to discuss increasing standards for education, including both pre-licensing and continuing education. There had been no changes to the education system for years and improvement was needed. The Education Committee's proposed changes were approved by the Commission and represented a huge improvement over the existing system. Mr. Doyle added that the real estate profession has changed dramatically over the years and the proposed changes will act to protect the public and ensure standards of competence in the delivery of services to the public. Mr. Doyle also explained that the course approval process will not change with the new modules.

The next witness to address the Commission was Kevin Gilligan, who has been a licensed broker in Delaware for 10 years. Mr. Gilligan testified that the emphasis should be placed on the quality and content of continuing education rather than the quantity of hours. Mr. Gilligan stated that he opposed increasing the required hours from 15 to 21.

Todd Stonesifer, the President of the Delaware Association of Realtors, addressed the Commission by offering his support to the proposed changes to the Rules and Regulations. Mr. Stonesifer has been licensed for 12 years. Mr. Stonesifer testified that the education requirements have changed very little but the industry has changed greatly and licensees need to stay on top of those changes. The problem now is that continuing education classes are repetitive and boring. The new modules will allow licensees to pick and choose their courses with the result that they will start to enjoy continuing education. Mr. Stonesifer asked the Commission to implement the proposed changes to protect the public and improve the competence of licensees.

Tim Riale next addressed the Commission. Mr. Riale is a licensed broker. He testified that the proposed changes to the Rules and Regulations will benefit the public. The results of previous continuing education audits demonstrated a need to adjust the continuing education requirements.

Shirley Kalvinsky addressed the Commission. She has been licensed for 35 years and an instructor for more than 30 years. Ms. Kalvinsky offered her support for the increase in continuing education hours and the new modules. Feedback regarding continuing education classes showed a need for change. Ms. Kalvinsky testified that the modules offer variety and flexibility with no time parameters or canned outlines. The modules do not involve specialized training but offer general topics.

Bill Lucks was the next witness to address the Commission. Mr. Lucks has two licenses in Delaware. He testified that he supports the changes to the continuing education requirements. The changes address both content and quality. The increased hours and the modules will ensure that licensees understand the applicable rules and how to conduct themselves. Mr. Lucks commented that these changes are needed given the rapid changes in the real estate industry.

Carol Burns, President of the Kent County Association of Realtors, addressed the Commission. Ms. Burns testified that the Kent County Association of Realtors fully supports the proposed changes to the continuing education requirements. She commented that the changes will increase licensee knowledge and professionalism and improve standards in the delivery of services to the public.

Greg Ellis, the President of the Commercial Industrial Realty Council of Delaware, addressed the Commission. He testified that he offered his comments on behalf of CIRS and on his own behalf. Mr. Ellis stated that while he applauded efforts to improve continuing education, he did not think that the proposed modules would have the intended result. The basic concepts in the modules have been taught repeatedly. The existing concepts need to be improved to make sure licensees understand what they are being taught. Increased continuing education hours won't fix the problem. Mr. Ellis testified that the industry needs to be more professional, and the modules won't help get the basic concepts across to licensees.

Dan Leshar addressed the Commission, stating that, like Mr. Ellis, he is from the Commercial Industrial Realty Council of Delaware. The proposed changes represent a 40% increase in continuing education hours. Real estate salespeople operate as small businessmen and the increase in hours will lead to increased costs. Increasing the hours won't necessarily result in a smarter industry. The modules will present less flexibility and less elective continuing education courses. Mr. Leshar testified that he reviewed Commission minutes and found no information showing a connection between the amount of continuing education hours and problems with Delaware licensees. He does not believe that the change will result in a smarter industry. The change will result in a 40% increase in income for instructors.

The next witness to address the Commission was Gene Millman, who testified that he is in favor of the proposed changes. He served on the subcommittee which addressed the continuing education issue. He has been in the real estate business for 27 years and an instructor for 21 years for the Delaware Association of Realtors. Mr. Millman stated that he found that agents with many years in the business don't understand changes in the law. Mr. Millman supported the increase in hours and changes in education content. He stated that the modules will allow for the incorporation of contemporary issues in continuing education.

Dick Brogan, who has been a licensee since 1994 and a broker since 2001, addressed the Commission. Mr. Brogan offered his support for the proposed changes. He testified that the changes focus on quality and the actual number of hours is not important. The Commission needs to continue with increasing continuing education requirements.

Donna Klimowicz next addressed the Commission. She is an associate broker who has been licensed since 1980. When she was first licensed, there were no continuing education requirements. Ms. Klimowicz testified that she is on the Commission's Education Committee and the Education Committee of the Delaware Association of Realtors. Ms. Klimowicz testified that the real estate industry is changing, including advances in technology, and the public is knowledgeable. The consumer is the priority and increased continuing education is needed for licensees. Many agents are inept and need the additional education. The Education Committee worked hard on the changes. Ms. Klimowicz stated that the proposed changes will give flexibility in terms of courses and increased quality. The public will benefit from these revisions to the continuing education requirements.

William Lower addressed the Commission. Mr. Lower is with a commercial redevelopment firm in Wilmington. He asked the Commission to delay immediate action on the proposed revisions on the basis that there has been

insufficient information communicated to licensees regarding the increase in hours. The changes will result in a diminished curriculum and increased cost. Given the current market, the changes will put a burden on licensees. Mr. Lower suggested that the Commission postpone its decision until there is a greater consensus.

Danielle Benson addressed the Commission. She is a broker and has been licensed for 17 years. She serves on the Education Committee and commented that the discussion regarding the modules involved a great deal of time, effort and differing opinions. The modules present a great format to start with. Working in management, she has been surprised by the actions of certain licensees. The public would be reluctant to work with these people. The revised education standards will increase professionalism with the result that the entire profession will be improved.

Rob Burton next addressed the Commission. He offered that there are two problems with the proposed revisions. Currently, there is no requirement at the end of a course that the course participant demonstrate knowledge. The courses "stink" and present information in a way that is not grasped by many people. Increasing the continuing education hours will be like throwing money at the problem with no understanding of what the problem is. Mr. Burton testified that the problem is that brokers are not doing their jobs. Brokers need to provide oversight, guidance and instruction. Requiring more continuing education classes, without requiring attendees to demonstrate their knowledge, is wrong. Attendees should be required to pass a test at the end of the course to show if they are being taught. Brokers vary in terms of how they educate their agents. In terms of requiring extra hours, Mr. Burton stated that in his view 15 hours are sufficient, if licensees are required to show their knowledge at the end of a course. Without this requirement, a licensee can just sit through a course and do nothing, and the certificate means nothing.

The next individual to address the Commission was Joe Hill, a Rehoboth Beach broker who has been licensed for 42 years. Mr. Hill offered his view that the problem with continuing education lies with instructors who are not doing their jobs. The Commission should overhaul the process and require that instructors be qualified first and then increase the hours. Mr. Hill pointed out that, in real estate schools, teachers must be certified.

Joe Wells addressed the Commission. Mr. Wells, a realtor and appraiser, testified that the focus should be on improving the quality of continuing education. An added burden for him is the fact that he needs 28 hours of continuing education to maintain his appraiser's license. Mr. Wells testified that the real estate and appraisal professions are inter-related and the Commission should be more liberal in the approval of appraisal courses for elective credits. As a person who is dual licensed, under the proposed continuing education requirements, he would need to obtain almost 50 hours of continuing education, which would create a burden for him.

Tom Burns next addressed the Commission. He testified that with changes in the real estate industry, there were concerns regarding the quality of continuing education offerings and a perceived need to improve teaching methods. The proposed modules are imperfect, but will expose the licensee to all aspects of real estate. The modules provide maximum flexibility and will ensure that courses are not redundant. The Education Committee also recommended revisions to the course evaluation forms, which will lead to higher quality instructors. Currently, the broker course is the same course every two years. With the proposed revisions, this will change. The modules will lead to quality instruction and exposure to current issues in the profession. Mr. Burns concluded that he strongly supported the recommended revisions to the Rules.

Shirley Kalvinsky again addressed the Commission by testifying that she wanted to clarify an issue presented in earlier public comment. The modules will include a test feature at the end of each course. She also spoke in favor of the required courses for new licensees.

Kathy Sperl-Bell addressed the Commission. She testified that currently there is a national debate about changes in the real estate industry. There is a need to improve professionalism in the real estate business. She noted that currently, in pre-licensing courses, there is a focus on teaching to the test, which involves materials unrelated to become a broker. Ms. Sperl-Bell commented that certain brokers are not ensuring that their agents are up to par.

Findings of Fact and Conclusions

The Commission considered the written and verbal comments provided at the public hearing.

The Commission deliberated on the public comment for and against the amendments to the Rules and Regulations. In particular, the Commission considered the public comment that the increase in continuing

education hours was not warranted, would pose a hardship to licensees, and result in financial benefit to instructors. The majority of the Commissioners, with two members dissenting, voted to approve the proposed changes. The Commission found that the purpose of the licensing law is to improve licensee competence, enhance standards, and thus safeguard the interests of the public. The real estate business is changing rapidly. Licensees should be highly knowledgeable about their profession, and the new continuing education modules will address important current issues in the profession, including risk management. Continuing education is essential to ensure ongoing competence of licensees, and the increased hours will enhance licensees' skills and professionalism.

The Commission delegated to the Education Committee the task of developing improved continuing education standards. The process involved in developing the new standards was lengthy and thorough. Discussions were held in public meetings and input was sought from all parties. As evidenced by the written comment and testimony presented at the hearing, the proposed revisions had extensive support, including support from Delaware professional associations.

The Commission finds that the proposed amendments to the Rules and Regulations pertaining to continuing education requirements will serve to enhance the skills and competence of licensees and in this way protect the interests of the public, consistent with the mandate of 24 **Del.C.** §2900.

The Law

The Commission's rulemaking authority is provided by 24 **Del.C.** §2906(a)(1).

Decision and Effective Date

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

Text and Citation

The text of the revised Rules and Regulations remains as published in the *Delaware Register of Regulations*, Volume 15, Issue 10 on April 1, 2012, without modification.

SO ORDERED this 14th day of June 2012.

DELAWARE REAL ESTATE COMMISSION

Andrew Staton, Professional Member, Chairperson

Michael Harrington, Sr., Professional Member,
Secretary

Christopher J. Whitfield, Professional Member,
Vice-Chairperson (Dissenting)

Joseph McCann

Ricky H. Allamong, Professional Member

Patricia O'Brien, Public Member

James C. Brannon, Jr., Public Member

Vincent M. White, Professional Member

Gilbert Emory, Public Member (Dissenting)

2900 Real Estate Commission

* Please note that no changes were made to the regulation as originally proposed and published in the April 2012 issue of the *Register* at page 1441 (15 DE Reg. 1441). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2900 Real Estate Commission

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

Real Estate Commission Education Committee

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2925

2925 Real Estate Commission Education Committee

ORDER

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on May 10, 2012 at a scheduled meeting of the Delaware Real Estate Commission (“the Commission”) to receive comments regarding proposed amendments to the Commission’s Guidelines for Fulfilling the Delaware Real Estate Education Requirements. The Commission has proposed extensive revisions to the Guidelines. The Guidelines have been amended to include information previously contained only in an “Appendix” posted on the Commission’s website. The amendments ensure that pre-licensing and continuing education standards are properly and fully set forth in rules promulgated and adopted by the Commission. The amended Guidelines explain new continuing education standards, which will be set forth in further detail in the Commission’s rules and regulations. Specifically, pursuant to the proposed revisions, continuing education offerings must fall into one of seven different modules, or, for new licensees, one of four different modules. In a new Rule 11.0, procedures are detailed for addressing course providers who receive negative evaluations from course attendees. This new Rule is intended to ensure quality in the provision of education to prospective and current licensees.

Pursuant to the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed amendments to the Rules and Regulations was published on April 1, 2012 in the *Delaware Register of Regulations*, Volume 15, Issue 10 at 15 **DE Reg.** 1455.

Summary of the Evidence and Information Submitted

The Commission received written comment at the public hearing on May 10, 2012. There was no verbal comment.

The following notices, written comments and documents were admitted as exhibits and made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Exhibit 3: May 4, 2012 letter from Trina Joyner, President, Sussex County Association of Realtors. Ms. Joyner noted several concerns regarding the proposed revisions. Among other items, Ms. Joyner commented that Rule 3.4.1 does not reference “broker associate,” the rules include no definition of “school,” and the rules reference “Department of Public Instruction,” which does not exist.

Findings of Fact and Conclusions

The Commission considered the written comment provided at the public hearing. There was no verbal comment.

The Commission found that the proposed amendments serve the best interests of licensees and the public. With the revisions, all information pertaining to pre-licensing education and continuing education will be included in one set of rules, promulgated and adopted by the Commission. Further, the new Rule 11.0 addresses course providers who receive negative evaluations from course attendees. The outlined procedures will serve to ensure quality in the provision of continuing education.

With respect to the letter from Ms. Joyner, Exhibit 3, the Commission voted to refer her comments for discussion in subcommittee.

The Law

The Commission's rulemaking authority is provided by 24 Del.C. §2906(a)(1).

Decision and Effective Date

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

Text and Citation

The text of the revised Guidelines remains as published in the *Delaware Register of Regulations*, Volume 15, Issue 10 on April 1, 2012, without modification.

SO ORDERED this 14th day of June 2012.

DELAWARE REAL ESTATE COMMISSION

Andrew Staton, Professional Member, Chairperson

Christopher J. Whitfield, Professional Member,
Vice-Chairperson

Ricky H. Allamong, Professional Member

James C. Brannon, Jr., Public Member

Gilbert Emory, Public Member

Michael Harrington, Sr., Professional Member,
Secretary

Joseph McCann

Patricia O'Brien, Public Member

Vincent M. White, Professional Member

2925 Real Estate Commission Education ~~Committee~~ Guidelines

* Please note that no changes were made to the regulation as originally proposed and published in the April 2012 issue of the *Register* at page 1455 (15 DE Reg. 1455). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[2925 Real Estate Commission Education Guidelines](#)

DIVISION OF PROFESSIONAL REGULATION

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

ORDER

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

Pursuant to 29 Del.C. §10118 and 24 Del.C. §3006 (A)(1), the Delaware Board of Professional Counselors of Mental Health and Chemical Dependency issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on April 25, 2012, the Board makes the following findings and conclusions:

Summary of the Evidence

1. The Board posted public notice of the proposed amendments in the March 1, 2012 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. The Board proposed to rework its regulations to better clarify the license requirements of Professional Counselors of Mental Health and Associate Counselors of Mental Health.
2. The Board received no written comments during the month of March 2012. The Board held a public hearing on April 25, 2012 and received no public comments.
3. The Board proposed to add language to clarify the experience needed for licensure as a Professional Counselor of Mental Health and Associate Counselors of Mental Health.

Findings of Fact and Conclusions of Law

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on March 1, 2012.

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, 2012.

IT IS SO ORDERED this 23rd day of May, 2012, by the Board of Mental Health and Chemical Dependency Professionals of the State of Delaware.

Lisa Ritchie, President	Tracey Frazier, LCDP
Daniel Cherneski, Vice President	Tracy Hansen, LMFT
Ruth Banta, Public Member	Julius Mullen, Ph.D., LPCMH
Daniel Cooper, LPCMH	William Northery, Ph.D., LMFT
Robert Doyle III, Public Member	Elizabeth Vassas, Public Member
Greg Drevno, LPCMH	

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

* Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1294 (15 DE Reg. 1294). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

DIVISION OF PROFESSIONAL REGULATION

3100 Board of Funeral Services

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 Del.C. §3105(a)(1))
24 DE. Admin. Code 3100

ORDER

3100 Board of Funeral Services

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §3105(a)(1), the Delaware Board of Funeral Services issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on March 27, 2012, the Board makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the March 1, 2012 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. Affidavits of publication in these two periodicals was accepted collectively as Board's Exhibit 1. The Board proposed to clarify the Board's objective at 24 **Del.C.** §3100 of protecting the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by establishing minimum standards for advertising funeral services in the State of Delaware.

2. The Board received no written comments during the thirty day comment period. The Board held a public hearing on March 27, 2012 and received no public comments.

3. The Board proposed to add a new regulation, Regulation 12, as follows:

12.0 Standards for Advertising by Funeral Directors.

The Purpose of these standards is to protect the general public and to prohibit false, misleading, untrue or deceptive advertising practices by licensees.

12.1 Definitions

12.1.1 "Advertise," "advertising," or "promotional medium" means the use of printed media, radio, television, billboards, the internet, stationary, contracts, price lists, calendars, fans, novelty items, or any other advertising method or medium.

12.1.2 For the purposes of this rule, "funeral establishment" means any licensed place used in the care and preparation of human remains for funeral services.

12.2 General Rule

12.2.1 A licensee may not make or cause to be made an inaccurate or deceptive statement, representation, guaranty, warranty, testimonial or endorsement through advertising or promotional medium.

12.2.2 A licensee shall be accountable under this regulation if the licensee uses an agent or partnership to implement actions prohibited by this regulation.

12.2.3 A licensee who violates these regulations regarding advertising may be guilty of consumer fraud, deception, restraint of completion, or price fixing and may be disciplined pursuant to 24 **Del.C.** §3112(a)(5) and subjected to the disciplinary sanctions set forth in 24 **Del.C.** §3114.

12.3 Prohibitions

12.3.1 A licensee shall not use, publish or disseminate any false, misleading, untrue or deceptive advertising in any manner.

12.3.2 The contents of any advertising shall include the name of the funeral establishment, its address and its business phone number.

12.3.3 An advertisement shall not contain any representations that the licensee is willing to provide services which are illegal under the laws or regulations of the State of Delaware or the United States.

12.3.4 A licensee shall not engage in solicitation from a dying individual or the relatives of a dying individual other than through general advertising.

12.3.5 Any mention of fees in an advertisement shall disclose any relevant variables that would affect that fee so that the statement can not be misunderstood or deceptive to the general public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The public was given notice and an opportunity to provide the Board with comments in writing or by testimony at the public hearing on the proposed amendments to the Board's Rules. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on March 1, 2012.

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

IT IS SO ORDERED this _____ day of May, 2012.

Timothy Ballas
M.C. Byrd
Chad Chandler
Harry Fletcher

Marceline W. Knox
Danna Levy
William Torbert
Robert O. Wright

3100 Board of Funeral Services

* Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1300 (15 DE Reg. 1300). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

3100 Board of Funeral Services

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3906(a)(1), (24 Del.C. §3906(a)(1))
24 DE Admin. Code 3900

ORDER

3900 Board of Clinical Social Work Examiners

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on June 18, 2012 at a scheduled meeting of the Delaware Board of Clinical Social Work Examiners ("the Board") to receive comments regarding proposed amendments to the Board's Rules and Regulations. The Board proposes revisions to Rule 4.0, which sets forth the requirements for professional supervision pursuant to 24 Del.C. §3907(a)(1). Rule 4.3 is amended to require that the 1,600 hours of supervision shall occur in not less than one year, and must include at least 100 hours of one-to-one, face-to-face supervision. This revision shall apply to supervision commencing after the effective date of the rule.

Pursuant to the Administrative Procedures Act, 29 Del.C. §10115, notice of the proposed amendments to the Rules and Regulations was published on May 1, 2012 in the Delaware *Register of Regulations*, Volume 15, Issue 11 at 15 DE Reg. 1579.

Summary of the Evidence and Information Submitted

There was no written comment presented at the June 18, 2012 hearing. John Shuford testified that he was glad to see an official statement from the Board pertaining to supervision. This statement would make it clear to applicants what is expected for supervision.

The following notices were admitted as exhibits and made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Findings of Fact and Conclusions

There was no written comment presented. The Board considered the public comment presented.

The Board found that the new rule will provide greater clarity and guidance to applicants with respect to the supervision requirements for licensure. Further, the new rule will ensure that applicants have received adequate supervision and training with the goal of licensing competent professionals who will be able to protect the interests of the public. Adoption of the Rules and Regulations as proposed will therefore further the Board's mandate, as set forth in 24 **Del.C.** §3901:

"The primary objective of the Board of Clinical Social Work Examiners, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this chapter) through the effective control and regulation of the practice of clinical social work; the licensure, control and regulation of persons who practice clinical social work within Delaware, from unsafe practices, and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the Board are to maintain minimum standards of practitioner competency, and to maintain certain standards in the delivery of services to the public."

The Law

The Board's rulemaking authority is provided by 24 **Del.C.** §3906(a)(1).

Decision and Effective Date

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

Text and Citation

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

SO ORDERED this 18th day of June 2012.

DELAWARE BOARD OF CLINICAL SOCIAL WORK EXAMINERS

Fran Franklin, Professional Member, President
Rochelle Mason, Professional Member, Vice President
Sandra Bisgood, Public Member, Secretary
Philip Thompson, Professional Member
Yen-Anh Gibson, Public Member
Kyla Teed, Public Member

3900 Board of Clinical Social Work Examiners

* Please note that no changes were made to the regulation as originally proposed and published in the May 2012 issue of the *Register* at page 1279 (15 DE Reg. 1579). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

3900 Board of Clinical Social Work Examiners

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER THIRTY-FIVE**

RE: Reauthorizing The Establishment Of A Special Fund To Assist Delaware National Guard Members Or Delaware-Based Reservists Who Suffer Serious Financial Hardship

WHEREAS, in recent years, the United States of America has deployed its armed forces throughout the world to fight terrorism, provide domestic emergency services, and protect the lives and property of its citizens; and

WHEREAS, members of the Delaware National Guard and members of other Reserve Components (Army, Navy, Air Force, Marine Corps, Coast Guard) **who live within Delaware or whose units are stationed in Delaware contribute to the fight against terrorism, provide** vital emergency services, and protect the lives and property of citizens of the United States and other countries; and

WHEREAS, many individuals and organizations in our State desire to extend financial aid and assistance to ameliorate the hardships of Delaware National Guard members and Reserve members stationed in Delaware and their immediate family members and dependents; and

WHEREAS, the Department of Military Affairs, Joint Force Headquarters, Delaware, Commanded by the Adjutant General of the State of Delaware, has been directed by the Department of Defense of the United States to plan, organize, and manage the Defense Family Assistance and Wellness Program for all Guard and Reserve personnel within the State of Delaware; and

WHEREAS, in furtherance of that mission, the Delaware National Guard and Reserve Emergency Assistance Fund (hereinafter, the "DNGREAF") has, since its founding in 1991, served the needs of Delaware National Guard members and Reserve members from Delaware-based units and their dependents with assistance to help address some of the financial and personal sacrifices undertaken by those men and women in defense of our country while on active duty; and

WHEREAS, the sacrifices and hardships of calls to active duty can be felt by the men and women of the Delaware National Guard and Reserves well after their deployments have ended, and our collective responsibility as Delawareans and Americans to those who serve on our behalf continues beyond the end of deployments, and, to that end, so should the assistance our community provides through the DNGREAF to these brave men and women continue when needed; and

WHEREAS, it remains the policy of the State of Delaware to minimize the hardships arising from service or membership in the Delaware National Guard or Delaware-based Reservists,

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The Adjutant General of the State of Delaware is authorized and directed to continue and maintain the Delaware National Guard and Reserve Emergency Assistance Fund. The DNGREAF shall be maintained as a separate fund, separate from the General Fund or any special fund of the State.

2. Under rules and regulations developed and prescribed by the Adjutant General, the DNGREAF shall:

a. Receive, collect, and accept donations of money from whatever source or origin for the benefit of:

(i) Members of the National Guard or Reserves whose units are based within the State of Delaware;

and

(ii) The dependents or immediate family members of any persons described in the subparagraph above.

b. Disburse and pay to eligible persons (as defined in subparagraph (a)) such funds as may be necessary and appropriate to alleviate serious financial hardship (as determined by the board of directors of the DNGREAF).

c. Be managed in accordance with policies and procedures established by the Adjutant General of the State of Delaware. These procedures shall ensure sound management of funds deposited in the DNGREAF, and equitable distribution of those funds to eligible persons. These procedures shall specify periodic reports to be submitted to the Governor on the activities of the DNGREAF.

d. The Adjutant General of the State of Delaware has the authority to allow exceptions to the eligibility

criteria and disburse funds to non-eligible individuals subject to a favorable majority vote by the DNGREAF board of directors.

3. The DNGREAF shall not pledge, encumber, or obligate in any way the credit of the State of Delaware.

4. All funds collected and managed through the DNGREAF pursuant to Executive Order No. 92, issued November 14, 2006, shall be included in the DNGREAF created by this Order and subject to distribution under the terms of this Order.

5. Executive Order No. 92, issued by Governor Ruth Ann Minner and dated November 14, 2006, is hereby rescinded. Executive Order Nos. 89 and 105, issued by Governor Michael N. Castle, are hereby rescinded.

APPROVED this 1st day of June, 2012

Jack A. Markell,
Governor

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER THIRTY-SIX**

TO: Heads Of All State Departments And Agencies

RE: Review and Reform of State Agency Regulations

WHEREAS, as Governor, I am committed to growing Delaware's economy, expanding economic opportunity for all Delawareans, and making State government more efficient and effective; and

WHEREAS, although State agency regulations are often necessary for the effective functioning of State government and the protection of public health, safety and the environment, we must strive to ensure that such regulations do not impose unnecessary burdens upon our residents, businesses and other organizations; and

WHEREAS, establishing a mechanism for the periodic review of existing regulations will help ensure that our State regulations continue to serve the original purpose for which they were adopted, and will provide a process by which improvements can be made to our regulatory framework; and

WHEREAS, citizens are often in the best position to identify outdated, duplicative or overly burdensome regulations and any review of Delaware's existing regulatory regime must include a meaningful opportunity for public input from residents, business owners, employees, and other concerned citizens; and

WHEREAS, in order to be efficient with taxpayer dollars, the process for periodic review should be focused on and targeted at those regulations that have not been subject to review for at least three years for which substantive concerns exist; and

WHEREAS, it is appropriate for such a review to focus on older, well-established regulations because (1) such regulations are more likely to be outdated or otherwise no longer justified by present realities; and (2) a focus on such regulations will allow state agencies to consider the real-world effects of regulations in light of economic, technological and other changes; and

WHEREAS, to reduce impediments to economic growth and improve the efficiency of state government, it is appropriate for State agencies to conduct a periodic, focused and targeted review of areas in which existing regulations may be reduced or streamlined – while reaffirming their commitment to enacting new regulations that are reasonable and that comply with all applicable laws, including the Regulatory Flexibility Act.

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER, on this, the 14th day of June, 2012, that:

1. Each Department and Agency within the Executive Branch that is subject to the Administrative Procedures Act, 29 **Del.C.** §10111 *et seq.* ("APA") (each, an "Agency") shall conduct, in accordance

GOVERNOR'S EXECUTIVE ORDERS

with the procedures set forth below, a periodic review of regulations promulgated by such Agency to determine whether any such regulations should be modified or eliminated.

2. In accordance with the schedule set forth in Exhibit A (the "Public Input Period"), all Agencies shall solicit input from the business community, non-profit community and the general public to identify regulations promulgated by such Agency three years ago or more for possible modification or elimination. In connection with the Public Input Period, each Agency shall conduct at least one public hearing in each county, notice of which shall be provided by such Agency in accordance with the APA. In addition, notwithstanding the date of any public hearing hereunder, each Agency shall accept written submissions through the final day of the Public Input Period.
3. If an Agency receives a comment or submission during the Public Input Period that would be more appropriately directed to another Agency, board or commission, the Agency receiving such comment or submission shall ensure that it is delivered to the appropriate party in a timely manner.
4. At the conclusion of the applicable Public Input Period, each Agency shall evaluate the comments, proposals and recommendations received and submit revisions (*i.e.*, regulations to be eliminated or modified) to the Register of Regulations. All proposed revisions, including proposals to eliminate regulations, shall be conducted in accordance with the APA.
5. No later than one (1) year from the date of this Executive Order, the Governor's Office shall submit a report to General Assembly detailing the regulations eliminated or modified pursuant to this process established herein.
6. The regulatory review process described herein shall re-commence on a recurring basis no later than three (3) years from the submission to the General Assembly of the report described in paragraph (5) herein.

APPROVED this 14th day of June, 2012

EXHIBIT A PUBLIC INPUT PERIODS – SCHEDULE FOR EXECUTIVE BRANCH AGENCIES

In accordance with the schedule below, each Executive Branch Agency shall solicit input from the business community, non-profit community and the general public to identify regulations adopted three years ago or more to be reviewed by the Agency for possible modification or elimination (the "Public Input Period"). As set forth in paragraph (2) of this Executive Order, each Agency shall conduct at least one public hearing in each county in accordance with the APA, and shall also accept written submissions.

If an Agency determines that the number or complexity of its regulations requires a longer review period, such Agency may commence its Public Input Period prior to its corresponding starting date below. However, such Agency shall in all events comply with the notice provisions of the APA, and in no event may the Public Input Period be extended beyond the Agency's corresponding final date below.

AGENCY	PUBLIC INPUT PERIOD
Agriculture	July 1, 2012 – October 1, 2012
Children, Youth & Their Families (DSCYF)	July 1, 2012 – October 1, 2012
Economic Development (DED0)	July 1, 2012 – October 1, 2012
Education	July 1, 2012 – October 1, 2012
Finance	July 1, 2012 – October 1, 2012
Health & Social Services (DHSS)	September 1, 2012 – December 1, 2012
Housing (DSHA)	September 1, 2012 – December 1, 2012
Labor	September 1, 2012 – December 1, 2012
Management & Budget (OMB)	September 1, 2012 – December 1, 2012

Natural Resources & Environmental Control (DNREC)	December 1, 2012 – March 1, 2013
Safety and Homeland Security (DSHS)	December 1, 2012 – March 1, 2013
State	December 1, 2012 – March 1, 2013
Technology & Information (DTI)	December 1, 2012 – March 1, 2013
Transportation (DeIDOT)	December 1, 2012 – March 1, 2013

Jack A. Markell,
Governor

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

State Implementation Plan (SIP) Revision to address the Clean Air Act Section 110 Infrastructure Elements for the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

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

The Department of Natural Resources and Environmental Control (DNREC), Division of Air Quality (DAQ) is proposing to revise the SIP to address the implementation, maintenance, and enforcement of the 2008 8-hour Ozone NAAQS.

On March 27, 2008, the Environmental Protection Agency (EPA) promulgated a new NAAQS for the pollutant ozone. The level of the NAAQS was lowered from 0.08 parts per million (ppm) to 0.075 ppm, based on 8-hour average concentrations. Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each State is required to submit to EPA a SIP to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. This SIP fulfills this requirement relative to the 2008 ozone NAAQS.

The SIP document consists of a determination and certification that Delaware has reviewed its SIP and determined that all elements required in CAA § 110(a)(2) for the 0.075 ppm ozone NAAQS have been met through earlier SIP submissions in connection with previous ozone standards, dated December 13, 2007, and September 16, 2009. In addition, a more detailed demonstration detailing how Delaware complies with the requirements of 110(a)(2)(D)(i)(I) of the CAA is included.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, August 2, 2012 beginning at 6:00 PM in the DNREC's Richardson & Robbins Building Auditorium, 89 Kings Hwy, Dover, DE 19901. Interested parties may submit comments in writing to: Ron Amirikian, DNREC Division of Air Quality, 655 S. Bay RD, Suite 5N, Dover, DE 19901.

7. PREPARED BY:

Ronald A. Amirikian (302) 739-9402 ronald.amirikian@state.de.us June 15, 2012

**Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards
Revision to State Implementation Plan for Ozone
June 12, 2012**

1.0 Introduction and Background

A State Implementation Plan ("SIP") is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("NAAQS"). The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the US Environmental Protection Agency (EPA) on May 31, 1972. Since this initial approval the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. The revisions consisted of updated plans and inventories, and new and revised regulatory control requirements. Delaware's SIP is compiled at 40 C.F.R. Part 52 Subpart I.

Clean Air Act (CAA) § 110(a)(1) and (2) requires states to submit to the EPA SIP revisions that provide for the implementation, maintenance, and enforcement of any new or revised NAAQS within three years following the promulgation of such NAAQS. On March 27, 2008, EPA promulgated a new NAAQS for the pollutant ozone. The level of the NAAQS was lowered from 0.08 parts per million (ppm) to 0.075 ppm, based on 8-hour average concentrations.⁴

"Delaware has reviewed its SIP and determined that all elements required in CAA § 110(a)(2) for the 0.075 ppm ozone NAAQS have been met through earlier SIP submissions in connection with previous ozone standards. Discussion of each CAA § 110(a)(2) element was specifically addressed in formal submittals to the EPA dated December 13, 2007, and September 16, 2009. These prior submittals addressed the § 110(a)(2) requirements for the 1997 8-hour ozone NAAQS, and Delaware believes that no changes are needed for Delaware to implement and enforce the revised 2008 ozone NAAQS. This letter confirms and certifies that Delaware's current SIP is adequate to address all applicable CAA§ 110(a)(2) requirements for the 0.075 ppm ozone NAAQS."

This January 17, 2012 letter was based on an October 2, 2007 EPA document, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards." On March 29, 2012 the EPA returned Delaware's January 17, 2012 letter as incomplete for two reasons. First, EPA noted that Delaware's submittal did not include documentation to show that it had gone through the notice and hearing requirements of 40 CFR Part 51, Appendix V.⁵ Second, EPA indicated that the submittal was incomplete regarding a "negative declaration"⁶ related to 110(a)(2)(D)(i)(I) because "EPA would expect a demonstration that contains information supporting a claim that a state does not significantly contribute or interfere with maintenance of the 2008 ozone NAAQS in other states." This letter is incorporated here as Attachment B.

This document is a revision to Delaware's SIP. The purpose of this SIP revision is to address the two EPA comments identified above: 1) that Delaware must provide for public notice pursuant to 40 CFR Part 51, Appendix V, and 2) that EPA would expect a demonstration that contains information supporting a claim that a state does not significantly contribute or interfere with maintenance of the 2008 ozone NAAQS in other states.

Delaware is making this submission in absence of any published EPA guidance and is therefore relying on existing guidance and past practices as well as what Delaware believes to be a rational approach. Delaware encourages EPA to use this document as a template when formulating its guidance and require other states to submit similar analysis.

2.0 Certification that all CAA § 110(a)(2) Elements Have Been Met

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4. 73 FR 16436, March 27, 2008. National Ambient Air Quality Standards for Ozone, Final Rule
 5. EPA has apparently abandoned their 2007 guidance, and is now requiring all submissions, including those where the current SIP is reviewed and certified as being adequate without change, be subject to the SIP revision requirements of 40 CFR Part 51, Appendix V.
 6. The term "negative declaration" is a term the EPA used in their March 29, 2012 letter. Delaware agrees that under no circumstances is a negative declaration appropriate relative to 110(a)(2)(D)(i)(I). For clarity, Delaware has, and is, basing its confirmation and certification that it has complied with 110(a)(2)(D)(i)(I) on the adequate provisions in its SIP.

Delaware has reviewed its SIP and determined that all elements required in CAA § 110(a)(2) for the 0.075 ppm ozone NAAQS have been met through earlier SIP submissions in connection with previous ozone standards. Discussion of each CAA § 110(a)(2) element was specifically addressed in formal submittals to the EPA dated December 13, 2007, and September 16, 2009. These prior submittals addressed the § 110(a)(2) requirements for the 1997 8-hour ozone NAAQS, and Delaware believes that no changes are needed for Delaware to implement and enforce the revised 2008 ozone NAAQS. Those documents are incorporated here again and submitted as attachments C and D. This SIP revision confirms and certifies that Delaware's current SIP is adequate to address all applicable CAA § 110(a)(2) requirements for the 0.075 ppm ozone NAAQS.

3.0 Demonstration of Adequate Provisions in SIP (CAA § 110(a)(2)(D)(i)(I))

Delaware has been non-attainment for the pollutant ozone since a standard was first established in 1971. Over the past 40 years Delaware has learned that transport is very significant relative to ozone, and that the only way to reduce ozone concentrations is to reduce the volatile organic compound (VOC) and nitrogen oxides (NOx) emissions that are causing them. Over the last twenty years Delaware has adopted and implemented SIP provisions that cover all VOC and NOx emitting sources and source categories, and all such emissions in Delaware are now well controlled. These SIP provisions have eliminated Delaware's significant contribution to both its own unhealthy air quality, and the air quality of all downwind areas.⁷

CAA § 110(a)(2)(D) requires Delaware's SIP to "*Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).*"

Based on EPA's Cross State Air Pollution Rule (CSAPR) modeling,⁸ the provisions in Delaware's SIP were demonstrated by the EPA to be adequate provisions that satisfy CAA § 110(a)(2)(D)(i)(I) relative to the 0.08ppm ozone NAAQS. This SIP revision demonstrates that these same provisions in Delaware's SIP also satisfy CAA § 110(a)(2)(D)(i)(I) for the 0.075 ppm ozone NAAQS. This demonstration was specifically requested by the EPA in its March 29, 2012 letter.

3.1 Delaware's SIP includes measures that cover its entire emissions inventory

A periodic emissions inventory (PEI) is a comprehensive emissions inventory that quantifies the VOC and NOx emission from every source or other type emitting activity within a State. PEIs are developed every three years, and 2008 is the year of Delaware's most current (PEI). Delaware's PEI encompasses all emissions that could violate CAA § 110(a)(2)(D)(i)(I) with respect to the ozone NAAQS.

Year 2008 NOx emissions and VOC emissions were sorted from highest to lowest, and are summarized in Chart 1 and Chart 2. Many of Delaware's VOC and NOx control measures were not fully in effect in 2008. In order to demonstrate the effectiveness of Delaware's control measures Chart 1 and Chart 2 also include corresponding 2014 projected NOx and VOC emissions from EPA's Cross State Air Pollution Rule (CSAPR) 2014 base case modeling inventory.⁹

Table 3-1 below details VOC and NOx emissions from Delaware's 2008 PEI and EPA's 2014 base case CSAPR inventory. Included in Table 3-1 is every Delaware stationary source/source category that emitted equal to or greater than 25 tons per year (TPY) of either VOC or NOx, and that made up the top 99% of Delaware's VOC and NOx inventory. Table 3-1 is generally sorted from the largest Delaware source/source category, to the smallest, based on the 2008 PEI. For each source or source category in Table 3-1 the current applicable Delaware control measures are discussed, along with any identified additional measures that could be adopted into Delaware's SIP.

7. Delaware's air quality remains unhealthy because other upwind States have not done the same.

8. 76 FR 48208, August 8, 2011. The Cross-State Air Pollution Rule, Final Rule

9. ftp://ftp.epa.gov/EmisInventory/2005v4_2/2014emis/

Chart 3-1: Delaware 2008 PEI vs CSAPR 2014 NOx Emissions

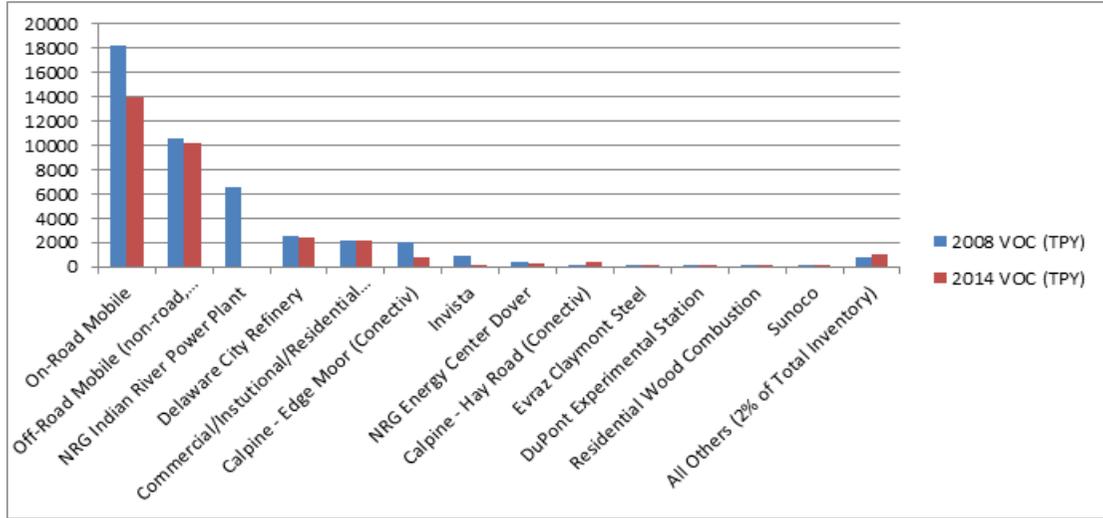


Chart 3-2: Delaware 2008 PEI vs CSAPR 2014 VOC Emissions

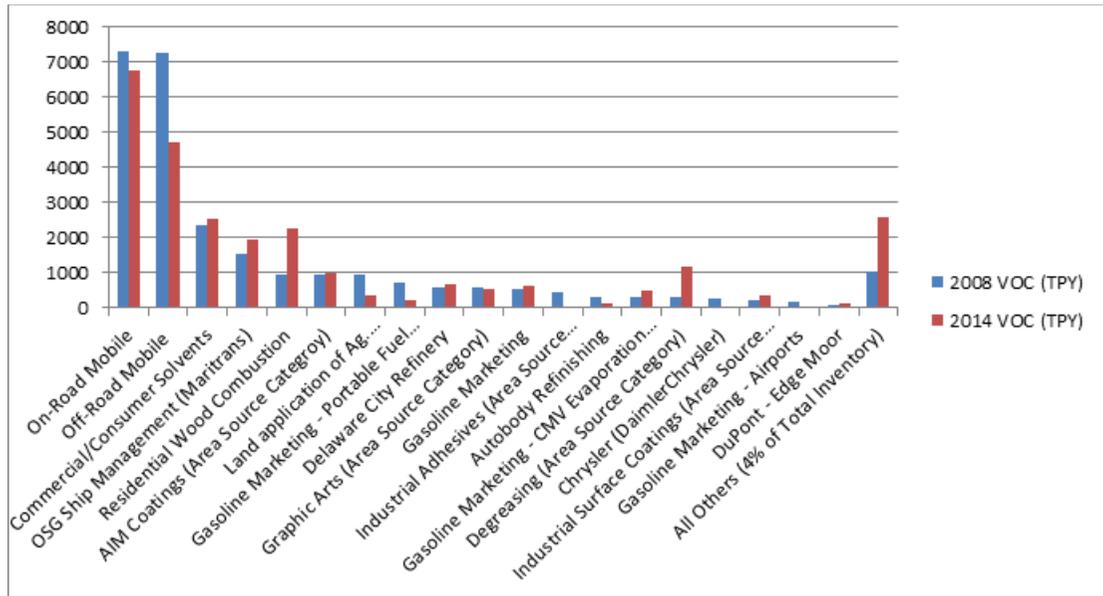


Table 3-1

FACILITY NAME / Source Category	2008 DE Periodic Emission Inventory		2014 CSAPR Base Case Inventory		Description of Control Measures in Delaware's SIP	Potential Additional Control Measures
	NOx (TPY)	VOC (TPY)	NOx (TPY)	VOC (TPY)		

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<p>On-Road Mobile</p> <p><i>41% of 2008 NOx Inventory</i></p> <p><i>27% of 2008 VOC Inventory</i></p>	18206	7322	13959	6744	<p>New vehicles must meet California vehicle emission standards (CA LEV 2) under 7 DE Admin. Code 1140.</p> <p>New and existing vehicles must be maintained under Delaware's vehicle Inspection and Maintenance program, 7 DE Admin. Code 1126 and 1131.</p> <p>Extended idling of heavy duty vehicles is prohibited under 7 DE Admin Code 1145.</p> <p>Overall on-road mobile emissions are capped in each of Delaware's three counties by ozone SIP budgets, which are managed under 7 DE Admin. Code 1132, transportation conformity.</p>	<p>Delaware has no authority under the CAA to further regulate tailpipe emissions.</p> <p>The next level of control would be to upgrade Sussex County's Basic I/M program to the Low Enhanced I/M program that is implemented in Kent and New Castle County. Delaware estimates this could reduce NOx emission by up to 292 TPY and VOC by up to 255 TPY, at a cost of 5,317 \$/ton.</p> <p>Aside from I/M program upgrades, all other identified measures are in the form of transportation control measures (TCMs), which generally gain small incremental reductions (i.e., on the order of tons per year, not hundreds of tons per year), and that have a \$/ton cost of \$50,000 to over \$1 million.</p>
<p>Off-Road Mobile (non-road, commercial marine, aircraft, locomotive)</p> <p><i>23% of 2008 NOx Inventory</i></p> <p><i>27% of 2008 VOC Inventory</i></p>	10518	7268	10177	4738	<p>These categories are subject to applicable federal measures only.</p>	<p>Delaware has limited authority under the CAA to regulate off-road mobile sources.</p> <p>Delaware, as part of the Ozone Transport Commission (OTC), is currently evaluating the feasibility of an off-road anti-idling regulation.</p> <p>Other potential measures include programs such as lawn-mower trade-in programs which generally gain small incremental reductions (i.e., on the order of tenths of a ton to several tons per year), and that have a \$/ton cost of \$50,000 to over \$1 million.</p>

GENERAL NOTICES

<p>NRG Indian River Power Plant</p> <p>15% of 2008 NOx Inventory</p>	6579	40	0 ^a	0.3	<p>Emissions are from four coal fired electric generating units (EGUs).</p> <p>Each of the four units installed low NOx burners under 7 DE Admin Code 1112 (NOx RACT).</p> <p>Units 1-3 are required to shutdown by consent order. Unit 2 was shutdown 5/2010 Unit 1 was shutdown 5/2011 Unit 3 is required to be shutdown in 12/2013, and in the interim has been controlled by installation of an SNCR system to supplement the existing low-NOx burners.</p> <p>Unit 4 has installed SCR technology and is subject to a NOx limitation of 0.1 lb/mmBTU, 24-hour average, under 7 DE Admin Code 1146, and an associated consent order.</p> <p>Unit 4 will be the only remaining coal fired unit in Delaware upon full implementation of the control measures currently being implemented.</p>	<p>Pipeline natural gas is not available as a generation fuel at this facility, and none of the units have natural gas firing capability in their current configuration.</p> <ul style="list-style-type: none"> • As Units 1 and 2 have already been shut down, there are no actions that could be taken to further reduce the NOx emissions from these two units. • With regards to Indian River Unit 3, SCR is the only commercially available technology capable of attaining additional NOx emission rate reductions beyond the capabilities of the currently installed NOx reduction technologies (low-NOx burners and SNCR). However, the amount of time involved in the engineering, procurement, installation, and startup of an SCR system for Unit 3 would exceed the time available before the scheduled shutdown of the unit (18 month through December 2013). Therefore there are no additional NOx emission rate controls available to reduce the NOx emissions rate from this unit between the current date and the unit's scheduled shutdown. <p>An SCR system has already been installed on Unit 4 that, in conjunction with its existing low-NOx burners and turbo-furnace design, has allowed Unit to demonstrate compliance with the unit's 0.1 lb/MMBTU, 24-hour average NOx emissions rate limit. No commercially available NOx emission controls have been demonstrated to achieve NOx emission rate reductions beyond those achievable utilizing SCR. Therefore there are no additional NOx emissions rate reduction capabilities available for this unit. Delaware concludes that there are no additional economically and technologically feasible means of reducing the NOx emissions rate from these units.</p>
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GENERAL NOTICES

<p>Delaware City Refinery</p> <p>6% of 2008 NO_x Inventory</p> <p>2% of 2008 VOC Inventory</p>	2525	597	2367 ^b	665	<p>The Delaware City Refinery is a petroleum refinery.</p> <p>NO_x emissions are controlled under 7 DE Admin Code 1112 (NO_x RACT), and also under a NO_x cap/PAL established pursuant to Section 2.0 of 7 DE Admin Code 1142 and 1125. The NO_x cap began in 2011 at 2,525 TPY (i.e., actual 2008 emission levels), and decreases to 1,650 TPY beginning 2015.</p> <p>VOC emissions are subject to 7 DE Admin Code 1124 (VOC RACT). In addition, numerous sources at the facility are subject to emission limits established under 7 DE Admin. Code 1125 (LAER plus offsets).</p>	<p>Delaware's March 15, 2011 SIP revision, "<i>Demonstration that Amendments to Section 2.0 of 7 DE Admin Code 1142, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries Do not Interfere with Any Applicable Requirement of the Clean Air Act</i>" provides a detailed discussion of the facility-wide NO_x cap. The following information demonstrates the stringency of the facility-wide NO_x cap: Thirteen of the refineries industrial boilers were subject to the EPA NO_x SIP Call, which was implemented in Delaware under 7 DE Admin Code 1139. The initial 2,525 NO_x cap is significantly less than annualized NO_x SIP Call cap^c, 3,333, which indicates that implementation of RACT and NSR at the refinery have resulted in the implementation of NO_x controls at the refinery. The 1,650 TPY NO_x cap represents a 35% reduction beyond RACT limits (i.e., actual 2008 levels), and more than an additional 50% reduction below NO_x SIP Call levels. In addition, all future growth at the refinery must occur under this NO_x cap. Delaware concludes that it is not feasible to lower the NO_x cap at this time, and that NO_x emission cannot be significantly reduced from the refinery in the context of this SIP. In addition, no additional VOC reduction measures have been identified.</p>
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<p>Commercial/ Consumer Products 9% of 2008 VOC Inventory</p>	<p>0</p>	<p>2345</p>	<p>0</p>	<p>2531</p>	<p>Commercial and consumer products are defined as non-industrial products used around the home, office, institution, or similar settings. Included are hundreds of individual products, including personal care products (SCC 2460100000), household products (SCC 2460200000), automotive aftermarket products (SCC 2460400000), coatings and related products (SCC 2460500000), adhesives and sealants (SCC 2460600000), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) related products (SCC 2460800000), and other miscellaneous products (SCC 2460900000). The VOCs in these products may act either as the carriers for the active product ingredients or as the active ingredients themselves.</p> <p>This category has undergone three rounds of regulation in Delaware. First under a 1998 National Rule (63 FR 48819), then under a more stringent 2002 Delaware regulation (Section 2.0 of 7 DE Admin. Code 1141) which was based on a OTC model rule, and finally, under an update to Section 2.0 of 7 DE Admin. Code 1141 which was based on a 2006 revised OTC model rule, and which had a 2009 compliance date.</p>	<p>Delaware's SIP currently contains the most stringent provisions feasible at this point (i.e., those of the most recent OTC model rule adopted by any state).^d</p> <p>Delaware does not have the authority to directly regulate manufacturers outside of the boundaries of the State of Delaware. Because of this, the only means available to Delaware to regulate emission in this category is to regulate the allowable VOC content of products sold in Delaware.</p> <p>Delaware represents a very small market share to these manufacturers and any attempt by Delaware to further reduce allowable VOC content on our own would result in the manufacturers not selling in Delaware, rather than having the desired effect of reformulation to lower VOC emitting products. In other words, Delaware's market share alone is not large enough for manufacturers to justify the expense of reformulating their products. Separate from a national or regional rule, it is not feasible for Delaware to regulate this category further.^e</p>
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GENERAL NOTICES

<p>Commercial/ Institutional/ Residential Fuel Combustion (Area Source Category)</p> <p>5% of 2008 NO_x Inventory</p>	2113	95	2109	105	<p>The commercial/institutional fuel combustion category includes small boilers, furnaces, heaters, and other heating units too small to be considered point sources. The commercial/institutional sector includes wholesale and retail businesses; health institutions; social and educational institutions; and federal, state, and local governments (i.e., prisons, office buildings) and are defined by SIC codes 50-99. The fuel types included in this source category are coal (SCC 2103002000), distillate oil (SCC 2103004000), residual oil (SCC 2103005000), natural gas (SCC 2103006000), and liquefied petroleum gas (LPG) (SCC 2103007000). Uses of natural gas and LPG in this sector include space heating, water heating, and cooking. Uses of distillate oil and kerosene include space and water heating.</p> <p>Emissions in this category are from many small units throughout the State, where facility-wide VOC and NO_x emissions are generally less 5 TPY and 25 TPY, respectively (i.e., those not covered in the point source inventory).</p> <p>7 DE Admin Code 1112 requires the control of NO_x emissions from fuel burning equipment. Under 1112, units with maximum rated heat input capacities equal to or larger than 50 MMBtu/hr must be controlled by installation of either low excess air and low NO_x burner technology or flue gas recirculation technology. Units between 15 and 50 MMBtu/hr must receive an annual tune up performed by qualified personnel to minimize NO_x emissions. Most commercial/institutional combustion units are subject to the annual tune-up requirements, or are less than 15MMBtu/hr and are exempt from the requirements of 1112.</p>	<p>Additional control measures for this category are possible. 7 DE Admin. Code 1112 could be revised to achieve some additional NO_x reductions:</p> <ul style="list-style-type: none"> • 1112 could be revised such that it is applicable to combustion units at facilities with the potential to emit less than major thresholds; and the low-end exemption of 1112 could be revised from 15MMBTU/hr to 5MMBTU/hr. Covered units would be predominately small units subject to annual tune-ups, and a NO_x reduction of about 5% from each subject unit. Conservatively assuming that all emissions in this category would be impacted by the new requirement, this measure is estimated to have the potential to reduce 2012 NO_x emissions by up to 60 TPY, at a cost of over \$36,701/ton. • 1112 could be revised to require boilers in the 25 MMBTU/hr – 50 MMBTU/hr size range to install either low excess air and low NO_x burner technology or flue gas recirculation technology. This would reduce NO_x by up to 50% for each subject unit. Conservatively assuming that all emissions in this category would be impacted, this measure has the potential to reduce 2012 NO_x emissions by up to 600 TPY, at a cost of more than \$30,577/ton. <p>Other measures could likely be identified at similar reductions and cost effectiveness. Given the high control costs, and the large number of very small sources in this category, this category is best regulated through turnover of equipment.^f</p>
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<p>Calpine - Edge Moor (Conectiv)</p> <p>4% of 2008 NOx Inventory</p>	<p>1980</p>	<p>31</p>	<p>752</p>	<p>16</p>	<p>This facility is a power plant that consists of three gas/oil fired EGUs. (i.e., 86 MW, 174 MW, and 450 MW).</p> <p>NOx emissions are regulated under 7 DE Admin Code 1112 (NOx RACT), and 7 DE Admin Code 1146 (NOx, SO2 and Hg BACT).</p> <p>1146 requirements are phased in between 2009 and 2012. 1146 includes both a unit specific annual NOx cap, and a 0.125 lb/MMBTU emission limitation, demonstrated on a rolling 24-hour average basis.</p> <p>All units complied with 1112 through the installation of low NOx burners. As a result of Delaware's 7 DE Admin Code 1146 and a related Consent Decree, Calpine's (formerly Conectiv) Edge Moor Electric Generating Station was required to take actions that have significantly reduced the NOx emissions rate from the electric generating units at that site. Units 3 and 4 have both been modified with additional NOx emissions controls: low-NOx burners, overfire air, and SNCR. Unit 5's primary fuel is residual fuel oil, and incorporates low-NOx burners, overfire air, and SNCR for NOx emissions rate reduction. As of January 1, 2012, each unit has a NOx emissions rate limit of 0.125 lb/MMBTU, calculated on a rolling 24-hr basis. Each of these units in 2011 had an average annual NOx emissions rate of less than 0.1 lb/MMBTU.</p> <p>Note that implementation of regulation 1146 is not reflected in the 2008 inventory, but appears to be reflected in the EPA CSAPR 2014 inventory.</p>	<p>SCR is the most effective commercially available NOx emissions control technology available for a gas/oil fired steam generating units such as these at the Calpine-Edge Moor facility. Additional control is possible by replacing the existing SNCR technology with SCR technology on each of the three EGUs</p> <ul style="list-style-type: none"> Unit 3: The estimated incremental cost of reducing the NOx emission rate lower than the unit's 2011 annual average value (assuming a 10 year life, using the 2011 annual heat input, and using a 0.04 lb/MMBTU attainable NOx emissions rate basement) is \$26,348 per incremental ton of NOx reduced. This would reduce mass emissions by 32% (37 TPY based on actual 2011 data). Unit 4: The estimated incremental cost of reducing the NOx emission rate lower than the unit's 2011 annual average value (assuming a 10 year life, using the 2011 annual heat input, and using a 0.04 lb/MMBTU attainable NOx emissions rate basement) is \$10,145 per incremental ton of NOx reduced. This would reduce mass emissions by 57% (80 TPY based on actual 2011 data). Unit 5: The estimated incremental cost of reducing the NOx emission rate lower than the unit's 2011 annual average value (assuming a 10 year life, using the 2011 annual heat input, and using a 0.04 lb/MMBTU attainable NOx emissions rate basement) is \$37,277 per incremental ton of NOx reduced. This would reduce mass emissions by 57% (50 TPY based on actual 2011 data).
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GENERAL NOTICES

<p>OSG Ship Management</p> <p>6% of 2008 VOC Inventory</p>	0	1522	0	1939	<p>Lightering emissions are controlled by vapor balancing under Section 46 of 7 DE Admin. Code 1124. Emission limitations are phased in between 2008 and 2012. In 2012 and beyond, lightering emissions are capped (i.e., all crude oil lightering emissions plus growth) at 43% of actual 2005 levels.</p> <p>Lightering restricted on ozone action days.</p> <p>Vapor balance required on all transfers capable of vapor balancing.</p>	<p>Feasible control technology was determined to be limited to vapor balance due to operation in the marine environment.</p> <p>Additional controls beyond vapor balancing are not feasible.</p>
<p>Residential Wood Combustion</p> <p>4% of 2008 VOC Inventory</p>	88	948	73	2243 ⁹	<p>Delaware does not regulate this category in its SIP.</p>	<p>Given Delaware's climate this activity generally occurs outside the ozone season, so additional control beyond the federal NSPS is not warranted.</p>
<p>Invista</p> <p>2% of 2008 NOx Inventory</p>	941	26	18	26	<p>The Invista-Seaford facility includes two steam boilers.</p> <p>The first is a 94 MMBTU/hr package boiler firing pipeline natural gas or #2 fuel oil, utilizes flue gas recirculation for NOx control in compliance with 7 DE Admin Code 1112 and operates in compliance with its permitted NOx mass emissions limit of 39 tons/year and a permitted NOx emissions rate of 0.10 lb/MMBTU when firing natural gas and 0.11 lb/MMBTU when firing #2 fuel oil.</p> <p>The second is a 220 MMBTU/hr boiler firing pipeline natural gas or #2 fuel oil, utilizes layered NOx reduction technologies to meet the requirements of 7 DE Admin Code 1112 and 40 CFR Part 60 Subpart Db. The NOx reduction technologies utilized on this boiler are low NOx burners, flue gas recirculation, and SCR..... with a permitted NOx mass emissions limit of 118 tons per year firing #2 fuel oil and 12 tons per year firing natural gas, and a permitted NOx emissions rate of 0.20 lb/MMBTU calculated on a 30 day rolling average</p>	<p>For the 94 MMBTU/hr package boiler, SCR is the most effective commercially available NOx reduction technology applicable to oil/gas fired boilers. The estimated incremental cost of reducing NOx emissions rate below the permitted NOx emissions rate of 0.10 lb/MMBTU (assuming 10 year life, permitted NOx annual mass emissions limit of 39 tons/year, permitted NOx emissions rate of 0.10 lb/MMBTU, and using a 0.04 lb/MMBTU attainable NOx emissions rate basement) is \$10,900 per ton of NOx reduced.</p> <p>For the 220 MMBTU/hr boiler SCR is the most effective NOx reduction technology applicable to oil/gas fired boilers. As this unit already incorporates SCR technology, there are no more effective NOx reduction technologies commercially available to further reduce the NOx emissions rate from this boiler</p>

<p>Architectural and Industrial Maintenance (AIM) Coatings (Area Source Category) <i>3% of 2008 VOC Inventory</i></p>	0	938	0	1006	<p>Architectural surface coating operations consist of applying a thin layer of coating such as paint, paint primer, varnish, or lacquer to architectural surfaces, and the use of solvents as thinners and for cleanup. Surface coatings include either a water-based or solvent-based liquid carrier that generally evaporates in the curing process. Architectural surface coatings are applied to protect the substrate and/or to increase the aesthetic value of a structure.</p> <p>Industrial maintenance coatings include primers, sealers, undercoats, and intermediate and topcoats formulated for and applied to substrates in industrial, commercial, coastal, or institutional situations that are exposed to extreme environmental and physical conditions. These conditions include immersion in water, chemical solutions and corrosives, and exposures to high temperatures.</p> <p>AIM coatings are regulated under Section 1 of 7 DE Admin. Code 1141. This regulation is based on an Ozone Transport Commission (OTC) model rule (which was based on California regulations), and which is much more stringent than the current federal rule. The compliance date of this regulation was 1/1/2005.</p>	<p>Delaware's SIP currently contains the most stringent provisions feasible at this point (i.e., those of the most recent OTC model rule adopted by any state)^h.</p> <p>Delaware does not have the authority to directly regulate manufacturers outside of the boundaries of the State of Delaware. Because of this, the only means available to Delaware to regulate emission in this category is to regulate the allowable VOC content of products sold in Delaware.</p> <p>Delaware represents a very small market share to these manufacturers and any attempt by Delaware to further reduce allowable VOC content on our own would result in the manufacturers not selling in Delaware, rather than having the desired effect of reformulation to lower VOC emitting products. In other words, Delaware's market share alone is not large enough for manufacturers to justify the expense of reformulating their products. Separate from a national or regional rule, it is not feasible for Delaware to regulate this category further.</p>
<p>Land application of Ag. Herbicides/pesticides <i>3% of 2008 VOC Inventory</i></p>	0	853	0	343 ⁱ	<p>None.</p>	<p>Regulation of this category is not feasible by the State of Delaware.</p> <p>The only identified potential control measure for this source category is to reduce the VOC content of the herbicide/pesticide. Delaware does not command sufficient market share for this to be feasible. This category is best regulated by the EPA under a national rule.</p>

GENERAL NOTICES

Gasoline Marketing - Portable Fuel Containers <u>3% of 2008 VOC Inventory</u>	0	712	0	224	Portable fuel containers are regulated nationally by the EPA under 40 CFR Part 59, Subpart F.	No control measures to further reduce emission from this category have been identified.
Graphic Arts (Area Source Category) <u>2% of 2008 VOC Inventory</u>	0	575	0	559	<p>Printing operations are a source of VOC emissions due to the volatile organic content of inks and thinners used in the industry. It is estimated that, on average, half of the graphic arts establishments are in-house printing services in non-printing industries. The remaining establishments are located at businesses whose main function is printing or graphic arts. Large printing operations with VOC emissions of 10 TPY or more are included in the point source inventory.</p> <p>All sources with maximum theoretical emissions equal to or greater than 7.7 TPY are subject to the CTG based requirements in Section 37 of 7 DE Admin Code 1124 (VOC RACT).</p> <p>Offset lithographic and letterpress emission sources with maximum theoretical emissions equal to or greater than 15 pounds per day are subject to the CTG based requirements in Section 47 of 7 DE Admin Code 1124 (VOC RACT).</p>	Delaware's SIP currently contains the most stringent identified provisions feasible at this point (i.e., those of the most recent EPA CTGs).

GENERAL NOTICES

<p>Retail Gasoline Marketing –</p> <ul style="list-style-type: none"> • Stage I Vapor Recovery • Stage II Vapor Recovery • Tank Breathing • Trucks in Transit 	0	525	0	633	<p>Stage I emissions (i.e., tank truck refilling of storage tanks) are controlled by vapor balancing under Section 26 of 7 DE Admin. Code 1124 (VOC RACT).</p> <p>Stage II emissions (i.e., refueling of vehicles) are controlled by vapor balancing under Section 36 of 7 DE Admin. Code 1124 (VOC RACT).</p> <p>Gasoline tank breathing emissions are subject to annual leak testing and permitting requirements under Section 36 of 7 DE Admin. Code 1124 (VOC RACT)</p> <p>Gasoline tank truck emissions are subject to annual leak testing and permitting requirements under Section 27 of 7 DE Admin. Code 1124 (VOC RACT).</p>	<p>No control measures to further reduce emission from Tank Breathing, and trucks in transit have been identified.</p> <p>Additional reductions could be achieved by revising Stage I and Stage II requirements to California EVR requirements. This could reduce Delaware VOC emissions by up to 400 TPY, at a cost of \$7,640/ton.</p>
<p>Industrial Adhesives (Area Source Category)</p> <p><i>2% of 2008 VOC Inventory</i></p>	0	461	0	0	<p>Regulated under Section 4.0 of 7 DE Admin. Code 1141. 1141 is much more stringent than the most recent EPA CTG, and has broader coverage than the CTG (i.e., it covers field applied roofing adhesives and sealants not covered by the CTG). These requirements took effect on 5/1/2009.</p>	<p>Delaware's SIP represents the current level of technology for this source category.</p> <p>Additional regulation of this category is not feasible at this time.</p>
<p>NRG Energy Center Dover</p>	358	2	293	2	<p>Emissions are from one cogeneration unit, and two combustion turbines.</p> <p>All units are subject to RACT under 7 DE Admin Code 1112 (NOx RACT), and PTE limits under 7 DE Admin. Code 1125. The combustion turbines are subject to NSPS under 7 DE Admin Code 1120 and 40 CFR Part 60 Subpart GG.</p>	<p>The owner operator has applied for a permit to repower the existing coal fired cogeneration boiler with a heat recovery boiler and convert one combustion turbine to combined cycle operation. When the first combustion turbine is converted to combined cycle, the unit will be subject to NSPS under 7 DE Admin Code 1120 and 40 CFR Part 60 Subpart Db.</p> <p>The owner operator has requested a permit NOx emissions limit of 2.5 ppmvd for the repowered, combined cycle unit.</p> <p>Additional controls are not feasible.</p>

GENERAL NOTICES

<p>Auto body Refinishing</p> <p>1% of 2008 VOC Inventory</p>	0	320	0	141	<p>Auto refinishing is the repairing of worn or damaged automobiles, light trucks, and other vehicles, and refers to any coating applications that occur subsequent to those at original equipment manufacturer (OEM) assembly plants (i.e., coating of new cars is not included in this category). The majority of these operations occur at small body shops that repair and refinish automobiles. This category covers solvent emissions from the refinishing of automobiles, including paint solvents, thinning solvents, and solvents used for surface preparation and cleanup.</p> <p>Autobody refinishing is regulated under Section 11 of 7 DE Admin Code 1124. This source category has undergone three rounds of regulation in Delaware since 1990 (i.e., 1st CTG RACT, then OTC Model Rule 1 in 2002, and now OTC Model Rule 2 which had a compliance date of 1/1/2012).</p> <p>Note that implementation of Delaware's 1/1/2012 regulation is not reflected in the 2008 inventory, but appears to be reflected in the EPA CSAPR 2014 inventory.</p>	<p>Delaware's SIP represents the current level of technology for this source category.</p>
<p>Gasoline Marketing - CMV Evaporation Losses</p>	0	309	0	496	<p>Not regulated beyond any applicable federal measures.</p>	<p>No control measures to reduce emission from this category have been identified.</p>

GENERAL NOTICES

<p>Degreasing (Area Source Category)</p> <p>1% of 2008 VOC Inventory</p>	<p style="text-align: center;">0</p>	<p style="text-align: center;">308</p>	<p style="text-align: center;">0</p>	<p style="text-align: center;">1174^k</p>	<p>Solvent cleaning is the process of using organic solvents to remove grease, fats, oils, wax or soil from various metal, glass, or plastic items. Non-aqueous solvents such as petroleum distillates, chlorinated hydrocarbons, ketones, and alcohols have been used historically; however, the use of aqueous cleaning systems for some applications has recently gained acceptance.</p> <p>The types of equipment used in this method are categorized as cold cleaners, open top vapor degreasers, or conveyORIZED degreasers.</p> <p>Degreasing is regulated under Section 33 of 7 DE Admin. Code 1124. This category has undergone two rounds of regulation in Delaware (i.e., 1st CTG RACT, then OTC Model Rule 1 in 2002). This category is regulated much more stringently than required by the CTG.</p>	<p>A new OTC model rule was approved at the May 2012 OTC spring meeting. No state has yet adopted this rule. Delaware is evaluating for adoption as it may have the potential to further reduce VOC emissions from this category in the future.</p>
<p>Chrysler (DaimlerChrysler)</p> <p>1% of 2008 VOC Inventory</p>	<p style="text-align: center;">34</p>	<p style="text-align: center;">260</p>	<p style="text-align: center;">0</p>	<p style="text-align: center;">0</p>	<p>This facility was an automobile assembly plant.</p> <p>NOx and VOC emissions were subject to 7 DE Admin Code 1112 (NOx RACT) and 1124 (VOC RACT), and the facility was covered under a VOC/NOx PAL issued pursuant to 7 DE Admin Code 1125.</p> <p>This facility is now shutdown.</p>	<p>This facility is now shut-down.</p>
<p>Evrax Claymont Steel</p>	<p style="text-align: center;">190</p>	<p style="text-align: center;">67</p>	<p style="text-align: center;">133</p>	<p style="text-align: center;">74</p>	<p>This facility is a 500,000 TPY steel plate manufacture, with the main emission source being an electric arc furnace.</p> <p>NOx emissions from the EAF are limited by proper operation of the EAF (SIP approved alternate NOx RACT). VOC emissions are exempted from RACT.</p> <p>NOx emissions from the reheat furnace limited to 0.25 lb/mmBtu under 7 DE Admin Code 1112 (alternate NOx RACT).</p>	<p>No control measures to further reduce NOx or VOC emissions from an EAF have been identified.</p>

GENERAL NOTICES

Calpine - Hay Road (Connectiv) 1% of 2008 NOx Inventory	202	11	467	18	<p>This facility is a power plant that consists of six combined cycle gas fired (oil backup) EGUs.</p> <p>Units 1-3 are subject to 7 DE Admin Code 1112 (NOx RACT) limits of 25 to 88 ppm, 1-hour average, depending on fuel and firing mode. Units 5-7 are subject to 7 DE Admin. Code 1112, plus they are controlled by SCR as required by 7 DE Admin. Code 1125 (NOx LAER plus offsets).</p>	<p>SCR is the most effective commercially available NOx emission control technology commercially available for combustion turbine and combined cycle electric generating units such as those installed at Hay Road.</p> <p>Hay Road units 5, 6 and 7 already incorporate SCR.</p> <p>It is technically feasible to retrofit SCR on the Hay Road units 1, 2, and 3 that do not presently incorporate SCR. Assuming a 10-year life and using the 2011 annual heat input, it is estimated that the incremental cost of reducing NOx for Hay Road units 1, 2, and 3 collectively is approximately \$8,800 per incremental ton of NOx reduced. This would reduce NOx mass emissions by approximately 72% (.354 TPY based on actual 2011 data).</p>
Industrial Surface Coatings (Area Source Category) (1% of 2008 VOC Inventory)	0	201	0	375 ^l	<p>This source category is covered under Section 1 of 7 DE Admin. Code 1141 and several section of CTG based 7 DE Admin. Code 1124.</p>	<p>Delaware's SIP represents the current level of technology for this source category. Additional regulation of this category is not feasible at this time.</p>
Sunoco	83	94	108	49	<p>This facility was subject to 7 DE Admin. Code 1112 (NOx RACT) and 1124 (VOC RACT). It was subject to beyond-RACT NOx control under Section 1 of 7 DE Admin. Code 1142.</p>	<p>The facility is now shutdown.</p>
Gasoline Marketing – Airports and Marinas	0	175	0	61	<p>Stage I emissions are controlled by vapor balancing under Section 26 of 7 DE Admin. Code 1124 (VOC RACT).</p>	<p>No control measures to further reduce emission from this category have been identified.</p>

GENERAL NOTICES

DuPont Experimental Station	156	6	184	11	<p>NOx emissions are substantially from four oil fired 96 mmBTU/hr boilers.</p> <p>Each boiler is equipped with low NOx burner and low excess air technology under 7 DE Admin Code 1112 (NOx RACT).</p>	<p>SNCR and SCR are technically feasible post-combustion NOx reduction technologies applicable to oil fired boilers.</p> <ul style="list-style-type: none"> • The estimated cost effectiveness for retrofit of SNCR on these boilers ranges from \$2,070 per incremental ton of NOx reduction to \$7,270 per incremental ton of NOx reduction to achieve an overall reduction of 40% in NOx emissions. • The estimated cost effectiveness for retrofit of SCR on these boilers ranges from \$5,290 per incremental ton of NOx reduction to \$6,925 per incremental ton of NOx reduction to achieve an overall reduction of 70% in NOx emissions.
DuPont - Edge Moor	32	100	35	116	<p>NOx emissions are from small (<50 mmBTU/hr) combustion units, which are subject to annual tune-up requirements to minimize NOx under 7 DE Admin Code 1112 (NOx RACT).</p> <p>VOC emissions are subject to an 81% reduction under Section 50 of 7 DE Admin Code 1124 (VOC RACT).</p>	<p>No control measures to further reduce emission from this facility have been identified.</p>
General Motors	25	83	56	64	<p>This facility was an automobile assembly plant.</p> <p>This facility was subject to 7 DE Admin. Code 1112 (NOx RACT) and 1124 (VOC RACT).</p>	<p>The facility is now shut down.</p>
Dover Air Force Base	39	31	48	67	<p>This facility is a U.S. Air Force Base.</p> <p>VOC emissions from the facility have been reduce by more than 81% since 1990 under 7 DE Admin Code 1124 (VOC RACT). NOx emissions are primarily from four gas fired central heat plant boilers, which are controlled by low NOx burners installed pursuant to 7 DE Admin. Code 1112 (NOx RACT).</p>	<p>No feasible control measures to further reduce emission from this facility have been identified.</p>

GENERAL NOTICES

Formosa Plastics	25	42	34	58	<p>This is a plastics material and resin manufacturing facility.</p> <p>NOx emissions are from a 30 and a 40 mmBTU/hr boiler, subject to annual tune-up requirements to minimize NOx emissions under 7 DE Admin Code 1112 (NOx RACT).</p> <p>VOC emissions are from various storage tanks and reactors that are controlled by primary and secondary thermal oxidizers, with scrubbers under 7 DE Admin Code 1124 (VOC RACT) and federal NESHAP requirements.</p>	<p>SNCR and SCR are technically feasible post-combustion NOx reduction technologies applicable to oil and gas fired boilers.</p> <ul style="list-style-type: none"> The estimated cost effectiveness for retrofit of SNCR on these boilers ranges from \$5,540 per incremental ton of NOx reduction to \$19,450 per incremental ton of NOx reduction to achieve an overall reduction of 40% in NOx emissions. The estimated cost effectiveness for retrofit of SCR on these boilers ranges from \$12,100 per incremental ton of NOx reduction to \$15,900 per incremental ton of NOx reduction to achieve an overall reduction of 80% in NOx emissions. <p>No control measures to further reduce VOC emissions from this facility have been identified</p>
DSWA Southern Landfill	38	28	8	13	<p>Landfill emissions are controlled by a gas collection system and flare pursuant to 40 CFR Part 62, Subpart I and Part 63, Subpart AAA.</p>	<p>No control measures to further reduce emission from this facility have been identified.</p>

Croda	49	10	2	12	<p>NOx emissions are from a 75mmbtu/hr and a 115mmbtu/hr boiler, both equipped with low NOx burners/low excess air technology pursuant to 7 DE Admin. Code 1112 (NOx RACT). In addition, NOx from this facility are covered under a NSR PAL.</p>	<p>SNCR and SCR are technically feasible post-combustion NOx reduction technologies applicable to gas and oil fired boilers.</p> <ul style="list-style-type: none"> • The estimated cost effectiveness for retrofit of SNCR on these boilers ranges from \$69,200 per incremental ton of NOx reduction to \$104,000 per incremental ton of NOx reduction to achieve an overall reduction of 40% in NOx emissions. • The estimated cost effectiveness for retrofit of SCR on these boilers ranges from \$374,300 per incremental ton of NOx reduction to \$557,000 per incremental ton of NOx reduction to achieve an overall reduction of 70% in NOx emissions. <p>Given that these units are already controlled, and that emissions are projected to be low in the future, additional control beyond RACT is not warranted in the context of CAA 110(a)(2)(D)(i)(I).</p>
Prescribed Fires	16	35	5	51	Open burning is restricted under 7 DE Admin. Code 1113.	The limited burning allowed under 1113 is substantially limited to outside the ozone season. Additional controls are not feasible.
Traffic Markings (Area Source Category)		48	0	100 ^m	Section 1 of 7 DE Admin. Code 1141	This category is currently regulated at the level of demonstrated technology.

GENERAL NOTICES

DuPont - Chestnut Run	45	2	51	3	<p>48 mmbtu/hr boiler subject to annual tune-up to minimize NOx emission under 7 DE Admin Code 1112 (NOx RACT). 96 mmbtu/hr boiler equipped with low NOx burner and low excess air technology under 7 DE Admin Code 1112 (NOx RACT). Vapor degreaser and other VOC emission points subject to 7 DE Admin Code 1124 (VOC RACT).</p>	<p>SNCR and SCR are technically feasible post-combustion NOx reduction technologies applicable to oil fired boilers.</p> <ul style="list-style-type: none"> The estimated cost effectiveness for retrofit of SNCR on these boilers ranges from \$3220 per incremental ton of NOx reduction to \$7330 per incremental ton of NOx reduction to achieve an overall reduction of 40% in NOx emissions. The estimated cost effectiveness for retrofit of SCR on these boilers ranges from \$10,550 per incremental ton of NOx reduction to \$15,580 per incremental ton of NOx reduction to achieve an overall reduction of 70% in NOx emissions. <p>Given that these units are already controlled, and that emissions are projected to be low in the future, additional control beyond RACT is not warranted in the context of CAA 110(a)(2)(D)(i)(I).</p>
Printpack	2	42	6	104	<p>The emissions from the facility are from seven flexographic printing presses, a photopolymer plate making system, and automatic parts washer, and a waste solvent tank.</p> <p>Emissions are controlled by a regenerative thermal oxidizer operated pursuant to 7 DE Admin. Code 1124 (VOC RACT).</p>	<p>No control measures to further reduce emission from this facility have been identified.</p>

GENERAL NOTICES

City of Dover - McKee Run	33	0	0 ⁿ	0	<p>This facility is a power plant that consists of three gas/oil fired EGUs.</p> <p>These three units are controlled with low NOx burners installed pursuant to 7 DE Admin. Code 1112 (NOx RACT), with Unit 3 (the largest unit) also being controlled with overfire air. These units each have permit required short term NOx emission rate limits with a 24-hr averaging period, and collectively have a 24-hour mass emission limit.</p> <p>As a result of 7 DE Admin. Code 1146, all three McKee Run units were converted from residual oil primary fuel to natural gas primary fuel with No. 2 oil backup.</p>	<p>SCR is the most effective commercially available NOx reduction technology commercially available for oil and gas fired electric generating unit boilers such as the three units at McKee Run. For Unit 1 the estimated cost effectiveness is \$126,600 per incremental ton of NOx reduction, for Unit 2 the estimated cost effectiveness is \$150,100 per incremental ton of NOx reduction, and for Unit 3 the estimated cost effectiveness is \$38,900 per incremental ton of NOx reduction. For each of these units, the retrofit of SCR would be expected to achieve an 80% reduction in NOx emissions (28 TPY based on actual 2011 data).</p> <p>SNCR is another commercially available, technically feasible retrofit NOx reduction technology for oil and gas fired boilers such as the three units at the McKee Run facility. For Unit 1 the estimated cost effectiveness is \$76,500 per incremental ton of NOx reduction, for Unit 2 the estimated cost effectiveness is \$92,800 per incremental ton of NOx reduction, and for Unit 3 the estimated cost effectiveness is \$24,900 per incremental ton of NOx reduction. For each of the three units, the retrofit of SNCR would be expected to achieve a 40% reduction in NOx emissions (15 TPY based on actual 2011 data).</p>
Delaware City Terminal	0	33	0	26	VOC emissions are regulated under 7 DE Admin Code 1124 (VOC RACT).	No feasible control measures to further reduce emission from this source have been identified.
Mountaire Farms - Millsboro	33	0	15	0.35	7 DE Admin. Code 1112 (NOx RACT)	No control measures to further reduce emission from this facility have been identified.

GENERAL NOTICES

Commercial Cooking (Area Source Category)	0	32	0	30	Not regulated in Delaware's SIP.	The only identified VOC controls in place with regards to commercial cooking are those affecting chain-driven charbroilers. Delaware estimates emissions from chain-driven charbroilers to be less than 5% its total commercial cooking VOC, i.e. a maximum of 1 tpy of controllable VOCs. A report by the Bay Area Air Quality Management District (April, 2007) says that costs for controls would be \$5,193/ton of VOC reduced.
FMC	30	1	0.003	0.042	NOx emissions from two 25 mmBTU/hr boilers and three small spray dryers. Annual tune-ups to minimize NOx emissions on all NOx emitting units is required by 7 DE Admin. Code 1112 (NOx RACT).	No control measures to further reduce emission from this facility have been identified.
Hirsh Industries	1	26	2	24	Subject to Section 19 of 7 DE Admin. Code 1124, which is based on the most recent EPA CTG.	No control measures to further reduce emission from this facility have been identified.
DSWA Cherry Island Landfill	1	24	4	57	Landfill emissions are controlled by a gas collection system and flare pursuant to 40 CFR Part 62, Subpart I and Part 63, Subpart AAA.	No control measures to further reduce emission from this facility have been identified.
Total - categories covering all 2008 PEI sources that emit more than 25 TPY of either VOC or NOx, and which total the top 99% of DE's overall 2008 Anthropogenic Emissions	44342	26550	30906	24899		

Total - all other 150+ 2008 PEI facilities and source categories not included above	418	347	823	1692	Many of these small sources are also controlled under the adequate measures in Delaware's SIP. This includes small sources covered by CTG and non-CTG RACT. This also includes many combustion turbines and diesel generators with very low TPY emissions, but with very high TPD emissions on days conducive to ozone formation. These units are regulated under 7 DE Admin. Code 1144 and 1148. Control of all units with significant emissions on days conducive to the formation of ozone is critical to compliance with CAA 110(a)(2)(D)(i)(I).	
Total Anthropogenic Emissions (TPY)	44760	26897	31729	26591		

- a. Emissions from this facility are low, but are anticipated to generally be greater than zero.
 - b. Note that the 2014 CSAPR projection is inflated because it exceeds the allowable refinery NOx CAP.
 - c. The referenced SIP revision includes a demonstration that the refinery emissions are uniform across the year, and regulation on a TPY basis and not on an ozone season basis is acceptable. Based on this the 1139 budgets were annualized by multiplying by 12/5.
 - d. The OTC commissioners approved an updated consumer products model rule in May 2012. Delaware plans to propose an update to its regulations based on this model rule in the future
 - e. Note that the OTR states are currently considering an update to their model rule. This is based on CARB 2006 amendments, plus potential increased benefit by adding paint thinner and multi-purpose solvents, and has the potential to reduce Delaware VOC emissions by 365 TPY.
 - f. Note that section 4.0 of 7 DE Admin. Code 1125 requires BACT for any new source that emits greater than 5 TPY of NOx.
 - g. Delaware cannot explain why this emission is projected to be so high in CSAPR inventories. 2014 emissions should remain on-par with 2008 levels.
 - h. An update AIM model rule was approved by the OTC on June 3, 2010, which has not yet been adopted by any state. Delaware plans to propose an update to its regulations based on this model rule in the future.
 - i. Delaware cannot explain why this emission is projected to be so low in CSAPR inventories. 2014 emissions should remain on-par with 2008 levels.
 - j. Section 5 of 7 DE Admin. Code 1141 reduces VOC emission from this category by about 50%. It is not clear where the emissions from this category are reflected in the CSAPR inventory.
 - k. Delaware cannot explain why this emission is projected to be so high in CSAPR inventories. 2014 emissions should remain on-par with 2008 levels.
 - l. Because of 7 DE Admin Code 1141 and CTG based updates to 7 DE Admin Code 1124 that took effect post-2008, we would expect 2014 emissions to be lower than 2008 emissions for this category.
 - m. Delaware cannot explain why this emission is projected to increase in the CSAPR inventory. 2014 emissions should remain on-par with 2008 levels
 - n. Emissions from this facility are expected to be very low, but to generally be greater than zero.
 The information in the Table 3-1 above demonstrates that Delaware's SIP includes measures that cover all non-trivial NOx and VOC sources in the State.
- 3.2 Implementation of the measures in Delaware's SIP have been effective, and have resulted in significant emissions reductions.

GENERAL NOTICES

Delaware's adjusted¹⁰ 1990 base year SIP inventory emissions totaled 82,718 TPY, and 95,203 TPY for VOC and NO_x, respectively. Delaware's 2005 PEI demonstrates that emissions were reduced to 30,626 TPY, and 45,250 TPY for VOC and NO_x, respectively¹¹. This reduction (i.e., a 63% reduction in VOC and 52% reduction in NO_x) was largely attributable to Delaware's implementation of 7 DE Admin. Code 1125 (NSR), 7 DE Admin. Code 1112 (NO_x RACT), and 7 DE Admin. Code 1124 (VOC RACT), 7 DE Admin. Code 1126 and 1136 (vehicle I/M) control measures.

Table 3-2

	1990 PEI	2005 PEI
NO_x	95203	45250
VOC	82718	30626

While Delaware attained compliance with the 1-hour ozone NAAQS in 2005, it remained non-attainment for the 1997 8-hour ozone NAAQS. Between 2005 and 2009 Delaware adopted stringent control requirements applicable to its largest sources (e.g., EGUs, large ICI boilers, lightering). These control requirements generally incorporated phased-in compliance dates: a 2009 date to aid in attainment of the 1997 8-hour ozone NAAQS by the statutory deadline, and a later date, generally 2012/13, which was 1) looking forward to EPA finalization of a new 8-hour ozone NAAQS that was protective of public health¹², and 2) that resulted in each source/source category being well controlled. During this time period Delaware also updated its VOC RACT requirements and adopted regional measures to reduce emission from large area source categories (e.g., AIM, Consumer Products, etc.).

EPA's CSAPR projections give an indication of the effectiveness of Delaware's current SIP measures once fully implemented (i.e., after 2013). EPA developed base case projection inventories for 2012 and 2014 as part of the CSAPR. The 2014 CSAPR inventory is detailed in Table 3-1, and both 2012 and 2014¹³ CSAPR inventories are summarized in Table 3-3 below.

Table 3-3

	2012 CSAPR		2014 CSAPR	
	NO _x	VOC	NO _x	VOC
EGU	2639	75	1701	40
Non-EGU	3975	3858	3675	3861
Nonpoint	2255	11201	2194	11115
Nonroad	10365	5165	10177	4526
Onroad	16294	7599	13959	6744
Fires	23	305	23	305
Total	35549	28204	31729	26591

10. Delaware's actual 1990 base year SIP inventory emissions totaled 52,493 TPY, and 77,281 TPY for VOC and NO_x, respectively. To enable direct comparison to Delaware's 2005 PEI the on-road and non-road categories were adjusted using EPA's MOBILE6.2 and 2004 non-road models.

11. These reductions were made to reduce ozone concentrations under the 1-hour ozone standard. Delaware attained the 1-hour ozone NAAQS in 2005.

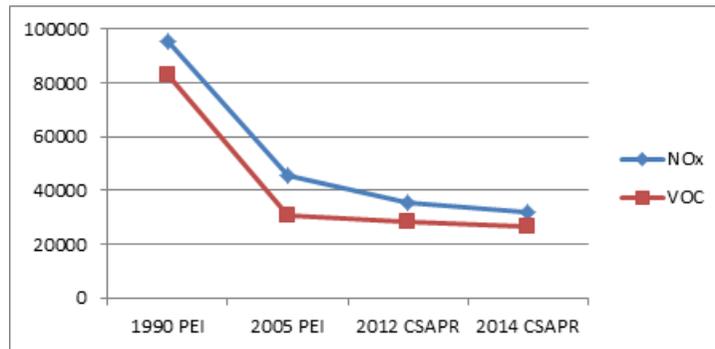
12. EPA abandoned this effort

13. ftp://ftp.epa.gov/EmisInventory/2005v4_2/2014emis/

For 2014 EPA projects Delaware's overall emissions to be 26,591 TPY and 31,729 TPY for VOC and NOx, respectively. This represents a 13% reduction in state-wide VOC emissions, and a 30% reduction in state-wide NOx emissions since 2005; and a 68% reduction in VOC and a 67% reduction in NOx emission levels since 1990.

This inventory analysis is summarized in Chart 3-3 below.

Chart 3-3



This data clearly demonstrates that Delaware's current SIP measures are very effective at reducing emissions that contribute to ozone formation. By extension, Delaware's SIP measures have reduced the impact of Delaware emissions on the attainment and maintenance of air quality standards in both Delaware and downwind states.

3.3 Cost Effectiveness of the measures in Delaware's SIP

The large emission reductions discussed in Section 3.2 above have required a correspondingly large economic investment by Delaware.¹⁴ Table 3-4 below provides estimates of the cost to achieve the significant emission reductions discussed above:

14.

GENERAL NOTICES

Table 3-4

Regulation (7 DE Admin. Code)	Pollutant	Estimated Cost Effectiveness
1112 (NOx RACT)	NOx	\$400 - \$12,300 per ton
1124 (VOC RACT)	VOC	\$3,000 - \$29,000 per ton
1126 (Vehicle I/M)	VOC, NOx	\$1,000 - \$5,000 per ton
1136 (Vehicle I/M)	VOC, NOx	\$1,000 - \$5,000 per ton
1125 (non-attainment NSR)	VOC, NOx	\$39,700 to \$150,000 per ton
1142, Section 2.0 (NOx emissions from Petroleum Refineries)	NOx	\$10,000 - \$150,000 per ton
1141, Section 1.0 (AIM)	VOC	\$6,400 per ton
1141, Section 2.0 (Consumer Products)	VOC	\$800 per ton
1144 (Stationary Generators)	NOx	\$23,000 - \$90,000 ¹
1146 (EGU Multi-Pollutant Regulation)	NOx	\$1,200 - \$5000 per ton ²
1148 (Combustion Turbines)	NOx	\$63,000 - \$78,000 per ton ²⁴

1 The \$/ton cost is very high because the subject units have low TPY emissions. These units were regulated not because they are high TPY emitters, but rather because they have high daily emissions. For example, a unit that emits 10 tons all on a day conducive to ozone formation, and a unit that emits 3,650 TPY, 10 tons each day, both contribute the same to ozone NAAQS attainment/maintenance problems.

2 7 DE Admin. Code 1146 is a multi-pollutant regulation that covers NOx, SO2 and Hg. This cost is for the NOx pollutant only.

Delaware evaluated EPA's final report "*Direct Cost Estimates for the Clean Air Act Second Section 812 Prospective Analysis*," dated February 2011. This report estimates costs of "local controls" by each U.S. State. Delaware adjusted this cost data to account for state size by dividing by population from

the 2010 census. Table 3-5 below compares the 2010 per capita cost invested in local controls by Delaware to the CSAPR covered states.

Table 3-5

State	\$ local controls/person
New Jersey	231.71
New York	169.77
Texas	136.90
Delaware	128.29
Maryland	87.73
West Virginia	63.90
Pennsylvania	63.15
Illinois	61.18
Indiana	40.12
Wisconsin	36.43
Michigan	22.82
Ohio	20.94
Alabama	14.62
Tennessee	10.87
Missouri	5.84
North Carolina	4.32
Kentucky	3.85
Georgia	3.69
Virginia	2.64
Arkansas	0
Iowa	0
Kansas	0
Minnesota	0
Florida	0
Louisiana	0
Mississippi	0
Nebraska	0
Oklahoma	0
South Carolina	0

This indicates that Delaware has incurred a local control cost beyond most of the CSAPR covered states to comply with the CAA.

3.4 Measures in Delaware's SIP that cover EGUs

The EPA has defined emissions that contribute significantly under CAA § 110(a)(2)(D)(i)(I) in various ways, all of which have substantially limited such emissions to EGUs. In the NO_x SIP Call and CAIR EPA's methodology defined significant contribution as those emissions that could be removed with the

use of “highly cost effective” EGU controls. Under CSAPR, EPA determined that the emissions contributing significantly to nonattainment or interfere with maintenance were those that could be removed with \$500/ton cost on EGUs, based on an analysis that accounted for both cost and air quality improvement. Under any definition, EGU’s in Delaware are well controlled, and looking solely at EGUs Delaware has satisfied 110(a)(2)(D)(i)(I).

Delaware has measures in its SIP that control each of its EGUs (i.e., 7 DE Admin. Code 1112, 1146, and 1148). Pertinent characteristics of these measures are that they apply on a stack-by-stack basis (i.e., trading is not allowed), they require compliance on a short-term basis (i.e., generally a 24-hour or shorter rolling average), and they require controls on all EGUs, including those with high daily emissions despite having small annual mass emissions (e.g., peaking units). In addition, Delaware has measures in its SIP to prevent smaller stationary reciprocating engine driven generators from operating as EGUs without controls (i.e., 7 DE Admin. Code 1144). Additional detail on Delaware’s current EGU control measures is presented in the SIP revisions associated with the adoption of 7 DE Admin. Code 1112, 1144, 1146 and 1148.

Table 3-1 and the inventory analysis in Section 3.2 above summarize the current level of control on Delaware EGUs. EPA’s CSAPR base case inventories and CAIR budgets also demonstrate the effectiveness of the EGU measures in Delaware’s SIP.

- Between 2012 and 2014 Delaware’s EGU emissions are projected to decrease from 2,639 TPY (7.4% of Delaware’s overall 2012 CSAPR NOx inventory) to 1,701 TPY (5.4% of Delaware’s overall 2014 CSAPR NOx inventory). For comparison, prior to implementation of Delaware’s EGU SIP measures (i.e., prior to 1990) Delaware’s EGU emissions were 24,878 TPY (32% of Delaware’s overall 1990 NOx inventory). This represents a 93% reduction in NOx emissions from this sector.
- Under CAIR Delaware’s annual 2015 NOx EGU budget was 3,472 tons, and Delaware’s ozone season EGU budget was 1,855 tons. EPA’s 2014 projection indicates that Delaware’s annual EGU emissions are about 50% of the corresponding 2015 CAIR budget – in fact, Delaware’s annual EGU emissions (i.e., 12-months) are less than its 2015 CAIR ozone season budget (5-months).¹⁵

Table 3-1 indicates that Delaware could achieve, in the aggregate, an additional estimated 549 TPY reduction in NOx from installing additional EGU controls.

- At about \$8,800 /ton DE could reduce NOx emissions by 354 TPY
- At \$10,000/ton by an additional 80 TPY
- At over \$25,000/ton, by an additional 115 TPY

This high cost of additional EGU control is consistent with the EPA CSAPR analysis. Under CSAPR EPA determined that no additional EGU reductions would be achieved in Delaware for cost up to \$2,500/ton. In CSAPR the EPA evaluated ozone season and annual EGU NOx emissions at pollution control marginal costs per ton of reductions ranging from \$0 to \$2,500/ton, for 2012 and 2014 scenarios. In all cases Delaware NOx emissions increased with cost. This indicates that controls are being added to EGUs outside of Delaware as cost increases, which would increase the capacity factor of Delaware units by making them more competitive. Additional reductions will not be realized from Delaware EGU’s until the control cost exceeds about \$8,800/ton, at which time gas fired combined cycle units in Delaware would install SCR.

Delaware concludes that because the cost is very high, the potential air quality benefit is low (i.e., the potential to further reduce significant mass emissions from Delaware’s EGUs is low), and because each of Delaware’s EGUs are already well controlled, these additional reductions beyond Delaware’s current SIP measures are not feasible in the context of this SIP, and are not required under 110(a)(2)(D)(i)(I).

3.5 Measures in Delaware’s SIP that cover non-EGUs

CAA § 110(a)(2)(D)(i)(I) covers a scope broader than EGUs. CAA § 110(a)(2)(D)(i)(I) requires a SIP to “Contain adequate provisions prohibiting...any source or other type of emissions activity...from emitting any air pollutant in amounts which will contribute significantly...” Ozone and ozone precursors

15. This does not imply that CAIR budgets are an adequate measure of compliance with CAA 110(a)(2)(D)(i)(I); rather it is an indication that Delaware’s EGU SIP measures effectively control emissions.

are transported and can contribute to ozone concentrations in downwind areas regardless of their source. To satisfy 110(a)(2)(D) a SIP must contain provisions that cover VOC and NOx emissions from any source or other type of activity within the state. A state has not satisfied 110(a)(2)(D) until 1) the total emissions from the state no longer impact any other nonattainment/maintenance area by more than 1% of the NAAQS, or 2) there are adequate provisions in the SIP that cover all sources or other type of activities in the State. If there are any sources not regulated, then 110(a)(2)(D) has not been satisfied.

Section 3.1 above demonstrates that Delaware has measures in its SIP that cover all non-trivial VOC and NOx emitting activities. Section 3.2 above demonstrates that these measures are effective. In Table 3-1 Delaware has identified non-EGU measures that could achieve, in the aggregate, an additional estimated 1,125 TPY reduction in NOx and a 655 TPY reduction in VOC. These establish the level of control currently in effect in Delaware.

- At about \$5,000/ton DE could reduce NOx emissions by about 375 TPY and VOC by 255 TPY
- At \$10,000/ton DE could reduce NOx by an additional 50 TPY and VOC by an additional 400 TPY
- At over \$10,000/ton, DE could reduce NOx by an additional 700 TPY

The analysis in Section 3.2 above shows that DE has reduced emissions by 56,127 TPY VOC and 63,474 TPY NOx between 1990 and 2014. These potential additional reductions make up about 1% of the VOC reductions, and less than 2% of the NOx reductions already made by Delaware's SIP measures. Delaware concludes that because the cost is very high, the potential air quality benefit is low (i.e., the potential to reduce significant mass emission is low), and because each of these sources/source categories are already well-controlled, these additional reductions beyond Delaware's current SIP measures are not feasible in the context of this SIP, and are not required under 110(a)(2)(D)(i)(I).

4.0 Conclusion

This SIP revision demonstrates 1) that the Delaware SIP contains measures that cover every non-trivial VOC and NOx emitting source and source category in the State, and 2) that implementation of these measures has resulted in significant emission reductions in Delaware. Delaware concludes that the Delaware emissions that would significantly contribute to nonattainment and maintenance in downwind areas are those VOC and NOx emissions that are reduced by the following adequate measures in Delaware's SIP:

- Centralized Vehicle Inspections and Maintenance (I/M) requirements to include testing of older, high emitting vehicles, to significantly reduce on-road mobile emissions (7 **DE Admin. Code** 1126 and 1136)
- Stringent Reasonable Available Control Technology (RACT) on all major nitrogen oxides (NOx) and volatile organic compound (VOC) stationary sources, which establishes a baseline level of control and achieves large, cost effective reductions (7 **DE Admin. Code** 1112 and 1125)
- Best Available Control Technology (BACT) has been required on all existing coal and residual oil fired EGUs, and large industrial boilers, which ensure the largest emitters are well controlled (7 **DE Admin. Code** 1142 and 1146)
- BACT on all sources with high daily emissions, despite low annual emissions, which ensure all emissions on ozone days are controlled (7 **DE Admin. Code** 1144 and 1148).
- Adoption of regional measures to reduce emission from large non-point source categories that have been recommended by the Ozone Transport Commission (7 **DE Admin. Code** 1141, Sections 1, 2 and 4)
- Major and minor new source review, with minor source thresholds set at 5 tpy for ozone precursor emission, which ensures new units are well-controlled (7 **DE Admin. Code** 1125)

Additional opportunities for controlling emissions are either outside of our regulatory authority, impractical as a Delaware only initiative or carry an additional incremental cost in excess of \$5,000 per ton. We are recommending this cost threshold to the EPA as criteria for evaluating all transport SIPs. Additional control measures from Delaware are not required under CAA § 110(a)(2)(D)(i)(I).

In the unlikely event that nonattainment or maintenance problems remain in downwind states impacted by Delaware once all states comply with CAA § 110(a)(2)(D)(i)(I), then the EPA should respond at that time with a SIP call under CAA § 110(k).

This and prior SIP revisions demonstrate that Delaware's SIP adequately addresses the requirements of CAA § 110(a)(2) for the 2008 ozone NAAQS.

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, July 11, 2012 beginning at 11:00 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DELAWARE STATE FIRE PREVENTION COMMISSION

PUBLIC NOTICE

In accordance with procedures set forth in 29 **Del.C.** ch. 11, Subch. III and 29 **Del.C.**, ch. 101, the Delaware State Fire Prevention Commission is proposing to adopt changes and updates to current regulations 701, 702, 703, 704, 705 and 706.

The Delaware State Fire Prevention Commission will hold a public hearing at which members of the public may present comments on the proposed regulations on August 21, 2012 at 10:00 a.m. in the Delaware State Fire Prevention Chamber at the Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments must be received on or before August 7, 2012. Members of the public may receive a copy of the proposed regulations at no charge by United States Mail by writing Ms. Sherry Lambertson at the address of the Delaware State Fire Prevention Commission set forth above.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

501 Harness Racing Rules and Regulations

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del. C.** §10005, proposes to change its Rule 6.2.2.1.10, 6.2.2.2 & 8.2.2.4. The Commission will hold a public hearing on the proposed rule changes on August 14, 2012. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on July 1, 2012.

The proposed changes are for the purpose of updating Rule 3 and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml

A copy is also available for inspection at the Harness Racing Commission office.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

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

DEPARTMENT OF FINANCE

OFFICE OF THE STATE LOTTERY

204 Sports Lottery Rules and Regulations

PUBLIC NOTICE

The Delaware State Lottery will seek public comments on the issue of whether its current rules should be amended. 10 **DE Admin. Code** 204 will be amended to establish rules for sports betting under new legislation

authorizing various changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 31, 2012 at the State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address.

These amendments will update regulations. They will rewrite the section on licensing of agents to allow sports betting to take place at retail establishments other than casinos. The amendments will substantially rewrite section 6 regarding the duties of agents and will substantially rewrite the licensing procedure of section 12. The amendments will eliminate section 13 regarding self-excluded persons, as that section will not be applicable.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****3102 Long Term Care Transfer, Discharge and Readmission Procedures****PUBLIC NOTICE**

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a complete revision of the previously proposed Regulation 3102 for the establishment of Long Term Care Transfer, Discharge and Readmission Hearing Procedures.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 by Wednesday August 1, 2012.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Fair Hearing Practice and Procedures – Expedited Fair Hearings****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) is proposing to amend the Division of Social Services Manual regarding Fair Hearing Practice and Procedures specifically, *Expedited Fair Hearings*.

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, 2012.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Nursing Facility Quality Assessment****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) is proposing to amend the Title XIX Medicaid State Plan regarding *Nursing Facility Quality Assessment*.

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, 2012.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

**State Survey Agency – State Long-Term Care Ombudsman Program – Notice of Change in Administrative Authority
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) is proposing to amend the Title XIX Delaware Medicaid State Plan regarding *State Survey Agency* specifically, *a change in the administrative authority of the State Long-Term Care Ombudsman Program*.

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

**Telemedicine
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) is proposing to amend the Title XIX Delaware Medicaid State Plan *to allow for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid*.

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, 2012.

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

DIVISION OF SOCIAL SERVICES

**Child Care Subsidy Program
Determining Technical Eligibility for Child Care
PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Technical Eligibility*

for Child Care.

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

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

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3600 BOARD OF REGISTRATION OF GEOLOGISTS
PUBLIC NOTICE

The Delaware Board of Geologists (Board) pursuant to 24 **Del.C.** §3606 (a)(1) proposes to amend its rules and regulations. The proposed revisions update the regulations by clarifying provisions related to lapsed and expired licenses, adding online courses and web seminars to courses acceptable for continuing education in place of home study, and updating the list of sponsored organizations that receive automatic approval of continuing education programs offered to licensees to meet the continuing education requirements. The revisions also add manslaughter to the list of crimes the Board has determined to be substantially related to the practice of geology. Finally, the proposal corrects several grammatical errors.

The Board will hold a public hearing on the proposed rule change on August 10, 2012 at 10:15 a.m., Second floor conference room B, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Sandra Wagner, Administrative Specialist, Delaware Board of Geologists, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. The final date to receive written comments will be at the public hearing.

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