
Delaware Register of Regulations

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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 17, 2013.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY**

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

Secretary's Order No.: 2013-A-0001

7 DE Admin. Code 1125, Requirements for Preconstruction Review, Section 1.9 ("Definitions")

Date of Issuance: May 9, 2013

Effective Date of the Amendment: June 11, 2013

** Please Note: The proposed regulation addressed amendments to Sections 1.9 and 2.0, which was published in the September 2012, issue of the Delaware Register of Regulations (16 DE Reg. 239). The Order only adopted the amendments to Section 1.9. The amendments to Section 2.0 were not finalized. The final regulation is being published here as an Errata. The effective date, as to the amendments to Section 1.9 remains the same.*

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

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 1125, Requirements for Preconstruction Review, Section 1.9 ("Definitions"). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-18. The Department published its initial proposed Regulation Amendments in the September 1, 2012 Delaware *Register of Regulations*, and held a public hearing on September 27, 2012. It should be noted that the only public comment received by the Department in this matter came from the Delaware Solid Waste Authority at the time of the aforementioned public hearing, and that such comment voiced support for this proposed action.

The proposed amendments to 7 DE Admin. Code 1125 will enable the Department to revise Section 1.9 of Regulation 1125 to include in the definition for "Greenhouse Gases (GHG)" that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration. This proposed change mirrors the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 22, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will be enabled to incorporate federal rule language contained in the three-year deferral rule (76 FR 43490 – July 20, 2011) to exempt new source review permitting of facilities emitting biogenic sourced carbon dioxide (CO₂).

In conclusion, the following findings and conclusions are entered:

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

- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on September 27, 2012;
- 3.) The Department held a public hearing on September 27, 2012 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) revise Section 1.9 of Regulation 1125 to include in the definition for "Greenhouse Gases (GHG)" that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration; (2) effectively mirror the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills; and, lastly, because (3) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 942(b) (7 Del.C. §942(b))

Secretary's Order No.: 2013-F-0015

7 DE Admin. Code §3545: *Invasive Finfish*

Date of Issuance: May 9, 2013

Effective Date of the Amendment: June 11, 2013

* **Please Note:** This regulation was inadvertently excluded in the Final Regulations that were published on June 1, 2013. It is being published here as an Errata. The effective date remains the same.

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

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3500, specifically, for the inclusion of a new section in Delaware's Tidal Finfish regulations, to wit: 7 **DE Admin. Code** §3545: Invasive Finfish. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-24. The Department published its initial proposed regulation in the March 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on March 21, 2013. The public hearing record remained open at that time for public comment through April 5, 2013.

The proposed new section of the Delaware Tidal Finfish regulations seeks to enable the Department to (1) formally designate snakehead fish, blue catfish, flathead catfish, walking catfish, and grass carp as invasive finfish species; (2) prohibit the unauthorized stocking, possession, purchase, transport or sale of live invasive finfish; and (3) specify fishing equipment and methods to take invasive finfish species. Snakehead fish, blue catfish, flathead catfish, walking catfish and grass carp are all invasive finfish species whose introduction or proliferation are likely to

cause economic and/or environmental harm to Delaware's tidal waters. The proposed action will assist in preventing the introduction or proliferation of these invasive fishes in Delaware.

The proposed Amendments were thoroughly vetted by the Department at the public hearing on March 21, 2013, at which time comments supporting this proposal were received from both the Center for the Inland Bays and the Delaware Mobile Surf Fishermen, or DMS Inc. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No additional public comment was received by the Department from the public during the post-hearing phase of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 25, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, comment voicing support of this proposed action was received from the public that attended the hearing held on March 21, 2013. No additional public comment was received by the Department from the public during the post-hearing phase of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. The adoption of this Order will allow Delaware to (1) formally designate snakehead fish, blue catfish, flathead catfish, walking catfish, and grass carp as invasive finfish species; (2) prohibit the unauthorized stocking, possession, purchase, transport or sale of live invasive finfish; and (3) specify fishing equipment and methods to take invasive finfish species.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on March 21, 2013;
- 3.) The Department held a public hearing on March 21, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will allow Delaware to amend its existing Tidal Finfish Regulations (7 **DE Admin. Code** §3500) to include a new section, §3545, Invasive Finfish, which will (1) formally designate snakehead fish, blue catfish, flathead catfish, walking catfish, and grass carp as invasive finfish species; (2) prohibit the unauthorized stocking, possession, purchase, transport or sale of live invasive finfish; and (3) specify fishing equipment and methods to take invasive finfish species;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be enabled to (1) formally identify those finfish species which are categorized as invasive, whose introduction or proliferation are likely to cause economic and/or environmental harm to Delaware's tidal waters; (2) assist in preventing the introduction or proliferation of said invasive fishes in Delaware; and lastly, because (3) the amendments are well supported by documents in the record;
- 7.) The Department shall submit this Order approving the final regulation to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

3545 Invasive Finfish

(Penalty Section 7 **Del.C.** 936(b)(2))

1.0 Definitions

- 1.1 For the purpose of Tidal Finfish Regulation 3545, the following words and phrases shall have the following meaning ascribed to them, unless the context clearly indicates otherwise:
“Bow and arrow” means an instrument with one or more pointed barbed or barbless prongs or blades affixed to a straight shaft and propelled by a stringed mechanical device.
“Director” means the Director of the Division of Fish and Wildlife.
“Invasive finfish” means any species of the family Channidae, including but not limited to the northern snakehead (*Channa argus*) and blotched snakehead (*C. maculata*); blue catfish (*Ictalurus furcatus*); flathead catfish (*Pylodictis olivaris*); walking catfish (*Clarias batrachus*); and grass carp (*Ctenopharyngodon idella*).

2.0 Transportation, Possession and Sale

It is unlawful to transport, purchase, possess, or sell a live invasive finfish without the written permission of the Director.

3.0 Stocking

It is unlawful to stock any invasive finfish, including the eggs thereof or other biological material, capable of spread, reproduction or propagation, into the tidal waters of this state without the written permission of the Director.

4.0 Equipment and Methods Used for Invasive Species Fishing

- 4.1 It is lawful for a person to take invasive finfish with any fishing equipment or method for which they are licensed, permitted or lawfully exempt.
4.2 It is lawful for a licensed, permitted or lawfully exempt recreational angler to take invasive finfish in Delaware’s tidal waters with a bow and arrow.

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 FINANCE
OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4819 (29 **Del.C.** §4819)

PUBLIC NOTICE**205 Charitable Video Lottery Rules and Regulations****AUTHORITY**

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Del.C.** §4819A(h), adopted amendments to 10 **DE Admin. Code** 205 without prior notice or public hearing in response to the signing of House Bill 1, an Act to Amend Title 29 of the Delaware Code Relating to Lotteries, on January 30, 2013. It is now necessary to extend those emergency regulations for 60 days, pursuant to 29 **Del.C.** §10119.

REASON FOR EXTENSION OF THE EMERGENCY ORDER

An Act to Amend Title 29 of the Delaware Code Relating to Lotteries, signed into law January 30, 2013, and scheduled to sunset on June 30, 2013, authorized the introduction of Charitable Video Lottery Machines at Charitable Gaming Organizations, defined as an organization in existence as of January 1, 2013, that is a fraternal or veterans organization with national affiliation or an organization, in existence as of January 1, 2013, whose membership consists primarily of veterans honorably discharged or active duty service members. §4819A(h) of the Act states "The Department of Finance shall enact regulations on an emergency basis to implement the operation of the charitable video lottery machines for the approved charitable gaming organizations." In order to ensure the integrity of this new form of gaming, it is imperative that newly authorized Charitable Video Lottery Agents and Charitable Video Lottery Vendors be held to a standardized set of operational regulations consistent with their business and trade style. As with any expansion of government gaming, it is in the best interests of the program administrator, in this case the State, to establish and ensure compliance with regulations and standards commonly

associated with gaming operations in order to maintain the public confidence and trust currently held by the Lottery.

These regulations effectively allowed for the start-up and operation of Charitable Video Lottery Machines within the confines of Charitable Gaming Organizations as newly defined by HB 1, which, in part, states "community organizations are in need of a source of revenue in order to support their operations and charitable activities".

Due to the condensed time frame allowed based on the urgency for these organizations to start generating funds as referenced above, it was necessary to implement these newly created emergency regulations. At this time legislation is pending to permanently allow charitable organizations to utilize video lottery machines. Due to time constraints, it is necessary to extend the emergency regulations for a period of up to 60 days until this legislation becomes final and final regulations may be adopted.

EFFECTIVE DATE OF THE ORDER

This Emergency Order shall take effect at 12:01 a.m. June 26, 2013 and shall remain in effect for 60 days.
ORDER

It is hereby ordered this 14th day of June, 2013, that the above referenced amendment to 10 DE Admin. Code 205 is adopted pursuant to 29 Delaware Code, Section 4819.

Tom Cook, Secretary, Department of Finance

205 Charitable Video Lottery Rules and Regulations

1.0 Introduction: Role of State Lottery Office

These regulations are authorized pursuant to 29 Del.C. §4819A(h) of Title 29 of the Delaware Code. Charitable Video Lottery operations in the State of Delaware are strictly regulated by the Delaware State Lottery Office through the powers delegated to the Director of the Lottery pursuant to Title 29 of the Delaware Code.

2.0 Definitions

For the purposes of these regulations, the following words and phrases have the meaning ascribed to them in this Section unless the context of the regulation clearly indicates otherwise, or unless they are inconsistent with the manifest intention of the Delaware State Lottery Office.

"agency" or "lottery office" - the Delaware State Lottery Office created pursuant to 29 Del.C. Ch. 48.
"agent" or "licensed agent" or "charitable gaming organization" or "charitable video lottery agent" - any person licensed by the Director of the agency to conduct charitable video lottery operations.

"applicant" - any person applying for a license authorized under these regulations.

"background investigation" - the security, fitness and background checks conducted of an applicant.

"charitable video lottery" - any lottery conducted with a charitable video lottery machine or linked charitable video lottery machines with an aggregate progression prize or prizes.

"charitable video lottery facility" - a building containing a gaming room or rooms.

"charitable video lottery machine" - any machine in which coins, credits or tokens are deposited in order to play any game of chance in which the results, including options available to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a charitable video lottery machine notwithstanding (i) the use of an electronic credit system making the deposit of bills, coins, or tokens unnecessary.

"charitable video lottery vendor" - any person who supplies or services charitable video lottery machines or associated equipment.

"certification" - the authorization by the lottery in accordance with its inspection and approval process of charitable video lottery machines and video games, such certification to relate to either hardware or software.

"credit slip" - the receipt issued from a charitable video lottery machine for payment of credits by an agent.

"credit" - the opportunity provided to a player to play a video game or redeem the credit for cash.

"DGE" - the Division of Gaming Enforcement of the Department of Safety and Homeland Security, as authorized by the Delaware Code.

"Director" - the Director of the Delaware State Lottery Office as established by Title 29 of the Delaware Code.

"gaming" - the dealing, operating, carrying on, maintaining or exposing for play any charitable video lottery machine in a licensed charitable gaming organization.

"gaming area" - A location in a charitable gaming organization where gaming activity is conducted at charitable video lottery machines.

"gaming vendor" - any vendor offering goods or services relating to the manufacture, operation, maintenance, security, distribution, service or repair of charitable video lottery machines.

"hearing officer" - a member of the Lottery Commission or other qualified person designated by the Chairperson of the Lottery Commission to conduct a hearing on any matter within the jurisdiction of the Lottery.

"license" - the authorization granted by the agency which permits an applicant to engage in defined charitable video lottery activities as an agent or charitable gaming vendor;

"license application" - the process by which a person requests licensing for participation in the charitable video lottery operations.

"licensee" - any person authorized by the Director to participate in charitable video lottery operations.

"lottery" - the public gaming system or games established and operated by the Delaware State Lottery Office.

"Lottery Commission" – the Lottery Commission of the State of Delaware as established by 29 Del.C. §4837.

"MEAL" - a written Machine Entry Authorization Log stored inside the charitable video lottery machine.

"net charitable video lottery game proceeds" - the total amount of credits or cash played less the total amount of credits or cash won by the players. "Net charitable video lottery game proceeds" does not include sums withheld from player winnings for tax liabilities incurred by the players, nor does it include amounts held in reserve for large or progressive prizes yet to be won by players.

"owner" - a person who owns, directly or indirectly, ten percent or more of an applicant or licensee.

"person" - an individual, general partnership, limited partnership, corporation or other legal entity.

"player" - an individual who plays a charitable video lottery machine.

"premises" - the building and grounds occupied by a licensed agent where the agent's charitable video lottery operations occur or support facilities for such operations exist, such as facilities for the service of food or drink, including those areas not normally open to the public, such as areas where records related to charitable video lottery operations are kept.

"terminal" - a charitable video lottery gaming device.

"video game" - any game played on a charitable video lottery machine, including but not limited to a variation of poker, blackjack, pull tabs, instant or line-up games.

"video game event outcome" - the result of a video game achieved by a player at a charitable video lottery machine.

3.0 Licensing of Agents

3.1 Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:

3.1.1 The applicant's legal name, address, type of organization (fraternal, veterans), organizational ID# or Federal Employer's Identification Number (FEIN), the names, addresses, social security

numbers (if applicable) and dates of birth (if applicable) of all officers assuming responsibility for the organization.

3.1.2 Certified copies of the applicant's charter, articles of incorporation, and other documents which constitute or explain the legal organization of the applicant.

3.1.3 Any and all other information as the Director may require to determine the competence, honesty and integrity of the applicant as required by Title 29 of the Delaware Code.

3.2 The application, as well as other documents submitted to the agency by or on behalf of the applicant for purposes of determining the qualifications of the applicant or agent, shall be sworn to or affirmed before a notary public. If any form or document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the forms or documents and that, to the best of his or her knowledge, information and belief, based on diligent inquiry, the contents of the form or documents so supplied are true.

3.3 Upon request of the agency, the applicant shall supplement the information provided in the application form as deemed necessary by the agency. The applicant shall furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, tax returns, cancelled checks or other materials required or requested by the agency for purposes of determining the qualifications of the applicant or agent.

3.4 To the extent, if any, that the information supplied in the application or otherwise supplied by the applicant or on the applicant's behalf, becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.

3.5 The applicant shall cooperate fully with the agency and the Division of Gaming Enforcement (DGE) with respect to its background investigation of the applicant. Among other things, the applicant, upon request, shall make available any and all of its books or records for inspection by the agency or the DGE.

3.6 As soon as the agency has determined that the application is complete, it shall forward same to the DGE which shall, as soon as practicable, undertake and complete the background investigation of the applicant and the officers assuming responsibility for the organization and report its findings to the agency.

3.7 The Director shall weigh the following factors in his or her evaluation of the application:

3.7.1 The criminal background, if any, of the applicant or any of its officers. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten (10) years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

3.7.2 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.

3.7.3 The extent to which the applicant has cooperated with the agency and the DGE in connection with the background investigation.

3.7.4 Whether the person, or any of its officers, are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.

3.7.5 With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.

3.7.6 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.

3.7.7 Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.

EMERGENCY REGULATIONS

- 3.8 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.7, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.
- 3.9 The approval of any license or the renewal of a license to an agent is subject to the following conditions:
- 3.9.1 Operation pursuant to a license issued under these regulations shall signify agreement by the agent to abide by all provisions of the regulations, including those contained in this section.
- 3.9.2 The agent shall at all times make its premises available for inspection by authorized representatives of the agency or the DGE personnel, during all operational hours. The Lottery and the DGE shall be authorized entry to the premises and access to any charitable video lottery machines or records of the agent without acquiring a warrant.
- 3.9.3 To the extent permitted by law, an agent accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of material or information supplied to the agency in connection with the application for the agent's operations.
- 3.9.4 An agent shall immediately notify the agency of any proposed or effective change regarding the makeup of the officers assuming responsibility of the agent.
- 3.9.5 An agent has a continuing duty to maintain suitability for licensure. A license does not create a property right, but is a revocable privilege contingent upon continuing suitability for licensure.
- 3.9.6 Any license granted may not be transferred, assigned or pledged as collateral. Any loss of charter or any action that occurs which causes the agent to no longer qualify as a Charitable Gaming Organization as defined in 29 Del.C. §4803 of Title 29, after the Director has issued a license, shall automatically terminate the license ninety (90) days thereafter.
- 3.10 To the extent provided by law, any information obtained pursuant to this Section 3 shall be held in confidence and not subject to the Delaware Freedom of Information Act, 29 Del.C. chapter 100.

4.0 Licensing of Gaming Vendors

- 4.1 A person expressing an interest to be selected as a charitable gaming vendor shall file an application for a charitable gaming vendor license in accordance with these regulations.
- 4.2 A charitable gaming vendor shall be licensed in accordance with these regulations prior to conducting any business with the Lottery or charitable video lottery agent, provided however, that upon a finding of good cause by the Director for each business transaction the Director may permit an applicant for said license to conduct business transactions prior to the issuance of the license.
- 4.3 Each person desiring to obtain a license from the agency as a charitable gaming vendor shall submit a license application on a form specified and supplied by the agency. The license application shall, among other things:
- 4.3.1 Give notice that the applicant will be required to submit to a background investigation.
- 4.3.2 Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners.
- 4.3.3 Require the applicant to disclose its legal name, form or entity (e.g., general or limited partnership, corporation).
- 4.4 The Director shall weigh the following factors in his or her evaluation of the application:
- 4.4.1 The criminal background, if any, of the applicant or any of its officers. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten (10) years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.
- 4.4.2 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.
- 4.4.3 The extent to which the applicant has cooperated with the agency and the DGE in connection with the background investigation.

- 4.4.4 Whether the person, or any of its officers, are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.
- 4.4.5 With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.
- 4.4.6 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.
- 4.4.7 Current prosecution for any offense listed in 4.4.1 of this section, provided that, at the request of the applicant, the Director shall defer its decision on the application during the pendency of the charge.
- 4.4.8 Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.
- 4.5 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.7, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.
- 4.6 Charitable gaming vendors shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.
- 4.7 Each charitable video lottery machine certified by the Director shall bear a unique serial number and shall conform to the machine model certified by the Director.
- 4.8 Charitable gaming vendors shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.
- 4.9 A charitable gaming vendor shall not distribute a charitable video lottery machine for placement in the state unless the charitable video lottery machine has been approved by the agency. Only charitable gaming vendors may apply for approval of a charitable video lottery machine or associated equipment.
- 4.10 The charitable gaming vendor is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its charitable video lottery machines and associated equipment. The charitable gaming vendor may not change the assembly or operational functions of any of its charitable video lottery machines approved for placement in Delaware unless a "request for modification to an existing charitable video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of charitable video lottery machines after modifications have been made.
- 4.11 The following duties are required of all licensed charitable gaming vendors, without limitation:
 - 4.11.1 Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.
 - 4.11.2 Conduct charitable video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.
 - 4.11.3 Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the charitable gaming vendor's participation in or the operation of a charitable video lottery game.
 - 4.11.4 Maintain all required records.

- 4.11.5 It shall be the ongoing duty of the charitable gaming vendor licensee to notify the Director of any change in ownership. The failure of any new owner to satisfy a background investigation may constitute "cause" for the suspension or revocation of the license.
- 4.11.6 Supervise its employees and their activities to ensure compliance with these rules.
- 4.11.7 Comply with such other requirements as shall be specified by the Director.

5.0 Agents: Duties

- 5.1 The following duties are required of all licensed agents:
 - 5.1.1 Provide a secure location for the placement, operation, and play of all licensed charitable video lottery machines located on the licensed agent's premises.
 - 5.1.2 Permit no person to tamper with or interfere with the approved operation of any licensed charitable video lottery machine or other gaming equipment without prior written approval of the agency, unless otherwise directed by the Lottery.
 - 5.1.3 With respect to charitable video lottery operations, contract only with suppliers of charitable video lottery equipment and paraphernalia authorized by the agency to participate in charitable video lottery operations within the State of Delaware.
 - 5.1.4 Ensure that no gaming equipment or any other related accessory shall be used in a charitable video lottery facility if the equipment, materials and suppliers have not been previously approved by the agency.
 - 5.1.5 Ensure licensed charitable video lottery machines are placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence.
 - 5.1.6 Monitor charitable video lottery machine play and prevent access to or play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated, and prohibit play by persons who are barred by law or self-banned from playing any charitable video lottery machine.
 - 5.1.7 Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.
 - 5.1.8 Maintain at all times sufficient cash in denominations accepted by the video machines located in the premises.
 - 5.1.9 Report promptly all charitable video lottery machine malfunctions to the appropriate charitable gaming vendor and agency and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.
 - 5.1.10 Assume responsibility for the proper and timely payment to players of credits awarded.
 - 5.1.11 Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery and prohibit illegal gambling on the premises.
 - 5.1.12 Attend all meetings, seminars, and training sessions required by the agency.
 - 5.1.13 Supervise its employees and their activities to ensure compliance with these rules.
 - 5.1.14 Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age. No credits or prizes may be redeemed by or for any person illegally on the agent's premises or persons who have requested that they be self-banned from the agent's premises.
 - 5.1.15 Provide dedicated power and a proper charitable video lottery machine environment in accordance with the specifications of the agency.
 - 5.1.16 Immediately report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto by the agent, its employees, or anyone acting on behalf of the agent, excluding violations concerning motor vehicle laws.

- 5.1.17 Conduct charitable video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.
- 5.1.18 Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the charitable video lottery system, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.
- 5.1.19 Maintain all required records.
- 5.1.20 Provide at the request of the Director or the DGE immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties imposed by these regulations.
- 5.1.21 Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom charitable video lottery business is conducted. The agent shall pay the players and transfer the net charitable video lottery game proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 **Del.C.** Ch. 48.
- 5.1.22 Comply with such other requirements as shall be specified by the Director.
- 5.1.23 Notify the Director on a continuing basis of any change in officers assuming responsibility of the organization.
- 5.1.24 Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the charitable video lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation.
- 5.1.25 Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 **Del.C.** Ch. 48.
- 5.1.26 Immediately notify the DGE and agency about, and submit any evidence of, any gaming equipment or other device used in a charitable video lottery facility which has been, or there is reasonable suspicion that it may have been, tampered with or altered in such a way that the integrity or conformity of the gaming equipment or the device may have affected its use.
- 5.1.27 Immediately notify the DGE about any illegal and/or suspicious activities that occur or are occurring in the agent's charitable video lottery facility that relate to the safety, security and/or gaming operations of the facility. An agent shall also immediately notify the DGE of any illegal or suspicious activities that occur outside of the charitable video lottery facility that relate to the safety, security and/or gaming operations of the charitable video lottery facility.
- 5.1.28 Immediately notify the DGE if anyone acting on behalf of the agent physically detain a person suspected of a violation of 11 **Del.C.** 1471.
- 5.2 The agent who has retained any gaming equipment or other devices, under a reasonable suspicion that said gaming equipment or article was tampered with or altered, or who has retained any device of those specified in these regulations under a reasonable suspicion that said device was introduced or used or intended to be used in the charitable video lottery facility in violation of the law or the regulations, shall keep said equipment or article in the state in which it was found when it was retained, and shall deliver said equipment or article to a representative of the DGE as soon as possible.
- 5.3 The agent shall be responsible for ensuring that any gaming equipment or any other device and any evidence related to the same which should be submitted to the DGE is maintained in a secure manner until the arrival of an authorized representative of the DGE.

6.0 Game Requirements

- 6.1 Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

- 6.2 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the charitable video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet. In the event a person illegally on the premises or a self-barred person attempts to claim a prize, the charitable video lottery agent will also treat the play of the game as void and the person shall not be entitled to any prize won or a refund of amounts bet.
- 6.3 No person may play or attempt to play credits on a charitable video lottery machine that were won by another player on that machine and inadvertently or accidentally left on the machine by the original player. Any such play of another person's credits shall be treated as void and the person who plays another player's credits that were accidentally left on the machine shall not be entitled to any prize won or a refund.
- 6.4 No payment for a credit slip or a prize claim form for a prize awarded on a charitable video lottery machine may be made unless the credit slip or prize claim form meets the following requirements:
- 6.4.1 It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;
- 6.4.2 It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;
- 6.4.3 It is not counterfeit in whole or in part; and
- 6.4.4 It is presented by a person authorized to play.
- 6.5 Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section.
- 6.6 Restrictions on Payment - Agents may only redeem credit slips for credits awarded on charitable video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.
- 6.7 Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.
- 6.8 Liability for Malfunction - The agency and the State of Delaware are not responsible for any charitable video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.0 Accounting and Distribution Procedures; Forms, Records and Documents

- 7.1 Each agent and charitable gaming vendor shall submit to the Director such financial and operating information as the Director shall require from time to time at such times and in such format as the Director shall specify.
- 7.2 The agency may periodically prescribe a set of standard reporting forms and instructions to be used by each charitable video lottery agent for filing reports.
- 7.3 The agency or its designated agents shall have the right to audit the books and records including without limitation tax returns and IRS withholding and reporting records of any agent and each charitable gaming vendor. To such end, the agents and service companies shall fully cooperate with whomever undertakes the audit.
- 7.4 The net charitable video lottery game proceeds returned to the state shall be remitted weekly, bi-weekly or monthly to the agency at the discretion of the Lottery Director through the electronic transfer of funds to an EFT account. To the extent, if any, that such weekly, bi-weekly or monthly remission cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day that such services are available. Agents shall furnish to the agency all information and bank authorizations required to facilitate the timely transfer of monies to the State lottery fund. Agents shall provide the agency thirty (30) days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.
- 7.5 The agency is not responsible for resolving discrepancies which are differences between actual money collected and the amount shown on the accounting meters or billing statement. Further, the agency is not responsible for the loss or theft of money prior to its deposit in the agency's account in the bank.

- 7.6 Agents shall comply with all prescribed Federal requirements for tax withholding, recording and reporting, including, without limitation, those requirements relating to the transfer of funds withheld from player winnings from the agents to the tax authorities.
- 7.7 Any discrepancy regarding settlement of accounts will be resolved by the Director as he or she deems appropriate.
- 7.8 All information required to be placed on any form, record, or document shall be recorded on such form, record, or document in ink or other permanent form.
- 7.9 Each agent shall maintain complete, accurate, and legible records of all transactions pertaining to revenue and gaming activities. Each agent shall maintain detailed, supporting, subsidiary records sufficient to meet financial reporting requirements prescribed by the Lottery Director. Each agent shall also establish an inventory system of retained financial documents that facilitates their preservation and makes them readily available for review or copying by regulatory authorities and other authorized individuals or groups, and provides procedures for destruction.

8.0 Maintenance of Charitable Video Lottery Machines

- 8.1 No charitable video lottery machine may be placed in operation in Delaware until the charitable gaming vendor has provided its personnel with sufficient and appropriate training in the service and repair of each of its approved charitable video lottery machine models.
- 8.2 Each charitable gaming vendor shall service and maintain its charitable video lottery machines, current software, and associated equipment in the manner and condition required by the agency and in accordance with its contractual arrangements.
- 8.3 A MEAL book shall be kept within the main cabinet access area in each charitable video lottery machine. Every person, including agency personnel, who gains entry into any internal space of a charitable video lottery machine shall sign the MEAL book, indicate the time and date of entry, and reason for entry. The MEAL books shall be retained by agents for a period of three years from the date of the last entry. The MEAL books shall be made available upon request for inspection by the agency.
- 8.4 Service companies shall provide the agency or its designee upon request with a master key for access into each locked compartment of each charitable video lottery machine placed in operation (i.e., cash box, main cabinet, logic box).

9.0 Transportation, Registration, and Location of Charitable Video Lottery Machines

- 9.1 No person shall ship or transport a charitable video lottery machine into or out of the State without first obtaining a written authorization for such transport from the Director or designee. Transporting of charitable video lottery machines within the State of Delaware shall be accomplished by the charitable gaming vendor or his designate, with the concurrence of the Director. Charitable video lottery agents are not authorized to transport charitable video lottery machines at any time without agency approval. Any person transporting a charitable video lottery machine from one location to another within the State shall notify the agency in writing prior to the transportation of said charitable video lottery machine. Requests to transport machines shall include the following information:
 - 9.1.1 The full name and address of the person transporting the charitable video lottery machine;
 - 9.1.2 The reason for transporting the charitable video lottery machine;
 - 9.1.3 The full name and address of the person where the charitable video lottery machine is currently located;
 - 9.1.4 The full name and address of the person to whom the terminal is being sent and the destination of the charitable video lottery machine, if different from the address;
 - 9.1.5 The serial and model numbers (if applicable) of each charitable video lottery machine received;
 - 9.1.6 The manufacturer of the charitable video lottery machine; and
 - 9.1.7 The expected date and time of charitable video lottery machine installation.
- 9.2 If the charitable video lottery machine will not be placed in operation, the charitable gaming vendor shall notify the agency of the address where said terminal is to be warehoused or otherwise kept. Prior

to use, the storage facility shall be inspected and approved for charitable video lottery machine storage by the agency.

9.3 Project Request Forms

- 9.3.1** A charitable video lottery agent or charitable gaming vendor must complete a Project Request Form whenever it seeks approval for the movement of charitable video lottery terminals or for other modifications or changes to charitable video lottery terminals and other gaming related equipment.
- 9.3.2** A Project Request Proposal Form must be submitted whenever an agent or service provider seeks: i) to move or modify a charitable video lottery machine on the premises; ii) to convert a game theme on a charitable video lottery machine; iii) to convert the play denomination on a charitable video lottery machine; iv) to change the percentage payout on a charitable video lottery machine; v) to change any software on a charitable video lottery machine; vi) to change the jackpot lockup amount on a charitable video lottery machine; vii) to change the configuration of a charitable video lottery machine; viii) to perform a wholesale replacement of parts of a charitable video lottery machine; ix) to make any type of adjustment to mechanical or electronic meters.
- 9.3.3** No project is approved until the Lottery has signed the Project Request Form and distributed copies of the completed form to the appropriate parties. The Lottery will strictly enforce the approved start and end time on the Project Request Form. No charitable video lottery agent or service provider under any circumstances will be permitted to shut down or otherwise modify any charitable video lottery terminal prior to the approved start time or after the approved end time listed on a Project Request Form without written approval from the Lottery Office.
- 9.3.4** A charitable video lottery agent must notify the Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the charitable video lottery agent. A charitable gaming vendor must notify the Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the charitable gaming vendor.

10.0 Enforcement and Hearings

- 10.1** The Director shall not deny, refuse to renew, or revoke any license unless it has first afforded the applicant or licensee an opportunity for a hearing on an appeal for reconsideration before the Lottery Commission.
- 10.2** If the Director determines that an applicant or licensee has not satisfied or continued to satisfy the license requirements for the granting or retention of an application or license, a written notice of an intent to deny or revoke the application or license shall be served upon the applicant or licensee. The written notice shall include the reasons for the intended denial or revocation and shall advise the applicant or licensee of the right to request a hearing on an appeal for reconsideration before the Lottery Commission.
- 10.3** An applicant or licensee who has received a notice of intent to deny or revoke an application or license shall have an opportunity to request a hearing on an appeal for reconsideration before the Lottery Commission within thirty (30) days of receipt of the written notice.
- 10.4** If an applicant or licensee desires a hearing, it shall provide the Lottery Commission and Director with a written statement within ten (10) days of receipt of the notice which contains the following:
- 10.4.1** A clear and concise statement indicating the reasons for appealing the decision of the Director;
- 10.4.2** A verification by the applicant or licensee that the information provided is true and accurate; and
- 10.4.3** The signature of the applicant or licensee.
- 10.5** If an applicant or licensee fails to timely file an appeal for reconsideration or withdraws the appeal for reconsideration, the Director shall determine that there is a waiver of the right to a hearing and an admission of all allegations of fact set forth in the Director's notice of intent to deny or revoke a license. The Director shall take final action, including denying or revoking a license.
- 10.6** The appeal for reconsideration shall be heard by the Lottery Commission, provided however, that the Chairperson of the Lottery Commission may, in his discretion, designate a member of the Lottery Commission, or other qualified person other than an employee of the Lottery Commission, to serve as

- hearing officer in a particular matter. The hearing shall be conducted within thirty (30) days of the receipt of the letter of appeal unless extenuating circumstances require a longer period.
- 10.7 At the hearing, the Director or his designee shall be responsible for presenting the matter in support of his determination to the Lottery Commission, including calling witnesses, introducing any relevant evidence and making any necessary arguments.
- 10.8 Notice of the hearing shall be given to the parties at least twenty (20) days before the date it is to be held.
- 10.9 If the parties agree to a settlement prior to the conclusion of the hearing before the Lottery Commission or the designated hearing officer, a written stipulation signed by all parties shall be submitted to the Lottery Commission. The settlement shall be scheduled for disposition by the Lottery Commission at a public meeting at which the Lottery Commission shall:
- 10.9.1 Approve the settlement;
- 10.9.2 Approve the settlement as modified by the Lottery Commission with the consent of the parties;
- 10.9.3 Reject the settlement and schedule the matter for further proceedings; or
- 10.9.4 Take such action as the Lottery Commission deems appropriate.
- 10.10 No settlement shall be approved by the Lottery Commission unless the settlement agreement is voluntary, consistent with the law and fully dispositive of all issues in controversy.
- 10.11 An executed stipulation of settlement shall, upon approval by the Lottery Commission, be considered a withdrawal of an appeal for reconsideration and evidence of informed consent to such final Lottery Commission action as described therein.
- 10.12 The applicant or licensee may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the applicant or licensee, written evidence of a representative's authority shall be presented to the Lottery Commission in a form satisfactory to the Lottery Commission.
- 10.13 The applicant or licensee, his legal counsel or duly authorized representative may, with the approval of the Lottery Commission, waive the hearing and agree to submit the case for decision on the record, with or without a written brief. Such a waiver or agreement shall be in writing and placed in the record.
- 10.14 The applicant or licensee shall be given an opportunity for argument within the time limits fixed by the Lottery Commission or designated hearing officer following submission of the evidence. The Lottery Commission or hearing officer, upon request of the applicant or licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten (10) days after the hearing date or within such other time as fixed by the Lottery Commission or hearing officer.
- 10.15 The Lottery Commission or hearing officer may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. The Lottery Commission or hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.
- 10.16 A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.
- 10.17 An applicant or licensee shall have the affirmative obligation to establish by clear and convincing evidence that the Director's determination was in error under the criteria for licensing established by these regulations.
- 10.18 A written decision shall be rendered by the Lottery Commission, or by a designated hearing officer, setting forth findings of fact and conclusions of law within forty-five (45) days of the hearing unless extenuating circumstances require a longer period. An order shall be entered memorializing the decision. All orders and decisions made by the Lottery Commission under this appeal procedure are final.
- 10.19 A copy of the written decision and order of the Lottery Commission or hearing officer shall be submitted to the Director who shall serve the order and written decision upon the applicant or licensee and any attorney of record in person or by registered or certified mail.
- 10.20 In cases where the written decision is rendered by a designated hearing officer, a person aggrieved by the decision of the hearing officer may, within thirty (30) days of the decision, file a notice of an intent to contest the findings of fact and conclusions of law of the hearing officer, which shall set forth the

reasons for contesting the decision. A written response to the notice of intent to contest the findings of fact and conclusions of law may be filed within twenty (20) days by the opposing party. Upon the filing of the notice of intent, the aggrieved person shall be afforded an opportunity to appear before the Lottery Commission within thirty days (30) of said filing. The Lottery Commission may adopt, remand for further proceedings, modify or reverse the decision of the hearing officer, by written decision and order, within forty-five (45) days of the decision of the hearing officer. A copy of the written decision and order of the Lottery Commission shall be submitted to the Director who shall serve the order and written decision upon the applicant or licensee and any attorney of record in person or by registered or certified mail.

- 10.21 If a notice of intent is not filed in accordance with the timelines set forth herein, the matter shall be submitted to the Lottery Commission for final disposition. An order memorializing the decision of the Lottery Commission shall be entered within forty-five (45) days of the decision of the hearing officer. The Lottery Commission may adopt, remand for further proceedings, modify or reverse the decision of the hearing officer by written decision and order. A copy of the order of the Lottery Commission shall be submitted to the Director who shall serve the order upon the applicant or licensee and any attorney of record in person or by registered or certified mail.
- 10.22 A person aggrieved by a final decision or order of the Lottery Commission made after a hearing may obtain judicial review thereof by appeal to the Superior Court pursuant to §10142 of Title 29. The filing of an appeal shall not stay enforcement of the decision or order of the Lottery Commission unless a stay is obtained from the court upon application in accordance with the rules of court or from the Lottery Commission.
- 10.23 An applicant or licensee whose license has been revoked or whose application for a license has been denied shall be prohibited from reapplying for any license for a period of five (5) years from the date of the order denying or revoking the license.
- 10.24 Any party may, within ten (10) days after the service of a final order of the Lottery Commission, file a motion for reconsideration which motion may seek to reopen the record. The motion shall be in writing and shall state the grounds upon which relief is sought. The Lottery Commission may grant such motion, under such terms and conditions as the Commission may deem appropriate, when the Lottery Commission finds just cause for reconsideration of the order based upon legal, policy or factual argument advanced by the movant or raised by the Lottery Commission on its own motion.
- 10.25 Any party may, within one (1) year after the service of a final order of the Lottery Commission, file a motion to reopen the record based upon newly discovered evidence. The motion shall be supported by an affidavit of the moving party or counsel showing with particularity the materiality and necessity of the additional evidence and the reason why such evidence was not presented at the original hearing or on a motion for reconsideration. The Lottery Commission may grant such motion upon a showing that the newly discovered evidence is material and necessary, that sufficient reason existed for failure to present such evidence, and that the evidence is reasonably likely to change the final decision of the Lottery Commission. Upon reconsideration, the Lottery Commission may modify its decision and order as the additional evidence may warrant.
- 10.26 Any party may, within one (1) year of the service of a final order of the Lottery Commission, file a motion for relief from such an order. The motion shall be in writing and shall state the grounds upon which relief is sought. The Lottery Commission may grant such motion and vacate or modify the order, reopen the record, or grant a hearing upon a showing of the following:
- 10.26.1 Mistake, inadvertence, surprise or excusable neglect;
 - 10.26.2 Fraud, misrepresentation or other misconduct of an adverse party; or
 - 10.26.3 Any other reason consistent with public policy and in the interests of justice.
 - 10.26.4 No motion filed pursuant to this section, and no order granting such motion, shall suspend the operation of any order of the Lottery Commission unless otherwise specified by order of the Lottery Commission.
- 10.27 Any money or thing of value which has been obtained by any person prohibited from gaming activity in a charitable video lottery facility shall be subject to an order of forfeiture by the Director, following

notice to the prohibited person and an opportunity for the prohibited person to file an appeal for reconsideration by the Lottery Commission in accordance with the procedures set forth in 13.1 et seq.

- 10.28** Whoever violates the Lottery chapter 29 Del.C. Ch. 48, or any Lottery rule or regulation duly promulgated thereunder, or any condition of a license issued pursuant to 29 Del.C. §4805, or any Administrative Order issued pursuant to Lottery statutes or regulations shall be punishable as follows:
- 10.28.1** If the violation has been completed by a civil penalty imposed by Superior Court, which by 29 Del.C. §4823 shall have jurisdiction of civil penalty actions brought pursuant to this section, of not less than \$1,000 nor more than \$10,000 for each completed violation. Each day of a continued violation shall be considered as a separate violation if, on each such day, the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence.
- 10.28.2** If the violation is continuing or if there is a substantial likelihood that it will reoccur, the Director may also seek a temporary restraining order, preliminary injunction, or permanent injunction in the Court of Chancery, which shall have jurisdiction of an action for such relief.
- 10.29** In his discretion, the Director may impose an administrative penalty of not more than \$1,000 for each administrative penalty for each violation. Each day of continued violation shall be considered as a separate violation if the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violations shall not be a defense to a continued violation with respect to the first day of its occurrence. Prior to the assessment of an administrative penalty, written notice of the Director's proposal to impose such penalty shall be given to the violator, and the violator shall have thirty (30) days from receipt of such notice to file an appeal for reconsideration before the Lottery Commission in accordance with the procedures set forth above. A hearing, if requested, shall be held prior to the imposition of the penalty in accordance with the procedures set forth above. If no hearing is timely requested, the proposed penalty shall become final and shall be paid no later than sixty (60) days from receipt of the notice of proposed penalty. Assessment of an administrative penalty shall take into account the circumstances, nature, and gravity of the violation, as well as any prior history of violations, the degree of culpability, the economic benefit to the violator resulting from the violation, any economic loss to the State, and such other matters as justice may require. In the event of nonpayment of an administrative penalty within thirty (30) days after all legal appeal rights have been waived or otherwise exhausted, a civil action may be brought by the Director in Superior Court for the collection of the penalty, and for interest, from the date payment was due, attorneys' fees and other legal costs and expenses. The validity or amount of such administrative penalty shall not be subject to review in an action to collect the penalty. Any penalty imposed after a public hearing is held pursuant to this subsection shall be appealable to Superior Court, and such appeal shall be governed by §10142 of Title 29.
- 10.30** In his discretion, the Director may endeavor to obtain compliance with requirements of the Lottery chapter, 29 Del.C. Ch. 48, by written Administrative Order. Such order shall be provided to the responsible party, shall specify the complaint, and propose a time for correction of the violation. It may also provide an opportunity for a public hearing, at which the Director shall hear and consider any submission relevant to the violation, corrective action, or the deadline for correcting the violation.
- 10.31** The Director shall enforce Ch. 48, 29 Delaware Code and any rules, regulations, or Administrative Orders issued thereunder.
- 10.32** Any interest, costs or expenses collected by the Lottery under actions instituted by 29 Del.C. §4823 or these regulations shall be appropriated to the State Lottery Office to carry out the purposes of 29 Del.C. Ch. 48.

11.0 Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular

section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

12.0 Key Controls

12.1 Any key that is considered sensitive and is required to be controlled and maintained by these regulations and any corresponding locking device shall be approved by the agency. Such keys shall be legally duplicated only by the manufacturer or other approved entity and shall be capable of unlocking the locking device on no more than one (1) type of secure box, compartment or location used or maintained within the charitable video lottery facility. Nothing herein shall preclude the agency from exempting a type of secure box, compartment or location from the requirements of this subsection upon a determination that the security of such box, compartment or location would not otherwise be compromised.

12.2 The agent shall establish key control for any sensitive key. Such procedures shall provide for, at a minimum, the following:

12.2.1 The requisitioning of keys and locking devices from vendors, blank stock, and destruction; and

12.2.2 The security and restrictions which control access to keys, whether manually or through an electronic system, and records and reports generated or prepared.

13.0 Bank Secrecy Act, Title 31, Anti-Money Laundering

Consistent with the requirements of the federal Bank Secrecy Act, (31 U.S.C. 5311, et seq) and regulations promulgated thereunder, each licensed agent shall comply with federal law pertaining to reportable currency transactions and transactions that are believed to be suspicious.

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

Statutory Authority: Title 3, Sections 102 and 302 (3 **Del.C.** §102 and §302)
3 **DE Admin. Code** 101

PUBLIC NOTICE

Background

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

Public Comment Period

The Department of Agriculture will take written comments on the proposed Regulations until July 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shortridge, Chief of Community Relations
2320 South DuPont Highway, Dover, DE 19901
(302) 698-4500
daniel.shortridge@state.de.us

101 On-Farm Home Processing of Non-Potentially Hazardous Foods

(Break in Continuity of Sections)

8.0 Operator qualifications

The below framework provides for the operator to possess the knowledge and demonstrate the abilities needed to safely perform production under the on-farm home food processing program.

8.1 Education and training.

8.1.1 Persons responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean and safe food. Food handlers should receive appropriate training in proper food handling techniques and food protection principles, and should be informed of the dangers of poor personal hygiene and unsanitary practices.

8.1.2 An individual who wishes to process non-potentially hazardous foods in a domestic kitchen shall have adequate knowledge of safe food handling practices and shall have successfully completed a course offered through the Cooperative Extension Program prior to applying for a permit. The course shall be approved by DDA and provide a minimum of 8 hours of training in:

8.1.2.1 Sanitation;

8.1.2.2 Cross-contamination controls; and

8.1.2.3 Food security/defense.

8.2 Disease control:

8.2.1 Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated, shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected. Personnel shall be instructed to report such health conditions to the regulatory authority.

8.3 Cleanliness:

8.3.1 All persons working in direct contact with food, food-contact surfaces, and food-packaging materials shall conform to hygienic practices while on duty to the extent necessary to protect against contamination of food. The methods for maintaining cleanliness include, but are not limited to:

- Wearing outer garments suitable to the operation in a manner that protects against the contamination of food, food-contact surfaces, or food-packaging materials;
- Maintaining adequate personal cleanliness;
- Washing hands thoroughly (and sanitizing if necessary to protect against contamination with undesirable microorganisms) in an adequate hand washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.
- Removing all unsecured jewelry and other objects that might fall into food, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which food is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects against the contamination by these objects of the food, food-contact surfaces, or food-packaging materials;
- Maintaining gloves, if they are used in food handling, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material;
- Wearing, where appropriate, in an effective manner, hair nets, headbands, caps, beard covers, or other effective hair restraints;
- Storing clothing or other personal belongings in areas other than where food is exposed or where equipment or utensils are washed;
- Confining the following to areas other than where food may be exposed or where equipment or utensils are washed: eating food, chewing gum, drinking beverages, or using tobacco.
- Taking any other necessary precautions to protect against contamination of food, food-contact surfaces, or food-packaging materials with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

- No animals or fowls shall be kept in or permitted to enter the premises of any on-farm food operations.
- 8.4 While operating with a license issued in accordance with this regulation, the person-in-charge shall manufacture and process only non-potentially hazardous foods such as:
- Baked breads, cakes, muffins, or cookies with a water activity of .85 or less
 - Candy (non-chocolate)
 - Containerized fruit preparations consisting of jellies, jams, preserves, marmalades, and fruit butters with an equilibrated pH of 4.6 or less or a water activity of 0.85 or less;
 - Fruit pies with an equilibrated pH of 4.6 or less or a water activity of 0.85 or less;
 - Herbs in vinegar with an equilibrated pH of 4.6 or less;
 - Honey and herb mixtures; and
 - Dried fruit and vegetables;
 - Spices or herbs
 - Maple syrup and sorghum
 - Snack items such as popcorn, caramel corn, and peanut brittle
 - Roasted nuts
- 8.5 While operating with a license issued in accordance with this regulation, the person-in-charge shall **not** process potentially hazardous foods for commercial sale such as:
- Low-acid canned foods, such as home-canned or jarred fruits, vegetables, pickled products, sauces, relishes.
 - Cream, custard, pumpkin, meat, or other single-crust pies or cream or cheese-filled baked goods
 - Cured or fermented foods;
 - Seafood;
 - Apple cider or other juices;
- 8.6 While operating with a license issued in accordance with this regulation, the person-in-charge shall limit processed food production to:
- 8.6.1 An amount of food that can safely be produced in the domestic kitchen as evidenced by sanitation and process and cross-contamination control;
- 8.6.2 ~~\$40,000~~ \$50,000 of sales of on-farm home processed foods.
- 8.7 While operating with a license issued in accordance with this regulation, the person-in-charge shall process commercially only during times when the kitchen is not being used for domestic purposes;
- 8.8 While operating with a license issued in accordance with this regulation immediately before and after processing commercially, the person-in-charge shall clean and sanitize all food contact surfaces, equipment, and utensils;
- 8.9 While operating with a license issued in accordance with this regulation while processing commercially, the person-in-charge shall:
- 8.9.1 Use only building areas, equipment, and utensils that DDA has reviewed or inspected and approved;
- 8.9.2 Shall store ingredients for commercial manufacturing and finished manufactured food in a separate area from foods used domestically.

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

101 On-Farm Home Processing of Non-Potentially Hazardous Foods

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: Title 3, Section 2221 (3 Del.C. §2221)
3 DE Admin. Code 1201

PUBLIC NOTICE

Background

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

Public Comment Period

The Department of Agriculture will take written comments on the proposed Regulations until July 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shortridge, Chief of Community Relations
2320 South DuPont Highway, Dover, DE 19901
(302) 698-4500
daniel.shortridge@state.de.us

1201 Nutrient Management Certification Regulations

PREAMBLE

These regulations have been developed pursuant to 3 Del.C. Ch. 22. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

(Break in Continuity of Sections)

11.0 Certification Renewals

- 11.1 At least ~~60~~ 45 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.
- 11.2 Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.
- 11.3 The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.
- 11.4 Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.

- 11.5 Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section 2262, Chapter 22, of the **Delaware Code**.

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

1201 Nutrient Management Certification Regulations

DEPARTMENT OF FINANCE

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4826 (29 **Del.C.** §4826)

206 Internet Lottery Regulations

PUBLIC NOTICE

AUTHORITY

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Del.C.** §4826(c) is proposing Regulations for the Delaware Lottery 10 **DE Admin. Code** 206 for Internet Lottery Regulations.

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES

Delaware Department of Finance ("Department"), Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4826 (29 **Del.C.** §4826) is proposing amendments to 10 **DE Admin. Code** 206 in response to the signing of House Bill 333, the Delaware Gaming Competitiveness Act of 2012, on June 28, 2012 which authorized Internet Lotteries.

These amendments will update Lottery regulations to include new Internet Lottery regulations. Internet Lotteries are defined by 29 **Del.C.** §4801(i) as "all lottery games in which the player's interaction with the game operated by the Office occurs over the Internet (which, for purposes of this chapter, shall include any public or private computer or terminal network, whether linked electronically, wirelessly, through optical networking technology or other means), including Internet ticket games, the Internet video lottery and Internet table games." The proposed regulations will set forth parameters for minimum internal controls, vendor licensing, employee licensing, approval of gaming equipment, and other operational standards.

NOTICE OF PUBLIC COMMENT

Interested persons may submit comments in writing to Rebecca Goldsmith, Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

The comment period will close on July 31, 2013.

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

206 Internet Lottery Regulations

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

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

4462 Public Drinking Water Systems

PUBLIC NOTICE

Health Systems Protection, Office of Drinking Water, Division of Public Health, has proposed amendments to the State of Delaware Regulations Governing Public Drinking Water Systems. Amendments have been made to the following Sections:

- "Section 2.0, page 9, added definition of Health Advisory
- "Section 2.0, page 13, modified definition of Sanitary Survey
- "Section 4.3.3.4.1.3, page 46, added requirement to provide information on detected unregulated contaminants for which the US EPA has developed and published a health advisory

On July 1, 2013, the Division plans to publish proposed amendments to the Delaware Regulations Governing Public Drinking Water Systems and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the July 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Drinking Water at (302) 741- 8630.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Wednesday, July 31, 2013 at:

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

4462 Public Drinking Water Systems

(Break in Continuity of Sections)

2.0 Definitions

The following definitions shall apply to these regulations:

(Break in Continuity Within Section)

"Health Advisory (HA)" means an estimate of acceptable drinking water levels for a chemical substance based on health effects information; a Health Advisory is not a legally enforceable Federal standard, but serves as technical guidance to assist Federal, State and local officials.

One-Day HA: The concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects for up to one day of exposure. The One-Day HA is normally designed to protect a 10-kg child consuming 1 liter of water per day.

Ten-Day HA: The concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects for up to ten days of exposure. The Ten-Day HA is also normally designed to protect a 10-kg child consuming 1 liter of water per day.

Lifetime HA: The concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects for a lifetime of exposure. The Lifetime HA is based on exposure

of a 70-kg adult consuming 2 liters of water per day. The Lifetime HA for Group C carcinogens includes an adjustment for possible carcinogenicity.

(Break in Continuity Within Section)

"Sanitary Survey" means a review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of: evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing potable drinking water; or updating the inventory information. ~~Sanitary surveys are classified as follows:~~

- ~~• Class 1—on site review.~~
- ~~• Class 2—telephone review.~~

(Break in Continuity of Sections)

4.0 Reporting, Public Notification, Consumer Confidence Reports and Record Maintenance

(Break in Continuity Within Section)

4.3 Consumer Confidence Reports:

(Break in Continuity Within Section)

4.3.3.4 Information on Detected Contaminants.

4.3.3.4.1 This sub-section specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring (except *Cryptosporidium*). It applies to:

4.3.3.4.1.1 Contaminants subject to an MCL, MRDL, action level, or treatment technique (regulated contaminants);

4.3.3.4.1.2 Contaminants for which monitoring is required by CFR 141.40 (unregulated contaminants); ~~and~~

4.3.3.4.1.3 Unregulated contaminants for which the US EPA has developed and published a health advisory; and

~~4.3.3.4.1.3~~ 4.3.3.4.1.3~~4~~ Disinfection byproducts or microbial contaminants for which monitoring is required by sections CFR 141.142 and 141.143 except as provided under subsection 4.3.3.5.1 and which are detected in the finished water.

(Break in Continuity Within Section)

4.3.6 Converting MCL Compliance Values for Consumer Confidence Reports

Key

AL=Action Level

MCL=Maximum Contaminant Level

MCLG=Maximum Contaminant Level Goal

MFL=million fibers per liter

mrem/year=millirems per year (a measure of radiation absorbed by the body)

MRDL=Maximum Residual Disinfection Level

MRDLG=Maximum Residual Disinfection Level Goal

NTU=Nephelometric Turbidity Units

pCi/l=picocuries per liter (a measure of radioactivity)

ppm=parts per million, or milligrams per liter (mg/l)

ppb=parts per billion, or micrograms per liter (µg/l)

ppt=parts per trillion, or nanograms per liter

ppq=parts per quadrillion, or picograms per liter

TT=Treatment Technique

Contaminant	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG
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PROPOSED REGULATIONS

Microbiological Contaminants				
1. Total coliform bacteria	MCL: (systems that collect >40 samples/month) 5% of monthly samples are positive; (systems that collect <40 samples/month) 1 positive monthly sample.			0
2. Fecal coliform and E. coli	A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or E. coli positive.			0
3. Fecal Indicators (enterococci or coliphage)	TT		TT	N/A
4. Total organic carbon (ppm)	TT		TT	N/A
5. Turbidity	TT (NTU)		TT	n/a
Radioactive Contaminants				
6. Beta/photon emitters	4 mrem/yr		4 mrem/yr	0
7. Alpha emitters	15 pCi/l		15 pCi/l	0
8. Combined radium	5 pCi/l		5 pCi/l	0
9. Uranium	30 µg/L		30 µg/L	
Inorganic Contaminants				
10. Antimony	.006	1000	6 ppb	6
11. Arsenic	.010	1000	10	0
12. Asbestos	7 MFL		7 MFL	7
13. Barium	2		2 ppm	2
14. Beryllium	.004	1000	4 ppb	4
15. Cadmium	.005	1000	5 ppb	5
16. Chromium	.1	1000	100 ppb	100
17. Copper	AL=1.3		AL=1.3 ppm	1.3
18. Cyanide	.2	1000	200 ppb	200
19. Fluoride	2.0		2.0 ppm	2.0
20. Lead	AL=.015	1000	AL=15 ppb	0
21. Mercury (inorganic)	.002	1000	2 ppb	2
22. Nitrate (as Nitrogen)	10		10 ppm	10
23. Nitrite (as Nitrogen)	1		1 ppm	1
23a. Nitrate/nitrite (as Nitrogen)	10		10 ppm	10
24. Selenium	.05	1000	50 ppb	50
25. Thallium	.002	1000	2 ppb	0.5
Synthetic Organic Contaminants including Pesticides and Herbicides				
26. 2,4-D	.07	1000	70 ppb	70
27. 2,4,5-TP [Silvex]	.05	1000	50 ppb	50
28. Acrylamide	TT		TT	0
29. Alachlor	.002	1000	2 ppb	0
30. Atrazine	.003	1000	3 ppb	3
31. Benzo(a)pyrene [PAH]	.0002	1,000,000	200 ppt	0
32. Carbofuran	.04	1000	40 ppb	40
33. Chlordane	.002	1000	2 ppb	0
34. Dalapon	.2	1000	200 ppb	200
35. Di(2-ethylhexyl)adipate	.4	1000	400 ppb	400
36. Di(2-ethylhexyl) phthalate	.006	1000	6 ppb	0
37. Dibromochloropropane	.0002	1,000,000	200 ppt	0
38. Dinoseb	.007	1000	7 ppb	7
39. Diquat	.02	1000	20 ppb	20
40. Dioxin [2,3,7,8-TCDD]	.00000003	1,000,000,000	30 ppq	0
41. Endothall	.1	1000	100 ppb	100

PROPOSED REGULATIONS

42. Endrin	.002	1000	2 ppb	2
43. Epichlorohydrin	TT		TT	0
44. Ethylene dibromide	.00005	1,000,000	50 ppt	0
45. Glyphosate	.7	1000	700 ppb	700
46. Heptachlor	.0004	1,000,000	400 ppt	0
47. Heptachlor epoxide	.0002	1,000,000	200 ppt	0
48. Hexachlorobenzene	.001	1000	1 ppb	0
49. hexachlorocyclopentadiene	.05	1000	50 ppb	50
50. Lindane	.0002	1,000,000	200 ppt	200
51. Methoxychlor	.04	1000	40 ppb	40
52. Oxamyl [Vydate]	.2	1000	200 ppb	200
53. PCBs [Polychlorinated biphenyls]	.0005	1,000,000	500 ppt	0
54. Pentachlorophenol	.001	1000	1 ppb	0
55. Picloram	.5	1000	500 ppb	500
56. Simazine	.004	1000	4 ppb	4
57. Toxaphene	.003	1000	3 ppb	0
Volatile Organic Contaminants				
58. Benzene	.005	1000	5 ppb	0
59. Bromate	.010	1000	10	0
60. Carbon tetrachloride	.005	1000	5 ppb	0
61. Chloramines	MRDL = 4.0		MRDL = 4.0	MRDLG =4.0
62. Chlorine	MRDL = 4.0		MRDL =4.0	MRDLG =4.0
63. Chlorite	1		1	0.8
64. Chlorine dioxide	MRDL = .8	1000	MRDL = 800	MRDLG = 800
65. Chlorobenzene	.1	1000	100 ppb	100
66. o-Dichlorobenzene	.6	1000	600 ppb	600
67. p-Dichlorobenzene	.075	1000	75 ppb	75
68. 1,2-Dichloroethane	.005	1000	5 ppb	0
69. 1,1-Dichloroethylene	.007	1000	7 ppb	7
70. cis-1,2-Dichloroethylene	.07	1000	70 ppb	70
71. trans-1,2-Dichloroethylene	.1	1000	100 ppb	100
72. Dichloromethane	.005	1000	5 ppb	0
73. 1,2-Dichloropropane	.005	1000	5 ppb	0
74. Ethylbenzene	.7	1000	700 ppb	700
75. Haloacetic acids (HAA)	.060	1000	60 ppb	N/A
76. Methyl <i>tert</i> Butyl Ether	.01	1000	10 ppb	0
77. Styrene	.1	1000	100 ppb	100
78. Tetrachloroethylene	.005 .001	1000	5 1 ppb	0
79. 1,2,4-Trichlorobenzene	.07	1000	70 ppb	70
80. 1,1,1-Trichloroethane	.2	1000	200 ppb	200
81. 1,1,2-Trichloroethane	.005	1000	5 ppb	3
82. Trichloroethylene	.005 .001	1000	5 1 ppb	0
83. TTHMs [Total trihalomethanes]	0.10/0.080	1000	100/80 ppb	N/A
84. Toluene	1		1 ppm	1
85. Vinyl Chloride	.002 .001	1000	2 1 ppb	0
86. Xylenes	10		10 ppm	10
. Control of DBP Precursors (TOC)	TT		TT	N/A

(Break in Continuity of Sections)

PROPOSED REGULATIONS

6.0 Inorganic and Organic Chemical Requirements

(Break in Continuity Within Section)

6.2.1.3 Volatile Synthetic Organic Chemicals (VOCs)

Contaminant	MCL
Benzene	0.005 mg/L
Carbon Tetrachloride	0.005 mg/L
1,2-Dichlorobenzene	0.6 mg/L
1,4-Dichlorobenzene	0.075 mg/L
1,2 Dichloroethane	0.005 mg/L
1,1 Dichloroethylene	0.007 mg/L
Cis-1,2-Dichloroethylene	0.07 mg/L
Trans 1,2 Dichloroethylene	0.1 mg/L
Dichloromethane	0.005 mg/L
1,2 Dichloropropane	0.005 mg/L
Ethylbenzene	0.7 mg/L
Methyl tert Butyl Ether (MTBE)	0.01 mg/L
Monochlorobenzene	0.1 mg/L
Styrene	0.1 mg/L
Tetrachloroethylene ^{1,2,3}	0.005 0.001 mg/L
Toluene	1 mg/L
1,2,4-Trichlorobenzene	0.07 mg/L
1,1,1-Trichloroethane	0.2 mg/L
1,1,2-Trichloroethane	0.005 mg/L
Trichloroethylene ^{1,2,3}	0.005 0.001 mg/L
Vinyl Chloride ^{1,2,3}	0.002 0.001 mg/L
Xylenes (total)	10 mg/L

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

4462 Public Drinking Water Systems

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Office of Workers' Compensation

Statutory Authority: 19 Delaware Code, Section 2322 F(j) (19 Del.C. §§2322F(j))
19 DE Admin. Code 1341

1341 Workers' Compensation Regulations

PUBLIC NOTICE

The Secretary of Labor, in accordance with 19 Del.C. §§2322B,C,D,E, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals 1) update the fee schedule and fee schedule guidelines to significantly reduce the number of medical codes with fees designated as POC85 (85 percent of charge); 2) remove the anchor date for medical codes to allow annual coding updates; 3) add the methodology used for hospital and ambulatory surgery center annual rate change reports; 4) change the anesthesia, pathology, durable medical equipment, and radiology fee

methodologies; 5) change the pharmacy reimbursement and formulary; 6) change the initial date providers use to determine the two year deadline for completing the mandatory continuing education course; 7) remove the UR appeal deadline that is now part of the statute; and 8) remove the "Employer's Modified Duty Availability Report" and "Physicians Report of Workers' Compensation Injury" previously embedded in the regulations.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on July 29, 2013, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be August 13, 2013, which is 15 days following the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

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

1341 Workers' Compensation Regulations

DIVISION OF INDUSTRIAL AFFAIRS
Office of Workers' Compensation

Statutory Authority: 19 Delaware Code, Section 2322C (19 Del.C. §§2322C)
19 DE Admin. Code 1342

1342 Health Care Practice Guidelines

PUBLIC NOTICE

The Secretary of Labor, in accordance with 19 Del.C. §§2322C, has proposed revisions to the rules and regulations relating to the practice guidelines in the Delaware Workers' Compensation Health Care Payment System (HCPS). The proposals are as follows:

PART A Carpal Tunnel Syndrome Guidelines: removes the reference to maximum medical improvement.

PART B Chronic Pain Treatment Guidelines: 1) remove the reference to maximum medical improvement; 2) correct the Office of Workers' Compensation name; and 3) change the number of allowable maximum visits primarily in section 6.0, Therapeutic Procedures – Non-Operative.

PART C Cumulative Trauma Disorder Treatment Guidelines: removes the reference to maximum medical improvement.

PART D Low Back Treatment Guidelines: remove the reference to maximum medical improvement; correct typographical errors; revise the maximum number of treatments allowed, primarily in two sections, Therapy – Passive and Therapy – Active; and revise the section on Artificial Lumbar Disc Replacement.

PART E Shoulder Treatment Guidelines: changes the maximum duration allowed for Superficial Heat and Cold Therapy.

PART F Cervical Treatment Guidelines: adds the effective date; deletes references to maximum medical improvements; and changes the number of maximum allowable treatments or visits, primarily in the section Therapy - Passive.

PART G Lower Extremity Treatment Guidelines: adds the effective date; deletes references to maximum medical improvements; and changes the number of maximum allowable treatments for superficial heat and cold therapy.

PROPOSED REGULATIONS

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on July 29, 2013, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be August 13, 2013, which is 15 days following the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

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

1342 Health Care Practice Guidelines

DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10115
(19 Del.C. §3122 & 29 Del.C. §10115)

1202 Unemployment Insurance Regulations

PUBLIC NOTICE

The State of Delaware, Department of Labor's Division of Unemployment Insurance ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to do so found at 19 Del.C. §3122 and 29 Del.C. §10115. The proposed amended regulations will streamline unemployment insurance procedures, reduce the number of regulations confronting unemployment insurance claimants and employers, reduce paperwork, and contribute to the efficient operation of the government of the State of Delaware. The proposed regulations will be considered at a public hearing scheduled for Monday, July 22, 2013 from 10 a.m. to 12 noon in the third floor conference room of the offices of the Delaware Department of Justice located at 102 West Water Street, Dover, Delaware, 19904. Copies of the proposed amended regulations may be obtained from the Division of Unemployment Insurance (see address below).

The Division solicits, and will consider, timely filed written comments from persons with interest concerning these proposed amended regulations. The filing deadline for such written comments will be thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, **or by July 31, 2013**. Any such submissions should be mailed or hand-delivered to W. Thomas MacPherson, Director, Division of Unemployment Insurance whose address is Delaware Department of Labor, Division of Unemployment, 4425 North Market Street, Wilmington, Delaware 19809.

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

1202 Unemployment Insurance Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1101

REGISTER NOTICE

SAN#: 2013-13

1. TITLE OF REGULATIONS:

Revision to 7 **DE Admin. Code** 1101, Definitions and Administrative Principles.

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

This revision to 7 **DE Admin. Code** 1101 was identified in an April 1, 2013 Department of Natural Resources and Environmental Control (DNREC) report titled, "Executive Order 36 Report to The Office of the Governor." In 2008 Delaware's air regulations were recoded and established in 7 **DE Admin. Code** 1100. The regulatory language in 1101 was inadvertently not updated, and continues to reference to the prior "Regulations Governing the Control of Air Pollution." The outdated references could lead to citizens and industry searching for documents that no longer exist, or potentially to an incorrect regulatory interpretation. Revisions are proposed to correct the outdated references.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

7. PREPARED BY:

Ron Amirikian (302) 739-9402 June 12, 2013 Email address: Ronald.amirikian@state.de.us

1101 Definitions and Administrative Principles

(Break in Continuity of Sections)

~~02/01/1984~~ (Insert Revision Effective Date)

3.0 Administrative Principles

- 3.1 In certain regulations, air quality standards will be established. These standards shall not be interpreted to allow significant deterioration of existing air quality in any portion of the State; otherwise, they shall be paramount in matters pertaining to the control of air pollution throughout the State.
- 3.2 In addition to or supplemental to these air quality standards, certain emission requirements will be specified. Such emission requirements are selected as minimum controls necessary to ensure a reasonable quality of air throughout the State. Where it is established that these emission requirements are inadequate to attain or maintain the applicable air quality standard, the Department shall exercise its authority to require additional control measures.
- 3.3 The Department intends to have regulations adopted governing the control of air pollution as rapidly as practicable. The lack of Regulation governing an air contaminant or combination of air contaminants will not prevent the Department from taking any and all actions necessary to maintain a reasonable quality of air throughout the State.
- 3.4 If any part of ~~these regulations~~ 7 DE Admin. Code 1100, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of ~~these Regulations~~ 7 DE Admin. Code 1100 shall not be affected thereby and shall be deemed valid and effective.

PROPOSED REGULATIONS

- 3.5 The Department may enter into agreement or agreements on a regional basis for the purpose of attaining air quality goals. Such interstate agreements shall facilitate the attainment and maintenance of air quality standards.

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

1101 Definitions and Administrative Principles

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1103

REGISTER NOTICE

SAN#: 2013-14

1. TITLE OF REGULATIONS:

Revision to 7 DE Admin. Code 1103, Ambient Air Quality Standards.

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

This revision to 7 DE Admin. Code 1103 was identified in an April 1, 2013 Department of Natural Resources and Environmental Controls (DNREC) report titled, "Executive Order 36 Report to The Office of the Governor." Revisions are proposed to bring the regulatory standards up-to-date with current federal requirements. 1103 currently contains outdated test methods and emission standards. This requires citizens and industry to review both state regulations and federal regulations, and to reconcile the two, in order to understand the requirements that apply in Delaware. This could also lead to state and federal requirements being incorrectly applied. This unnecessary regulatory burden will be eliminated with this revision to 1103. The revised regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

7. PREPARED BY:

Ron Amirikian (302) 739-9402 June 12, 2013 Email address: ronald.amirikian@state.de.us

1103 Ambient Air Quality Standards

09/11/99 (Insert Revision Effective Date)

1.0 General Provisions

- 1.1 Air quality standards are required to assure that ambient air quality shall be consistent with established criteria and shall serve to effectively and reasonably manage the air resources of the State of Delaware.
 - 1.1.1 Primary air quality standards provide public health protection, including protecting the health of sensitive populations such as asthmatics, children, and the elderly.
 - 1.1.2 Secondary air quality standards provide public welfare protection, including protection against decreased visibility and damage to crops, animals, vegetation, and buildings.
- 1.2 At such time as additional pertinent information becomes available with respect to applicable air quality criteria, recommendations shall be incorporated and the air quality standards shall be subject to revisions.
- 1.3 The absence of a specific ambient air quality standard shall not preclude actions by the Department to control contaminants to assure protection, safety, welfare, and comfort of the people of the State of Delaware.
- 1.4 Air quality standards are defined by frequency distribution presentations and arithmetic averages. The characteristic parameters describing the frequency distribution are the geometric mean and 99th percentile.
 - 1.4.1 The geometric mean is defined as the Nth root of the product of N numbers. Assuming a log-normal cumulative frequency distribution, the 50th percentile value will be equal to the geometric mean.
 - 1.4.2 The arithmetic average mean is defined as the sum of a set of values divided by the number of values.
 - 1.4.3 The 99th percentile for a group of numbers is defined as that value which is exceeded by one percent of the numbers.
- 1.5 The ambient air quality values stated herein shall apply to all areas outside a source property line.
- 1.6 The sampling and analytical procedures and techniques employed to determine ambient air concentrations of contaminants shall be consistent with methods which result in a representative evaluation of the prevailing conditions. The following methods shall be used directly or employed as reference standards against which other methods may be calibrated;
 - 1.6.1 Ambient concentrations of total suspended particulates shall be determined by the reference high volume method in accordance with 40 CFR, Part 50, ~~Appendix B, June 29, 1979~~ Appendix B, Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method), April 22, 1983.
 - 1.6.2 Ambient concentrations of sulfur dioxide shall be determined by the reference or equivalent method in accordance with 40 CFR, Part 50, ~~Appendix A-1, June 29, 1979.~~ Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.
 - 1.6.3 Ambient concentrations of carbon monoxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix C, ~~June 29, 1979.~~ Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry, August 31, 2011.
 - 1.6.4 Ambient concentrations of ozone corrected for interferences due to nitrogen oxides and sulfur dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix D, ~~June 29, 1979.~~ Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere, July 18, 1997.
 - 1.6.5 Ambient concentrations of methane and non-methane hydrocarbons shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix E, June 29, 1979.
 - 1.6.6 Ambient concentrations of nitrogen dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix F, ~~June 29, 1979.~~ Measurement Principle and

PROPOSED REGULATIONS

Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence), January 20, 1983.

- 1.6.7 Ambient concentrations of hydrogen sulfide shall be determined by gas chromatographic separation - flame photometric detection.
- 1.6.8 Ambient concentrations of lead shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix G, ~~June 29, 1979.~~ Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air, November 12, 2008.
- 1.6.9 Ambient concentrations of PM₁₀ particulate shall be determined by a reference method in accordance with 40 CFR, Part 50, Appendix J, Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere, August 7, 1987, or an equivalent method.
- 1.6.10 Ambient concentrations of PM_{2.5} particulate shall be determined by the reference method based on 40 CFR, Part 50, Appendix L, ~~as found in the Federal Register dated July 18, 1997, on page 38714—38752.~~ Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere, October 17, 2006.
- 1.7 Air quality standards are expressed in metric units with the approximate equivalent volumetric units in parentheses. The standard conditions for air ambient monitoring is 760 mm. Hg and 25°C. The formula to convert metric units to parts per million (ppm) is:

$$\text{ppm(vol)} = \frac{\mu\text{g}/\text{m}^3 \times 0.024465}{\text{MW}} \quad \text{or} \quad \frac{\text{mg}/\text{m}^3 \times 24.465 \times 10^{-6}}{\text{MW}}$$

where MW is molecular weight of the contaminant being measured.

02/01/1981

2.0 General Restrictions

No person shall cause the air quality standards specified in this Regulation to be exceeded.

02/01/1981

3.0 Suspended Particulates

- 3.1 The Primary Ambient Air Quality Standards for Particulate Matter are:
- 3.1.1 An annual geometric mean of 75 micrograms per cubic meter not to be exceeded, based upon 24 hour average concentrations.
- 3.1.2 A value of 260 micrograms per cubic meter not to be exceeded more than once per year, based upon 24 hour average concentrations.
- 3.2 The Secondary Ambient Air Quality Standards for Particulate Matter are:
- 3.2.1 An annual geometric mean of 60 micrograms per cubic meter as a guideline for achieving the secondary standard based upon 24 hour average concentrations.
- 3.2.2 A value of 150 micrograms per cubic meter not to be exceeded more than once per year, based upon 24 hour average concentrations.

~~02/01/1984~~ (Insert Revision Effective Date)

4.0 Sulfur Dioxide

- ~~4.1 The Primary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:~~
- ~~4.1.1 An annual arithmetic average value of 80 $\mu\text{g}/\text{m}^3$, (0.03 ppm) not to be exceeded, based upon 24 hour average concentrations. The national primary 1-hour air quality standard for oxides of sulfur is 75 parts per billion (ppb) measured in the ambient air as sulfur dioxide. The 1-hour ambient air quality standard~~

is when the three-hour average of the annual (99th percentile) of the daily maximum 1-hour average concentration is less than or equal to 75 ppb.

- 4.1.1 Compliance with the national primary 1-hour air quality standard is determined in accordance with 40 CFR Part 50 Appendix T, Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide), June 23, 2010.
- 4.1.2 A twenty-four average value of 365 µg/m³ (0.14 ppm) not to be exceeded more than once per year based upon 24-hour average concentrations. The national primary 1-hour air quality standard for oxides of sulfur is set forth in 40 CFR Part 50.17, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.
- ~~4.2 The Secondary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:~~
 - ~~4.2.1 A three-hour average value of 1300 micrograms per cubic meter (0.5 ppm), not to be exceeded more than once per year.~~
- 4.2 The 24-hour primary national ambient air quality standard for oxides of sulfur is 0.14 parts per million (ppm), not to be exceeded more than once per calendar year.
 - 4.2.1 Compliance with the national 24-hour primary ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.
 - 4.2.2 The national primary 24-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.4, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.
- 4.3 The national primary annual ambient air quality standard for sulfur oxides of 0.030 parts per million (ppm), annual arithmetic mean, shall not be exceeded.
 - 4.3.1 Compliance with the national annual primary ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.
 - 4.3.2 The national primary 24-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.4, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.
- 4.4 The national secondary 3-hour ambient air quality standard for sulfur oxides is 0.5 parts per million (ppm), not to be exceeded more than once per calendar year.
 - 4.4.1 Compliance with the national secondary 3-hour ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.
 - 4.4.2 The national secondary 3-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.5, National Secondary Ambient Air Quality Standard for Sulfur Oxides (Sulfur Dioxide), May 22, 1996.

02/01/1981

5.0 Carbon Monoxide

- 5.1 The average concentration of carbon monoxide taken over any consecutive eight hours shall not exceed a value of 10 milligrams per cubic meter (9 ppm) more than once per year.
- 5.2 The average concentration of carbon monoxide taken over any one hour period shall not exceed 40 milligrams per cubic meter (35 ppm) more than once per year.

09/11/1999 (Insert Revision Effective Date)

6.0 Ozone

- 6.1 ~~One-hour primary and secondary ambient air quality standards for ozone. The average number of days per calendar year with a maximum one-hour average value exceeding $235 \mu\text{g}/\text{m}^3$ (0.12 ppm) shall be equal to or less than one, averaged over three consecutive years. This standard shall be applicable to New Castle County and Kent County. The 1-hour primary and secondary ambient air quality standard for ozone is $235 \mu\text{g}/\text{m}^3$ (0.12 ppm). The primary and secondary ozone ambient air quality standards are met when the number of days per calendar year with maximum hourly average concentrations above $235 \mu\text{g}/\text{m}^3$ (0.12 ppm) is equal to or less than 1, as determined by 40 CFR Part 50, Appendix H, Interpretation of the 1-hour Primary and Secondary National Ambient Air Quality Standards for Ozone, July 18, 1997. The 1-hour primary and secondary national ambient air quality standards are set forth in 40 CFR Part 50.9, National 1-hour Primary and Secondary Ambient Air Quality Standards for Ozone, May 14, 2012.~~
- 6.2 ~~Eight-hour primary and secondary ambient air quality standards for ozone. The average of the fourth highest daily maximum eight-hour average ozone concentration is less than or equal to 0.08 ppm, averaged over three consecutive years. This standard applies to all Counties in Delaware. The 8-hour primary and secondary ambient air quality standard for ozone is 0.075 parts per million (ppm). The primary and secondary ozone ambient air quality standards are met when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppb, as determined in accordance with 40 CFR Part 50, Appendix P, Interpretation of the Primary and Secondary Air quality Standards for Ozone, May 27, 2008. The 8-hour primary and secondary ozone standards are set forth in 40 CFR Part 50.15, National Primary and Secondary Air Standards for Ozone, May 27, 2008.~~

02/01/1981

7.0 Hydrocarbons

- 7.1 The hydrocarbons standard in 7.2 of this regulation is for use as a guide in devising implementation plans to achieve the ozone standard.
- 7.2 The average concentration of hydrocarbons, exclusive of methane, taken over a three hour period from 6 to 9 a.m., local time, shall not exceed 160 micrograms per cubic meter (0.24 ppm) more than once per year.

02/01/1984 (Insert Revision Effective Date)

8.0 Nitrogen Dioxide

- ~~The annual arithmetic mean concentration of nitrogen dioxide shall not exceed 100 micrograms per cubic meter (0.05 ppm).~~
- 8.1 The national primary and secondary air quality standards for oxides of nitrogen (nitrogen dioxide indicator) are as follows:
- 8.1.1 The primary 1-hour air quality standard for oxides of nitrogen is 100 parts per billion (ppb), 1-hour average concentration, measured in the ambient air as nitrogen dioxide. Compliance with the 1-hour standard is demonstrated when the three-year average of the 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined with 40 CFR Part 50, Appendix S, Interpretation of the Primary Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide), February 9, 2010.
- 8.1.2 The primary annual air quality standard for oxides of nitrogen is 53 parts per billion (ppb), annual average concentration, measured in the ambient air as nitrogen dioxide. The primary annual air quality standard is demonstrated when the average annual concentration in a calendar year is less than or equal to 53 ppb, as determined with 40 CFR Part 50, Appendix S, Interpretation of the Primary Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide), February 9, 2010.

8.1.3 The secondary annual air quality standard for oxides of nitrogen is 53 parts per billion (ppb), annual arithmetic mean concentration, measured in the ambient air as nitrogen dioxide. The secondary ambient air quality standard is demonstrated when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm. To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

8.2 The primary and secondary air quality standards for nitrogen dioxide are as set forth in 40 CFR Part 50.11, February 9, 2010.

02/01/1981

9.0 Hydrogen Sulfide

- 9.1 The average concentration of hydrogen sulfide taken over any consecutive three minutes shall not exceed 0.06 ppm.
- 9.2 The average concentration of hydrogen sulfide taken over any consecutive 60 minutes shall not exceed 0.03 ppm.

02/04/1984 (Insert Revision Effective Date)

10.0 Lead

~~The 24-hour concentration of lead averaged over a calendar quarter shall not exceed 1.5 micrograms per cubic meter. The national primary and secondary ambient air quality standard for lead (Pb) and its compounds are 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), arithmetic mean concentration over a 3-month period measured in the ambient air as Pb. The national primary and secondary air quality standards are set forth in 40 CFR Part 50.16, National Primary and Secondary Ambient Air Quality Standards for Lead November 12, 2008.~~

02/11/2003 (Insert Revision Effective Date)

11.0 PM_{10} and $\text{PM}_{2.5}$ Particulates

- 11.1 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM_{10} are:
- 11.1.1 ~~The primary and secondary air quality standards for PM_{10} are 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24-hour average concentration. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$, as determined in accordance with 40 CFR, Part 50, Appendix K, Interpretation of the National Ambient Air Quality Standards for Particulate Matter, October 17, 2006, is equal to or less than one. The national primary and secondary air quality standards are set forth in 40 CFR Part 50.6, National Primary and Secondary Ambient Air Quality Standards for PM_{10} .~~
- 11.1.2 ~~50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix K, is less than or equal to 50 $\mu\text{g}/\text{m}^3$. Reserved~~
- 11.2 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as $\text{PM}_{2.5}$ are:
- 11.2.1 ~~65 The 24-hour primary and secondary air quality standard is 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24-hour average concentration. The 24-hour primary and secondary $\text{PM}_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38757–38758, Interpretation of the National Ambient Air Quality Standards for $\text{PM}_{2.5}$, January 15, 2013, is~~

PROPOSED REGULATIONS

less than or equal to ~~65~~ 35 $\mu\text{g}/\text{m}^3$. The national 24-hour primary and secondary air quality standards are set forth in 40 CFR Part 50.13, National Primary and Secondary Air Quality Standards for $\text{PM}_{2.5}$, October 17, 2006.

11.2.2 ~~45.0~~ The primary annual air quality standard is 12.0 micrograms per cubic meter (mg/m^3) annual arithmetic mean concentration. The annual primary ~~and secondary~~ $\text{PM}_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, ~~as found in the Federal Register dated July 18, 1997, on page 38756—38757~~ Interpretation of the National Ambient Air Quality Standards for $\text{PM}_{2.5}$, January 15, 2013, is less than or equal to ~~152.0~~ 15.0 $\mu\text{g}/\text{m}^3$. The national annual primary and secondary air quality standards are set forth in 40 CFR Part 50.18, National Primary and Secondary Air Quality Standards for $\text{PM}_{2.5}$, January 15, 2013.

11.2.3 The secondary annual air quality standard is 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration. The annual secondary $\text{PM}_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, Interpretation of the National Ambient Air Quality Standards for $\text{PM}_{2.5}$, January 15, 2013, is less than or equal to 15.0 $\mu\text{g}/\text{m}^3$. The national annual primary and secondary air quality standards are set forth in 40 CFR Part 50.13, National Primary and Secondary Air Quality Standards for $\text{PM}_{2.5}$, October 17, 2006.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1104

REGISTER NOTICE SAN#: 2013-15

1. TITLE OF REGULATIONS:

Revision to 7 **DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment.

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

This revision to 7 **DE Admin. Code** 1104 was identified in an April 1, 2013 Department of Natural Resource and Environmental Controls (DNREC) report titled, "*Executive Order 36 Report to The Office of the Governor.*" Revisions are proposed to clarify that the exemptions 1.2 and 1.4 of this regulation are for the capacity of the unit, and not the operating rate. The revised Regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

7. PREPARED BY:

Ron Amirikian (302) 739-9402 June 12, 2013 Email address: ronald.amirikian@state.de.us

1104 Particulate Emissions from Fuel Burning Equipment

02/01/1981 (Insert Revision Effective Date)

1.0 General Provisions

- 1.1 The emission of particulate matter from fuel burning equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 The provisions of this Regulation shall not apply where the heat input to capacity of the equipment is less than 1,000,000 BTU per hour.
- 1.3 The provisions of this regulation shall not apply to equipment or operations whose emissions are controlled by 7 **DE Admin. Code** 1105 or 7 **DE Admin. Code** 1107 or 7 **DE Admin. Code** 1129.
- 1.4 For purposes of this Regulation, the heat input value shall be based upon the manufacturer's guaranteed maximum input or the Department's calculated input capacity.
- 1.5 The provisions of this Regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 **DE Admin. Code** 1102.

02/01/1981

2.0 Emission Limits

No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two-hour average, from any fuel burning equipment.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1114

REGISTER NOTICE
SAN#: 2013-16**1. TITLE OF REGULATION:**

Revision to 7 **DE Admin. Code** 1114, Visible Emissions.

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

This revision to 7 **DE Admin. Code** 1114 was identified in an April 1, 2013 Department of Natural Resources and Environmental Control (DNREC's) report titled, "*Executive Order 36 Report to The Office of the Governor.*" Revisions are proposed to delete the alternate opacity standard in Section 2.3. This alternate standard was established for a petroleum refinery unit prior to installation of modern pollution control equipment in 2006. The installation of the pre-scrubber on the catalytic cracking unit in 2006 makes this alternative opacity standard obsolete, and the unit is now subject to compliance with the general 20 percent opacity limit in Section 2.1. This is a burdensome requirement to administer and track and is no longer relevant or necessary. The revised Regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

7. PREPARED BY:

Ron Amirikian (302) 739-9402 June 12, 2013 Email address: ronald.amirikian@state.de.us

1114 Visible Emissions

~~07/17/1984~~ (Insert Revision Effective Date)

1.0 General Provisions

- 1.1 The purpose of this regulation is to control the emissions of visible air contaminants from all stationary sources except electric arc furnaces and their associated dust-handling equipment as set forth in 2.2 of this regulation.
- 1.2 Measurements of air contaminant visibility shall be in accordance with accepted practices of Ringelmann values or opacity percentages.
- 1.3 The provisions of this regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.

2.0 Requirements

- 2.1 No person shall cause or allow the emission of visible air contaminants or smoke from a stationary or mobile source, the shade or appearance of which is greater than 20% opacity for an aggregate of more than three minutes in any one hour or more than 15 minutes in any 24 hour period. For guideline purposes only, Shade Number 1 of the Ringelmann Smoke Chart coincides with the regulatory limit of 20% opacity, when observing black smoke.
- 2.2 The requirements of 2.1 of this regulation shall not apply to electric arc furnaces, and their associated dust-handling equipment, with a capacity of more than 100 tons which are governed by 7 DE Admin. Code 1123.
- ~~2.3 The requirements of 2.1 of this regulation shall not apply to any existing Catalytic Cracking Unit. No person shall cause or allow the emission of visible air contaminants or smoke from any existing Catalytic Cracking Unit, the shade or appearance of which is greater than 50% opacity.~~

07/17/1984

3.0 Alternate Opacity Requirements

- 3.1 Whenever the Secretary determines that a source complies with an applicable mass emission standard and demonstrates that the opacity of the complying emissions is more restrictive than the requirements of 2.1 of this regulation, the Secretary will make an appropriate adjustment to the opacity standard for the affected source.
- 3.2 Whenever an owner or operator can establish compliance with an applicable mass emission standard and fails to comply with 2.1 of this regulation, the owner or operator may petition the Secretary setting forth the results of the emission testing or evaluation and request the Secretary to make an appropriate adjustment to the opacity standard for the affected source.
- 3.3 The Secretary may grant such a petition as outlined in 3.2 of this regulation upon a demonstration by the owner or operator that the affected source and associated air pollution control equipment was

operated and maintained during the mass emission test in a manner to minimize the opacity of emissions during emission testing or evaluation that the mass emissions testing was performed in accordance with procedures approved by the Department; and that the affected source and associated air pollution control equipment is incapable of continuously meeting applicable opacity standards as set forth in 2.1 of this regulation.

- 3.4 The Secretary may establish an opacity standard for the affected source at a level at which the source will be able to meet the adjusted opacity standard at all times during which the source is meeting the applicable mass emission rate standard. The Secretary will make the adjusted opacity standard a part of the operating permit in the form of an operating condition.
- 3.5 Any action by the Secretary pursuant to the provisions of 3.0 of this regulation shall be incorporated in the State Implementation Plan.

07/17/1984

4.0 Compliance with Opacity Standards

For purposes of this regulation, compliance with opacity standards shall be in accordance with 1.5.3 of 7 DE Admin. Code 1120.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1139

REGISTER NOTICE SAN#: 2013-17

1. TITLE OF REGULATION:

Repeal of 7 DE Admin. Code 1139, Nitrogen Oxides (NO_x) Budget Trading Program, and adoption of associated State Implementation Plan (SIP) Revision.

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

The repeal of 7 DE Admin. Code 1139 was identified in an April 1, 2013 Department of Natural Resources and Environmental Control (DNREC's) report titled, "*Executive Order 36 Report to The Office of the Governor.*" Repeal of this regulation is proposed. This regulation established Delaware's participation in the NO_x Budget Trading Program; a multi-state NO_x emissions cap and trade program established pursuant to Title 40, Part 96 of the Code of Federal Regulations (40 CFR Part 96) and 40 CFR Part 51.121. The underlying federal program was replaced by the federal Clean Air Interstate Rule (CAIR). Given this, 1139 no longer serves its intended purpose.

In addition, the adoption and submittal to the EPA of a SIP plan that demonstrates Delaware's compliance with the federal NO_x SIP Call requirements is also being proposed.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be

PROPOSED REGULATIONS

presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

7. PREPARED BY:

Ron Amirikian (302) 739-9402 June 12, 2013 Email address: ronald.amirikian@state.de.us

***Please Note: As a result of the regulation being repealed it is not being published here. A copy of the regulation is available at:**

1139 Nitrogen Oxides (NOx) Budget Trading Program

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1143

REGISTER NOTICE

SAN#: 2013-19

1. TITLE OF REGULATION:

Repeal of 7 DE Admin. Code 1143, Heavy Duty Diesel Engine Standards.

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

The repeal of 7 DE Admin. Code 1143 was identified in a April 1, 2013 Department of Natural Resources and Environmental Controls (DNREC) report titled, "Executive Order 36 Report to The Office of the Governor." Repeal of this regulation is proposed. The provisions of this regulation apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware. This regulation was developed and adopted as a backstop to a then anticipated EPA regulation. EPA successfully adopted standards and this regulation is no longer needed. The repeal of this regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

7. PREPARED BY:

Ron Amirikian (302) 739-9402 June 12, 2013 Email address: ronald.amirikian@state.de.us

Please Note: As a result of the regulation being repealed it is not being published here. A copy of the regulation is available at:

1143 Heavy Duty Diesel Engine Standards

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 Del.C. §1902(a))

7 DE Admin. Code 3200

REGISTER NOTICE #2013 - 06

3200 Horseshoe Crabs

1. TITLE OF THE REGULATION:

3201 Definitions

3216 Prohibition on Possession or Use of Asian Horseshoe Crabs

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

This proposed action seeks to define and prevent the possession and use of Asian horseshoe crabs (*Carcinoscorpius rotundicauda*, *Tachypleus gigas* and *Tachypleus tridentatus*) to protect human health and the shellfish resources of the State.

The Atlantic States Marine Fisheries Commission recently approved Resolution 13-01 recommending that member states take any and all action to ban the importation and use of Asian horseshoe crabs as bait as soon as possible. Reduced availability of Atlantic horseshoe crabs (*Limulus polyphemus*) has motivated seafood dealers in New York to import non-native Asian horseshoe crabs for use as bait in the American eel and whelk fisheries. There is concern that these animals may host parasites and pathogens that could have severe negative impacts on native horseshoe crabs and the ecosystem. In addition, *C. rotundicauda* is known to contain the powerful neurotoxin tetrodotoxin (TTX). Poisonings from this neurotoxin can be fatal. The potential for TTX accumulation in eel and whelk and subsequent risk to human health is unknown.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Section 1902 (a)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 3200 Horseshoe Crabs will be open July 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on July 25, 2013 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

3200 Horseshoe Crabs

3201 Definitions

(Penalty Section 7 Del.C. §2705(b))

1.0 The following definitions shall apply to terms in 7 Del.C. Ch. 27 relative to horseshoe crabs.

PROPOSED REGULATIONS

- 1.1 **"Asian Horseshoe Crabs"** shall mean any of the following species *Carcinoscorpius rotundicauda*, *Tachypleus gigas*, and *Tachypleus tridentatus*.
- 1.12 **"Bait Saving Device"** shall mean any device that when so deployed in or on a pot reduces either the rate at which bait, meaning horseshoe crabs or parts thereof, must be replenished or reduces the number or quantity of horseshoe crabs used as bait.
- 1.23 **"Collect"** shall mean to take live horseshoe crabs by any means other than by dredge.
- 1.34 **"Dispose of said Crabs Properly"** shall mean bury on the beach, incorporate into soil as fertilizer or any other method approved by the Department.
- 1.45 **"Dredge"** shall mean to use any device to gather, scrape, scoop, fish for or otherwise take bottom dwelling horseshoe crabs.
- 1.56 **"Personal, Non-Commercial Use"** shall mean to be used as food, fertilizer or bait or otherwise properly disposed without trading, bartering, or selling by one individual to another, or without transporting, shipping, or causing to be transported or shipped, out of state.

(Break in Continuity of Sections)

3216 Prohibition on Possession or Use of Asian Horseshoe Crabs

(Penalty Section 7 **Del.C.** §2705(b))

- 1.0 It is unlawful to possess or use as bait Asian horseshoe crabs or parts thereof without written authorization from the Director of the Division of Fish and Wildlife.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(b); (7 **Del.C.**, §901(b))
7 **DE Admin. Code** 3507

REGISTER NOTICE
SAN#: 2013-18 (E.O. 36)

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

1. TITLE OF THE REGULATIONS:

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (3.0, 5.0, & 6.0)

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

Among the considerations of Executive Order 36, pertaining to the review and reform of state agency regulations, was a focused review of older, well-established regulations to ensure that State regulations continue to serve the original purpose for which they were adopted and provide for improvements. The Department's focused review of the existing tidal finfish regulations found that 7 **DE Admin. Code** 3507 pertaining to black sea bass failed to adequately provide for the transferability of commercial black sea bass permits. The current black sea bass regulation was enacted between 2001 and 2003 to, in part, limit the number of permits issued for the black sea bass commercial fish pot and commercial hook and line fisheries. However, the regulation did not provide a method for those permits to be transferred by the current permit holders. The proposed amendments to 7 **DE Admin. Code** 3507 (3.0), (5.0) & (6.0) allow the transfer of black sea bass commercial fishery permits consistent with transfer criteria established in 7 **Del.C.**, Ch. 29.

These amendments are needed because several of the current permit holders will be retiring from commercial fishing and the Department wants to allow other Delawareans to obtain these permits. The Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Black Sea Bass allocates Delaware an annual commercial black sea bass quota. This regulation will assure that there will be Delaware permit holders to harvest this valuable resource.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., §901(b); §903(f)

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to the black sea bass regulation will be open July 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on July 25, 2013 beginning at 6:30 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302)739-9914
John Clark John.Clark@state.de.us (302) 739-9914

David E. Saveikis, Director

**3500 Tidal Finfish
Bass (Striped Bass; Black Sea Bass)**

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in 7 Del.C. §2903, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 ~~and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001. pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.~~

PROPOSED REGULATIONS

- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line ~~and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001~~ and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01a.m. March 1, and ending midnight May 18, and beginning at 12:01 a.m. October 15 and ending mid-night October 31.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 19 through October 14 and during the period November 1 through December 31.
- 12.2 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period January 1 through February 28.
-

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 Del.C., §1902(a))
7 DE Admin. Code 7402

REGISTER NOTICE #2013 - 07

7402 Shellfish Sanitation Regulations Appendix 1 Prohibited Shellfish Harvesting Areas Appendix 3 Conditional Shellfish Harvesting Area

1. TITLE OF THE REGULATION:

7402 Shellfish Sanitation Regulations

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

Reclassification of the Northwestern portion of Love Creek, a tributary of Rehoboth Bay, from Conditionally Approved to Prohibited for the harvest of shellfish. The Department, Division of Watershed Stewardship, has determined through the monitoring of water quality, analysis of shellfish growing area water data, and the review of sanitary shoreline survey information, that the closed areas includes those Inland Bay waters of Love Creek in Rehoboth Bay, located in Sussex County, Delaware, lying Northwest of a line running from the points: 38° 41' 21.14" N, -75° 8' 2.74" W and 38° 40' 59.85" N, -75° 8' 22.33" W.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., §1902(a)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7402 Shellfish Sanitation Regulations will be open July 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on July 25, 2013 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Debbie Rouse Debbie.rouse@state.de.us (302) 739-9939

Regulatory Flexibility Act Compliance Form

Background: The Regulatory Flexibility Act (29 Del.C. Chapter 104) states that prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.

Instructions: This form must accompany your Register Notice and the proposed regulation prior to being published in the Register of Regulations. Please explain your considerations for each of the following factors (attach additional pages or documents as needed):

1) The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:

No report will have to be prepared by individuals and/or small business to comply with the proposed amendment to the "State of Delaware Shellfish Sanitation Regulations"

2) The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:

No cost to small business or individuals to comply with the proposed amendment to the "State of Delaware Shellfish Sanitation Regulations"

3) The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:

No estimated cost to legal, consulting and accounting services for individuals and/or small business complying with the proposed amendment to the "State of Delaware Shellfish Sanitation Regulations".

4) The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:

N/A

Explanation:

This action is to amend the language in the "State of Delaware Shellfish Sanitation Regulations" to reclassify the Northwestern portion of Love Creek, a tributary of Rehoboth Bay, from Conditionally Approved to Prohibited from the harvest of shellfish. This amendment ensures the health and safety is not at risk from consumption of shellfish subjected to pollution or other conditions that may render the shellfish dangerous to public health.

5) The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:

No additional cost to DNREC, Division of Watershed Stewardship, Watershed Assessment and Management Section, Shellfish Program.

The purpose of Delaware's Shellfish Program is to ensure that all shellfish that are harvested from Delaware waters, or originate from other sources, are fit for human consumption. This is accomplished through adherence to National Shellfish Sanitation Program (NSSP) protocols, as administered under the authority of the U.S. Food and Drug Administration (U.S. FDA). It is the responsibility of the FDA to ensure that Delaware is in conformance with NSSP parameters through regular assessments of our Shellfish Program. This is an unfunded mandate from the U.S. Food and Drug Administration (U.S. FDA) to ensure and protect the health of Delaware's residents and visitors.

6) The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.

N/A

Explanation:

Standards or protocols for Delaware's Shellfish Program are administered under the authority of the U. S. Food and Drug Administration (U.S.FDA). Failure of a state's/country's shellfish program to conform to NSSP protocols will result in a non-conforming status being rendered upon said jurisdiction by the FDA, thereby effectively eliminating their shellfish industry.

All Delaware shellfish growing waters are classified on the basis of the suitability of the shellfish therein for human consumption. This is achieved through intensive water quality and sewage treat plant monitoring and analysis for a number of biological parameters; as well as by conducting sanitary survey (on-site visits) of all water-adjacent properties in the State of Delaware for the purpose of identifying, documenting, and helping to control pollution discharges.

7) What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?

The likely affected public is the commercial harvesters, shellfish dealer/processors and any person(s) in a shellfish related business. To ensure the health and safety of the consuming public, educational information and correspondence are provided to the commercial harvesters, dealers and processors about the reclassification of the Northwester portion of Love Creek, a tributary of Rehoboth Bay, from Conditionally Approved to Prohibited for the harvest of shellfish. The Shellfish Program provides all pertinent information through the use of mailings, e-mails and the Shellfish Program website on the determination through the monitoring of water quality, analysis of shellfish growing area water data, and the review of sanitary shoreline survey information, that the closed areas includes those Inland Bay waters of Love Creek in Rehoboth Bay, located in Sussex County, Delaware, due to degraded bacteriological water quality.

7402 Shellfish Sanitation Regulations

(Break in Continuity of Sections)

APPENDIX 1

This list of **Prohibited** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control on December 20, 1995. Shellfish harvesting is prohibited in the following areas for any reason at any time:

Delaware River / Bay:

1. The Delaware River north of a line drawn in an east-west direction running concurrently with the New Castle County / Kent County Line from the Western Shore of the Delaware River on the Delaware side of the River east to the New Jersey State Line.
2. Duck Creek, Leipsic River and Simons River and all their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.
3. Little Creek and its tributaries and a contiguous area in the Delaware Bay adjacent to the mouth. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.
4. St. Jones River and Murderkill River, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.
5. Mispillion River, Cedar Creek and Slaughter Creek, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.
6. Broadkill River including its tributaries. This area is marked by signs.
7. An area of Breakwater Harbor and Delaware Bay encompassed within a line running from the northern boundary of Beachplumb Island state-owned lands, in a northeasterly direction for 5000 feet, thence in a southeasterly direction to the west end of the inshore breakwater off of Lewes Beach and running on the inside of this breakwater to a point intersecting a line drawn from the Cape Henlopen Fishing Pier to the breakwater then running along said line to the fishing pier and down the center line of the fishing pier to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

Rehoboth Bay and Indian River Bay:

8. Lewes-Rehoboth Canal. This area is marked by signs.
9. Rehoboth Bay north of a line drawn in a northeasterly direction between the tip of White Oak Point to the tip of Bald Eagle Point, thence in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in a northeasterly direction to the tip of Thompson Island, thence in an easterly direction to the southern most point of the Rehoboth Bay Marina. This area is marked by signs and buoys.
10. Indian River Inlet and Cedar Islands. The western boundary line begins at Burton's Island, running south to a point west of the marsh which lies south of an unnamed gut south of the South Inlet Marina, thence in an easterly direction to said marsh. The eastern boundary begins one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. The northern boundary (in the vicinity of Cedar Islands in Rehoboth Bay) begins at an unnamed island north of Savages Ditch running in a southeasterly direction to Burton Island. The area is marked by signs and buoys.
11. White Creek and its tributaries extending south of a line drawn in an east-west direction from the East Shore of White Creek to a point on Big Marsh on the West Shore. This area is marked by signs.
12. Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the eastern bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.
13. Herring Creek and its tributaries extending northwest from a line running from Burton Point in a southerly direction to Long Neck. This area is marked by signs.
14. The southwest corner of Beach Cove. This area is marked by signs.
15. The southeast corner of Beach Cove. This area is marked by signs.
16. The northeast corner of Beach Cove. This area is marked by signs
17. Love Creek - The portion of Love Creek lying in a northwesterly direction from the line formed by a point marked on shore at the southern confluence of Love Creek and Arnell Creek, thence in a southwesterly direction to a point in the marsh identified as being directly south of Boathouse Lane. This area is marked by signs.

Little Assawoman Bay:

4718. Assawoman Canal. The Canal-proper is not marked. However, the adjacent waters in White Creek in Indian River Bay and Little Assawoman Bay are marked by signs.
4819. Miller Creek and its tributaries and the northern reaches of Little Assawoman Bay north of a line running in an east-west direction from Goose Point on the southern bank of Miller Creek at its mouth to an unnamed point on Fenwick Island State Park. This area is marked by signs.
4920. Dirickson Creek west of a line running from Bennett Point in a southwesterly direction to Conch Point. This area is marked by signs.
2021. Tubbs Cove south of a line running in an east-west direction from the shoreline north of Treasure Beach Campground to Point Of Ridge. This area is marked by signs.
2422. The waters adjacent to the Town of Fenwick Island south of a line running from Old Inlet Point in a north-north-easterly direction to an unnamed point on the barrier. This area is marked by signs.

Assawoman Bay:

2223. That portion of an unnamed bay north of the Delaware / Maryland line adjacent to the Cape Windsor Development. This area is marked by signs.
2324. Roy Creek and its tributaries north-west of a line running from an unnamed point on Greys Neck north-east across several unnamed islands to a point south of Route 54. This area is marked by signs.

Nanticoke River:

2425. Nanticoke River and all its tributaries. This area is marked by signs.

Atlantic Ocean:

2526. The Atlantic Ocean adjacent to Indian River Inlet encompassed within a line beginning one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

2627. The Atlantic Ocean within a radius of one-half mile from the South Coastal Sewage Treatment Plant outfall which is located at north latitude 38°31'34" west longitude 75°01'56".

Applies To All Areas:

2728. All artificial lagoons. Most of these areas are unmarked.

2829. All wet slip basins. Most of these areas are unmarked.

(Break in Continuity of Sections)

APPENDIX 3

This list of **Seasonally Approved** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control into the public record on December 20, 1995. Shellfish harvesting is allowed in the following areas in accordance with Delaware's fish and game laws from December 1 through April 15:

Rehoboth Bay:

1. The areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower. This area is marked by signs and buoys.
- ~~2. Love Creek north of a line running from a point on the southwest bank in a northeasterly direction to a point on the northeast shoreline. This area is marked by signs.~~
32. The area adjacent to West Bay Trailer Park Marina from a point north of the Marina in a southeasterly direction to a point directly north of the eastern-most point of Sally Cove Marsh and directly east of the middle Marina lagoon, thence in a southwesterly direction to a point south of the Marina. This area is marked by signs and buoys.
43. The area adjacent to the mouth of Herring Creek west of a line running from Burton Point on Angola Neck in a southeasterly direction to Nats Cove Point. This area is marked by signs and buoys.
54. Massey's Ditch and Roman T. Pond south of a line running from Bluff Point in a southeasterly direction to an unnamed point on the north bank of the unnamed island east of Massey's Ditch. This area is marked by signs.

Indian River Bay:

65. The area landward of a line running from a point on the south bank of the unnamed island east of Massey's Ditch in a southerly direction to Middle Island, thence in a westerly direction to a point on the Townsend Property east of Emily Gut (the same point marking the beginning of the Prohibited area boundary line). This area is marked by signs and buoys.
76. The area south of an east-west line running from Pasture Point, to Walter Point. This area is marked by signs and buoys.

PROPOSED REGULATIONS

NOTE: Please consult Delaware Fish and Game Laws for size and creel limits prior to harvesting shellfish.

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

7402 Shellfish Sanitation Regulations

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1301

REGISTER NOTICE

SAN#: 2013-10 (E.O.36)

1. TITLE OF THE REGULATION:

7 DE Admin Code 1301 *Regulations Governing Solid Waste* (DRGSW)

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

The purpose of these solid waste, including infectious waste, regulatory proposals is to provide amendments that afford regulated parties opportunity to propose alternative packaging methods for infectious waste provided compliance is achieved with applicable federal Department of Transportation (DOT) and Occupational Safety and Health Administration (OSHA) standards. It is also proposed to allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, it is proposed to amend the regulations with regard industrial landfill capping and grading, to allow soil-equivalent material to be used as the final grading layer, as well as alternative materials if approved by the Department, providing more flexibility for landfill operators.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., Chapter 60

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing for the proposed amendments will be held on August 7, 2013 from 6:30 P.M. to 7:00 P.M. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management Section, 302.739.9403,
William.BDavis@state.de.us

Marjorie A. Crofts, Director

Division of Waste and Hazardous Substances

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

1301 Regulations Governing Solid Waste

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74A; (7 **Del.C.**, Ch. 74A)
7 **DE Admin. Code** 1352

REGISTER NOTICE

SAN#: 2013-12

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1352, Regulations Governing Aboveground Storage Tanks

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

The Regulations Governing Aboveground Storage Tanks (the Regulations) were created under the authority of the Jeffrey Davis Aboveground Storage Tank Act, Title 7, **Del.C.**, Chapter 74A, in 2004. The Regulations were last updated in 2005. In response to Executive Order #36 the Delaware Department of Natural Resources and Environmental Control has conducted a periodic review of the AST Regulations to determine if the Regulations should be modified or eliminated. Three modifications have been identified:

- Part A, Section 4.6.3. has been modified to extend the required time frame for notification to the DNREC for a Retrofit or Upgrade from sixty (60) days to one (1) year.
- Part A, Section 5.3. has been modified to require a specific time frame in which the DNREC must respond to a request for alternative technology approval. Currently there is no time frame in which the DNREC must respond. The proposed change requires the DNREC to provide a written response within ninety (90) days of receiving a request.
- Part B, Section 1.7 has been modified to allow an Owner or Operator to request a one year extension of the DNREC approval for an installation of a new AST.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, **Del.C.**, Chapter 74A, The Jeffrey Davis Aboveground Storage Tank Act.

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

None known

6. NOTICE OF PUBLIC COMMENT:

The DNREC will conduct a Public Hearing. The hearing is scheduled to begin at 6:00pm on August 6, 2013 in the conference room at the DNREC office located at 391 Lukens Drive, New Castle, DE. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Mr. Alex Rittberg, DNREC/TMS, 391 Lukens Drive, New Castle, DE 19720 and must be received by the Department not later than August 6, 2013 unless a longer time is specified at the hearing.

Copies of the proposed regulations are available online at: <http://www.dnrec.delaware.gov/info/Rules.htm>

7. PREPARED BY:

Jill Williams Hall 302-395-2500 June 12, 2013

1352 Aboveground Storage Tanks**PART A GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANKS*****(Break in Continuity of Sections)*****4.0 Registration And Notification Requirements****4.1 Registration Requirements**

- 4.1.1 Any person that owns or operates an AST unless specifically exempted in §1 of this Part must register each AST with the Department on an AST registration form provided by the Department.
- 4.1.2 Registration of ASTs shall be renewed annually by payment of registration fees in accordance with Part A, 4.6 of these Regulations, on or before February 1 of every year and until the Department receives a formal notice that the AST has been ~~Removed~~ or Permanently Closed or undergone a Permanent Change in Contents in accordance with these Regulations.

(Break in Continuity Within Section)**4.6 Retrofitting/Upgrade of ASTs**

- 4.6.1 AST Owners and Operators shall notify the Department of all Retrofits or Upgrades of an AST on a form provided by the Department at least ten (10) days prior to beginning the Retrofit or Upgrade work.
- 4.6.2 If within the ten (10) day period, the required notification to the Department is completely satisfied, the Retrofit or Upgrade construction may proceed without waiting for the expiration of the 10 days.
- 4.6.3 If within ~~sixty (60) days~~ one (1) year after initial notification to the Department work has not commenced, a new registration form must be submitted to the Department.

5.0 Alternative Procedures Approval Requirements

- 5.1 The Owner and Operator of an AST subject to the provisions of these Regulations may request in writing a determination from the Department that any requirement of these Regulations shall not apply to such AST, and shall request approval of an alternative procedure as required.
- 5.2 The Department in its discretion may approve alternative procedures or technology or a combination of alternative procedures or technologies not specified in the Regulations if the following requirements are met. The requirements must be submitted in writing and shall set forth as a minimum the following information:
 - 5.2.1 Name and location of the Facility and the specific AST(s) for which an alternative procedure is sought;
 - 5.2.2 The specific provision of the Regulations for which an alternative procedure is sought;
 - 5.2.3 The contents of the AST;
 - 5.2.4 The basis for the alternative procedure, including but not limited to the technical difficulties that would result from compliance with the established provision;
 - 5.2.5 The alternative procedure or technology for which approval is sought; and
 - 5.2.6 Documentation that demonstrates that the alternative procedure or technology meets or exceeds the performance standard for approved technologies and that the alternative procedure or technology offers a no less stringent degree of protection for human health, safety or the environment as would the requirements specifically established in these Regulations.
- 5.3 The Department will provide a written response within ninety (90) days to all requests for alternative technology approvals. The request may be denied, approved or approved with conditions. If the technology or procedure or a combination of technologies or procedures is approved, the Owner and Operator must comply with any conditions imposed by the Department on its use to ensure the protection of human health, safety or the environment.
- 5.4 In the case of a denial of a request under this Section the Department will respond to the request stating the justification for the denial.

(Break in Continuity of Sections)

PART B INSTALLATION AND UPGRADE REQUIREMENTS FOR NEW AND EXISTING ABOVEGROUND STORAGE TANKS

1.0 General Requirements For All New Aboveground Storage Tanks and AST Relocations

(Break in Continuity Within Section)

- 1.7 A formal approval of installation shall be valid for one year from the date of approval. If construction of the AST is not initiated within one year of issuance of the Department's letter of approval, the Owner or Operator shall request an extension in writing, including the cause for the delay and the expected date of construction initiation the approval shall lapse. For the purpose of this rule, initiated shall mean construction equipment commonly used in Facility or system construction has been mobilized to the site and that materials used in the construction of the Facility or AST have been delivered to the site and construction has begun.

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

1352 Regulations Governing Aboveground Storage Tanks

DIVISION OF WATER

Statutory Authority: 7 Delaware Code, Section 7505(g) (7 Del.C., §7505(g))
7 DE Admin. Code 7503

REGISTER NOTICE
SAN # 2013 - 11 (E.O. 36)

7503 Oil Gas and Mineral Exploration Regulations

1. TITLE OF THE REGULATIONS:

Delaware regulations governing Oil gas and Mineral Exploration, 7 DE Admin. Code 7503

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

The Regulations have been a part of Delaware Code since 1971 and the Department has no record of any applications or permits granted under this regulation.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

These regulations are being proposed for sunset.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., §7505(g)

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

None

6. NOTICE OF PUBLIC COMMENT:

As a part of the Department of Natural Resources and Environmental Control's Executive Order 36 review of all regulations, 7 DE Admin. Code 7503 *Oil Gas and Mineral Exploration* (Regulation) was identified as a regulation to be repealed. The Regulation was adopted in 1971 and based on a records review; there has never been an application received or a permit decision made under the Regulations. Therefore, the Regulation Governing Oil Gas and Mineral Exploration is proposed to be deleted from the Administrative Code. The Department of Natural Resource and Environmental Control, Division of Water will hold a public hearing to accept comments on the proposal to repeal the Regulations Governing Oil Gas and Mineral Exploration on August 7, 2013

PROPOSED REGULATIONS

at 6:00 p.m. in the auditorium of the Richards and Robbins Building located at 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Kathy Stiller kathleen.stiller@state.de.us 302-739-9949.

***Please Note: As a result of the regulation being repealed it is not being published here. A copy of the regulation is available at:**

7503 Oil Gas and Mineral Exploration Regulations

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Section 343(c) (31 Del.C. §343(c))
9 DE Admin. Code 201

201 Child Placing Agencies

PUBLIC NOTICE

Summary

The Office of Child Care Licensing proposes to amend the Delaware Requirements for Child Placing Agencies to provide clarity, reflect changes in laws and treaties, align with current best practices, and improve standards of care. No public comments were received as part of the public hearing process for Executive Order 36; however, the proposed changes are based upon a formal comprehensive review process. Through this process all providers were asked to participate, as well foster and adoptive parents, children previously or currently served in the foster care and adoption system, and representatives of the Court and advocacy groups. The revisions represent a consensus of all participants including licensed providers, parents, youth, and subject experts based on best practice and provider consensus.

It has been 16 years since the regulations were last changed. There have been many legal changes in the area of foster care and adoption as well as in best practices that have called for more structure and accountability. Many providers advocated for stronger regulations which could afford children receiving foster care or adoptive services a uniform set of standards under which they would receive the protection needed without regard to the specific service provider or circumstances of the placement.

Comments

A copy of the proposed regulations is being published in the July 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on August 6, 2013. Comments may also be offered at a public hearing to be held at the New Castle County Government Center, James H. Gilliam, Sr. Building, Multi-Purpose Room, 77 Reads Way, New Castle, DE 19720 on Wednesday, July 24, 2013, 4:00 to 6:00 p.m.

Adoption of Proposed Regulation

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

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

201 Child Placing Agencies

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 16 Delaware Code, Chapter 78 (16 Del.C. Ch. 78)

Regulation Governing the State of Delaware Asbestos Certification and Training Program

PUBLIC NOTICE

In accordance and compliance with the procedures set forth at 29 Del.C. §1131, et seq. and 29 Del.C. §10101, et seq., the Director of the Office of Management and Budget is proposing to adopt the following Regulation:

I. Title of Regulation:

Regulation Governing the State of Delaware Asbestos Certification and Training Program (hereafter the "Program"). Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the following address:

122 Martin Luther King Jr. Blvd South
Dover, DE 19901

II. Brief Synopsis of the Subject, Substance, and Issues:

This proposed regulation is intended to provide public notice regarding the manner in which the Program will operate and be applied by the Office of Management and Budget. The presently existing asbestos regulation can be found at:

<http://dfm.delaware.gov/docs/regulations.pdf> and shall be repealed upon the adoption of the proposed regulation which is the subject of this notice.

The proposed regulation is intended to safeguard the public by requiring that renovations or demolitions which disturb asbestos be conducted only by contractors, supervisors, and workers certified by the Office of Management and Budget's Division of Facilities Management.

It is the purpose and the policy of the Division of Facilities Management to insure the health, safety, and welfare of the public by ensuring that asbestos abatement is performed in a manner which will minimize the risk of exposure to asbestos by:

A) Reducing potential exposure from asbestos-containing materials through the training and certification of contractors, professional service firms and Project Monitors, project supervisors, and workers.

B) Providing the building owner with certificate(s) of analysis stating that the material that is to be disturbed is in fact asbestos-containing material.

C) Establishing a program for such standards, which shall include revocation, suspension, and/or denial to renew certifications.

D) Establishing an asbestos management program in public schools under the guidelines and regulations as established under the U.S. Environmental Protection Agency (EPA) Asbestos Hazard Emergency Response Act (AHERA). Establish a similar program in public buildings for the purpose of protecting public health against the dangers of exposure to students/staff and the general public.

III. Possible Terms of the Agency Action:

There is no sunset date for this Regulation.

IV. Statutory Basis or Legal Authority to Act:

16 Del.C. §7801, et seq.

V. Other Regulations that May Be Affected by the Proposal:

None Known.

VI. Notice of Public Comment:

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed new regulations must submit them to:

Robert Scoglietti
Delaware Office of Management and Budget
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901
no later than the close of business on August 30, 2013.

VII. Notice of Public Hearing:

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on August 7, 2013 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM. It is requested that those interested in presenting statements at the public hearing register in advance by contacting:

Robert Scoglietti
Delaware Office of Management and Budget
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901

VIII. Prepared By:

Robert Scoglietti
Director of Policy and External Affairs
Delaware Office of Management and Budget

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

Regulation Governing the State of Delaware Asbestos Certification and Training Program

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 EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1502

REGULATORY IMPLEMENTING ORDER

1502 Professional Growth Salary Increments

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** 1502 Professional Growth Salary Increments. The regulation concerns the requirements for educators to attain salary increments, pursuant to 14 **Del.C.** §1305(p). It is necessary to amend this regulation in order to insure equity in the issuance of salary increments for the successful completion of a Master's Specialist Certificate.

Notice of the proposed amendment of the regulation was published in the *Delaware Register of Regulations* on May 1, 2013. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto

FINAL REGULATIONS

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** 1502 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 6th DAY OF JUNE, 2013

Kathleen Thomas, Chair	David Kohan
Michael Casson	Byron Murphy
Joanne Christian	Wendy Murray
Samtra Devard	Mary Pinkston
Stephanie DeWitt	Whitney Price
Karen Gordon	Stephanie Smith
Cristy Greaves	Jacque Wisnauskas
Chris Kenton	

IT IS SO ORDERED THIS 20th DAY OF JUNE, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved this 20th day of June, 2013.

State Board of Education

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

*Please note that no changes were made to the regulation as originally proposed and published in the May 2013 issue of the *Register* at page 1123 (16 DE Reg. 1123). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1502 Professional Growth Salary Increments

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512(1) (31 **Del.C.** 512(1))
16 **DE Admin. Code** 9018.2

ORDER

Food Supplement Program

DSSM: 9018.2 Time Limit for Able-bodied Adults Maintaining and Regaining ABAWD (Able-Bodied Adults Without Dependent) Eligibility

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 Food Supplement Program, specifically, Maintaining and Regaining ABAWD Eligibility. 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 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2013 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 Food Supplement Program, specifically, ~~Time Limit for Able-bodied Adults~~ Maintaining and Regaining ABAWD Eligibility.

Statutory Authority

7 CFR §273.24, Time Limit for Able-Bodied Adults

Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of food benefits to 3 months (consecutive or otherwise) in a 36-month period for ABAWDs who are not working, participating in, and complying with the requirements of a work program for 20 hours or more each week, or a workfare program. "ABAWDs" refers to Able-Bodied Adults Without Dependents.

Work registration is a technical eligibility factor for participation in the Food Supplement Program. Every able-bodied household member age 18-59, must work register unless otherwise exempt.

Summary of Proposed Changes

DSSM 9018.2, ~~Time Limit for Able-bodied Adults~~ Maintaining and Regaining ABAWD Eligibility: The intent of the proposed amendment is to clarify language to make the rules easier to understand and follow.

Additionally, the name of the section is changed to more accurately reflect the content of the policy.

The applicable federal citation is also added to the policy section.

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

The Associated Press, 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.

Associated Press

[This is in reference to] the new Food Supplement Program language changes regarding able-bodied adults in the latest issue of the registry of regulations. Hoping you can tell me why DSS does not consider anyone over the age of 50 to be able-bodied (9018.2(3)(b)), and why an able-bodied adult is exempt from the work requirement simply by living in a house where someone receives food stamps and there is a person under 18 in the house as well (9018.2(3)(g)).

Agency Response: The policy published in the register refers to a sub-group of Food Supplement Program (FSP) recipients referred to as "Able-bodied Adults Without Dependent Children" (ABAWD). It is not about able-

bodied adults as a whole.

ABAWDs are defined as "Individuals without children in their FSP household who must work and/or comply with certain work requirements for 20 hours a week in order to get food benefits."

Individuals receiving FSP must work or participate in a work program or a workfare program. If they don't meet this requirement for at least 3 months (consecutive or otherwise) in a 36 month period they are ineligible to receive food benefits. Some individuals are exempt from this time limit. Two groups of these are individuals are referenced in the question from the AP. Individuals under age 18 or 50 years of age or older do not have to meet the time limit. Also exempt from the 3 months' time limit are individuals who are part of a FSP household which contains an individual under the age of 18. These exemptions are FNS policy requirements (7 CFR 273.24).

The policy at 9018.2 was revised to clarify that individuals who meet the ABAWD definition are exempt from the 3 month time limit if the individual is part of a FSP household that contains a minor child. It does not mean a person may be an ABAWD if there is a minor in the house. Being in the house and being in the FSP household is an important distinction. Hence, the clarification.

GACEC and SCPD

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its Food Supplement Program regulation in the context of time limits for "Able-bodied adults without dependents".

The rationale is "to make the rules easier to understand and follow", to add a federal citation, and to change the name of the section to more accurately reflect the content of the policy. The revised regulation generally conforms to the federal regulation, 7 C.F.R. §273.24. The federal regulation implements a federal law limiting receipt of "food stamp" benefits to 3 months in a 36-month period for "able-bodied adults without dependents" (ABAWDs) who are not working or who are not exempt.

GACEC and SCPD endorse the proposed regulation subject to consideration of a minor revision to §9018.2, Section 4, as follows:

Good cause includes circumstances beyond the individual's control, such as, but not limited to: ...

This would clarify that the subsequent list is illustrative only and more closely conforms to the analogous federal standard, 7 C.F.R. §273.24(b)(2).

Agency Response: The text of the proposed regulation is amended as requested.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the May 2013 *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 Food Supplement Program (FSP), specifically, Maintaining and Regaining ABAWD Eligibility, is adopted and shall be final effective July 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #13-20 REVISION:

~~9018.2 Time Limit for Able-bodied Adults~~

~~Individuals are ineligible to continue to receive food stamps if, during any 36-month period they received food stamps at least three (3) months (consecutive or otherwise) while they did not either:~~

- ~~- work at least 20 hours per week (averaged monthly which means 80 hours a month); or~~
- ~~- participate in a work program at least 20 hours per week; or~~
- ~~- work and participate in a work program for any combination of hours that totaled 20 hours per week; or~~
- ~~- participate and comply in a workfare program.~~

Definitions

~~Work is defined as:~~

- ~~- Work in exchange for money;~~
- ~~- Work in exchange for goods or services (in-kind work);~~
- ~~- Unpaid work which is verified; or~~
- ~~- Any combination of the above definitions.~~

~~Qualifying work programs include programs under:~~

- ~~- Workforce Investment Act;~~
- ~~- Trade Adjustment Assistance Act; or~~
- ~~- Employment and Training (except for job search or job search training programs).~~

Good Cause

~~If the individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirements if:~~

- ~~- the absence from work is temporary; and~~
- ~~- the individual retains his or her job.~~

~~Good cause shall include circumstances beyond the individual's control, such as:~~

- ~~- illness;~~
- ~~- illness of another household member requiring the presence of the member;~~
- ~~- a household emergency; or~~
- ~~- the unavailability of transportation.~~

Exemptions

~~Individuals are exempt from this work requirement if he or she:~~

- ~~- is under 18 or over 50 years of age; (The month after an individual turns 18 will be the first month the individual must start meeting the work requirements. The month an individual turns 50 years of age will start the exemption.)~~
- ~~- is medically certified as physically or mentally unfit for employment. A person is medically certified as physically or mentally unfit for employment if he or she:~~
- ~~- is receiving temporary or permanent disability benefits issued by governmental or private sources.~~
- ~~- is obviously mentally or physically unfit for employment.~~
- ~~- provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel, that he or she is physically or mentally unfit for employment.~~
- ~~- a parent (natural, adoptive, or step) of a household member under age 18;~~
- ~~- is residing in a household where a household member is under age 18, even if the household member who is under 18;~~
- ~~- is pregnant (any trimester); or~~
- ~~- is otherwise exempt from work requirement under DSSM 9018.3.~~

Regaining Eligibility

~~Individuals denied eligibility under this work requirement, or who would have been denied under this work requirement if they had reapplied, can regain eligibility if during a 30-day period the individual:~~

- ~~- works (paid or non-paid) for 80 hours or more;~~
- ~~- participates in and complies with a work program, as described above, for 80 hours or more;~~
- ~~- participates in any combination of work and participation in work program for a total of 80 hours;~~
- ~~- participates in a workfare program; or~~
- ~~- becomes exempt.~~

~~Individuals who regain eligibility based on the requirements above will remain eligible as long as they meet the above requirements.~~

~~Individuals who lose their employment or cease participation in work or work supplementation programs may continue to receive food stamps for up to three (3) consecutive months beginning from the date DSS is notified that work has ended.~~

~~The only remaining cure during the 36-month period is for the individual to:~~
~~comply with the work requirements of this section; or~~
~~to become exempt under other provisions of the requirement.~~

~~Treatment of Income and Resources~~

~~The income and resources of an individual made eligible due to the time limit shall be handled according to DSSM 9076.2.~~

~~Benefits Received Erroneously~~

~~If an individual subject to the time limit receives food stamp benefits erroneously, consider the benefits to have been received unless or until the individual pays it back in full.~~

~~Verification~~

~~Verification is handled according to DSSM 9032.16 and DSSM 9038.~~

~~Reporting Requirements~~

~~Individuals subject to the time limit must report changes in work hours below 20 hours per week, averaged monthly.~~

~~Any work performed in a job that was not reported will be counted as work when determining countable months.~~

~~Countable Months~~

~~Countable months are months during which an individual receives food stamps for the full month while not:~~

- ~~- exempt;~~
- ~~- meeting the work requirements;~~
- ~~- receiving prorated benefits.~~

9018.2 Maintaining and Regaining ABAWD Eligibility

7 CFR 273.24

This policy applies to applicants for and recipients of the Food Supplement Program who are able-bodied adults who do not have dependent children living with them.

Definitions

ABAWD (able-bodied adults without dependent children) means individuals without children in their FSP household who must work 20 hours a week and/or comply with certain work requirements in order to get food benefits.

Work is defined as:

- A. Work in exchange for money;
- B. Work in exchange for goods or services (in-kind work);
- C. Unpaid work which is verified; or
- D. Any combination of the above definitions.

Qualifying work programs include programs under:

- A. Workforce Investment Act;
- B. Trade Adjustment Assistance Act; or
- C. Employment and Training (except for job search or job search training programs).

Countable months are months during which an individual receives food benefits for the full month while not:

- A. Exempt
- B. Meeting the work requirements
- C. Receiving prorated benefits

1. Benefits for ABAWDs Are Time-Limited

Able-bodied adults without dependent children (ABAWDs) can only receive 3 months of food benefits in a 36 month period if they do not meet the work requirements. When the individual meets a work requirement, he or she may get benefits longer than 3 months.

2. ABAWDs Must Meet Work Requirements

An ABAWD meets the work requirement when he or she:

- A. Works at least 20 hours per week (averaged monthly which means 80 hours a month); or
- B. Participates in a work program at least 20 hours per week; or
- C. Works and participates in a work program for any combination of hours that totaled 20 hours per week; or
- D. Participates and complies with a workfare program.

3. ABAWDs May Be Exempted from Time Limits

The following individuals are exempt from the 3 month limitation even if they do not meet the work requirements.

- A. An individual who is under age 18.
The month after the individual turns 18 is the first month he or she must start meeting the ABAWD work requirements.
- B. An individual who is 50 years of age or older.
An individual is no longer considered an ABAWD the month he or she turns 50 years old.
- C. An individual who is obviously mentally or physically unfit for employment.
- D. An individual who is medically certified as physically or mentally unfit for employment.
This must be verified by a written statement from medical personnel.
- E. An individual who is receiving temporary or permanent disability benefits issued by governmental or private sources.
- F. An individual who is a parent (natural, adoptive, or step) of a household member under 18 years of age.
- G. An individual who is living in a FSP household with a person who is under age 18, even if the person under 18 is not eligible for or receiving food benefits.
- H. An individual who is pregnant.
- I. An individual who is exempt from work requirements according to DSSM 9018.3.

4. ABAWDs May Be Exempted for Good Cause

If the individual would have worked an average of 20 hours per week but missed some work for good cause, consider the individual to have met the work requirements if:

- A. The absence from work is temporary; and
- B. The individual retains his or her job.

Good cause includes circumstances beyond the individual's control, such as [but not limited to]:

- A. Illness;
- B. Illness of household member requiring the presence of the ABAWD;
- C. A household emergency; or
- D. The unavailability of transportation.

5. ABAWDs May Regain Eligibility

Regaining eligibility applies to individuals who have received three ABAWD months then were closed or denied for failure to comply with ABAWD work requirements.

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After closing, an individual can regain eligibility if during a 30-day period the individual:

- A. Works (paid or non-paid) for 80 hours or more; or
- B. Participates in and complies with a work program for 80 hours or more; or
- C. Participates in and complies with a work supplementation program; or
- D. Participates in any combination of work and participation in a work program for a total of 80 hours; or
- E. Participates in a DSS workfare program; or
- F. Becomes exempt for any reason.

6. Resources and Income of ABAWDs Must be Counted

The income and resources of individuals excluded from FSP eligibility because they have exhausted their ABAWD months are handled according to DSSM 9076.2.

7. ABAWDs Must Verify Certain Information

Verification is handled according to DSSM 9032 and DSSM 9038.

8. ABAWDs Must Report Certain Work Changes

Individuals subject to the time limit must report when their work hours fall below 20 hours per week, averaged monthly.

Any work performed in a job that was not reported will be counted as work when determining countable months.

9. Benefits Received Erroneously Count as ABAWD Months

If an individual subject to the time limit receives food benefits erroneously, consider the benefits to have been received.

Exception: If an individual pays back erroneously issued food benefits in full, that month is not counted as an ABAWD month.

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Chapter 51 (16 Del.C. Ch. 51)

ORDER

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Substance Abuse and Mental Health (DSAMH) initiated proceedings to promulgate new regulations regarding the process by which individuals can be detained for behavioral health assessment and treatment. The Department's proceedings to promulgate new regulations were initiated pursuant to 29 **Delaware Code**, Section 10114, with authority prescribed by 29 **Delaware Code**, Section 7971. This regulation was promulgated March 1, 2013.

The Department found it necessary to amend language in the regulation concerning children and published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the May 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2013, 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 regulation establishes the Division of Substance Abuse and Mental Health's regulations for the eligibility criteria and means by which individuals qualify to attain credentialing as a mental health screener. The current proposed amendment addresses specifically how the screening process applies to children.

Statutory Authority

16 Del.C. Ch. 51, Admission, Maintenance and Discharge of Patients with Mental Conditions

Background

House Bill 311 significantly updates the laws under which a person can be held involuntarily for up to 24 hours for a mental health evaluation. In place of the current system where a person is transported in handcuffs by police to a hospital emergency department, the bill allows a psychiatrist or credentialed mental health screener to evaluate a person anywhere and then transport that person to the most appropriate location for evaluation or treatment in the most appropriate and least restrictive manner. The changes in this bill will be phased in over a year to ensure that the greatly expanded, community-based services are fully operational before the complete change in procedure takes place. Credentialed Mental Health Screeners are to be in use by July, 2013.

In addition to providing people with a wider array of appropriate treatment options, these changes will free law enforcement from unnecessary transportation duties and long waits in hospital waiting rooms. This bill expands the number and kind of professional staff who are credentialed to involuntarily detain someone for a mental health evaluation, increases the immunity afforded to doctors, and expands immunity to other professionals involved in the process. In addition to moving Delaware towards best practices in this field and protecting the civil rights of Delawareans, these changes will enable the State to attain compliance with the terms set forth in Settlement Agreement United States v. State of Delaware, C.A. No. 11-591-LPS. This regulation delineates what who may be eligible, what information must be contained in the application to become credentialed as a Mental Health Screener, establishes the authority for the format for the training and delineates how the credentialed status must be maintained and how it may be suspended or revoked.

Under the current law, youth are evaluated under the same law as adults, thus the new screener requirement will apply to youth as well. Concerns were raised concerning the training curriculum for screeners which did not specifically address children. Therefore, DSAMH and the Division of Services for Children, Youth and their Families' Division of Prevention and Behavioral Health Services agreed to authorize psychiatrists and credentialed physicians (but not non-physicians holding the new credential) to authorize commitment-related detention of children. This preserves the status quo for juveniles until any new process/requirements are thought through and enacted.

Summary of Proposal

This regulation sets forth methods used to determine eligibility for training and credentialing as a mental health screener. Effective July 1, 2013, new policy is added to the Division of Substance Abuse and Mental Health at DSAMH 6002 to provide mental health screener credentialing requirements. Upon review and request by the Department of Services for Children, Youth and Their Families, the regulation is being amended to reserve the decision to detain persons under 18 years of age to physicians only.

Fiscal Impact Statement

The proposed regulation imposes no additional costs on DSAMH. Credentialing of Mental Health Screeners is required as a piece of Delaware's legislative and other efforts to improve the State's behavioral health care system in keeping with the U.S. Department of Justice Olmstead Settlement Agreement, entered into in July, 2011. The proposed regulation completes the promulgation of changes in the laws governing how the State acts to preserve the civil and human rights of individuals who may be recommended for involuntary detention under 16 Del.C. Chapter 51 as amended by HB 311 in July, 2012.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

DSAMH acknowledges receipt of the letters of comment offered by both MeadowWood Hospital and Rockford Center. However, the comments from both entities are outside the scope of the proposed change.

The Division gratefully acknowledges the endorsement offered by the State Council for Persons with Disabilities. DSAMH has considered also this agency's comments as presented in the letter and responds as follows:

Comment 1. First, in §3.1.3, insert "Delaware-licensed" between "A" and "psychiatrist.]"

Agency Response: Only a licensed physician may practice as a psychiatrist in Delaware, so this change is not

needed.

Comment 2. In §3.1.3, 3.2.4, 3.3.4, 3.4.3 and 3.5.2, SCPD recommends revised language.

A. The statutory term is "detention", not detainment

B. Literally, the regulation states that the screener "detains" the individual. This is not accurate. In general, the screener authorizes detention...

C. The relevant statutes do not authorize a screener to "abrogate" a detention or detainment...

Therefore, SCPD recommends that the above references be changed to "may authorize detention for a psychiatric evaluation."

Agency Response: Amended as recommended.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the May 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the amended new regulation to update the Division of Substance Abuse and Mental Health (DSAMH) to add policy regarding the process to credential mental health screeners is adopted and shall be final effective July 10, 2013.

Rita M. Landgraf, Secretary, DHSS

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

1.0 Mental Health Screener Credentialing

Title 16, Chapter 51 of the **Delaware Code** states that only psychiatrists and professionals credentialed by the Delaware Department of Health & Social Services (DHSS) as a Mental Health Screener (MH Screener) have the authority to detain or abrogate a detainment of a person involuntarily for a psychiatric evaluation. No person shall hold themselves out to the public as credentialed mental health screener unless the persons are credentialed in accordance with this chapter. The Division of Substance Abuse and Mental Health (DSAMH) is the DHSS Division responsible for implementing and enforcing this law.

2.0 Definitions

As used in this subchapter:

"Continuing Education Units (CEUs)" means a measure used in continuing education programs, particularly for those required in a licensed profession, in order for the professional to maintain the license. In the case of unlicensed professionals who do not qualify for CEUs, the equivalent for the purpose contact hours or certificates of attendance issued in lieu of CEUs for continuing behavioral health training and education.

"Credentialed Mental Health Screener" means an individual who has applied for and been approved to be credentialed as a mental health screener under Chapter 51 by the DSAMH.

"Crisis experience in a mental health setting" is defined as direct experience providing acute crisis services to people with mental health disorders in settings that include, but are not limited to, psychiatric assessment centers, hospital emergency rooms, crisis walk in settings, admission departments of psychiatric or general service hospitals, mobile crisis departments, drop in centers and certain settings found in the Department of Corrections.

"Licensed Mental Health Professionals" means individuals who are licensed by the State of Delaware and who are otherwise eligible to be credentialed as a mental health screener under Chapter 51 include licensed physicians (MD/DO) whose practice specialty is other than psychiatry; licensed registered nurses with a bachelor's degree in nursing (BSN); licensed advanced practice registered nurses (APN); licensed physician assistants (PA-C); licensed clinical psychologists (PhD/

Psy.D); licensed clinical social workers (LCSW); licensed mental health counselors (LMHC); and licensed marriage and family therapists (LMFT).

“Supervision of unlicensed mental health professionals by a psychiatrist” means an unlicensed mental health professional who needs to work under a psychiatrist licensed to practice medicine will perform this work under their organization’s practice standards and guidelines. This includes requirements that the credentialed mental health screener discuss the individual in care’s issues on the phone or through telepsychiatry with the supervising psychiatrist at the time of the detainment decision and assuring that this psychiatrist agrees and countersigns the decision made. An electronically transmitted copy or original detainment form with the supervising psychiatrist’s signature will need to be placed in the client’s medical record at the facility or site where the detainment occurred within 24 hours.

“Unlicensed mental health professional” means an individual who works under the direct supervision of a psychiatrist but does not hold a professional license issued by the State of Delaware.

3.0 Qualifications of Applicants for Credentialed Mental Health Screener

3.1 Psychiatrists

3.1.1 The psychiatrist must supply evidence of current licensure to practice medicine in Delaware.

3.1.2 No mental health screener credentialing is required.

3.1.3 A psychiatrist may ~~[detain or abrogate a detainment]~~ authorize detention] for a psychiatric evaluation of any person, over or under age 18.

3.2 Board Certified Emergency Physicians

3.2.1 Each physician applicant must submit qualifications; and

3.2.2 Each physician must supply evidence of current licensure to practice medicine in Delaware and current Board Certification by the American Board of Emergency Medicine.

3.2.3 Each physician will receive and be required to review an information packet on statewide resources for clients in crisis.

3.2.4 A credentialed Board Certified Emergency Physician may ~~[detain or abrogate a detainment]~~ authorize detention] for a psychiatric evaluation of any person, over or under age 18.

3.3 Physicians

3.3.1 Each physician applicant must submit qualifications; and

3.3.2 Each physician must supply evidence of current licensure to practice medicine in Delaware.

3.3.3 Each physician will be required to attend four hours of training to be credentialed as a MH Screener.

3.3.4 A credentialed physician may ~~[detain or abrogate a detainment]~~ authorize detention] for a psychiatric evaluation of any person, over or under age 18.

3.4 Licensed Non-Physician Mental Health Professionals

3.4.1 Each applicant must submit qualifications and supply evidence that:

3.4.1.1 If employed by DSAMH or a self-employed professional not affiliated with any Delaware health care facility, the applicant has five (5) years’ experience in mental health clinical and/or crisis settings as an employed or as a contracted professional.

3.4.1.2 If employed or contracted by any Delaware health care facility, the applicant has at least two (2) years’ experience in mental health clinical and/or crisis settings as an employed or as a contracted professional, and that non-state health care facilities will take responsibility for the years of experience required for their staff to be credentialed.

3.4.2 Licensed Non-Physician Mental Health Professionals must meet the following qualifications:

3.4.2.1 Registered Nurse. Each applicant shall document current licensure by the State of Delaware as a Registered Nurse with a BSN degree and in good standing, as set forth in 24 Del.C. Ch. 19.

- 3.4.2.2 Advanced Practice Nurse. Each applicant shall document current licensure by the State of Delaware as an Advanced Practice Nurse in good standing, as set forth in Title 24 **Del.C.** Ch. 19, and employment under a formal protocol with a Delaware licensed physician
- 3.4.2.3 Licensed Psychologist. Each applicant shall document current licensure by in the State of Delaware as a Licensed Clinical Psychologist in good standing, as set forth in 24 **Del.C.** Ch. 35.
- 3.4.2.4 Licensed Clinical Social Worker
- 3.4.2.4.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Clinical Social Worker in good standing, as set forth in 24 **Del.C.** Ch. 39.
- 3.4.2.5 Licensed Professional Counselor of Mental Health
- 3.4.2.5.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Professional Counselor of Mental Health in good standing, as set forth in 24 **Del.C.** Ch. 30
- 3.4.2.6 Licensed Marriage and Family Therapist
- 3.4.2.6.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Marriage and Family Therapist in good standing, as set forth in 24 **Del.C.** Ch. 30.
- 3.4.2.7 Licensed Physician Assistant.
- 3.4.2.7.1 Each applicant shall document current licensure by in the State of Delaware as a Physician Assistant in good standing, as set forth in 24 **Del.C.** Ch. 17, and employment under the delegated authority of a licensed physician.
- 3.4.3 A credentialed Licensed Non-Physician Mental Health Professional may ~~[detain or abrogate a detainment]~~ authorize detention for a psychiatric evaluation of a person age 18 or older.
- 3.5 Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist
- 3.5.1 Each unlicensed mental health professional who is applying to become credentialed as a mental health screener must submit qualifications, and supply evidence that:
- 3.5.1.1 Such person has had two years of clinical and/or crisis experience if working as a State employee or contractor; or if working with a Delaware Health Care Facility as an employee or contracted staff member;
- 3.5.1.2 Such person has at least a bachelors or masters degree in a mental health related field if working as a State employee or contractor; or if working with a Delaware Health Care Facility as an employee or contracted staff member; and
- 3.5.1.3 Such person has committed to completing forty (40) hours of crisis services in an employed position under direct supervision of a psychiatrist or credentialed mental health screener following completion of the mental health screener training and satisfactory score on the mental health screener credentialing exam.
- 3.5.2 A credentialed Unlicensed Mental Health Professional may ~~[detain or abrogate a detainment]~~ authorize detention for a psychiatric evaluation of a person age 18 or older.

4.0 Applications Process

- 4.1 Application for Credentialing
- 4.1.1 An individual who wishes to be credentialed as a MH Screener under Chapter 51 shall complete an Application for Credentialing as a Mental Health Screener to DSAMH.
- 4.1.1.1 The application shall include a resume, school transcripts, current work history including experience in working with people in mental health crises, current employment, and all contact information including Delaware license numbers and titles, and such other credentials or proof of certification as may be necessary to meet requirements set forth in section 3 above.
- 4.2 Application for Re-credentialing

- 4.2.1 All Delaware credentialed mental health screeners except as noted in 4.2.1.2 below will be required to re-apply every two (2) years, 60 days prior to the second anniversary date of the issued credential, for renewal of the credential to DSAMH
 - 4.2.1.1 The application for renewal shall require the submission of applicable CEU's, as well as such other credentials or proof of continuing licensure, credentials or certification as may be necessary to meet the requirements set forth in section 3 above to be re-credentialed.
 - 4.2.1.2 The only professionals not required to undergo this re-credentialing process are licensed physicians whose specialty is psychiatry and physicians who maintain Board Certification Emergency Physicians.
 - 4.2.1.2.1 DSAMH will provide any changes in state mental health or associated resources to this group in a timely manner and when these services become available or are changed in any way.

5.0 Training, Credentialing and Re-credentialing Requirements for Licensed and Unlicensed Mental Health Professionals

5.1 Training

The following standards will apply to the credentialing and re-credentialing of Mental Health Screeners and sets forth the minimum qualifications and training requirements.

- 5.1.1 For licensed physicians other than psychiatrists training guidelines for applicants will include content that may change over time and is up to DSAMH to direct, including acceptable CEUs generally related to psychiatric or crisis work.
- 5.1.2 For licensed applicants training guidelines for applicants will include content that may change over time and is up to DSAMH to direct, including acceptable CEUs generally related to psychiatric or crisis work.
- 5.1.3 For unlicensed applicants training guidelines for applicants will include content that may change over time and is up to DSAMH to direct, including acceptable CEUs generally related to psychiatric or crisis work.

5.2 Credentialing

5.2.1 Board Certified Emergency Physicians.

- 5.2.1.1 Compliance with qualifications specified in §3 above;
- 5.2.1.2 Compliance with training guidelines as specified in §5.1 above.

5.2.2 Licensed physicians other than psychiatrists and Board Certified Emergency Physicians:

- 5.2.2.1 Compliance with qualifications specified above;
- 5.2.2.2 Compliance with training guidelines as specified in §5.1 above, including completion of 4 hours of training by the DHSS Division of Substance Abuse and Mental Health; and
- 5.2.2.3 Satisfactory score on the credentialing examination.

5.2.3 Licensed Mental Health Professionals

- 5.2.3.1 Compliance with qualifications specified in §3 above;
- 5.2.3.2 Compliance with training guidelines as specified in §5.1 above, including completion of 40 hours of training by DSAMH; and
- 5.2.3.3 Satisfactory score on the credentialing examination.

5.2.4 Unlicensed Mental Health Professionals

- 5.2.4.1 Compliance with qualifications specified above;
- 5.2.4.2 Compliance with training guidelines as specified in §5.1 above, including completion of 40 hours of mental health screener training by DSAMH;
- 5.2.4.3 Satisfactory score on the credentialing examination

5.3 Re-Credentialing

- 5.3.1 Licensed Physicians other than psychiatrists and Board Certified Emergency Physicians:
 - 5.3.1.1 Compliance with qualifications specified in §3 above; and

5.3.1.2 Compliance with training guidelines as specified in §5.1 above, including completion of 4 hours of training by DSAMH every two years.

5.3.2 Licensed Mental Health Professionals

5.3.2.1 Compliance with qualifications specified above; and

5.3.2.2 Compliance with training guidelines as specified in §5.1 above, including completion of 4 hours of training by DSAMH every two years

5.3.2.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

5.3.3 Unlicensed Mental Health Professionals

5.3.3.1 Compliance with qualifications specified above; and

5.3.3.2 Compliance with training guidelines as specified in §5.1 above, including completion of 8 hours of training by DSAMH every two years

5.3.3.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

6.0 Credentialed Mental Health Screener Performance

6.1 Conflict of Interest Statement:

The intent of the law is to ensure that no person is detained for any reason other than experiencing symptoms associated with a mental condition that may result in danger to self or others, and that any conflicts of interest as set forth in 16 **Del.C.** §5122 are disclosed on the DSAMH Crisis Intervention Assessment Tool and 24-hour Emergency Admission form filed with DSAMH within 24 hours of signature of the detention order. DSAMH will collect and monitor all assessments, detentions and non-detentions performed by credentialed mental health screeners, whether a conflict of interest is disclosed or not, for purposes of ensuring that the intent of this law is met and that admissions are appropriate.

6.2 Record Keeping, Forms and Documentation. The following standards will apply to the Forms and Documentation required to monitor and report on the performance of credentialed mental health screeners as it pertains to compliance with conflict of interest disclosure in actions to detain, or undo a detention, of an individual under this statute.

6.2.1 Credentialed mental health screeners will be required to complete a DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form for the purpose of ensuring a standardized approach to assessing the needs of clients in crisis and documenting the decision premised upon that assessment. These forms will become part of the client's records and sent to DSAMH as soon as possible and within 24 hours by the credentialed MH Screener that signs the detainment order.

6.3 Data Review and Reporting. Detainment Orders, Assessment Tools and Emergency Admissions forms will be reviewed and the data collected will be recorded in a database. This database will include administrative information, such as the client MCI number, the date of contact, where the contact occurred, what staff member was lead in this response by name, the nature of the crisis, what was done including alternatives to inpatient care, who signed the detainment order, where the individual went once the detainment order was signed, and who transported the client; and clinical information, if a detainment order was not signed, documentation as to where the client went, to whom referred for care plans for follow-up, and transportation.

6.3.1 Reports from the DSAMH database will be publicly generated monthly showing aggregated data on detainments in Delaware.

6.3.2 Detainment data will be reviewed to monitor for anomalies in detainment rates to assure mental health screener performance improvement and compliance.

7.0 Suspension or Revocation of Mental Health Credential

7.1 The following outlines circumstances under which a credential may be suspended or revoked. DSAMH will monitor individuals and general facilities performing credentialed mental health screenings and detaining individuals for 24 hours under this regulation as specified in Section 6.0. Nothing in Section 6

relieves credentialed mental health screeners of the requirement to keep their own records on their work to detain or not detain individuals that they assess. Copies of the screening form are sufficient documentation if the individual mental health screener or organization that supports these screeners keeps this information protected and confidential under federal law. Compliance with federal laws on this documentation is the responsibility of the individual who has been credentialed as a Mental Health Screener.

- 7.1.1 Failure of any credentialed MH Screeners to be aware of, and operate in compliance with, the federal and state laws pertaining to protection of health records. Failure to comply with this requirement will result in immediate suspension of the Mental Health Screener credential.
- 7.1.2 Suspension or revocation of a professional license will result in the immediate revocation of the MH Screener credential.
- 7.1.3 Loss of psychiatric supervision. For unlicensed mental health professionals who cease to work under the supervision of a psychiatrist licensed to practice medicine, the Mental Health Screener credential is immediately revoked.
- 7.2 Compliance with notification of this revocation is the responsibility of the individual who has been credentialed as a Mental Health Screener.
- 7.3 Reinstatement of [the Mental Health Screener credential of] an individual for whom a credential has been suspended or revoked will be at the discretion of DSAMH, in light of circumstances surrounding the original suspension or revocation.

8.0 Payment for Voluntary and Involuntary Admissions.

Payment to hospitals for voluntary and involuntary admissions of clients in crisis will be made pending approval by a psychiatrist designated by the Secretary of Health and Social Services. Approval will depend on the outcome of an independent review of forms and documentation as specified in Section 6.0. The review's specific purpose will be to confirm that: the admission represents the most appropriate and least restrictive treatment for the client in crisis; that the duration of stay for the admitted client is reviewed and deemed appropriate, and that the State is the payer of last resort.

9.0 Appeal Process.

Any individual who has been denied credentialing as a mental health screener or who has had a screening credential suspended or revoked can appeal this decision by writing to the DSAMH Director. Such an appeal, based on knowledge and facts of this event, must be made within twenty (20) days of the denial. A response by the DSAMH Director will be forthcoming within thirty (30) days.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60, (7 Del.C. Ch. 60)
7 DE Admin. Code 1108

1108 Sulfur Dioxide Emissions From Fuel Burning Equipment

ORDER

Secretary's Order No.: 2013-A-0021

Date of Issuance: June 12, 2013

Effective Date of the Amendment: July 11, 2013

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 *revised* regulations to amend 7 **DE Admin. Code** 1108, Sulfur Dioxide Emissions from Fuel Burning Equipment. The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-06. The Department published its initial proposed regulation Amendments in the April 1, 2013 *Delaware Register of Regulations*, and held a public hearing on April 24, 2013. It should be noted that public comment was received from both the Delaware Chapter of the Sierra Club and the U.S. Department of Defense by the Department with regard to this proposed promulgation, and the Department provided a very thorough and detailed response to the same.

The proposed *revised* amendments to 7 **DE Admin. Code** 1108 will reduce the allowable content of sulfur in fuel oils combusted in Delaware, and to effectively reduce the emission of sulfur dioxide (SO₂) into the atmosphere. These proposed changes will aid in the attainment and maintenance of Delaware's air quality relative to the SO₂ and fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program. It should be noted that other North-East and Mid-Atlantic states are adopting similar regulations as well.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 7, 2013 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will lower sulfur content in residual fuel from 10,000 ppm to 5,000 ppm, in distillate fuel from 3,000 ppm to 15 ppm, and to set up a compliance date of July 1, 2016. DAQ also proposes to add necessary recordkeeping and reporting requirements to ensure compliance of the regulation. The new limits shall apply to all three counties in Delaware.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on April 24, 2013;
- 3.) The Department held a public hearing on April 24, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) reduce the allowable content of sulfur in fuel oils combusted in Delaware; (2) effectively reduce the emission of sulfur dioxide (SO₂) into the atmosphere; (3) the aforementioned reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program; and, lastly, because (4) the amendments are well supported by documents in the record;
- 6.) Specifically, the aforementioned proposed *revised* amendments to 7 **DE Admin. Code** 1108 will enable Delaware to do the following: (1) revise the current sulfur content limit in residual fuel from 1% to 0.5%; (2) revise the current sulfur content limit in distillate fuel from the current 0.3% to 15 ppm; (3) for any other fuel, the current sulfur limit of 1% shall be retained; (4) all aforementioned sulfur content

limits shall apply to all three counties of Delaware; (5) the compliance date for said sulfur content limits shall be July 1, 2016; (6) revise Section 4.2 to allow using ASTM method D2622, and any alternative method found in 40 CFR 80.580, to provide flexibility; (7) create a detailed certification and recordkeeping section; and (8) provide clarifying language to the existing language contained in 7 **DE Admin. Code** 1108 as so to provide clarity and a better understanding to the general public and the regulated community with regard to this regulation;

- 7.) The Department shall submit this Order approving the final *revised* 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

1108 Sulfur Dioxide Emissions from Fuel Burning Equipment

~~42/08/1983~~ 07/11/2013

1.0 General Provisions

- 1.1 The emission of sulfur dioxide (SO_2) from fuel burning equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 ~~The provisions of this regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7-DE Admin. Code 1102.~~
- 1.32 This regulation shall not apply to fuels used in fluid coking, **[operations or] fluid catalytic cracking [or]** catalyst regeneration **[operations]**.
- 1.43 This regulation shall not apply to fuels used by watercraft.

~~05/09/1985~~ 07/11/2013

2.0 Limit on Sulfur Content of Fuel

- 2.1 ~~Except as provided in 2.2 of this regulation~~ Prior to July 1, 2016, no person shall offer for sale, sell, deliver, or purchase any fuel having a sulfur content greater than 1.0% by weight when such fuel is intended for use in any fuel burning equipment in New Castle County. No person shall use any fuel having a sulfur content greater than 1.0% by weight in any fuel burning equipment in New Castle County.
- 2.2 ~~No~~ Prior to July 1, 2016, no person shall offer for sale, sell, deliver or purchase, or use in any fuel burning equipment, distillate fuel oil having a sulfur content greater than 0.3% by weight.
- 2.3 ~~Oil Sampling Method—Oil samples shall be obtained using proper American Society for Testing and Materials (ASTM) methods or alternative methods approved by the Department. On and after July 1, 2016, no person shall offer for sale, sell, deliver, or purchase any fuel having a sulfur content greater than the limits specified in 2.3.1 through 2.3.3 of this regulation, when such fuel is intended for use in any fuel burning equipment in Delaware, and no person shall use any fuel having a sulfur content greater than the limits specified in 2.3.1 through 2.3.3 of this regulation in any fuel burning equipment in Delaware.~~
- 2.3.1 For a distillate fuel, except as provided for in 2.4 of this regulation, 15 ppm by weight;
- 2.3.2 For a residual fuel, 0.5% by weight;
- 2.3.3 For any other fuel, 1.0% by weight.
- 2.4 ~~Sulfur concentrations of residual and distillate fuels shall be determined by the x ray absorption or the Parr oxygen bomb technique.~~ Transition Period for Distillate Fuel. Fuel having a sulfur content that meets the limit as specified in 2.2 of this regulation but is greater than the limit specified in 2.3.1 of this regulation may be offered for sale, sold, delivered, purchased, and used in Delaware on and after July 1, 2016 only as specified in 2.4.1 and 2.4.2 of this regulation.

- 2.4.1 Distillate fuel stored within Delaware prior to July 1, 2016 may be offered for sale, sold, purchased, or delivered for use in any fuel burning equipment in Delaware through June 30, 2017, provided records are kept for a period of two (2) years which document and certify the fuel was stored within Delaware prior to July 1, 2016.
- 2.4.2 Distillate fuel that meets the requirements of 2.4.1 of this regulation that is purchased and received for use on or before June 30, 2017 may be used in any fuel burning equipment in Delaware after June 30, 2017.

~~05/09/1985~~ 07/11/2013

3.0 Emission Control in Lieu of Sulfur Content Limits of 2.0 of This Regulation

~~The limits on sulfur content established by 2.0 of this regulation shall not apply to any fuel burning equipment employing emission control which limits sulfur dioxide emission to that which would result from burning, without emission control, a fuel permitted by 2.0 of this regulation. Any fuel burning equipment employing emission controls of SO₂, being covered by a permit issued pursuant to 7 DE Admin. Code 1102, which limits SO₂ emissions to less than that which would result from burning, without emission control, a fuel meeting the corresponding sulfur content limit in 2.0 of this regulation, may use fuel with a sulfur content greater than the corresponding limit in 2.0 of this regulation. In order to employ an emission control rather than sulfur content limits as a means of complying with this Regulation, an owner or operator of fuel burning equipment must demonstrate to the Department in advance that the equivalent emission will be achieved.~~

07/11/2013

4.0 Sampling and Testing Methods and Requirements

- 4.1 Oil samples shall be obtained using standard American Society for Testing and Materials (ASTM) methods ASTM D4057-06 "Practice for Manual Sampling of Petroleum and Petroleum Products," or any alternative method approved by the Department and the U.S. Environmental Protection Agency (EPA).
- 4.2 Sulfur concentrations of residual fuels and distillate fuels shall be determined by the following method:
- 4.2.1 The standard ASTM method D2622-10 "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry," or
- 4.2.2 Any alternative method specified in Title 40, Code of Federal Regulations, Part 80, Section 580 (July 2012 edition), or
- 4.2.3 Any alternative method approved by the Department and the EPA.
- 4.3 Any refinery subject to 2.0 of this regulation shall sample and determine the actual sulfur content of each batch of fuel oil they produce that is subject to 2.0 of this regulation, using the sampling and testing methods specified in 4.1 and 4.2 of this regulation.
- 4.4 Any person subject to 2.0 of this regulation that sells or delivers a batch or shipment of fuel oil that was blended, or came in contact, with any fuel oil or fuel additive that is not established as compliant with the requirements of 2.0 of this regulation based on sampling and testing using the methods specified in 4.1 and 4.2, or based on records received from the transferor pursuant to 5.1 of this regulation, shall sample and determine the actual sulfur content of that batch or shipment using the sampling and testing methods specified in 4.1 and 4.2 of this regulation.
- 4.5 Any person subject to 2.0 of the regulation that is not covered under 4.3 or 4.4 of this regulation shall, for each batch or shipment of fuel oil they sell or deliver:
- 4.5.1 Establish the sulfur content based on records they received from the transferor pursuant to 5.1 of this regulation, or
- 4.5.2 Sample and determine the actual sulfur content using the sampling and testing methods specified in 4.1 and 4.2 of this regulation.

07/11/2013

5.0 Recordkeeping and Reporting

- 5.1 Three (3) months after this revision of this regulation becomes effective, any person subject to 2.0 of this regulation, when selling or delivering any fuel oil to be used in Delaware (i.e., the transferor), shall provide to the person receiving the fuel oil (i.e., the transferee) an electronic or paper record that contains the following information:
- 5.1.1 Name, address and telephone number of the transferor.
 - 5.1.2 Name, address and telephone number of the transferee, and the address where the fuel oil is delivered.
 - 5.1.3 The volume of fuel being sold or delivered, and the date of sale or delivery.
 - 5.1.4 The type of fuel, and the sulfur content of the fuel as a delivered product, determined pursuant to 4.3, 4.4, or 4.5 of this regulation, as applicable, and expressed as one of the following:
 - 5.1.4.1 The actual sulfur content in ppm or percent (%) by weight, or
 - 5.1.4.2 A statement that certifies the sulfur content of the shipment is equal to or below the applicable limit specified in 2.0 of this regulation, or
 - 5.1.4.3 Except for a sale or delivery to an ultimate consumer, a product code or product description that identifies the sulfur content of the shipment as equal to or below the applicable limit specified in 2.0 of this regulation, provided such code or description is standardized throughout the distribution system in which it is used, and each downstream party is given sufficient information to know its full meaning.
- 5.2 Any person subject to 5.1 and 4.3, 4.4, or 4.5 of this regulation shall maintain records, for a minimum period of two (2) years from the date the records were generated, in electronic or paper format, that document the determination or establishment of the actual sulfur content of each batch or shipment of fuel oil.
- 5.3 Any person complying with 5.1.4.3 of this regulation shall maintain records, for a minimum period of two (2) years from the date the records were generated, in electronic or paper format, that document and explain the product code or product descriptions used.
- 5.4 For any transferee subject to requirements of a permit issued pursuant to 7 DE Admin. Code 1102, the records established pursuant to 5.1 of this regulation shall be maintained by the transferee for a minimum period of two (2) years from the date the record was generated.
- 5.5 The records as established pursuant to 5.2, 5.3, and 5.4 of this regulation shall be provided to the Department, upon written request by the Department, within thirty (30) days after such request is received.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

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

ORDER

1900 Board of Nursing

NATURE AND STAGE OF THE PROCEEDINGS

On January 1, 2013, the Delaware Board of Nursing published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 16, Issue 7. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 13, 2013 at a regularly scheduled meeting of the Delaware Board of Nursing to

receive verbal comments regarding the Board's proposed amendments to its regulations. The proposed amendments to Rule 14.2.1.5 and 14.2.1.6 would allow a nurse changing her primary state of residence from one compact state to another to continue to practice under her home state license for ninety days, an increase from the current thirty day requirement. These changes are an attempt to conform to the Nurse Licensure Compact Administrators' Model Rules and Regulations, which allow for 90 days.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 -Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 -Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on February 13, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comment provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1904(c) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments to Rule 14.2.1.5 and 14.2.1.6 allow a nurse changing her primary state of residence from one compact state to another to continue to practice under her home state license for ninety days, an increase from the current thirty day requirement, in conformance with the Nurse Licensure Compact Administrators' Model Rules and Regulations.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations, as published in the *Delaware Register of Regulations*, Vol. 16, Issue 7, January 1, 2013, and as attached hereto.

IT IS SO ORDERED this 8th day of May, 2013 by the **DELAWARE BOARD OF NURSING:**

Evelyn Nicholson, Public Member, President

Kathy L. Bradley, LPN

Robert Contino, RN, Nurse Educator, Vice President

Lyron Deputy, RN

Dianne Halpern, RN

Tracy D. Littleton, LPN

Robert Maddex, Public Member

Mary Lomax, Public Member

Madelyn Nellius, Public Member

Delphos Price, RN, CRNA, Adv. Practice Nurse Member

David Salati, RN

Harland Sanders, Jr., Public Member

Pam Tyranski, RN

***Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 736 (16 DE Reg. 736). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1900 Board of Nursing, Section 14.0

DIVISION OF PROFESSIONAL REGULATION

1900 Board of Nursing

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

ORDER

1900 Board of Nursing

NATURE AND STAGE OF THE PROCEEDINGS

On April 1, 2013, the Delaware Board of Nursing published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 16, Issue 10. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 8, 2013 at a regularly scheduled meeting of the Delaware Board of Nursing to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations on June 12, 2013, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on May 8, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1904(c), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed addition to Rule 6.4 permits graduates of out-of-state programs that may not have attained Board approved status to obtain licensure by examination if, at the time of submission of the application, the Board finds that the content of the out-of-state program is equivalent to the minimum requirements of the Board for full approval status established by these regulations. There is also an addition to the title of Regulation 6.4, reflecting this addition.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed, absent a minor technical change of capitalizing the word "board" as it is used in the regulation. As this is a minor, technical, non-substantive change, the regulation need not be republished and is adopted with this change.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new regulations are attached hereto.

SO ORDERED this 12th day of June, 2013.

BY THE DELAWARE BOARD OF NURSING

Evelyn Nicholson (President)

Kathy L. Bradley

Madelyn Nellius

Robert Contino (Vice President)

Lyron Deputy

Dianne Halpern

Tracy D. Littleton
 Robert Maddex
 Delphos Price
 Harland Sanders, Jr.

Mary Lomax
 Pam Tyranski
 David Salati

***Please note that no changes were made to the regulation as originally proposed and published in the April 2013 issue of the *Register* at page 956 (16 DE Reg. 1051). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1900 Board of Nursing, Section 6.0

DIVISION OF PROFESSIONAL REGULATION

1900 Board of Nursing

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

ORDER

1900 Board of Nursing

Pursuant to 29 **Del.C.** §10113(b)(4) and 24 **Del.C.** §1906(a)(1), the Delaware State Board of Nursing issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 **Del.C.** §10113(b)(4), Regulation 10.4.2.21 of the Board of Nursing must be changed as it improperly includes the term Advanced Practice Nurse, a grammatical error in the regulation. This is non-substantive changes to correct the technical errors of deleting the unnecessary term "Advanced Practice Nurse."

SUMMARY OF THE EVIDENCE

1. Rule 10.4.2.21 now states: "Allowing another person to use her/his nursing license, temporary permit, or Advanced Practice Nurse."

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

10.4.2.21 "Allowing another person to use her/his nursing license, or temporary permit, ~~or Advanced Practice Nurse.~~"

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, 2013.

IT IS SO ORDERED this 12th day of June, 2013.

BY THE DELAWARE BOARD OF NURSING

Evelyn Nicholson (President)
 Kathy L. Bradley
 Madelyn Nellius
 Tracy D. Littleton
 Robert Maddex
 Delphos Price
 Harland Sanders, Jr.

Robert Contino (Vice President)
 Lyron Deputy
 Dianne Halpern
 Mary Lomax
 Pam Tyranski
 David Salati

1900 Board of Nursing

(Break in Continuity of Sections)

10.0 Disciplinary Proceedings

10.1 Disciplinary Sanctions

10.1.1 The Board may:

- 10.1.1.1 refuse to issue a temporary permit or a license to practice nursing;
- 10.1.1.2 revoke, suspend or censure a license to practice nursing;
- 10.1.1.3 issue a letter of reprimand;
- 10.1.1.4 place a license on probationary status;
- 10.1.1.5 refuse to renew a license; or
- 10.1.1.6 otherwise discipline a licensee as provided by 24 **Del.C.** §1922.

10.2 Procedures

- 10.2.1 Any individual shall submit a written complaint of alleged violations of 24 **Del.C.** Ch. 19 to the Division of Professional Regulation. The Executive Director will retain a copy of the complaint.
- 10.2.2 Any Board member receiving a complaint alleging an applicant's or a practitioner's or licensee's violation of the Nurse Practice Act should promptly forward the complaint to the Division of Professional Regulation with a copy to the Executive Director of the Board of Nursing.
- 10.2.3 Hearings on licensing matters and complaints filed with the Board that allege an applicant or a licensee has violated the Nurse Practice Act, 24 **Del.C.** Ch. 19, shall be heard and determined by the Board in accordance with the applicable provisions of the Nurse Practice Act and the Administrative Procedures Act, 29 **Del.C.** Ch. 101. When the applicant or licensee, prosecuting Deputy Attorney General, and appointed Board member consent, the complaint may be resolved through the Consent Agreement process in lieu of a formal disciplinary hearing before the Board.

10.3 Reissuance of License Following Disciplinary Action

- 10.3.1 Upon application made by the licensee, a suspended or probated license may be reissued or reinstated in accordance with conditions that the Board may apply, after the imposed period of discipline has concluded and after evidence is presented to satisfy the Board that the condition that lead to the disciplinary action has been corrected.

10.4 Unprofessional Conduct Defined

- 10.4.1 Nurses whose behavior fails to conform to legal and accepted standards of the nursing profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.
- 10.4.2 Unprofessional conduct shall include but is not limited to the following:
 - 10.4.2.1 Performing acts beyond the authorized scope of the level of nursing practice for which the individual is licensed.
 - 10.4.2.2 Assuming duties and responsibilities within the practice of nursing without adequate preparation, or without maintenance of competency.
 - 10.4.2.3 Performing new nursing techniques and/or procedures without education and practice.
 - 10.4.2.4 Inaccurately and willfully recording, falsifying or altering a patient or agency ~~document~~ record related to patient care, employment, or licensure.
 - 10.4.2.5 Committing or threatening violence, verbal or physical abuse of patients or co-workers or the public.
 - 10.4.2.6 Violating professional boundaries of the nurse-patient relationship including but not limited to physical, sexual, emotional or financial exploitation of the patient or patient's significant other(s).
 - 10.4.2.7 Engaging in sexual conduct with a patient, touching a patient in a sexual manner, requesting or offering sexual favors, or language or behavior suggestive of the same.
 - 10.4.2.8 Assigning unlicensed persons to perform the practice of licensed nurses.

- 10.4.2.9 Delegating nursing practice to unqualified persons.
 - 10.4.2.10 Failing to supervise persons to whom nursing practice has been delegated.
 - 10.4.2.11 Leaving a patient assignment except in documented emergency situations.
 - 10.4.2.12 Failing to safeguard a patient's dignity and right to privacy in providing services.
 - 10.4.2.13 Violating the confidentiality of information concerning a patient.
 - 10.4.2.14 Failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.
 - 10.4.2.15 Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical or mental impairment or dependence on alcohol or drugs.
 - 10.4.2.16 Diverting or misappropriating monies, drugs, supplies or property of a patient agency or governmental program.
 - 10.4.2.17 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.
 - 10.4.2.18 Practicing professional or practical nursing with an expired license.
 - 10.4.2.19 Practicing as an Advanced Practice Nurse with an expired license.
 - 10.4.2.20 Practicing advanced practice, professional or practical nursing in this state without a current Delaware license or permit as defined in Section 14.0 Nursing Licensure Compact Rules and Regulations.
 - 10.4.2.21 Allowing another person to use her/his nursing license, or temporary permit, ~~or Advanced Practice Nurse.~~
 - 10.4.2.22 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider.
 - 10.4.2.23 Committing fraud, misrepresentation or deceit in taking NCLEX-RN or PN, or in obtaining a license, temporary permit or advanced practice license.
 - 10.4.2.24 Disclosing the contents of the licensing examination or soliciting, accepting or compiling information regarding the examination before, during or after its administration.
 - 10.4.2.25 Failing to report unprofessional conduct by another licensee.
 - 10.4.2.26 Practicing or holding oneself out as an Advanced Practice Nurse without a current license.
 - 10.4.2.27 Failing to comply with the requirements for mandatory continuing education, unless exempt.
 - 10.4.2.28 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.
 - 10.4.2.29 Failing to comply with the terms and conditions set out in a disciplinary action of the Board.
- 10.5 Duty to Report by Licensed Nurses and other agencies
- 10.5.1 A licensed nurse shall report, on a complaint form, names of subject individuals to the Board of Nursing if the nurse has reasonable cause to suspect that a nurse or an applicant has violated any of the grounds for discipline found in this section within thirty days of becoming aware of such information.
 - 10.5.2 Failure to report as required by rule 10.5.1 is a disciplinable offense pursuant to 24 **Del.C.** §1922(a)(11).

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

1900 Board of Nursing, Section 10.0

DIVISION OF PROFESSIONAL REGULATION

3500 Board of Examiners of Psychologists

Statutory Authority: 24 Delaware Code, Section 3506 (24 Del.C. §3506)

24 DE Admin. Code 3500

ORDER

3500 Board of Examiners of Psychologists

NATURE AND STAGE OF THE PROCEEDINGS

On April 1, 2013, the Delaware Board of Examiners of Psychologists published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 16, Issue 10. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 6, 2013 at a regularly scheduled meeting of the Delaware Board of Examiners of Psychologists to receive verbal comments regarding the Board's proposed amendments to its regulations. Following this public hearing, a second written comment period was held open for fifteen days.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on May 6, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There was no public comment provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §3506(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed revision to Rule 5.0 seeks to correct a typographical error. The proposed amendments to Rule 7.0 are an attempt to clarify the group supervision requirements for postdoctoral applicants. The proposed addition to Rule 10.0 is an attempt to define a continuing education hour, and the proposed revision to Rule 10.0 is an attempt to clarify the process by which teaching a workshop may be used for qualifying continuing education. The proposed creation of Rule 18.0 addresses the practice of telepsychology by licensees.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

SO ORDERED this 3rd day of June, 2013.

BY THE DELAWARE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Dr. Richard Brokaw, President, Sussex County

Dr. Marcia S. Halperin, New Castle County

Dr. Wesley R. Bowman, Vice President, New Castle Co.

Dr. Rachel A. Brandenburg, New Castle County

Lee Wheeler, Public Member, Secretary, Sussex County
Eleanor Allione, Public Member, New Castle County

Rosa Robinson, Public Member, Kent County
Dr. Joseph Zingaro, Kent County

***Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 736 (16 DE Reg. 736). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3500 Board of Examiners of Psychologists

EXECUTIVE DEPARTMENT

DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

Statutory Authority: 29 Delaware Code, Section 5029(a), (29 **Del.C.** §5029(a))

ORDER

401 Procedures Regarding Non-State Guaranteed Bonds 403 Administration and Operation of Council on Development Finance

Proposed changes to Regulation 401 Procedures Regarding Non-State Guaranteed Bonds and Regulation 403 Administration and Operation of Council on Development Finance were published in the Delaware *Register of Regulations* on February 1, 2013. The comment period remained open until March 3, 2013. There was no public hearing on the proposed changes to Regulations 401. Public notice of the proposed changes to Regulations 401 and 403 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No comments were submitted by the public.

Findings of Fact

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

Pursuant to 29 **Del.C.** §5053(k), The Delaware Economic Development Authority (the "Authority") is directed to prescribe such regulations as may be necessary to carry out the purposes of act creating the Authority, 29 **Del.C.** Subch. IV (the "Act"). The purpose of Regulation 401 is to regulate the administration of the Act, including, but not limited to, regulation of the process for applying to the Authority for the issuance of conduit bonds and the Authority's approval of such applications. The proposed regulations constitute a revision of the existing Regulation 401, to update fees and current practices. The requirements of the amended Regulation 401 best serve the interests of the public in that they reflect the actual process for processing and approving an application for conduit bond financing.

Pursuant to 29 **Del.C.** §5029(a), The Delaware Economic Development Authority (the "Authority") is directed to prescribe such regulations as may be necessary to carry out the purposes of the Council on Development Finance (the "Council".) The proposed regulations constitute a revision of the existing Regulation 403, to reflect current practices. The requirements of the amended Regulation 403 best serve the interests of the public in that they reflect the actual practices regarding the administration and operation of the Council.

Decision and Effective Date

Sections 5029(a) and 5053(k) of the Act authorize the Authority to draft rules and regulations to carry out its purposes.

The Authority hereby adopts these regulations effective May 30, 2013.

Text and Citation

The text of the proposed amendments to Regulations 401 and 403 last appeared in the *Register of Regulations* Vol. 16, Issue 8, pages 831-837.

IT IS SO ORDERED this 30th day of May, 2013.

Alan B. Levin, Chairman, Delaware Economic Development Authority

***Please note that no changes were made to the regulation as originally proposed and published in the February 2013 issue of the *Register* at page 831 (16 DE Reg. 831). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**401 Procedures Regarding Non-State Guaranteed Bonds and
403 Administration and Operation of Council on Development Finance**

OFFICE OF MANAGEMENT AND BUDGET

Statewide Benefits Office

Statutory Authority: 29 Delaware Code, Sections 5210(4) and 9602
(29 **Del.C.**, §§5210(4) & 9602)
19 **DE Admin. Code** 2001

ORDER

Employees Eligible to Participate in the State Group Health Insurance Program Eligibility and Enrollment Rules

Effective on July 1, 2013, under the authority of Title 29, Section 9602(b)(4) of the Delaware Code, the State Employee Benefits Committee (SEBC) voted to amend the Group Health Insurance Program (GHIP) Eligibility and Enrollment Rules shown below. The amended rules are effective upon publication in the *Register of Regulations* in accordance with 147th General Assembly's House Bill 75.

2001 Group Health Care Insurance Eligibility and Coverage Rules

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

2001 Group Health Care Insurance Eligibility and Coverage Rules

STATE BOARD OF PENSION TRUSTEES

THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Statutory Authority: 29 Delaware Code, Section 8308(c)(1) (29 **Del.C.** §8308(c)(1))
19 **DE Admin. Code** 2000

2002 State Employees' Pension Plan

2003 State Judiciary Pension Plan

2004 State Police Pension Plan

2005 County and Municipal Employees' Pension Plan

2006 County and Municipal/Firefighter Pension Plan

ORDER

The Board of Pension Trustees published proposed changes in the *Delaware Register of Regulations* on April 1, 2013 to the regulations of the following retirement plans: 2002 State Employees' Pension Plan; 2003 State

Judiciary Pension Plan; 2004 State Police Pension Plan; 2006 County and Municipal/Firefighter Pension Plan; and 2005 County and Municipal Employees' Pension Plan (the "Proposed Regulations"). The comment period remained open until May 15, 2013. Subsequently, the Board of Pension Trustees conducted a duly noticed public hearing on May 31, 2013. Public notice of the proposed changes to Proposed Regulations in the *Delaware Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No comments were submitted by the public during both the notice and comment period of April 1, 2013 to May 15, 2013, or at the public hearing conducted on May 31, 2013.

Findings of Fact:

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

Pursuant to 29 **Del.C.** § 8308(c)(1), the Delaware Office of Pensions (the "Pensions Office") is directed to prescribe such regulations as may be necessary to carry out the purposes of act creating the Pensions Office, 29 **Del.C.** Ch. 83, Subch. I (the "Act"). The purpose of the Proposed Regulations is to regulate the administration of the Act, including, but not limited to, regulation of the Delaware Public Employees' Retirement System (the "System") which consists of nine retirement plans and three commingled pension funds. The proposed regulations delete obsolete language, bring the regulations into compliance with changes in federal law, and clarify the definitions of casual/seasonal, regular part-time, substitute, and temporary employee. Identical update and formatting changes are made in each set of regulations. The requirements of the amended Proposed Regulations best serve the interests of the public in that they reflect the actual, updated process and practices for administering the retirement plans within the System in compliance with the changes in Federal Law.

Decision and Effective Date

Section 8308(c)(1) of the Act authorize the Pensions Office to draft rules and regulations to carry out its purposes.

The Authority hereby adopts these regulations effective July 11, 2013.

Text and Citation

The text of the proposed amendments to the Proposed Regulations last appeared in the *Delaware Register of Regulations*, Vol. 16, Issue 10, pages 1065-1066.

IT IS SO ORDERED this 7th day of June, 2013.

David Craik, Pension Administrator, Delaware Office of Pensions

***Please note that no changes were made to the regulation as originally proposed and published in the April 2013 issue of the *Register* at page 1065 (16 DE Reg. 1065). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

The Delaware Public Employees' Retirement System

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER THIRTY-NINE**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: REESTABLISHMENT OF THE STATEWIDE INTEROPERABILITY EXECUTIVE COUNCIL TO PROMOTE AND ENHANCE STATEWIDE INTEROPERABILITY OF PUBLIC SAFETY COMMUNICATIONS SYSTEMS

WHEREAS, the safety of all Delawareans is of paramount importance; and

WHEREAS, effective public safety communications are critical to protecting the lives and property of the citizens of Delaware; and

WHEREAS, to communicate effectively with the public about safety issues, all levels of government must cooperate and share a wide variety of data, including voice, electronic, and video information;

WHEREAS, the Federal Communications Commission has adopted new technological and coordination requirements that affect the ability of public safety communications systems to interoperate with one another; and

WHEREAS, state, federal, local, and private entities with similar communications requirements must work cooperatively to promote and enhance statewide interoperability of public safety communications systems; and

WHEREAS, the attainment of interoperable public safety communications requires statewide coordination and leadership; and

WHEREAS, to advance the above-referenced goals, the Statewide Interoperability Executive Council was established by Executive Order Number 104, signed by Delaware Governor Ruth Ann Minner in November 2007; and

WHEREAS, the Statewide Interoperability Executive Council would benefit from additional diversity and flexibility in power of appointment of its members;

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 as follows:

1. The Delaware Statewide Interoperability Executive Council (hereinafter, "SIEC") is hereby reestablished. The SIEC shall consist of the following members:

a. The Secretary of the Department of Safety and Homeland Security or his or her designee, appointed by the Secretary;

b. The Secretary of the Department of Transportation or his or her designee, appointed by the Secretary;

c. The Chief Information Officer of the State of Delaware or his or her designee, appointed by the Chief Information Officer;

d. The Secretary of the Department of Health and Social Services or his or her designee, appointed by the Secretary;

e. The Commissioner of the Department of Corrections or his or her designee, appointed by the Commissioner;

f. The Adjutant General of the Delaware National Guard or his or her designee, appointed by the Adjutant General;

g. A representative of New Castle County Government, appointed by the County Executive;

h. A representative of Kent County Government, appointed by the County Administrator;

i. A representative of Sussex County Government, appointed by the County Administrator;

j. A representative of the City of Wilmington, appointed by the Mayor of Wilmington;

k. A representative of the Delaware League of Local Governments, appointed by the President of the League;

l. A representative of the Delaware Volunteer Firefighters Association, appointed by the President of the DVFA;

m. A representative of the Delaware Police Chiefs' Council, appointed by the Chairperson of the Council;

n. A representative of the Delaware Public Service Commission, as appointed by the Chairperson of the Commission;

- o. A representative of the Office of the Governor; appointed by the Governor; and
 - p. Other members as recommended by the SIEC, as approved and appointed by the Governor.
2. All members of the SIEC shall serve at the pleasure of the appointing authority. The Secretary of the Department of Safety and Homeland Security shall be the Chairperson of the SIEC.
 3. The Chairperson of the SIEC may form subcommittees consistent with the needs of the SIEC to address public safety interoperability issues including, but not limited to the following: technical support, operations support, and training and exercise support. The subcommittees may include individuals who are not members of the SIEC but who have demonstrated an interest or expertise in public safety interoperability issues. The SIEC Chair shall appoint an SIEC member to serve as Chair of each subcommittee.
 4. The purpose of the SIEC shall be to provide policy-level direction and promote efficient and effective use of resources for matters related to public safety communications interoperability. To that end it shall:
 - a. Develop and maintain a statewide communications interoperability plan;
 - b. Develop standards for public safety communications to ensure consistent development of existing and future communications infrastructure;
 - c. Promote cooperation among state, federal, and local public safety agencies in addressing statewide communications interoperability needs in Delaware;
 - d. Review priorities for statewide communications interoperability needs and assist in the development of projects, plans, policies, standards, priorities, and guidelines for communications interoperability;
 - e. Ensure adequate wireless spectrum to accommodate all public safety communications; and
 - f. Provide recommendations to the Governor and the Delaware General Assembly, when appropriate, concerning issues related to statewide communications interoperability for public safety in Delaware.
 5. The SIEC shall adopt and operate in accordance with bylaws. These bylaws may be amended, supplemented, or repealed as needed by the SIEC.

Jack A. Markell,
Governor

EXECUTIVE ORDER NUMBER FORTY

June 7, 2013

TO: Heads Of All State Departments And Agencies

RE: Establishment Of The Delaware Justice Reinvestment Oversight Group To Ensure Effective Implementation Of Senate Bill 226

WHEREAS, from 2011 to 2012, the Delaware Justice Reinvestment Task Force conducted a comprehensive examination of the Delaware criminal justice system; and

WHEREAS, further to the Task Force's recommendations, the Delaware Legislature passed Senate Bill 226, which was signed into law in August 2012; and

WHEREAS, Senate Bill 226 requires that the Delaware Department of Corrections and the judiciary implement important reforms; and

WHEREAS, if implemented successfully, Senate Bill 226 could reduce the prison population and produce savings of up to \$27 million over five years, which could be available for reinvestment; and

WHEREAS, a Justice Reinvestment Oversight Group will, through a deliberative and rigorous process, help to ensure effective implementation of Senate Bill 226 (hereinafter "SB 226");

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby ORDER that:

1. The Delaware Justice Reinvestment Oversight Group (hereinafter "Oversight Group") is hereby established. The Oversight Group will consist of:
 - a. Two members of the Senate, both appointed by the President pro tempore of the Senate;
 - b. Two members of the House of Representatives, both appointed by the Speaker of the House;
 - c. The President Judge of the Superior Court or designee;
 - d. The Chief Judge of the Court of Common Pleas or designee.

- e. The Chief Magistrate of the Justice of the Peace Court or designee;
 - f. The Secretary of the Department of Labor or designee;
 - g. The Secretary of the Department of Health and Social Services or designee; and
 - h. The Commissioner of the Department of Corrections or designee.
2. The chair of the Oversight Group shall be the President Judge of the Superior Court.
 3. A quorum of the Oversight Group shall consist of a majority of members. If a quorum is met at any meeting, it is a sufficient number of members for any official action to be taken by the Oversight Group.
 4. Each voting member shall be entitled to appoint a single individual to serve as proxy for the duration of his term if the member is unable to attend a meeting of the Oversight Group.
 5. Members of the Oversight Group shall receive no compensation for their services, except that any member may be reimbursed for actual expenses incurred in the performance of their duties by the agency or department in which they serve as an official or employee.
 6. When the following items are on the agenda of the Oversight Group, the following representatives shall be invited to attend the meeting:
 - a. When the Oversight Group reviews the progress of state agencies in implementing SB 226, a representative from each of the Attorney General's Office and the Public Defender's Office shall be invited to the meeting.
 - b. When the oversight committee considers the reallocation of resources, a representative of the Department of Health and Social Services shall be invited to the meeting.
 - c. A representative of the Office of Management and Budget shall be invited to all meetings of the Oversight Group.
 7. All executive branch departments and agencies shall, upon request of the Oversight Group or the Governor, provide requested services, information, and technical assistance to support the goals of the Task Force.
 8. The Oversight Group shall meet as soon as practicable after appointment. Thereafter, the Oversight Group shall meet at least bi-annually and at the call of the chair or by a majority of the members.
 9. The Oversight Group terminates three years after its first meeting, unless the Governor, via Executive Order, continues it for a specified period of time.
 10. The Oversight Group shall:
 - a. Review the implementation of SB 226 including, but not limited to:
 - i. Establish reporting requirements for the agencies tasked with implementing SB 226;
 - ii. Receive and review reports from the agencies; and
 - iii. Establish and review outcome measures related to SB 226.
 - b. Establish funding priorities and submit an application to the U.S. Department of Justice's Bureau of Justice Assistance (BJA) for Justice Reinvestment Initiative seed funding.
 - c. Develop a plan for (i) measuring the cost impacts of SB 226 and (ii) reallocation of resources if any savings are realized.
 - d. Identify and recommend statutory changes that facilitate the implementation of SB 226.
 - e. Undertake such additional studies or evaluations as the Oversight Group considers necessary to further the goals of SB 226.
 - f. On or before December first of each year, beginning in 2013, report on implementation progress, cost impacts, and reallocation of resources to the Governor, General Assembly, and Supreme Court, the first report to be submitted by December 31, 2013 and annually thereafter.
 11. The Delaware Criminal Justice Council shall:
 - a. Provide staff assistance and support to the Oversight Group, as needed.
 - b. Administer any grant funding received through applications made by the Oversight Group.

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)

Secretary's Order No.: 2013-A-0019

Approving Final Revision to Delaware's State Implementation Plan (SIP) for the Implementation, Maintenance and Enforcement of the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS), Pursuant to the Requirements of Section 110(a)(2)(A)-(M) of the Federal Clean Air Act (CAA)

Date of Issuance: May 29, 2013

Effective Date of the Amendment: June 11, 2013

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

Background and Procedural History

This Order considers the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). Effective June 2, 2010, the U.S. Environmental Protection Agency (EPA) strengthened the sulfur dioxide NAAQS by adding a new 1-hour standard of 75 parts per billion. Section 110(a) of the Clean Air Act requires States to submit to EPA a SIP that provides for implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. Section 110(a)(2) lists the elements that are to comprise the implementation plan, which include basic program elements such as enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection.

The proposed SIP document discusses how Delaware meets each requirement of Section 110(a)(2)(A)-(M) of the Clean Air Act for the 2010 sulfur dioxide NAAQS. Because there have been NAAQS in existence for many years that cover sulfur dioxide, the Clean Air Act Section 110 infrastructure requirements are already substantially addressed in Delaware's SIP. Consequently, this revision contains no new rules or regulations.

The Department published its initial proposed revision to the aforementioned Delaware SIP in the April 1, 2013 *Delaware Register of Regulations*, and held a public hearing on April 24, 2013. It should be noted that no members of the public attended the aforementioned hearing held by the Department, however, comment was received from EPA on April 22, 2013 with regard to this proposed SIP. The Department thoroughly reviewed EPA's comments and responded to the same fully by adding some additional citations and references within the Plan for improved clarity and understanding.

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 EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 28, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan, which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS), as attached to the Report as Appendix A.

Findings and Discussion

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

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). With the adoption of this Order, Delaware will once again demonstrate that the contingency requirements of the Clean Air Act (CAA) are met.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed SIP revision as final;
- 2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on April 24, 2013;
- 3.) The Department held a public hearing on April 24, 2013, in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;
- 5.) The recommended revision to Delaware's State Implementation Plan (SIP) which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) should be adopted as final, thereby enabling Delaware to (1) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met; and (2) because the revision is well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final revision to Delaware's State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) 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

**Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards (NAAQS)
State Implementation Plan Revision to address the Clean Air Act Section 110 Infrastructure Elements For
the 2010 Nitrogen Dioxide NAAQS**

May 20, 2013

1.0 Background

Effective August 23, 2010, the Environmental Protection Agency (EPA) established a new 1-hour primary National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO₂) at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.¹ Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each state is required to submit to the EPA a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS.² This SIP revision fulfills this requirement relative to the 2010 SO₂ NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

1. 75 FR 35520

2. SIPs meeting CAA §110(a)(1) and (2) are also known as "infrastructure" SIPs.

Delaware's initial SIP was approved by the 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. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled in the Code of Federal Regulations at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the CAA, specifically, CAA §110(a)(2), relative to the 2010 SO₂ NAAQS. Under the heading "*Delaware's Plan*" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how the 2010 SO₂ NAAQS is being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law³, which gives the Delaware Department of Natural Resources and Environmental Control (DNREC) the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 2010 SO₂ NAAQS are already contained in Delaware's SIP. The following Table identifies those SIP provisions. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table 1-1 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA

3. Referred to in this document as "7 DeI.C." followed by the specific section citation (e.g., §6005).

<p>§110(a)(2)(A)</p>	<p>Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.</p>	<p>For the 2010 SO₂ NAAQS, the following emission limitations and schedules contained in Delaware's approved SIP.</p> <ul style="list-style-type: none"> • 7 DE Admin. Code 1101^a, Definitions And Administrative Principles • 7 DE Admin. Code 1108, <u>Sulfur Dioxide Emissions From Fuel Burning Equipment</u> • 7 DE Admin. Code 1109, <u>Emissions Of Sulfur Compounds From Industrial Operations</u> • 7 DE Admin. Code 1110, <u>Control Of Sulfur Dioxide Emissions Kent And Sussex Counties</u> • 7 DE Admin. Code 1127, Stack Heights • 7 DE Admin. Code 1136, <u>Acid Rain Program</u> • 7 DE Admin. Code 1144, Stationary Generator Emissions, November 1, 2007 • 7 DE Admin. Code 1145, <u>Excessive Idling Of Heavy Duty Vehicles</u>, August 12, 2005 • 7 DE Admin. Code 1146 <u>Electric Generating Unit (EGU) Multi-Pollutant Regulation</u>, November 21, 2006 	<p>40 CFR 52.420(c)</p>
<p>§110(a)(2)(B)</p>	<p>Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.</p>	<p>7 DE Admin. Code 1117 Source Monitoring, Record Keeping And Reporting and 7 DE Admin. Code 1103, Ambient Air Quality Standards, provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.</p>	<p>40 CFR 52.420(c)</p>

GENERAL NOTICES

<p>§110(a)(2)(C)</p>	<p>Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;</p>	<p>Delaware implements its Construction and Operation Permit Program requirements under 7 DE Admin. Code 1102 and 1125. These existing permitting programs ensure that the construction and modification of both major and minor stationary sources do not cause or contribute to a violation of the SO₂ NAAQS.</p> <p>7 DE Admin. Code 1125 fulfills parts C and D of Title I of the CAA; governing preconstruction review and permitting of any new or modified major stationary sources of air pollutants. 1125 is approved in the DE SIP. Under 1125 any major source or modification that results in a net significant increase of SO₂ (40 TPY or greater) must apply Best Available Control Technology (BACT) to reduce SO₂ emissions.</p> <p>7 DE Admin. Code 1102 provides for the evaluation and necessary regulation of any stationary source that emits equal to or greater than 0.2 lb of any air contaminate, including SO₂, in any one day.</p> <p>In addition, the measures described in CAA 110(a)(2)(A) are enforced, in part, through permits issued pursuant to DE Admin. Codes 1102 and 1125.</p>	<p>40 CFR 52.420(c)</p>
<p>§110(a)(2)(E)(iii)</p>	<p>(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;</p>	<p>The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.</p>	

§110(a)(2)(F)	<p>Require, as may be prescribed by the Administrator—</p> <p>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p> <p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</p>	<p>§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include to DE Admin. Codes 1117 and 1103. These requirements are included in Delaware's SIP, as necessary.</p> <p>§110(a)(2)(F)(ii): Specific emission reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include DE Admin. Code 1117. These requirements are included in Delaware's SIP.</p> <p>These regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the 2010 SO₂ NAAQS.</p>	40 CFR 52.420(c)
§110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;	7 DE Admin. Code 1115, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in Delaware's SIP.	40 CFR 52.420(c)
§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. This does not apply because no part of Delaware is designated nonattainment for the 2010 SO ₂ NAAQS.	
§110(a)(2)(J) (PSD)	Meet the applicable requirements of part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in 7 DE Admin. Code 1125, Preconstruction Review.	

a. Delaware's air quality regulations are codified in Delaware's administrative code, - Title 7 Natural Resources and Environmental Control, 1100 Air Quality Management Section. Citations are expressed in this document as "7 DE Admin. Code" followed by the specific subpart of 1100. All portions of the DE Admin. Code referred to in this document are already included in Delaware's SIP.

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions for the 2010 SO₂ NAAQS. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A–M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

(A) §110(a)(2)(A) Requirement: Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA, to include the requirements associated

with the 2010 SO₂ NAAQS. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 **Del.C.**, Chapter 60. This authority is applicable to the 2010 SO₂ NAAQS.

- (B) **§110(a)(2)(B) Requirement:** Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for the 2010 SO₂ NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Delaware currently measures and reports SO₂ concentrations from our monitoring sites located in Wilmington near MLK Boulevard, Delaware City, Bellefonte, Summit Bridge, and Lewis.
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network Delaware provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. Delaware submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- Other requirements of the 2010 SO₂ NAAQS include fully operational SO₂ air quality monitoring network in place by January 1, 2013. Based on census and emissions data, Delaware has the appropriate number and location of SO₂ monitors in New Castle County and in Sussex County. All monitors are operational as of January 1, 2013.

- (C) **§110(a)(2)(C) Requirement:** Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware, through its Division of Air Quality, exercises its programmatic authority to utilize the enforcement powers set out in

7 Del.C. §6005 entitled “Enforcement; civil and administrative penalties; expenses”; 7 Del.C. §6013 entitled “Criminal penalties”; and 7 Del.C. §6018 entitled “Cease and desist order.” Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

- (D) **§110(a)(2)(D) Requirement:** 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 126⁴ and 115⁵ (relating to interstate and international pollution abatement).

Delaware’s Plan: Delaware’s SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS, to include the 2010 SO₂ NAAQS, and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware’s legal authority is contained in the following:

- Delaware Code Title 7, Chapter 60 §6010(c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to regulate sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.
- 110(a)(2)(D)(i)(I): While the U.S. Environmental Protection Agency (EPA) has not yet designated any area of the country as nonattainment for the 2010 SO₂ NAAQS, on February 7, 2013 the EPA did send letters to state and tribal leaders outlining the areas it is considering designating as non-attainment. The nearest area to Delaware that EPA is considering designating nonattainment is Indiana County, Pennsylvania, which is about 280 kilometers west of the northern borders of Delaware.
- SO₂ is readily removed from the atmosphere through processes such as scavenging, chemical reactions, soil and surface water absorption, and dry deposition. Because of these removal processes the highest ambient concentrations of SO₂ emissions generally occur relatively close to one or a few key SO₂ sources in an area (often within 10-20 kilometers of that parent source or

4. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

sources) and decrease quickly as the distance from an SO₂ source increases.⁶ Thus, from an air quality management perspective, the SO₂ NAAQS is considered to be a “source-oriented” NAAQS rather than a “regional” one (i.e., more similar to the lead NAAQS than the ozone NAAQS). Accordingly, in order for SO₂ emissions from Delaware to contribute significantly to non-attainment in, or interfere with maintenance by, any other state, the nonattainment or maintenance area would need to be located in close proximity to a source in Delaware.

- Given that 1) the “nearest” area that EPA is considering designating as nonattainment is Indiana, PA, which is geographically upwind of Delaware⁷ and far away from the closest Delaware border, 2) urban SO₂ emissions decrease exponentially over time and distance, 3) the SO₂ NAAQS is considered to be a “source-oriented” NAAQS rather than a “regional” one and 4) EPA has indicated that it is not considering designating as nonattainment any area near enough to Delaware to be significantly impacted by Delaware’s SO₂ emissions; Delaware emissions do not significantly contribute to nonattainment in, or interfere with maintenance by, any other area with respect to the 2010 SO₂ NAAQS.
- All major stationary sources are subject to Prevention of Significant Deterioration (PSD) permitting programs under the PSD of 7 **DE Admin. Code** 1125, Preconstruction Review. The requirements of 1125 ensure no new or modified SO₂ emitting source will cause or contribute to non-attainment in any area.
- 110(a)(2)(D)(i)(II): The requirements of CAA 110(a)(2)(D)(i)(II) are met by new major sources and major modifications in Delaware being subject to the PSD requirements which are contained in Section 3.0 of 7 **DE Admin. Code** 1125, Preconstruction Review. The visibility prong of §110(a)(2)(D)(i)(II) has been met through an approved regional haze state implementation plan (SIP). Delaware’s regional haze SIP was approved on July 19, 2011 (76 FR 42557).
- 110(a)(2)(D)(ii): Nothing in Delaware’s statutory or regulatory authority prohibits or otherwise interferes with Delaware’s ability to exercise sections 126 and 115 of the CAA.

(E) §110(a)(2)(E) Requirement: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,⁸ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or

5. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

6. For modeling purposes, EPA recommends using an SO₂ urban half-life of 4 hours (40 CFR Part 51, Appendix W).

7. The prominent wind direction on the east coast is westerly (i.e., the winds are predominately from Indiana, PA to Delaware).

8. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §110(a)(2)(E) (iii) are not applicable to Delaware as discussed in Section 1.0 of this document.

Delaware's Plan: For §110(a)(2)(E)(i), Delaware has adequate authority under state law pursuant to 7 **Del.C.** Chapter 60 to carry out its SIP obligations with respect to the 2010 SO₂ NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines under 7 **Del.C.** Chapter 60. The Division of Air Quality is responsible for developing, implementing, and enforcing the SIP. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

For §110(a)(2)(E)(ii), Delaware finalized a SIP document that satisfies CAA §110(a)(2)(E)(ii) and §128 by including in the SIP applicable requirements of 29 **Del.C.**, Ch. 58, "Laws Regulating the Conduct of Officers and Employees of the State." This final document was submitted to the EPA as a SIP revision on January 11, 2013 and was approved and published in the Federal Register on April 17, 2013 (78 FR 22785).

- (F) **§110(a)(2)(F) Requirement:** Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of SO₂ emissions and emissions related-data from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100.

- (G) **§110(a)(2)(G) Requirement:** Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;⁹

Delaware's Plan: Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

7 **Del.C.** §6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 **Del.C.** §6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 **Del.C.** §6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 **Del.C.** §6018). Thus, it necessarily follows that any discharge of an air

contaminant, including SO₂, that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.

- (H) **§110(a)(2)(H) Requirement:** Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

- (I) **§110(a)(2)(I) Requirement:** In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

Delaware's Plan: This does not apply because no part of Delaware is designated nonattainment for the 2010 SO₂ NAAQS.

- (J) **§110(a)(2)(J) Requirement:** Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).¹⁰

- **Delaware's Plan:** Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:
- **7 DE Admin. Code 1132, Transportation Conformity,** provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide a forum for consultation with local governments. Delaware's MPOs are: WILMAPCO, Kent County MPO, and the Salisbury-Wicomico MPO. Regional planning organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are on-going in accordance with EPA Rules. All SIP revisions and new/amended regulations undergo public notice and hearing, pursuant to **7 Del.C. Chapters 29 and 60,** which include publication in the newspapers and in the Delaware *Register*, and which have allowed for comment by the both the public and local political subdivisions. Delaware believes the public notice and hearing processes also fulfills the section 121 consultation

9. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.

- DNREC makes real-time and historical air quality information available on its Web site.
- PSD requirements necessary to implement the 2010 SO₂ NAAQS are SIP approved and implemented through the requirements of 7 DE Admin. Code 1125, Preconstruction Review.
- With regard to visibility protection, there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2010 SO₂ NAAQS. Delaware is complying with, and will continue to comply with the visibility protection and regional haze program requirements under Part C of the CAA.

- (K) **§110(a)(2)(K) Requirement:** Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Delaware's Plan: Delaware has the authority and technical capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions, and will continue to perform modeling as necessary, but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit to the EPA the Air Quality modeling data as part of Delaware's relevant SIP submissions, permit actions,¹¹ and through federal grant commitments or in other ways that EPA may request.

- (L) **§110(a)(2)(L) Requirement:** Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 Del.C. §§6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "Delaware" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits

10. §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

11. Permit modeling requirements are specified in Section 3.0 of DE Admin Code 1125, Requirements for Preconstruction Review, as approved by EPA on October 2, 2012 (77 FR 60053).

Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

- (M) §110(a)(2)(M) Requirement:** Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 **Del.C.** §6006 and 6010 and 29 **Del.C.** Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. The public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M) for the 2010 SO₂ NAAQS.

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Tuesday, July 9, 2013 beginning at 1:30 p.m. A business meeting will be held on the following day, Wednesday, July 10, 2013 beginning at 12:15 p.m. Both the hearing and the meeting are open to the public and will be held at the Carvel State Office Building, 820 North French Street, 2nd Floor Auditorium, Wilmington, Delaware 19810. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
101 On-Farm Home Processing of Non-Potentially Hazardous Foods
PUBLIC NOTICE

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

The Department of Agriculture will take written comments on the proposed Regulations until July 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shortridge, Chief of Community Relations
2320 South DuPont Highway, Dover, DE 19901
(302) 698-4500
daniel.shortridge@state.de.us

OFFICE OF THE SECRETARY
1201 Nutrient Management Certification Regulations
PUBLIC NOTICE

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

The Department of Agriculture will take written comments on the proposed Regulations until July 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shortridge, Chief of Community Relations
2320 South DuPont Highway, Dover, DE 19901
(302) 698-4500
daniel.shortridge@state.de.us

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, July 18, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY
206 Internet Lottery Regulations
PUBLIC NOTICE

Delaware Department of Finance ("Department"), Office of the State Lottery, pursuant to 29 Delaware Code, Section 4826 (29 Del.C. §4826) is proposing amendments to 10 DE Admin. Code 206 in response to the signing of House Bill 333, the Delaware Gaming Competitiveness Act of 2012, on June 28, 2012 which authorized Internet Lotteries.

These amendments will update Lottery regulations to include new Internet Lottery regulations. Internet Lotteries are defined by 29 **Del.C.** §4801(i) as "all lottery games in which the player's interaction with the game operated by the Office occurs over the Internet (which, for purposes of this chapter, shall include any public or private computer or terminal network, whether linked electronically, wirelessly, through optical networking technology or other means), including Internet ticket games, the Internet video lottery and Internet table games." The proposed regulations will set forth parameters for minimum internal controls, vendor licensing, employee licensing, approval of gaming equipment, and other operational standards.

Interested persons may submit comments in writing to Rebecca Goldsmith, Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

The comment period will close on July 31, 2013.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
4462 Public Drinking Water Systems
PUBLIC NOTICE

Health Systems Protection, Office of Drinking Water, Division of Public Health, has proposed amendments to the State of Delaware Regulations Governing Public Drinking Water Systems. Amendments have been made to the following Sections:

- "Section 2.0, page 9, added definition of Health Advisory
- "Section 2.0, page 13, modified definition of Sanitary Survey
- "Section 4.3.3.4.1.3, page 46, added requirement to provide information on detected unregulated contaminants for which the US EPA has developed and published a health advisory

On July 1, 2013, the Division plans to publish proposed amendments to the Delaware Regulations Governing Public Drinking Water Systems and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the July 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Drinking Water at (302) 741- 8630.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Wednesday, July 31, 2013 at:

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

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Office of Workers' Compensation
1341 Workers' Compensation Regulations
PUBLIC NOTICE

The Secretary of Labor, in accordance with 19 **Del.C.** §§2322B,C,D,E, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals 1) update the fee schedule and fee schedule guidelines to significantly reduce the number of medical codes with fees designated as POC85 (85 percent of charge); 2) remove the anchor date for medical codes to allow annual coding updates; 3) add the methodology used for hospital and ambulatory surgery center annual rate change reports; 4) change the anesthesia, pathology, durable medical equipment, and radiology fee methodologies; 5) change the pharmacy reimbursement and formulary; 6) change the initial date providers use to determine the two year deadline for completing the mandatory continuing education course; 7) remove the UR appeal deadline that is now part of the statute; and 8) remove the "Employer's Modified Duty Availability Report" and "Physicians Report of Workers' Compensation Injury" previously embedded in the regulations.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on July 29, 2013, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be August 13, 2013, which is 15 days following the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

DIVISION OF INDUSTRIAL AFFAIRS
Office of Workers' Compensation
1342 Health Care Practice Guidelines
PUBLIC NOTICE

The Secretary of Labor, in accordance with 19 **Del.C.** §§2322C, has proposed revisions to the rules and regulations relating to the practice guidelines in the Delaware Workers' Compensation Health Care Payment System (HCPS). The proposals are as follows:

- PART A Carpal Tunnel Syndrome Guidelines:** removes the reference to maximum medical improvement.
- PART B Chronic Pain Treatment Guidelines:** 1) remove the reference to maximum medical improvement; 2) correct the Office of Workers' Compensation name; and 3) change the number of allowable maximum visits primarily in section 6.0, Therapeutic Procedures – Non-Operative.
- PART C Cumulative Trauma Disorder Treatment Guidelines:** removes the reference to maximum medical improvement.
- PART D Low Back Treatment Guidelines:** remove the reference to maximum medical improvement; correct typographical errors; revise the maximum number of treatments allowed, primarily in two sections, Therapy – Passive and Therapy – Active; and revise the section on Artificial Lumbar Disc Replacement.
- PART E Shoulder Treatment Guidelines:** changes the maximum duration allowed for Superficial Heat and Cold Therapy.
- PART F Cervical Treatment Guidelines:** adds the effective date; deletes references to maximum medical improvements; and changes the number of maximum allowable treatments or visits, primarily in the section Therapy - Passive.
- PART G Lower Extremity Treatment Guidelines:** adds the effective date; deletes references to maximum medical improvements; and changes the number of maximum allowable treatments for superficial heat and cold therapy.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on July 29, 2013, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be August 13, 2013, which is 15 days following the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

DIVISION OF UNEMPLOYMENT INSURANCE**PUBLIC NOTICE****1202 Unemployment Insurance Regulations**

The State of Delaware, Department of Labor's Division of Unemployment Insurance ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to do so found at 19 **Del.C.** §3122 and 29 **Del.C.** §10115. The proposed amended regulations will streamline unemployment insurance procedures, reduce the number of regulations confronting unemployment insurance claimants and employers, reduce paperwork, and contribute to the efficient operation of the government of the State of Delaware. The proposed regulations will be considered at a public hearing scheduled for Monday, July 22, 2013 from 10 a.m. to 12 noon in the third floor conference room of the offices of the Delaware Department of Justice located at 102 West Water Street, Dover, Delaware, 19904. Copies of the proposed amended regulations may be obtained from the Division of Unemployment Insurance (see address below).

The Division solicits, and will consider, timely filed written comments from persons with interest concerning these proposed amended regulations. The filing deadline for such written comments will be thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, **or by July 31, 2013**. Any such submissions should be mailed or hand-delivered to W. Thomas MacPherson, Director, Division of Unemployment Insurance whose address is Delaware Department of Labor, Division of Unemployment, 4425 North Market Street, Wilmington, Delaware 19809.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY****1101 Definitions and Administrative Principles****PUBLIC NOTICE**

This revision to 7 **DE Admin. Code** 1101 was identified in an April 1, 2013 Department of Natural Resources and Environmental Control (DNREC) report titled, "Executive Order 36 Report to The Office of the Governor." In 2008 Delaware's air regulations were recoded and established in 7 **DE Admin. Code** 1100. The regulatory language in 1101 was inadvertently not updated, and continues to reference to the prior "Regulations Governing the Control of Air Pollution." The outdated references could lead to citizens and industry searching for documents that no longer exist, or potentially to an incorrect regulatory interpretation. Revisions are proposed to correct the outdated references.

Interested parties may submit comments in writing to Ron Amirkian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

DIVISION OF AIR QUALITY
1103 Ambient Air Quality Standards
PUBLIC NOTICE

This revision to 7 **DE Admin. Code** 1103 was identified in an April 1, 2013 Department of Natural Resources and Environmental Controls (DNREC) report titled, "Executive Order 36 Report to The Office of the Governor." Revisions are proposed to bring the regulatory standards up-to-date with current federal requirements. 1103 currently contains outdated test methods and emission standards. This requires citizens and industry to review both state regulations and federal regulations, and to reconcile the two, in order to understand the requirements that apply in Delaware. This could also lead to state and federal requirements being incorrectly applied. This unnecessary regulatory burden will be eliminated with this revision to 1103. The revised regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

DIVISION OF AIR QUALITY
1104 Particulate Emissions from Fuel Burning Equipment
PUBLIC NOTICE

This revision to 7 **DE Admin. Code** 1104 was identified in an April 1, 2013 Department of Natural Resource and Environmental Controls (DNREC) report titled, "*Executive Order 36 Report to The Office of the Governor.*" Revisions are proposed to clarify that the exemptions 1.2 and 1.4 of this regulation are for the capacity of the unit, and not the operating rate. The revised Regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

DIVISION OF AIR QUALITY
1114 Visible Emissions
PUBLIC NOTICE

This revision to 7 **DE Admin. Code** 1114 was identified in an April 1, 2013 Department of Natural Resources and Environmental Control (DNRECs) report titled, "*Executive Order 36 Report to The Office of the Governor.*" Revisions are proposed to delete the alternate opacity standard in Section 2.3. This alternate standard was established for a petroleum refinery unit prior to installation of modern pollution control equipment in 2006. The instillation of the pre-scrubber on the catalytic cracking unit in 2006 makes this alternative opacity standard obsolete, and the unit is now subject to compliance with the general 20 percent opacity limit in Section 2.1. This is a burdensome requirement to administer and track and is no longer relevant or necessary. The revised Regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

Interested parties may submit comments in writing to Ron Amirikian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

DIVISION OF AIR QUALITY**1139 Nitrogen Oxides (NO_x) Budget Trading Program****PUBLIC NOTICE**

The repeal of 7 **DE Admin. Code** 1139 was identified in an April 1, 2013 Department of Natural Resources and Environmental Control (DNREC's) report titled, "*Executive Order 36 Report to The Office of the Governor.*" Repeal of this regulation is proposed. This regulation established Delaware's participation in the NO_x Budget Trading Program; a multi-state NO_x emissions cap and trade program established pursuant to Title 40, Part 96 of the Code of Federal Regulations (40 CFR Part 96) and 40 CFR Part 51.121. The underlying federal program was replaced by the federal Clean Air Interstate Rule (CAIR). Given this, 1139 no longer serves its intended purpose.

In addition, the adoption and submittal to the EPA of a SIP plan that demonstrates Delaware's compliance with the federal NO_x SIP Call requirements is also being proposed.

Interested parties may submit comments in writing to Ron Amirkian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

DIVISION OF AIR QUALITY**1143 Heavy Duty Diesel Engine Standards****PUBLIC NOTICE**

The repeal of 7 **DE Admin. Code** 1143 was identified in a April 1, 2013 Department of Natural Resources and Environmental Controls (DNREC) report titled, "*Executive Order 36 Report to The Office of the Governor.*" Repeal of this regulation is proposed. The provisions of this regulation apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware. This regulation was developed and adopted as a backstop to a then anticipated EPA regulation. EPA successfully adopted standards and this regulation is no longer needed. The repeal of this regulation will also be submitted to the EPA as a revision to Delaware's State Implementation Plan (SIP).

Interested parties may submit comments in writing to Ron Amirkian, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 1, 2013, beginning at 6:00 p.m. in DNREC's Richards and Robbins Building auditorium, 89 Kings Hwy, Dover, Delaware 19901.

DIVISION OF FISH AND WILDLIFE**3216 Prohibition on Possession or Use of Asian Horseshoe Crabs****PUBLIC NOTICE**

This proposed action seeks to define and prevent the possession and use of Asian horseshoe crabs (*Carcinoscorpius rotundicauda*, *Tachypleus gigas* and *Tachypleus tridentatus*) to protect human health and the shellfish resources of the State.

The Atlantic States Marine Fisheries Commission recently approved Resolution 13-01 recommending that member states take any and all action to ban the importation and use of Asian horseshoe crabs as bait as soon as possible. Reduced availability of Atlantic horseshoe crabs (*Limulus polyphemus*) has motivated seafood dealers in New York to import non-native Asian horseshoe crabs for use as bait in the American eel and whelk fisheries. There is concern that these animals may host parasites and pathogens that could have severe negative impacts on native horseshoe crabs and the ecosystem. In addition, *C. rotundicauda* is known to contain the powerful neurotoxin tetrodotoxin (TTX). Poisonings from this neurotoxin can be fatal. The potential for TTX accumulation in eel and whelk and subsequent risk to human health is unknown.

The hearing record on the proposed changes to 3200 Horseshoe Crabs will be open July 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public

hearing on the proposed amendment will be held on July 25, 2013 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas
PUBLIC NOTICE

Among the considerations of Executive Order 36, pertaining to the review and reform of state agency regulations, was a focused review of older, well-established regulations to ensure that State regulations continue to serve the original purpose for which they were adopted and provide for improvements. The Department's focused review of the existing tidal finfish regulations found that 7 **DE Admin. Code** 3507 pertaining to black sea bass failed to adequately provide for the transferability of commercial black sea bass permits. The current black sea bass regulation was enacted between 2001 and 2003 to, in part, limit the number of permits issued for the black sea bass commercial fish pot and commercial hook and line fisheries. However, the regulation did not provide a method for those permits to be transferred by the current permit holders. The proposed amendments to 7 **DE Admin. Code** 3507 (3.0), (5.0) & (6.0) allow the transfer of black sea bass commercial fishery permits consistent with transfer criteria established in 7 **Del.C.**, Ch. 29.

These amendments are needed because several of the current permit holders will be retiring from commercial fishing and the Department wants to allow other Delawareans to obtain these permits. The Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Black Sea Bass allocates Delaware an annual commercial black sea bass quota. This regulation will assure that there will be Delaware permit holders to harvest this valuable resource.

The hearing record on the proposed changes to the black sea bass regulation will be open July 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on July 25, 2013 beginning at 6:30 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
1301 Regulations Governing Solid Waste
PUBLIC NOTICE

The purpose of these solid waste, including infectious waste, regulatory proposals is to provide amendments that afford regulated parties opportunity to propose alternative packaging methods for infectious waste provided compliance is achieved with applicable federal Department of Transportation (DOT) and Occupational Safety and Health Administration (OSHA) standards. It is also proposed to allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, it is proposed to amend the regulations with regard industrial landfill capping and grading, to allow soil-equivalent material to be used as the final grading layer, as well as alternative materials if approved by the Department, providing more flexibility for landfill operators.

The public hearing for the proposed amendments will be held on August 7, 2013 from 6:30 P.M. to 7:00 P.M. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
1352 Aboveground Storage Tanks
PUBLIC NOTICE

The Regulations Governing Aboveground Storage Tanks (the Regulations) were created under the authority of the Jeffrey Davis Aboveground Storage Tank Act, Title 7, **Del.C.**, Chapter 74A, in 2004. The Regulations were last updated in 2005. In response to Executive Order #36 the Delaware Department of Natural Resources and Environmental Control has conducted a periodic review of the AST Regulations to determine if the Regulations should be modified or eliminated. Three modifications have been identified:

- Part A, Section 4.6.3. has been modified to extend the required time frame for notification to the DNREC for a Retrofit or Upgrade from sixty (60) days to one (1) year.
- Part A, Section 5.3. has been modified to require a specific time frame in which the DNREC must respond to a request for alternative technology approval. Currently there is no time frame in which the DNREC must respond. The proposed change requires the DNREC to provide a written response within ninety (90) days of receiving a request.
- Part B, Section 1.7 has been modified to allow an Owner or Operator to request a one year extension of the DNREC approval for an installation of a new AST.

The DNREC will conduct a Public Hearing. The hearing is scheduled to begin at 6:00pm on August 6, 2013 in the conference room at the DNREC office located at 391 Lukens Drive, New Castle, DE. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Mr. Alex Rittberg, DNREC/TMS, 391 Lukens Drive, New Castle, DE 19720 and must be received by the Department not later than August 6, 2013 unless a longer time is specified at the hearing.

Copies of the proposed regulations are available online at: <http://www.dnrec.delaware.gov/info/Rules.htm>

DIVISION OF WATER
7503 Oil Gas and Mineral Exploration Regulations
PUBLIC NOTICE

The Regulations have been a part of Delaware Code since 1971 and the Department has no record of any applications or permits granted under this regulation. These regulations are being proposed for sunset.

As a part of the Department of Natural Resources and Environmental Control's Executive Order 36 review of all regulations, **7 DE Admin. Code 7503 Oil Gas and Mineral Exploration** (Regulation) was identified as a regulation to be repealed. The Regulation was adopted in 1971 and based on a records review; there has never been an application received or a permit decision made under the Regulations. Therefore, the Regulation Governing Oil Gas and Mineral Exploration is proposed to be deleted from the Administrative Code. The Department of Natural Resource and Environmental Control, Division of Water will hold a public hearing to accept comments on the proposal to repeal the Regulations Governing Oil Gas and Mineral Exploration on August 7, 2013 at 6:00 p.m. in the auditorium of the Richards and Robbins Building located at 89 Kings Highway, Dover, DE 19901.

DIVISION OF WATERSHED STEWARDSHIP
7402 Shellfish Sanitation Regulations
Appendix 1 Prohibited Shellfish Harvesting Areas
Appendix 3 Conditional Shellfish Harvesting Area
PUBLIC NOTICE

Reclassification of the Northwestern portion of Love Creek, a tributary of Rehoboth Bay, from Conditionally Approved to Prohibited for the harvest of shellfish. The Department, Division of Watershed Stewardship, has determined through the monitoring of water quality, analysis of shellfish growing area water data, and the review of sanitary shoreline survey information, that the closed areas includes those Inland Bay waters of Love Creek in Rehoboth Bay, located in Sussex County, Delaware, lying Northwest of a line running from the points: 38° 41' 21.14" N, -75° 8' 2.74" W and 38° 40' 59.85" N, -75° 8' 22.33" W.

The hearing record on the proposed changes to 7402 Shellfish Sanitation Regulations will be open July 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on July 25, 2013 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WATER
7503 Oil Gas and Mineral Exploration Regulations
PUBLIC NOTICE

The Regulations have been a part of Delaware Code since 1971 and the Department has no record of any applications or permits granted under this regulation.

As a part of the Department of Natural Resources and Environmental Control's Executive Order 36 review of all regulations, 7 **DE Admin. Code** 7503 *Oil Gas and Mineral Exploration* (Regulation) was identified as a regulation to be repealed. The Regulation was adopted in 1971 and based on a records review; there has never been an application received or a permit decision made under the Regulations. Therefore, the Regulation Governing Oil Gas and Mineral Exploration is proposed to be deleted from the Administrative Code. The Department of Natural Resource and Environmental Control, Division of Water will hold a public hearing to accept comments on the proposal to repeal the Regulations Governing Oil Gas and Mineral Exploration on August 7, 2013 at 6:00 p.m. in the auditorium of the Richards and Robbins Building located at 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR
FAMILIES**
DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
201 Child Placing Agencies
PUBLIC NOTICE

The Office of Child Care Licensing proposes to amend the Delacare Requirements for Child Placing Agencies to provide clarity, reflect changes in laws and treaties, align with current best practices, and improve standards of care. No public comments were received as part of the public hearing process for Executive Order 36; however, the proposed changes are based upon a formal comprehensive review process. Through this process all providers were asked to participate, as well foster and adoptive parents, children previously or currently served in the foster care and adoption system, and representatives of the Court and advocacy groups. The revisions represent a consensus of all participants including licensed providers, parents, youth, and subject experts based on best practice and provider consensus.

It has been 16 years since the regulations were last changed. There have been many legal changes in the area of foster care and adoption as well as in best practices that have called for more structure and accountability. Many providers advocated for stronger regulations which could afford children receiving foster care or adoptive services a uniform set of standards under which they would receive the protection needed without regard to the specific service provider or circumstances of the placement.

A copy of the proposed regulations is being published in the July 1, 2013 edition of the Delaware Register of Regulations. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on August 6, 2013. Comments may also be offered at a public hearing to be held at the New Castle County Government Center, James H. Gilliam, Sr. Building, Multi-Purpose Room, 77 Reads Way, New Castle, DE 19720 on Wednesday, July 24, 2013, 4:00 to 6:00 p.m.

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

**OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF FACILITIES MANAGEMENT****Regulation Governing the State of Delaware Asbestos Certification and Training Program
PUBLIC NOTICE**

This proposed regulation is intended to provide public notice regarding the manner in which the Program will operate and be applied by the Office of Management and Budget. The presently existing asbestos regulation can be found at:

<http://dfm.delaware.gov/docs/regulations.pdf> and shall be repealed upon the adoption of the proposed regulation which is the subject of this notice.

The proposed regulation is intended to safeguard the public by requiring that renovations or demolitions which disturb asbestos be conducted only by contractors, supervisors, and workers certified by the Office of Management and Budget's Division of Facilities Management.

It is the purpose and the policy of the Division of Facilities Management to insure the health, safety, and welfare of the public by ensuring that asbestos abatement is performed in a manner which will minimize the risk of exposure to asbestos by:

A) Reducing potential exposure from asbestos-containing materials through the training and certification of contractors, professional service firms and Project Monitors, project supervisors, and workers.

B) Providing the building owner with certificate(s) of analysis stating that the material that is to be disturbed is in fact asbestos-containing material.

C) Establishing a program for such standards, which shall include revocation, suspension, and/or denial to renew certifications.

D) Establishing an asbestos management program in public schools under the guidelines and regulations as established under the U.S. Environmental Protection Agency (EPA) Asbestos Hazard Emergency Response Act (AHERA). Establish a similar program in public buildings for the purpose of protecting public health against the dangers of exposure to students/staff and the general public.

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed new regulations must submit them to:

Robert Scoglietti
Delaware Office of Management and Budget
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901
no later than the close of business on August 30, 2013.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on August 7, 2013 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM. It is requested that those interested in presenting statements at the public hearing register in advance by contacting:

Robert Scoglietti
Delaware Office of Management and Budget
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901