
Delaware Register of Regulations

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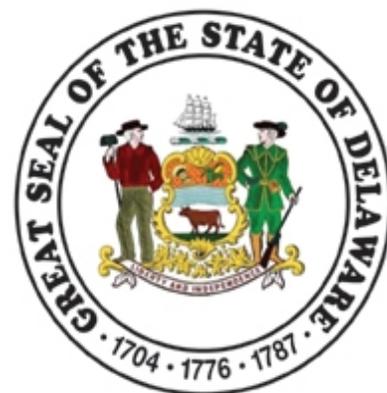
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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 15, 2011.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE

PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 1102 (3 **Del.C.** §1102)

PUBLIC NOTICE

803 Rules and Regulations for the Control and Supression of the White Pine Blister Rust

The Delaware Department of Agriculture proposes these amended regulations in accordance with the General Assembly's mandate to enforce Chapter 11 of Title 3 of the Delaware Code and to specify the means by which citizens of the State of Delaware may cultivate plants of the genus *Ribes* within the state.

Any comments concerning these proposed amended regulations should be submitted to the Plant Industries Administrator, Faith Kuehn, at the Delaware Department of Agriculture, 2320 S. Dupont Highway, Dover, DE 19901 on or before June 30, 2011. Copies of the proposed amended regulations are available on request.

~~Rules and Regulations for the Control and Supression of the White Pine Blister Rust~~

~~It has been determined that White Pine Blister Rust, *Cronartium ribicola* Fischer, an injuriously dangerous plant disease, has been found in the State of Delaware. Since this disease is capable of killing or seriously damaging valuable white pine trees, by virtue of authority vested in me by Delaware Code, Title 3, Chapter 11, Section 1101, I hereby promulgate the following rules and regulations:~~

~~SECTION I~~

~~The entire State is hereby declared a White Pine Blister Rust Control Area.~~

~~SECTION II~~

~~1. Since it is an established fact that this disease requires alternate host plants of the Genus *Ribes*, (gooseberries and currants), in order to perpetrate itself and spread from one white pine tree to another, and that~~

~~the white pines are of greater value to the State than are plants of the Genus, the importation of plants, or parts thereof, of any Ribes species into the State of Delaware is prohibited except as hereinafter provided.~~

~~2. The propagation and transportation of any plants of any plants of any plants of the Genus Ribes within the State of Delaware is prohibited except as hereinafter provided.~~

~~3. The importation, propagation and transportation of plants of the Genus Ribes will be permitted in that portion of the State lying south of the Chesapeake --- Delaware Canal provided a permit authorizing shipment into this area and planting and propagation within the area is obtained from the office of the State Plant Pathologist and provided that other requirements prescribed by the State Plant Pathologist as deemed necessary are satisfied.~~

~~4. Plants may be brought into the State of Delaware while dormant and packaged for reshipment while dormant provided the plants are not planted, grown, or propagated in the State during the interim except as provided for in these rules and regulations and provided the plants are not sold for planting or propagating within the prohibited area of the State except as provided for in the following paragraph.~~

~~5. Plants to be used for experimental, educational, or scientific purposes on such conditions are under such safeguards as may be prescribed by the State Plant Pathologist are excepted from foregoing paragraph of this section.~~

~~6. Any plants found to have been transported or propagated in violation of these regulations shall be destroyed, according to law, by this Department or its authorized agents in addition to such penalties as may be provided by law.~~

~~7. Any plants of the Genus Ribes now growing within the State may be destroyed, according to law, where in the opinion of the State Plant Pathologist they are a definite and immediate hazard to valuable White Pine trees.~~

SECTION III

~~The State Department of Agriculture authorized its duly appointed agents to cooperate with other agencies of the State of Delaware, counties or municipalities of the State of Delaware, corporations, individuals, or Federal agencies in carrying out the purposes of these rules and regulations.~~

SECTION IV

~~These rules and regulations shall take effect the fifth day of April 1972.~~

~~APPROVED This 5th day of April, 1972~~

~~Secretary, Department of Agriculture~~

803 Rules and Regulations for the Control and Supression of the White Pine Blister Rust

1.0 Authority

These regulations are promulgated pursuant to the authority of Section 1102 of Title 3 of the **Delaware Code**.

2.0 Purpose

2.1 It is an established fact that White Pine Blister Rust requires alternate host plants of the genus *Ribes* to perpetuate itself and spread from one white pine tree to another, and that White Pine trees are valued as a landscape and ornamental tree. Therefore, the importation and cultivation of *Ribes* species is prohibited except as outlined in this regulation.

2.2 These regulations govern the permitting process and cultivation of plants of the genus *Ribes* within the State of Delaware. The Plant Industries Administrator or her or his designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein. These regulations have been developed to allow, as a permitted activity, the cultivation of *Ribes* species in a way that intends to minimize the potential for an outbreak of White Pine Blister Rust, *Cronartium ribicola*.

3.0 Definitions

"Department" means the State of Delaware Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents, or representatives.

"Person" means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons, and every officer, agent, or employee thereof.

"Plant" refers to all plant parts, including whole plants, roots, scions, seeds and/or cuttings.

4.0 Quarantine

4.1 No person shall possess or transport the plants *Ribes aurium* (golden currant) or *Ribes nigrum* (black currant) within the State of Delaware. No permits shall be issued for the plants *Ribes aurium* or *Ribes nigrum*.

4.2 No person shall possess or transport plants of the genus *Ribes sp.* without a valid permit from the Department of Agriculture.

5.0 Permitted Activities

5.1 A permit authorizing shipment, planting and propagation within a specified area may be obtained from the Delaware Department of Agriculture, Plant Industries for *Ribes sp* as specified in Section 4.0 of this regulation.

5.2 The permit must include the following information:

5.2.1 name, address, and telephone number of person applying for the permit

5.2.2 number of plants to be grown or imported during permit period, listed by cultivar

5.2.3 detailed map showing where *Ribes* cultivars will be grown during the permit period.

5.3 Conditions for the permit are as follows:

5.3.1 the permit shall expire five years from the date of issuance

5.3.2 at the end of the permit period, the permittee shall remove and destroy all permitted plants, unless the permit is amended and approved by the Department.

5.3.3 If any additional *Ribes* plants are received by the permittee during this period, the permittee shall notify the Department in writing, and include variety information and location of plants.

5.3.4 the permit may be revoked at any time, if the Department determines that the permittee did not follow permit conditions, if plants appear to be a risk of spread of white pine blister rust, or if white pine blister rust is discovered near the permitted location.

5.4 The application is not valid as a permit, unless signed by an authorized Department official.

6.0 Inspections

6.1 Inspections by the Department of Agriculture shall proceed as follows:

6.1.1 the permittee must allow Department access to site where the plants are grown.

6.1.2 the Department may inspect plants at least once each year during the permit period to ensure freedom from white pine blister rust disease.

6.1.3 If, upon inspection, white pine blister rust is found on the *Ribes* plants, the Department will issue a Control or Destruction order, in accordance with Title 3, Chapter 11, and at the permittee's expense.

6.2 Plants used for experimental, educational or scientific purposes are not exempted from these regulations.

7.0 Violations

Any *Ribes* species plants found to have been transported or propagated in violation of these regulations shall be destroyed at the owner's expense by the Department of Agriculture, and the owner assessed a civil penalty, in accordance with §1109(e).

THOROUGHBRED RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 3 Del.C. §10103(c) has proposed changes to its rules and regulations. The proposed changes for Rule 2.1.2.2 amend retired member eligibility, eliminating the minimum number of career mounts. The proposed changes for Rule 2.1.3.1 amend eligibility defined for permanently disabled members, by removing the existing language and replacing it with new language.

A public hearing will be held on June 21, 2011, beginning at 9:00 AM, in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive comments will be June 21, 2011, during the public hearing. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations**1.0 Introduction**

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

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- 1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.
 - 1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

2.0 Eligibility Criteria for Health Coverage

- 2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
 - 2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had twenty-five (25) mounts in a Delaware Park season at Delaware Park; and
 - 2.1.1.1 If the jockey's Delaware Park mounts are less than 100 in a Delaware Park season, then 50% or more of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.
 - 2.1.1.2 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.
 - 2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:
 - 2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or
 - 2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years ~~and had at least 5,000 career mounts at any track.~~
 - 2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:
 - 2.1.3.1 ~~Qualification as an active Delaware jockey as defined by 2.1.1 for at least three years preceding determination of permanent disability. The jockey was an active participant in the Delaware Jockeys' Health and Welfare Fund benefit program at the time of the on-track accident that resulted in total and permanent disability; and~~
 - 2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.
- 2.2 A jockey and/or the jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage beginning on the first of the month after it can be determined the eligibility requirement has been met, and continuing until December 31st of the next calendar year.
- 2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
 - 2.3.1 Eligibility for coverage for dependants will be determined by the company providing the insurance coverage.

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

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 525

Education Impact Analysis Pursuant To 14 Del.C. §122(d)**525 Requirements for Career and Technical Education Programs****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs to provide flexibility in the scheduling of courses in approved skilled and technical sciences education pathways.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is providing additional flexibility for the scheduling of courses in approved skilled and technical sciences education pathways and should improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is providing additional flexibility for the scheduling of courses in approved skilled and technical sciences education pathways and does not specifically address that all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is providing additional flexibility for the scheduling of courses in approved skilled and technical sciences education pathways and does not specifically address that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is providing additional flexibility for the scheduling of courses in approved skilled and technical sciences education pathways and does not specifically address that all students' legal rights are respected.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing this subject has not changed.

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

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

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

525 Requirements for Career and Technical Education Programs

1.0 Career and Technical Education Programs

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

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

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

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

- 2.1 Meet the requirements within the state plan for the Carl D. Perkins Career and Technical Education Act of 2006.
- 2.2 Have the approval of the Department of Education before implementing new CTE courses and or pathways.
 - 2.2.1 The determination for the minimum number of credits for a pathway shall be based on the content standards as approved under 14 DE Admin. Code 501.
- 2.3 Adequately fund, support and sustain the instructional program.
- 2.4 Ensure all teachers are certified in the Career and Technical Education Program areas in which they teach.
- 2.5 Ensure that all teachers meet the Delaware Department of Education (DE DOE) Skilled and Technical Science Standards for the specific career area in which they teach.
 - 2.5.1 Such standards may include, but are not limited to, holding a state professional license in the area to be taught; holding an industry recognized certification of technical competence or journeyman status in the specific career area; or additional work experience.
- 2.6 Where appropriate and applicable, ensure that all teachers meet certification requirements for administering the end of Pathway Assessment in the specific career area in which they teach.
- 2.7 Make provisions for meeting the unique needs of all students.
- 2.8 Establish and maintain an active CTE advisory committee which includes labor and management personnel to assist in the development and operation of the program.
- 2.9 Use Department of Labor market projections to determine the need for new and continuing Career and Technical Education Programs.
- 2.10 Assess occupational needs and the availability of placement and employment opportunities for program completers with input from the local CTE advisory committee.
- 2.11 Use the information derived from the Student Success Plan (SSP) portfolio to determine student occupational interests, needs and educational program.
- 2.12 Organize and financially support Career and Technical Student Organizations as integral components of Career and Technical Education Programs in public schools that complement and enrich instruction. The following career and technical student organizations are affiliated in Delaware:
 - 2.12.1 Business Professionals of America (BPA)
 - 2.12.2 Technology Student Association (TSA)
 - 2.12.3 DECA, an association of marketing students
 - 2.12.4 Family, Career and Community Leaders of America (FCCLA)

- 2.12.5 The National FFA Organization
- 2.12.6 Skills USA
- 2.12.7 The Delaware Career Association (DCA)
- 2.13 Integrate related academic content into individual career and technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals as documented in the student's SSP.
- 2.14 ~~Schedule skilled and technical sciences (trade and industrial) education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years. For an approved skilled and technical sciences education pathway, beginning with the 2011-12 school year, courses shall be scheduled for a minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled, according to the following schedule:~~
- 2.14.1 Nine (9) Credit Pathway – a minimum of six (6) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled.
- 2.14.2 Six (6) Credit Pathway – a minimum of four (4) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled; or
- 2.14.3 Four (4) Credit Pathway – a minimum of two (2) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled; or
- 2.14.4 Three (3) Credit Pathway – a minimum of two (2) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled.
- 2.15 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career and Technical Education Program in a career and technical school district.
- 2.16 Use equipment and facilities comparable to that used by local business and industry for which the Career and Technical Education Program is preparing students.
- 2.17 Schedule Department of Education and Delaware Advisory Council on Career and Technical Education Program review and monitoring visits upon request.
- 2.18 Report CTE program data as required by the Delaware Department of Education.
- 1 DE Reg. 1196 (2/1/98)**
- 6 DE Reg. 955 (2/1/03)**
- 8 DE Reg. 1603 (5/1/05)**
- 9 DE Reg. 1070 (01/01/06)**
- 12 DE Reg. 439 (10/01/08)**
- 12 DE Reg. 936 (01/01/09)**

3.0 Cooperative Education Programs

- 3.1 Cooperative Education Programs provide senior Career and Technical Education Program students with coordinated on the job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on the job training in occupations directly related to the Career and Technical Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.
- 3.2 In order to qualify for Career and Technical Education funding units the Career and Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period,

each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make at least quarterly visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.

- 3.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 3.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Cooperative Education programs without senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 3.5 In order to qualify for career and technical education funding units the students shall:
 - 3.5.1 Possess minimum occupational competencies specified by the Career and Technical Education Teacher Coordinator before being placed in cooperative employment;
 - 3.5.2 Be in their senior year or otherwise approved pursuant to 3.4;
 - 3.5.3 Be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed Career and Technical Education pathway;
 - 3.5.4 Meet the requirements of 3.1 through 3.4; and
 - 3.5.5 Be supervised through on site visits by an assigned Career and Technical Education Program Teacher Coordinator or Career Guidance Counselor.

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

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

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

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

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

4.0 Diversified Occupations Programs

- 4.1 Diversified Occupations Programs provide students with coordinated on the job training not ordinarily available in the classroom. During the student's junior or senior year or under unique circumstances as approved by the Department of Education, employers provide this on the job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.
- 4.2 In order to qualify for career and technical education funding units a Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make at least quarterly on site visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 4.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 4.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Diversified Occupations programs without junior or senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.

- 4.5 In order to qualify for career and technical education funding units the students shall possess minimum readiness competencies as specified by the Career Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, meet the requirements of 4.1 through 4.4 and be actively enrolled in a Diversified Occupations Work Experience Program that meets for at least one class period per week.

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

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

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

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 DE Admin. Code 922

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

922 Children With Disabilities Subpart A, Purposes and Definitions

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 922, Children With Disabilities, Subpart A, Purposes and Definitions.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA"). The Department of Education adopted Regulation 922 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations in August 2006 implementing the IDEA.

The proposed revisions to 14 **DE Admin. Code** 922 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. The proposed revisions clarify the definitional use of the terms "hard of hearing", "intellectual disability", and "multiple disabilities".

Please note the IDEA specifically requires the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. Regulation 922 identifies those additional State requirements by italicizing them in the text of the regulations.

Persons wishing to present their views regarding the proposed amendments may do so in writing by the close of business on or before **August 4, 2011** to Martha Toomey, Director, Exceptional Children Resources, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulation is also available by contacting Jennifer Kline, Esq., Education Associate, at the above address, or by email at: jkline@doe.k12.de.us.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendments address the achievement of children with disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments help assure children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendments do not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendments specifically ensure and implement the rights of children with disabilities under the IDEA and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendments leave decisions about the provision of special education services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendments do not require any more reporting than necessary to comply with State statutory and federal requirements addressing the education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendments reflect that partnership.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed amendments are designed to assure compliance with applicable laws regarding the education of children with disabilities in the most efficient and effective way for the Department, the school districts, and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

922 Children with Disabilities Subpart A, Purposes and Definitions

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

1.0 Purposes

- 1.1 *Regulations 922 to 929 (14 DE Admin. Code 922 to 929) implement, complement and supplement the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 et seq.), its implementing regulations (34 CFR part 300), and 14 Del.C. Ch. 31 (with the exception of Subchapter IV). They are designed and intended to insure compliance with state and federal laws concerning the education of children with disabilities. To the extent these regulations conflict with the federal regulations implementing Part B of the Individuals with Disabilities Education Act, the federal regulations shall prevail. Further, the purposes of these regulations are:*

- 1.1.1 To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- 1.1.2 To ensure that the rights of children with disabilities and their parents are protected;
- 1.1.3 To assist local educational agencies, educational service agencies, and *public* agencies to provide for the education of all children with disabilities; and
- 1.1.4 To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d); 14 **Del.C.** §3110)

10 DE Reg. 1816 (06/01/07)

2.0 Applicability of These Regulations to State and Local Agencies

- 2.1 These regulations apply to the State of Delaware as a recipient of payments under Part B of the Individuals with Disabilities Education Act, as amended.
- 2.2 Public agencies within the State of Delaware. The provisions of these regulations apply to all political subdivisions of the State of Delaware that are involved in the education of children with disabilities, including:
 - 2.2.1 The Delaware Department of Education.
 - 2.2.2 Local educational agencies (“LEAs”), educational service agencies (“ESAs”), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.
 - 2.2.3 *Any other State agency or school involved in the education of children with disabilities, including but not limited to, the Delaware School for the Deaf, the Delaware Autism Program, the Department of Services for Children, Youth and Their Families, and its divisions, programs, or schools, and the Department of Health and Social Services, and its divisions, units, or programs.*
 - 2.2.4 *Any juvenile or adult correctional facility involved in the education of children with disabilities, including but not limited to, facilities operated by the Department of Services for Children, Youth and Their Families and its divisions, and the Department of Corrections (through “the Prison Education Program”) and are binding on each public agency in Delaware that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.*
 - 2.2.5 Private Schools and Facilities: Each public agency in the State of Delaware is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of 14 **DE Adm in. Code** 923.48.0.

(Authority: 20 U.S.C. 1412; 14 **Del.C.** §3110th)

10 DE Reg. 1816 (06/01/07)

3.0 Definitions Applicable to Regulations 922 to 929:

“**Act**” means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a); 14 **Del.C.** §3110th)

“**Assistive Technology Device**” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1); 14 **Del.C.** §3110th)

“**Assistive Technology Service**” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2); 14 **Del.C.** §3110)

“Charter School” means given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221i(1); 14 **Del.C.** §§3110 and 505(a))

“Child with a Disability” means a child evaluated in accordance with 14 **DE Admin. Code** 925.4.0 through 925.12.0 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these regulations as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

Except as further provided in this paragraph, if it is determined, through an appropriate evaluation under 14 **DE Admin. Code** 925.4.0 through 925.12.0, that a child has one of the disabilities identified in the definitions of disability terms below, but only needs a related service and not special education the child is not a child with a disability under these regulations. If, consistent with the definition of Special Education in this section, the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

Child with a disability for children aged three (3) through nine (9), subject to the conditions described in 14 **DE Admin. Code** 923.11.0, includes a child who is experiencing developmental delays, as defined in the eligibility requirements for 14 **DE Admin. Code** 925, measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

Definitions of Disability Terms: The specific disability terms used in this definition of a child with a disability are defined as follows:

“Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the other criteria in this definition are satisfied.

Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in this section.

“Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

“Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

“Emotional Disturbance” means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or

health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.

“Hearing Impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. *The term “hard of hearing” is sometimes used as a substitute for the term “hearing impairment” and shall be considered an equivalent term for purposes of these regulations.*

“Mental Retardation” means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. *The terms “mental disability” or “intellectual disability” are sometimes used as substitutes for the term “mental retardation” and shall be considered equivalent terms for purposes of these regulations.*

“Multiple Disabilities” means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. *Nothing in these regulations shall be construed to require that a child with a disability be identified or classified as having multiple disabilities so long as the child receives the special education and related services the child needs to receive a free appropriate public education.*

“Orthopedic Impairment” means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

“Other Health Impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, and adversely affects a child's educational performance.

“Specific Learning Disability” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, or mental retardation.

“Speech or Language Impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

“Traumatic Brain Injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

“Visual Impairment Including Blindness” means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30); 14 Del.C. 3110)

“Consent” means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(Authority: 20 U.S.C. 1414(a)(1)(D); 14 Del.C. §3110)

14 DE Reg. 1053 (04/01/11)

“Core Academic Subjects” means English, reading or language arts, mathematics, science, world languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4); 14 Del.C. §3110)

“Day” means calendar day unless otherwise indicated as business day or school day.

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“Business Day” means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“School Day” means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3; 14 Del.C. §3110)

“Department of Education” or “DOE” means the Delaware Department of Education

“Educational Service Agency” means a regional public multi service agency authorized by the State of Delaware to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State of Delaware. The term includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school and includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5); 14 Del.C. §3110)

“Elementary School” means a nonprofit institutional day or residential school (including a public elementary charter school) that provides elementary education, as determined under Delaware law.

(Authority: 20 U.S.C. 1401(6); 14 Del.C. §3110)

“Equipment” means machinery, utilities, and built in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7); 14 Del.C. §3110)

“Evaluation” means procedures used in accordance with 14 **DE Admin. Code** 925.4.0 through 925.12.0 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c); 14 **Del.C.** §3110)

“Excess Costs” means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting amounts received under Part B of the Act; under Part A of Title I of the ESEA; under Parts A and B of Title III of the ESEA; and any State or local funds expended for programs that would qualify for assistance under any of the foregoing federal programs, but excluding any amounts for capital outlay or debt service.

(Authority: 20 U.S.C. 1401(8); 14 **Del.C.** §3110)

“Free Appropriate Public Education” or “FAPE” means special education and related services that: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the DOE, including the requirements of these regulations; include an appropriate preschool, elementary school, or secondary school education in Delaware; and are provided in conformity with an individualized education program (IEP) that meets the requirements of 14 **DE Admin. Code** 925.20 through 925.24.0; provide significant learning to the child with a disability; and confer meaningful benefit on the child with disability gauged to the child with a disability’s potential.

(Authority: 20 U.S.C. 1401(9); 14 **Del.C.** §3110)

14 DE Reg. 1053 (04/01/11)

“Highly Qualified Special Education Teachers” means:

- 1.0 Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term “highly qualified” has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also include the requirements described in 2.0 of this definition, and the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs 3.0 and 4.0 of this definition.
- 2.0 Requirements for special education teachers in general. When used with respect to any public elementary school or secondary school special education teacher teaching in Delaware, highly qualified requires that the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in Delaware as a special education teacher, (except that when used with respect to any teacher teaching in a public charter school, “highly qualified” means that the teacher meets the certification or licensing requirements set forth in Delaware’s charter school law (14 **Del.C.** Ch. 5)). In addition, the teacher must not have had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis and must hold at least a bachelor’s degree.
 - 2.1 A teacher will be considered to meet the standard in 2.0 of this definition if the teacher is participating in an alternative route to special education certification program under 14 **Del.C.** Ch. 12, Subch. VI.
 - 2.2 Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the requirements in 2.0 of this definition or the teacher holds at least a bachelor’s degree and meets the requirements in 2.1 of this definition.
- 3.0 Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), “highly qualified” means the teacher, whether new or not new to the profession, must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle,

or secondary school teacher who is new or not new to the profession; or meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards.

- 4.0 Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, “highly qualified” means that the teacher must either: meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c); or, in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c); or, in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two (2) years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c).
- 5.0 Rule of construction: Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular DOE or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under 14 **DE Admin. Code** 923.51.0 through 923.53.0 about staff qualifications with the DOE.
- 6.0 Applicability of definition to ESEA; and clarification of new special education teacher. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA. For purposes of 4.0 of this definition, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.
- 7.0 Private school teachers not covered. The requirements in this definition do not apply to private school teachers hired or contracted by local education agencies to provide equitable services to parentally placed private school children with disabilities under 14 **DE Admin. Code** 923.38.

(Authority: 20 U.S.C. 1401(10); 14 **Del.C.** §3110)

“**Homeless Children**” has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

(Authority: 20 U.S.C. 1401(11); 14 **Del.C.** §3110)

“**Include**” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

Authority: 20 U.S.C. 1221e-3; 14 **Del.C.** §3110)

“**Individualized Education Program**” or “**IEP**” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0.

(Authority: 20 U.S.C. 1401(14); 14 **Del.C.** §3110)

“**Individualized Education Program Team**” or “**IEP Team**” means a group of individuals described in 14 **DE Admin. Code** 925.21.0 that is responsible for developing, reviewing, or revising an IEP for a child with a disability

(Authority: 20 U.S.C. 1414(d)(1)(B); 14 **Del.C.** §3110)

“Institution of Higher Education” has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

(Authority: 20 U.S.C. 1401(17); 14 **Del.C.** §3110)

“Limited English Proficient” has the meaning given the term in section 9101(25) of the ESEA.

(Authority: 20 U.S.C. 1401(18); 14 **Del.C.** §3110)

“Local Educational Agency” or “LEA” means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency, as defined in this section, and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(Authority: 20 U.S.C. 1401(19); 14 **Del.C.** §3110)

“Native Language” means, when used with respect to an individual who is limited English proficient, the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except that when used in reference to direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, “native language” means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C. 1401(20); 14 **Del.C.** §3110)

“Parent” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.19.0 or section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 **Del.C.** §3110)

“Parent Training and Information Center” means a center assisted under sections 671 or 672 of the Act, and includes the *Parent Information Center of Delaware, Inc.*

(Authority: 20 U.S.C. 1401(25); 14 **Del.C.** §3110)

“Personally Identifiable” means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier (such as the child's social security number or student number); or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a); 14 **Del. C.** §3110)

“Public Agency” means the Department of Education, LEAs, ESAs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11); 14 **Del.C.** §3110)

“Related Services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological

services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, nothing in this exception limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in the preceding paragraph) that are determined by the IEP Team to be necessary for the child to receive FAPE; or limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 14 DE Admin. Code 923.13.2.

Definitions of Related Services Terms: The specific related services terms used in this definition are defined as follows:

- “**Audiology**” includes the identification of children with hearing loss, and determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parents, and teachers regarding hearing loss; and determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- “**Counseling Services**” includes services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- “**Early identification and Assessment of Disabilities in Children**” means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- “**Interpreting Services**” means the following when used with respect to children who are deaf or hard of hearing: Oral transliteration services; cued language transliteration services; sign language transliteration and interpreting services and transcription services such as communication access real time translation (CART), C Print, and Type Well; and special interpreting services for children who are deaf blind.
- “**Medical Services**” includes services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- “**Occupational Therapy**” means services provided by a qualified occupational therapist; and includes: improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.
- “**Orientation and Mobility Services**” means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching children the following, as appropriate:
 - Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

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The use of a long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision; To understand and use remaining vision and distance low vision aids; and Other concepts, techniques, and tools.

“Parent Counseling and Training” means assisting parents in understanding the special needs of their child, providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

“Physical Therapy” means services provided by a qualified physical therapist.

“Psychological Services” includes administering psychological and educational tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.

“Recreation” includes assessment of leisure function, therapeutic recreation services recreation programs in schools and community agencies and leisure education.

“Rehabilitation Counseling Services” means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

“School Health Services” and **“School Nurse Services”** means health services designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

“Social Work Services” in schools includes preparing a social or developmental history on a child with a disability; group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

“Speech Language Pathology Services” includes identifying children with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, children, and teachers regarding speech and language impairments.

“Transportation” includes travel to and from school and between schools, travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26); 14 Del.C. §3110)

“Scientifically Based Research” has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi); 14 Del.C. §3110)

“Secondary School” means a nonprofit institutional day or residential school, (including a public secondary charter school) that provides secondary education, as determined under Delaware law, except that it does not include any education beyond grade twelve (12).

(Authority: 20 U.S.C. 1401(27); 14 **Del.C.** §3110)

“Services Plan” means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 14 **DE Admin. Code** 923.32.0, and is developed and implemented in accordance with 14 **DE Admin. Code** ~~923.32.0~~ 923.37.0 through 923.39.0.

(Authority: 20 U.S.C. 1412(a)(10)(A); 14 **Del.C.** §3110)

“Secretary” means the Secretary of Education of the Delaware Department of Education unless otherwise indicated in the text of these regulations.

(Authority: 14 **Del.C.** §3110)

“Special Education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education.

Special education includes each of the following, if the services otherwise meet the requirements of the preceding paragraph: Speech-language pathology services, travel training and vocational education.

Definitions of Special Education Terms: The specific terms used in the definition of special education are defined as follows:

“At No Cost” means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

“Physical Education” means the development of physical and motor fitness, fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports) and includes special physical education, adapted physical education, movement education, and motor development.

“Specially Designed Instruction” means adapting, as appropriate to the needs of an eligible child under these regulations, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

“Travel Training” means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

“Vocational Education” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29); 14 **Del.C.** §3110)

“State” means the State of Delaware

(Authority: 20 U.S.C. 1401(31); 14 **Del.C.** §3110)

“State Educational Agency” or **“SEA”** means the Delaware Department of Education.

(Authority: 20 U.S.C. 1401(32); 14 **Del.C.** §3110)

“Supplementary Aids and Services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 14 **DE Admin. Code** 923.14 through 923.16.0.

(Authority: 20 U.S.C. 1401(33); 14 Del.C. §3110)

“These Regulations” means 14 DE Admin. Code 922 through 929, *Children with Disabilities, Sub Parts A through I* (14 DE Admin. Code 922 to 929) unless the context clearly indicates otherwise.

(Authority: 14 Del.C. §3110)

“Transition Services” means a coordinated set of activities for a child with a disability that is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; and is based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

Transition services include instruction, related services, community experiences, the development of employment and other post school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34); 14 Del.C. §3110)

“Universal Design” has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35); 14 Del.C. §3110)

“Ward of the State” means a child who, as determined by the state where the child resides, is a foster child, a ward of the state; or in the custody of a public child welfare agency, including, but not limited to, the Delaware Department of Services for Children, Youth, and Their Families.

(Authority: 20 U.S.C. 1401(36); 14 Del.C. §3110)

10 DE Reg. 1816 (06/01/07)

14 DE Reg. 1053 (04/01/11)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 923

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

923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 923, *Children With Disabilities, Subpart B, General Duties and Eligibility of Agencies*.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 Del.C. Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* (“IDEA”). The Department of Education adopted Regulation 923 as part of a comprehensive review of Delaware’s special education regulations, undertaken in response to changes in federal special education regulations in August 2006 implementing the IDEA.

The proposed revisions to 14 **DE Admin. Code** 923 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. The proposed revisions clarify the age of eligibility for a free, appropriate public education in a manner consistent with state law.

Please note the IDEA specifically requires the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. Regulation 923 identifies those additional State requirements by italicizing them in the text of the regulations.

Persons wishing to present their views regarding the proposed amendments may do so in writing by the close of business on or before **August 4, 2011** to Martha Toomey, Director, Exceptional Children Resources, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulation is also available by contacting Jennifer Kline, Esq., Education Associate, at the above address, or by email at: jkline@doe.k12.de.us.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendments address the achievement of children with disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments help assure children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendments do not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendments specifically ensure and implement the rights of children with disabilities under the IDEA and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendments leave decisions about the provision of special education services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendments do not require any more reporting than necessary to comply with State statutory and federal requirements addressing the education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendments reflect that partnership.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed amendments are designed to assure compliance with applicable laws regarding the education of children with disabilities in the most efficient and effective way for the Department, the school districts, and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies

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

[923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 925

Education Impact Analysis Pursuant To 14 Del.C. §122(d)**925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925, Children With Disabilities, Subpart D, Evaluations, Eligibility Determinations, Individualized Education Programs.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA"). The Department of Education adopted Regulation 925 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations in August 2006 implementing the IDEA.

The Department now proposes to amend Regulation 925 in response to changes made to the federal regulations in December 2008 implementing the IDEA.

The proposed revisions to 14 **DE Admin. Code** 925 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. The proposed amendments substitute the term "intellectual disability" for "mental disability", and clarify provisions related to the time period by which public agencies must identify transition services and planning for eligible students. The proposed revisions also enlarge the time from three to five days for public agencies to notify parents of a meeting scheduled to conduct a manifestation determination under the IDEA regulations.

Please note the IDEA specifically requires the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. Regulation 925 identifies those additional State requirements by italicizing them in the text of the regulations.

Persons wishing to present their views regarding the proposed amendments may do so in writing by the close of business on or before **August 4, 2011** to Martha Toomey, Director, Exceptional Children Resources, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulation is also available by contacting Jennifer Kline, Esq., Education Associate, at the above address, or by email at: jkline@doe.k12.de.us.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendments address the achievement of children with disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments help assure children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendments do not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendments specifically ensure and implement the rights of children with disabilities under the IDEA and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendments leave decisions about the provision of special education services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendments do not require any more reporting than necessary to comply with State statutory and federal requirements addressing the education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendments reflect that partnership.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed amendments are designed to assure compliance with applicable laws regarding the education of children with disabilities in the most efficient and effective way for the Department, the school districts, and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

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

[925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 926

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

926 Children With Disabilities Subpart E, Procedural Safeguards for Parents and Children

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 926, Children With Disabilities, Subpart E, Procedural Safeguards for Parents and Children.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA"). The Department of Education adopted Regulation 926 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations in August 2006 implementing the IDEA.

The proposed revisions to 14 **DE Admin. Code** 926 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. The proposed revisions also enlarge the notice period from three to five days for public agencies to notify parents of a proposed change in placement based upon a disciplinary removal.

Please note the IDEA specifically requires the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. Regulation 926 identifies those additional State requirements by italicizing them in the text of the regulations.

Persons wishing to present their views regarding the proposed amendments may do so in writing by the close of business on or before August 4, 2011 to Martha Toomey, Director, Exceptional Children Resources, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulation is also available by contacting Jennifer Kline, Esq., Education Associate, at the above address, or by email at: jkline@doe.k12.de.us.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendments address the achievement of children with disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments help assure children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendments do not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendments specifically ensure and implement the rights of children with disabilities under the IDEA and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendments leave decisions about the provision of special education services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendments do not require any more reporting than necessary to comply with State statutory and federal requirements addressing the education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendments reflect that partnership.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic

subjects of mathematics, science, language arts and social studies? The proposed amendments clarify the State's alignment with the requirements of the IDEA.

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed amendments are designed to assure compliance with applicable laws regarding the education of children with disabilities in the most efficient and effective way for the Department, the school districts, and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

926 Children With Disabilities Subpart E, Procedural Safeguards for Parents and Children

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

[926 Children With Disabilities Subpart E, Procedural Safeguards for Parents and Children](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 927

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

927 Children With Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 927, Children With Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 **Del.C.** Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA"). The Department of Education adopted Regulation 927 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations in August 2006 implementing the IDEA.

The proposed revisions to 14 **DE Admin. Code** 927 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. The proposed amendments clarify provisions related to parents accessing copies of educational records in a manner consistent with state law and 14 **Del.C.** §3130.

Please note the IDEA specifically requires the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. Regulation 927 identifies those additional State requirements by italicizing them in the text of the regulations.

Persons wishing to present their views regarding the proposed amendments may do so in writing by the close of business on or before **August 4, 2011** to Martha Toomey, Director, Exceptional Children Resources, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulation is also

available by contacting Jennifer Kline, Esq., Education Associate, at the above address, or by email at: jkline@doe.k12.de.us

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendments address the achievement of children with disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments help assure children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendments do not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendments specifically ensure and implement the rights of children with disabilities under the IDEA and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendments leave decisions about the provision of special education services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendments do not require any more reporting than necessary to comply with State statutory and federal requirements addressing the education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendments reflect that partnership.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed amendments are designed to assure compliance with applicable laws regarding the education of children with disabilities in the most efficient and effective way for the Department, the school districts, and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in continuity of sections)

17.0 Fees for Records

- 17.1 Each participating agency may ~~charge a fee for copies of records that are made for parents under these regulations if the fee does not exceed the actual cost of the records, or either provide copies of records to parents under these regulations *at no charge* or subject to a fee not to exceed the actual~~

cost of the records. Under no circumstances shall a fee be assessed which effectively prevents the parents from exercising their right to inspect, review and copy the records.

- 17.2 A participating agency may not charge a fee to search for or to retrieve information under these regulations.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 14 Del.C. §§3130 and 4111)

***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:**

[927 Children With Disabilities Subpart F, Monitoring, Enforcement and Confidentiality](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 928

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

[928 Children With Disabilities Subpart G, Use and Administration of Funds](#)

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 928, Children With Disabilities, Subpart G, Use and Administration of Funds.

Regulations 922 through 929 address the special education needs of children with disabilities, and implement 14 Del.C. Ch. 31 and Part B of the *Individuals With Disabilities Education Act*, 20 U.S.C. 1400 *et seq.* ("IDEA"). The Department of Education adopted Regulation 928 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations in August 2006 implementing the IDEA.

The proposed revisions to 14 DE Admin. Code 928 are designed to continue the alignment of state and federal regulations addressing the education of children with disabilities and their families, and to establish the conditions under which school districts, charter schools, and other educational agencies may receive funding for the education of children with disabilities. The proposed amendments establish provisions related to special education funding based on the needs of students in a manner consistent with state law and 14 Del.C. §1703.

Please note the IDEA specifically requires the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. Regulation 928 identifies those additional State requirements by italicizing them in the text of the regulations.

Persons wishing to present their views regarding the proposed amendments may do so in writing by the close of business on or before **August 4, 2011** to Martha Toomey, Director, Exceptional Children Resources, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulation is also available by contacting Jennifer Kline, Esq., Education Associate, at the above address, or by email at: jkline@doe.k12.de.us

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendments address the achievement of children with disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments help assure children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendments do not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendments specifically ensure and implement the rights of children with disabilities under the IDEA and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendments leave decisions about the provision of special education services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendments do not require any more reporting than necessary to comply with State statutory and federal requirements addressing the education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendments reflect that partnership.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed amendments are designed to assure compliance with applicable laws regarding the education of children with disabilities in the most efficient and effective way for the Department, the school districts, and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

928 Children with Disabilities Subpart G Use and Administration of Funds

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The italicized portions of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

1.0 Administration of Funds: DOE Audit

1.1 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the **Delaware Code**, these regulations and 14 **DE Admin. Code** 701.

1.2 Child Count procedures: Each public agency shall participate in the annual count of children served under the Act in accordance with procedures and forms developed by the DOE. Such procedures and forms shall conform to applicable state and federal requirements, regulations and written instructions.

- 1.3 Unit count audit and recovery of funds for ~~misclassified children counted in needs based funding levels incongruent with IEP needs identified~~: DOE shall conduct a random file audit in each LEA as soon as possible after September 30.
- 1.3.1 The purpose of the audit is to ensure that students reported as part of a special education unit as of September 30 are eligible for special education services as part of that unit on or prior to September 30 and that such services are being provided. The audit may be joined with other monitoring activities in the discretion of the DOE.
- 1.3.2 The specific procedures used to authenticate the count of children with disabilities shall be as provided ~~in the "Monitor's Handbook for the September Audit and Site Monitoring."~~ through written guidance by the DOE.
- 1.3.3 Nothing in this regulation limits DOE's monitoring and general supervisory authority or its ability to ~~identify children who have been misclassified~~ identify any federal or state regulatory non-compliance at times other than the audit of State units as of September 30, including as part of other routine monitoring activities.
- (Authority: 14 Del.C. §§122 and 3110)

14 DE Reg. 1069 (04/01/11)

2.0 Reserved

3.0 State Funding for Children with Disabilities

- 3.1 State funding under the unit system is contingent upon: the proper identification of children with disabilities in accordance with Title 14 of the **Delaware Code** and these regulations; and a satisfactory DOE audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count.
- 3.2 Paraprofessional Positions for Services to Children with Disabilities authorized under 14 Del.C. §1324.
- 3.2.1 As used in 3.2, the term "**Paraprofessional**" means "**Paraeducator**" "**Instructional Paraeducator**" and "**Service Paraeducator**" all as defined in 14 DE Admin. Code ~~1584.2-0~~ 1517.
- 3.2.2 All paraprofessionals shall work under the supervision of teachers.
- 3.2.3 ~~The following positions are authorized:~~
- 3.2.3.1 ~~Trainable Mental Disability Unit: One classroom teacher (or in lieu of a teacher, two paraprofessionals) may be employed, as long as the number of paraprofessionals does not exceed the number of teachers in any approved special school or program. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days.~~
- 3.2.3.2 ~~Severe Mental Disability Unit: One classroom teacher and one classroom paraprofessional may be employed per unit in any approved special school or program. In lieu of the teacher, two additional paraprofessionals may be employed, as long as the number of paraprofessionals does not exceed the number of teachers in any given school or program by a 2 to 1 ratio. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days.~~
- 3.2.3.3 ~~Autism Unit: One teacher and one paraprofessional may be employed per unit. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred twenty two (222) days, or in the event of additional student attendance as authorized in 14 Del.C. §1703(e), such additional time not exceeding 230 teacher days.~~
- 3.2.3.4 ~~Orthopedic Impairment Unit: One classroom teacher and one paraprofessional may be employed per unit in any approved special school or program.~~
- 3.2.3.5 ~~Hearing Impairment Unit: One classroom teacher and one paraprofessional per unit in grades K to 3, one classroom teacher and one paraprofessional per unit in grades 4 to 12, and one clerk aide for the parent-child program may be employed in any approved special school or program.~~

PROPOSED REGULATIONS

- 3.2.3.6 ~~Deaf Blindness Unit: One classroom teacher and one classroom paraprofessional may be employed per unit. In lieu of the teacher, two additional paraprofessionals may be employed as long as the number of paraprofessionals does not exceed the number of teachers in any approved special school by a 2 to 1 ratio. Teachers or paraprofessionals who work during the eleventh and twelfth months shall be paid for two hundred and twenty two (222) days.~~
- 3.2.3.7 ~~Intensive Learning Center Unit: One classroom teacher (or in lieu of a teacher, two paraprofessionals) may be employed as long as the number of paraprofessionals does not exceed the number of teachers in any center, and that all paraprofessionals work under the direct supervision of teachers.~~
- 3.2.43 The use and ratio of paraprofessionals to teachers shall be dependent upon the rationale developed by the public agency.
- 3.2.4 The DOE will authorize the needs based funding rubric which reflects the primary services and costs associated with the needs based funding units.
- 3.2.4.1 The rubric authorized by DOE will be consistent with the conditions for needs based units described in Title 14 Chapter 17 1703 (d) and must be used by all districts and charter schools.
- 3.2.4.2 The rubric will be published electronically annually through DOE's unit count web based portal.
- 3.2.4.3 Districts and charter schools shall assign each student with a disability as a preschool, basic, intensive or complex unit based on the educational needs of the student identified in the Individualized Education Program (IEP).
- 3.2.5 All units generated by special education students are to be used for professional staff to support students with disabilities to include special education teachers, school psychologists, speech language pathologists, reading specialists, educational diagnosticians, counselors, class aides and social workers. All other conditions as described in Title 14, Chapter 17 regarding needs based unit funding apply.
- 3.2.5.1 All districts and charter schools will submit annual documentation to the DOE certifying that basic, intensive and complex units earned are used to provide services to children counted in those units.
- 3.2.5.2 Forms for annual certifying documentation for needs based units will be published electronically through DOE's web based unit count portal.
- 3.3 School Nurses (as authorized by 14 Del.C. §1310)
- 3.3.1 A nurse shall be employed for a combination of eight (8) or more complex or intensive units of children or a combination with autism, orthopedic impairment, trainable mental disability, severe mental disability, thereof when those units are counted through a special school or program, and for hearing impairment as per statutory formula, i.e., 40:1. Such units shall be subtracted from the LEA's total units so that they are not counted twice.
- 3.4 Other Positions for Services to Children with Disabilities
- 3.4.1 Any special school or program with an enrollment of 10 or more units may employ a secretary (for 12 months per year) and proportional secretarial services for less than 10 units. Such units must be subtracted from the LEA's total units so that they are not counted twice.
- 3.4.2 Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care.
- 3.4.3 An instructional media specialist shall be assigned to the school for the ~~hearing impaired deaf~~ when there is a minimum of ~~40 units~~ 60 children.
- 3.4.4 Whenever the DOE with the approval of the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, ~~a principal for 8 or more such units of deaf blind children. If a principal is assigned responsibility for such a program for~~

~~fewer than 8 units, the support for the assignment shall be in the same ratio as the number of authorized units is to 8 units.~~

(Authority: 14 **Del.C.** §§122 and 3110)

4.0 Reserved

5.0 Federal Sub Grants to LEAs

- 5.1 DOE shall distribute any funds the State receives as part of its federal allocation under Part B of the Act, and does not reserve for permissible state activities, to LEAs (including public charter schools that operate as LEAs) in Delaware that have established their eligibility under section 613 of the Act (20 U.S.C. 1413) and these regulations for use in accordance with Part B of the Act.
- 5.2 Allocations to LEAs: The amount of the allocation DOE makes to eligible LEAs for each fiscal year Delaware receives a federal allocation under Part B of the Act shall be determined in accordance with 34 C.F.R. §300.705(b) and corresponding federal guidance and instructions.
- 5.3 Reallocation of funds: If DOE determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the DOE may reallocate any portion of the federal funds under these regulations that are not needed by that LEA to provide FAPE, to other LEAs in Delaware that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs.
- 5.4 *Application required: Each LEA seeking a sub grant shall complete and submit an application to DOE. The application shall: be submitted during the time frames established by DOE; be completed on or in such written or electronic form as DOE requires; include any certifications and assurances required by DOE; and be consolidated with the LEA's application for other federal programs to the extent permitted by DOE procedures.*
- 5.5 Review of application: appeal of adverse determination
 - 5.5.1 *DOE shall review each timely sub grant application, notify the LEA whether its application is approved or not approved, and advise the LEA of any conditions which must be met in order for the application to be approved.*
 - 5.5.2 Any amendment or revision to an LEA application shall be submitted in such written or electronic form as DOE requires and reviewed using the same requirements and procedures used for an initial application.
 - 5.5.3 In the event that DOE and the LEA cannot negotiate and effect an approved sub grant application, DOE shall notify the LEA in writing of its intent to disapprove all or part of the application. This notice shall also inform the LEA that it is entitled to a hearing before the DOE's final decision to disapprove all or part of the application, and shall advise the LEA of the procedure for requesting a hearing.
 - 5.5.4 An LEA shall have thirty (30) days to request a hearing, beginning on the date of the DOE's notice to the LEA of its right to a hearing. The request for a hearing must be filed in writing with the Secretary and shall explain why the LEA believes its application should be approved.
 - 5.5.5 The LEA shall have access, at a reasonable time and location, to all of the Department's records pertaining to the application and to the applications of other LEAs.
 - 5.5.6 The DOE shall schedule and conduct a hearing on the record within 30 days of the Secretary's receipt of a hearing request from the LEA. *Except as otherwise specifically provided in this section, the hearing shall be conducted in accordance with Delaware Department of Education's "Hearing Procedures and Rules" as from time to time amended.*
 - 5.5.7 No later than 10 days after the hearing, the DOE shall issue its written ruling, which shall include findings of fact and the reasons for its decision.
 - 5.5.7.1 If the DOE determines that its intention to disapprove all or part of the application was contrary to applicable state or federal law, the Department shall rescind its intent to disapprove the application and shall issue an approval consistent with the requirements of such laws.

- 5.5.7.2 If the DOE issues a final disapproval of all or part of the application, the LEA may appeal that decision to the Secretary of the United States Department of Education. The LEA must file a notice of appeal with the Secretary of the United States Department of Education within 20 days of the final disapproval of the Delaware Department of Education. *A copy of the LEA's federal notice of appeal must be filed with the Delaware Department of Education when it is filed with the United States Secretary of Education.*

(Authority: 20 U.S.C. 1411(f); 14 **Del.C.** §3110; see also 34 CFR 76.401(d))

6.0 to 17.0 Reserved

18.0 Facilities, Equipment and Materials

- 18.1 *All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.*
- 18.2 Compliance with certain regulations. *All facilities which house programs for children with disabilities shall meet State and federal standards with regard to space, health, fire, safety, and barrier free regulations, including as applicable:*
- 18.2.1 Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Standards for Buildings and Facilities"); or
- 18.2.2 Appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").
- (Authority: 20 U.S.C. 1404; 14 **Del.C.** §3110)

Subpart H Reserved

1.0 through 18.0 Reserved

Note to Readers: Subpart H of the federal regulations addresses the way the United States Department of Education's allocates Preschool Grants for Children with Disabilities to the State, i.e., no further state level regulation is necessary to implement Subpart H. The subpart is reserved, however, to preserve the integrity of the federal numbering system to the extent feasible under the State regulatory numbering system.

10 DE Reg. 1816 (06/01/07)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

16 DE Admin. Code 11002.9

PUBLIC NOTICE

Child Care Subsidy Program: 11002.9 Definitions and Explanation of Terms

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

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

Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2011.

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

SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Definition and Explanation of Terms*.

Statutory Authority

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

Summary of Proposed Change

DSSM 11002.9, *Definition and Explanation of Terms*: The purpose of the rule change is to clarify 'In-Home' Care and to update the Division of Social Services Manual with long-standing policy. Specifically, language is added to clarify that in-home care refers to one household's children. The intent is to better protect the health and safety of the children in this type of unlicensed care.

DSS PROPOSED REGULATION #11-18

REVISIONS:

11002.9 Definitions and Explanation of Terms

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

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

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

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

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

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

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

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

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

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

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

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

11 – Participants receiving TANF and not working, but participating in TANF E&T;

12 – Participants receiving TANF and working;

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

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

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

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

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

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

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

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

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

1. Center based (under DCIS II Child Care Sub system Site #17 or 18),

2. Large Family Home (under DCIS II Child Care Sub system Site #16),

3. Family Home (under DCIS II Child Care Sub system Site #15), and

4. In-Home (under DCIS II Child Care Sub system Site #19).

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

P. Educational Program - A program of instruction to achieve:

1. a basic literacy level of 8.9;

2. instruction in English as a second language;

3. a GED, Adult Basic Education (ABE), or High School Diploma;

4. completion of approved special training or certificate courses; or

5. a post-secondary degree where the degree is part of an approved DSS Employment and Training program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~AN~~-LL. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-

arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

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

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

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

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

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

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

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

8 DE Reg. 1154 (02/1/05)

9 DE Reg. 572 (10/01/05)

10 DE Reg. 564 (09/01/06)

11 DE Reg. 1488 (05/01/08)

13 DE Reg. 1088 (02/01/10)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11006.5.1

PUBLIC NOTICE

Child Care Subsidy Program, DSSM 11006.5.1, Terminating Providers

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2011.

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

SUMMARY OF PROPOSED CHANGE

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

Statutory Authority

- 45 CFR §98.40, *Compliance with applicable State and local regulatory requirements*
- 11 Delaware Code, Ch 85, *State Bureau of Identification*

Summary of Proposed Change

DSSM 11006.5.1, *Terminating Providers*: The purpose of the rule change is to revise language and to correct the number of training hours required by relative care providers. Specifically, the Division of Social Services (DSS) changes the phrase 'convicted of fraud against DHSS' to 'commits fraud against DHSS' as a reason for provider termination. DSS also changes the number of mandatory training hours for relative care from 45 hours to 47 hours to reflect the additional hours needed for the First Aid and CPR classes.

DSS PROPOSED REGULATION #11-19

REVISION:

11006.5.1 Terminating Providers

45 CFR 98.40, 11 Del.C., Ch. 85

This policy applies to all providers, including self-arranged clients.

DSS May Terminate Providers with Just Cause

1. The Division of Social Services may terminate any provider or self-arranged client from the Child Care Subsidy Program (Purchase of Care) if she or he:
 - A. Has a suspended, closed or terminated Office of Child Care Licensing (OCCL) license.
 - B. ~~Is convicted of committing~~ Commits fraud against DHSS.
 - C. Charges fees not allowed by the Child Care Contract, Division policy, or a Division approved waiver; has failed to reimburse those fees and/or has repeated offenses in this area.
 - D. Charges Purchase of Care Plus fees when she or he is not a DSS authorized POC Plus provider.
 - E. Does not keep accurate records per the DSS Child Care Contact; has had repeated offenses, has been counseled and has failed to meet the requirements of a corrective action plan agreed upon with the Child Care Monitor.
 - F. Does not keep an open bank account to receive direct deposit payments from the Child Care Subsidy Program. Direct deposit is mandatory for all DSS child care subsidy providers effective May 1, 2008.
2. In addition to the items mentioned above, the Division of Social Services may terminate any relative care provider from the Child Care Subsidy Program (Purchase of Care) if she or he:
 - A. Does not complete the ~~45~~ 47 hours of mandatory health and safety training hours within 18 months of becoming a relative or non-relative care provider as outlined in the initial orientation session.
 - B. Has an unsuitable criminal history or a member of the provider's household has an unsuitable criminal history. DSS uses Office of Child Care Licensing (OCCL) guidelines and Title 11, Chapter 85 of the **Delaware Code** to determine unsuitable criminal history.

13 DE Reg. 1211 (03/01/10)

DEPARTMENT OF JUSTICE**DIVISION OF SECURITIES**

Statutory Authority: 6 Delaware Code, Section 7325(b) (6 **Del.C.**, §7325(b))
Delaware Securities Act

PUBLIC NOTICE**Rules and Regulations Pursuant to the Delaware Securities Act**

In compliance with the State's Administrative Procedures Act (APA Title 29, Chapter 101 of the **Delaware Code**) and section 7325(b) of Title 6 of the **Delaware Code**, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division hereby proposes numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

Peter O. Jamison, III
Securities Commissioner
Department of Justice
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the *Delaware Register of Regulations*.

SUMMARY OF THE PROPOSED REVISION

The proposed revision, in pertinent part, makes the following changes to the Rules and Regulations Pursuant to the Delaware Securities Act:

- (1) The designations for certain subsections, paragraphs, and subparagraphs are revised to maintain uniformity in the letter and number designations used throughout the rules and regulations.
- (2) An exemption from registration is created (subject to a notice filing requirement) for any limited or private offer of securities that qualifies for exemption under the U.S. Securities Act of 1933 or the U.S. Securities and Exchange Act of 1934.
- (3) References to the "National Association of Securities Dealers" have been changed to refer to the "Financial Industry Regulatory Authority," which is new name for that organization.
- (4) The registration procedures for broker-dealers is revised to require that all broker-dealers register through the Central Registration Depository system ("CRD") administered by the Financial Industry Regulatory Authority ("FINRA").
- (5) The registration procedures for broker-dealers is revised to eliminate the requirement that the applicant file an audited financial statement.
- (6) The registration procedures for broker-dealers is revised to eliminate the procedure for obtaining a waiver from the examination requirements.
- (7) The registration procedures for investment advisers is revised to require that all investment advisers register through the Investment Adviser Registration Depository system ("IARD") administered by the Financial Industry Regulatory Authority ("FINRA").
- (8) The registration procedures for investment advisers is revised to eliminate the requirement that the applicant file a balance sheet prepared in accordance with Schedule G of Form ADV.

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- (9) The registration procedures for investment advisers is revised to eliminate the procedure for obtaining a waiver from the examination requirements.
 - (10) The notice filing procedures for federal covered advisers is revised to require that all federal covered advisers notice file through the IARD administered by the Financial Industry Regulatory Authority ("FINRA").
 - (11) The suitability standard for broker-dealers and investment advisers is revised to clarify that the standard applies to recommended investment strategies, as well as recommended purchase and sale transactions.
 - (12) A new section 101 is added to the rules to clarify that a reference in the rules to a provision in the Act shall be deemed to be a reference to the same provision as re-designated by any amendments to the Act.
 - (13) The Boston Stock Exchange is stricken from the provision of the rules that creates an exemption from registration for securities listed on a designated exchange.

Rules and Regulations Pursuant to the Delaware Securities Act

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

[**Rules and Regulations Pursuant to the Delaware Securities Act**](#)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE SECRETARY

Statutory Authority: 16 Delaware Code, Section 4797(c)
(16 Del.C., §4797(c))

PUBLIC NOTICE

Regulations Governing the Statewide Authorized Tamper Resistant Prescription Forms

The Delaware Department of Homeland Security is promulgating rules and regulations pursuant to 16 Del. C. § 4797(c) of the Delaware Code affecting professionals licensed or registered under Title 24 and Title 16 of the Delaware Code having prescriptive authority. The proposed rules and regulations establish security requirements for a blank prescription form used by a prescriber or practitioner in this State. The primary objective of these rules and regulations is to reduce prescription fraud by decreasing the potential for forgery or alteration of a prescription form. The regulations shall be known as "Regulations Governing the Statewide Authorized Tamper Resistant Prescription Forms".

A public hearing will be held on July 13, 2011 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover before James L. Collins, Director of the Division of Professional Regulation, where members of the public can offer comments. The Director will also receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to James Collins, Director, Division of Professional Regulation, at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Shauna Slaughter, Administrative Specialist, at the above address or by calling (302) 744-4502.

The Department through the Director may consider promulgating the proposed regulations immediately following the public hearing.

Regulations Governing the Statewide Authorized Tamper Resistant Prescription Forms**1.0 Purpose.**

To promulgate rules and regulations pursuant to Title 16, Section 4797 of the Delaware Code, that establish security requirements for a blank prescription form used by a prescriber or practitioner in this State. The primary objective of these rules and regulations is to reduce prescription fraud by decreasing the potential for forgery or alteration of a prescription form.

2.0 Scope and Applicability

2.1 Authority. These regulations are enacted pursuant to 16 Del.C. §4797. These regulations shall be known as "Regulations Governing the Statewide Authorized Tamper Resistant Prescription Forms".

2.2 Applicability. These regulations apply to any individual who is authorized by law to prescribe drugs in the course of professional practice and to any vendor in the business of manufacturing and selling tamper proof prescription forms to a Delaware practitioner or prescriber.

3.0 Definitions:

"Controlled Substance" shall mean a drug substance or immediate precursor in Schedules I through V as defined in 16 Del.C. Chap.47, Subchapter 2. There shall only be one controlled substance listed on each prescription form.

"Division" shall mean the Department of State, Division of Professional Regulation

"Drugs" shall mean drugs as defined in 16 Del.C. §4701(14) or 24 Del.C. § 2502(14).

"Practitioner" or "Prescriber" shall mean prescriber as defined in 24 Del.C. §2502(20). It shall not include any practitioner or prescriber generating prescriptions within a licensed medical facility that results in the internal dispensing of prescription drugs or devices to any patient receiving treatment in that facility.

"Provider ID #" shall mean the unique identification number assigned by a vendor to any individual, group or organization authorized to purchase tamper resistant prescription forms pursuant to 24 Del.C. §2502(20) and these rules and regulations. The Provider ID # shall be a suffix to the serial number on the prescription forms as described in section 6.11.

"Tamper Resistant Prescription Form" or "Prescription Form" shall mean a prescription form which has been authorized pursuant to 16 Del.C. §4797 and meets the criteria established in these rules and regulations.

"Vendor(s)" shall mean any corporation, company, or entity in the business of manufacturing and selling tamper resistant prescription forms to authorized practitioners or prescribers and who has registered its name, address and telephone number to the Division of Professional Regulation and has been assigned a Vendor ID number. All vendors registered with the Division of Professional Regulation are deemed to be in agreement that they shall abide by and comply with these rules and regulations.

"Vendor ID #" shall mean the unique identification number assigned by DPR to a registered vendor. Pursuant to 6.11, the Vendor ID # shall be displayed as a prefix to the serial number on the prescription form.

4.0 Authority of the Division of Professional Regulation:

4.1 In accordance with §4701(35) and §4731, Title 16 of the Delaware Code, the Director of the Division of Professional Regulation shall promulgate rules and regulations as they relate to tamper resistant prescription forms pursuant to 16 Del.C. §4797.

4.2 The Director shall establish and implement standards governing the production and issuance of authorized tamper resistant prescription forms pursuant to 16 Del.C. §4797.

4.3 DPR may inspect facilities or records of vendors or require submission of information to demonstrate compliance with these rules.

4.4 Any enforcement actions pursuant to these rules and regulations shall be governed by the Administrative Procedures Act (Chapter 101, Title 29 of the Delaware Code)

5.0 Tamper Resistant Form Requirements.

5.1 Secure Stock. All paper utilized in the production of tamper resistant prescription forms must be manufactured under tightly controlled security conditions, restricted in its use and distribution, and not readily available on the open market(unavailable in retail stores or stored in unsecured print facilities).

5.2 Vendors will be required to set all new copy on each prescription design. There are multiple versions that require design. Placement of design elements and security features must be consistent across all versions.

5.3 General Composition. A safety hollow VOID pantograph background is required on each design (a solid void pantograph is not acceptable). The document shall include substantial protection against reproduction by color copiers. Preferred methods include darker and lighter gradually changing tones that provide significant color copy protection across a full range of copier settings. The word "VOID" shall appear on all copies made across a wide variety of copier settings. Areas intended for data entry shall be in lighter tones to permit easy reading of information without compromising copy protection.

5.4 Custom Imprinting. Custom imprinting of the Prescription Forms will be required for each practitioner, group practice or institution. Printing will include name, street, city, state zip code, telephone number, State of Delaware license number, and the United States Drug Enforcement Agency (DEA) number (at the practitioner's option) of the practitioner(s) or institution as requested. All custom imprinting must be printed in black ink that penetrates the paper fibers as a prescription fraud prevention requirement (Toner based imprinting is not permitted).

5.5 Prescription Forms (Two Types - Practitioner and Institution).

5.5.1 Size: 4-1/4 "x 5-1/2" overall, no bleeds.

5.5.2 Stock. The stock must be 24# white controlled safety paper. The paper must contain an invisible eradicator sensitive ink that shows the word "VOID" when tampering is attempted. A simple stain is not sufficient. The paper must react when alteration is attempted using the following list of chemicals: Acetone, Methyl Ethyl Ketone, Ethyl Acetate, Nail Polish Remover, Paint Remover, Benzyl Alcohol, Methyl Alcohol, N-Butyl Alcohol, Iso Propyl Alcohol, Ethyl Alcohol, Rubbing Alcohol, Hair Spray, 1-Methoxy-2-Propanol, Carbon Tetrachloride, Bleach, Tetrahydrofurane, Butyl Cellulose, 5% Hydrochloric Acid & Trichloroethylene.

5.5.3 Presswork/Ink.

5.5.3.1 FRONT: Prints 3 colors (black and other colors to be specified by DPR including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy hollow VOID Pantograph as described under section 6.3, 6.5.2., and 7.1. There shall also be a tamper evident coating containing a hidden void feature. Under normal conditions, the feature is invisible. An erasure/abrasion attempt will activate the coating and the word VOID will appear.

5.5.3.2 BACK: Prints 3 colors (gray, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark identifying the vendor responsible for manufacturing the prescriptions forms printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed only at a 45 degree angle. This feature must also appear fluorescent green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled.

5.5.3 Construction/Bindery. Pads are edge glued in sets of 100 prescriptions for shipment to practitioners and institutions across Delaware. A chipboard backer is required for each pad.

5.6 Laser Sheets (1-Up Version).

5.6.1 Size: 8-1/2" x 11", no bleeds.

5.6.2 Stock. 24# white controlled safety paper. The stock utilized must be unavailable on the consumer market (unavailable in retail stores or stored in unsecured print facilities). The paper utilized must be designed and function effectively across a wide range of laser printing devices. The paper must contain an invisible eradicator sensitive ink that shows the word "VOID", as defined under section 6.3 and 7.1, when tampering is attempted. A simple stain is not sufficient. The paper must react when alteration is attempted using the following list of chemicals: (Acetone, Methyl Ethyl Ketone, Ethyl Acetate, Nail Polish Remover, Paint Remover, Benzyl Alcohol, Methyl Alcohol, N-Butyl Alcohol, Iso Propyl Alcohol, Ethyl Alcohol, Rubbing Alcohol, Hair Spray, 1- Methoxy-2-Propanol, Carbon Tetrachloride, Bleach, Tetrahydrofurane, Butyl Cellulose, 5% Hydrochloric Acid & Trichloroethylene).

5.6.3 Presswork/Ink:

5.6.3.1 FRONT: Prints 3 colors (black and other colors to be specified by DPR including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy hollow VOID Pantograph as described under section 6.3, 6.6.2 and 7.1. An additional coating is required on the face to insure toner adhesion to the paper. This feature is commonly referred to as "toner grip" or "laser lock".

5.6.3.2 BACK: Prints 3 colors (gray, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark identifying the vendor responsible for manufacturing the prescription forms printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed only at a 45 degree angle. This feature must also appear fluorescent green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled.

5.7 Laser Sheets (4-Up Version):

5.7.1 Size: Four individual 4-1/4" x 5-1/2" forms up on an 8-1/2" x 11" sheet, no bleeds.

5.7.2 Stock. 24# white controlled safety paper. The stock utilized must be unavailable on the consumer market (unavailable in retail stores or stored in unsecured print facilities). The paper utilized must be designed and function effectively across a wide range of laser printing devices. The paper must contain an invisible eradicator sensitive ink that shows the word "VOID", as defined under section 6.3 and 7.1, when tampering is attempted. A simple stain is not sufficient. The paper must react when alteration is attempted using the following list of chemicals: (Acetone, Methyl Ethyl Ketone, Ethyl Acetate, Nail Polish Remover, Paint Remover, Benzyl Alcohol, Methyl Alcohol, N-Butyl Alcohol, Iso Propyl Alcohol, Ethyl Alcohol, Rubbing Alcohol, Hair Spray, 1- Methoxy-2-Propanol, Carbon Tetrachloride, Bleach, Tetrahydrofurane, Butyl Cellulose, 5% Hydrochloric Acid & Trichloroethylene).

5.7.3 Presswork/Ink:

5.7.3.1 FRONT: Prints 3 colors (black plus colors to be specified by DPR including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy hollow VOID Pantograph as described under section 6.3 and 7.1. An additional coating is required on the face to insure toner adhesion to the paper. This feature is commonly referred to as "toner grip" or "laser lock".

5.7.3.2 BACK: Prints 3 colors (gray, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of

each prescription. The back shall also contain an artificial watermark identifying the vendor responsible for manufacturing the prescription forms printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed only at a 45 degree angle. This feature must also appear fluorescent green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled.

5.7.4 Perforations: Laser cross perforations (full horizontal & full vertical) divide each sheet into 4 equal sections that measure 4-1/4"x 5-1/2". Perforations must be compatible with a laser printing environment the paper must feed effectively and operate trouble-free across a wide range of laser devices by various manufacturers.

5.8 Thermal Rolls:

5.8.1 Size: Individual form size is 4-1/4 "x 5-1/2", no bleeds.

5.8.2 Stock. A heavy weight, high sensitivity, direct thermal paper grade with an average basis weight of 20.4 lbs. (76.8 grams/m²). The thickness should be an average of 3.26 Mils (82.8 Microns). The grade should have an enhanced coating design with resistance to reasonable environmental conditions. The grade should provide a clear, dark image that is consistent and suitable for high quality bar code imaging. The optimum activation temperature at 194+/- 9 degrees F (90 +/- 5 degrees C) should result in a density reading of 1.3 ODU. The thermal grade should have an image stability or archivability rating such that after imaging with reasonable storage, the image will remain human readable for a minimum of 10 years.

5.8.3 Presswork/Ink:

5.8.3.1 FRONT: Prints 3 colors (black and other colors to be specified by DPR including a friction activated ink.). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy hollow VOID Pantograph as described under section 6.3 and 7.1.

5.8.3.2 BACK: Prints 4 colors (gray, black, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark identifying the vendor responsible for manufacturing the prescription forms printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed only at a 45 degree angle. This feature must also appear fluorescent green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled. Two timing marks must also be printed in black ink on the back of each individual prescription.

5.8.4 This is a direct thermal roll product that requires winding 500 prescriptions on each roll. Scripts are wound on a roll that utilizes a 1" plastic core. A core made of cardboard or other material is not acceptable.

5.9 Intermic Thermal Rolls.

5.9.1 Size: Individual form size is 4-1/4" x 5-1/2", no bleeds.

5.9.2 Stock. A heavy weight, high sensitivity, direct thermal paper grade with an average basis weight of 20.4 lbs. (76.8 grams/m²). The thickness should be an average of 3.26 Mils (82.8 Microns). The grade should have an enhanced coating design with resistance to reasonable environmental conditions, such as 24 hour immersion in water. The grade should provide a clear, dark image that is consistent and suitable for high quality bar code imaging. The optimum activation temperature at 194+/- 9 degrees F (90 +/- 5 degrees C) should result in a density reading of 1.3 ODU. The thermal grade should have an image stability or archivability rating such that after imaging with reasonable storage, the image will remain human readable for a minimum of 10 years.

5.9.3 Presswork/Ink:

5.9.3.1 FRONT: Prints 3 colors (black plus colors to be specified by DPR including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy hollow VOID Pantograph as described under section 6.3 and 7.1.

5.9.3.2 BACK: Prints 4 colors (gray, black, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark identifying the vendor responsible for manufacturing the prescription forms printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed only at a 45 degree angle. This feature must also appear fluorescent green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled. A timing mark that extends horizontally across the back of each script shall be printed in black ink.

5.9.4 This is a direct thermal roll product that requires winding 500 prescriptions on each roll. Prescriptions are wound on a roll that utilizes a 1" plastic core. A core made of cardboard or other material is not acceptable. A full horizontal perforation is required between each prescription (every 5-1/2").

6.0 Two-Part Carbonless Form

6.1 Size: 4-1/4" x 5-1/2", no bleeds.

6.2 Stock:

6.2.1 Part 1 - Minimum of 20# White CB carbonless bond. The paper must contain an invisible coating that stains when bleach is applied.

6.2.2 Part 2 - Minimum of 20# Canary CF carbonless bond.

6.3 Presswork/Ink:

6.3.1 FRONT: Part 1 prints 3 colors (black plus colors to be specified by DPR including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy hollow VOID Pantograph as described under section 6.3 and 7.1. An additional coating is required on the face to insure toner adhesion to the paper. This feature is commonly referred to as "toner grip" or "laser lock". Part 2 prints one color to be specified by DPR.

6.3.2 BACK: Part 1 prints 3 colors (gray, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark identifying the vendor responsible for manufacturing the prescription forms printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed only at a 45 degree angle. This feature must also appear fluorescent green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled. The back of Part 2 is unprinted.

6.4 Numbering. A press or crash numbering methodology may be utilized to apply the crash numbering to part 2.

6.5 Construction and Bindery: Pads are edge glued in sets of 50 two-part prescriptions for shipment to practitioners and institutions across Delaware. A chipboard backer is required for each pad. An additional chipboard insert (size 4-1/4" x 5-1/2") is shipped with each pad. Since these are carbonless

2-part pads, the chipboard insert will be used to prevent writing through to other ply(s). An instruction sheet describing how to use the chipboard insert must also accompany STATE each shipment.

7.0 Mandatory Prescription Form Markers:

- 7.1 Hollow Void Pantograph: Outlined open letters spelling the word "VOID" when form is photocopied. A safety hollow VOID pantograph background is required on each design (a solid void pantograph is not acceptable) pursuant to Section 4.2 of these regulations.
- 7.2 Security Back Print: Text or images on back of forms stating that this is a security script;
- 7.3 Micro-printing: Very small font that is legible when viewed at 5 times magnification or greater, but illegible when copied;
- 7.4 Reverse "Rx": Visible "Rx" watermark that disappears when copied;
- 7.5 Watermarking: The back of the form shall contain an artificial watermark identifying the vendor responsible for manufacturing the prescription forms printed on the back of the prescription that can only be seen when viewed at an angle;
- 7.6 Solid colored background;
- 7.7 Quantity Check Boxes;
- 7.8 Refill Indicator;
- 7.9 Chemical Reactive Paper: The paper must react when alteration is attempted using the following list of chemicals: Acetone, Methyl Ethyl Ketone, Nail Polish Remover, Paint Remover, Benzyl Alcohol, Methyl Alcohol, Rubbing Alcohol, Hair Spray, 1-Methoxy-2-Propanol, Carbon Tetrachloride, Bleach;
- 7.10 List all Security Features on Back;
- 7.11 Serial Numbered: The serial number shall be prefaced by the Vendor ID # and the Provider ID # shall follow as a suffix to the serial number. The Vendor ID #, serial number and Provider ID # must also be displayed as a bar code pursuant to Section 6.13.2 of these regulations; and,
- 7.12 Heat Sensing (Thermochromic Ink) Imprint.
- 7.13 Serial Numbering/Bar Coding:
 - 7.13.1 Vendors shall adhere to a base 31 numbering scheme to be developed and employed in the contract period. The numbering scheme shall include a code 39 barcode and be in a format that can be easily data entered by the dispensing pharmacy and shall be approved by the Division of Professional Regulation.
 - 7.13.2 A unique human readable consecutive number (Alphanumeric) and matching linear barcode (code 39) must be applied to each individual prescription form in an established numbering scheme approved by the Division of Professional Regulation. Vendors must be able to guarantee no duplicate numbers across the entire range of product types (6 Items described herein). Each individual prescription must have a unique number and matching code 39 barcode printed in black. Forms held in storage for Delaware Practitioners shall be consecutive numbered/bar-coded to facilitate inventory accountability by the Vendor.
 - 7.13.3 Only one copy of serially numbered set shall be produced. NO DUPLICATE OR MISSING NUMBERS ARE ACCEPTABLE.
 - 7.13.4 The Vendor ID # shall appear as a prefix to the serial number and the Provider ID # shall appear as a suffix to the serial number. The Vendor ID # and Provider ID # shall also be included as part of the matching 39 barcode.

8.0 Requirements for Vendors

- 8.1 Secure Stock: Pursuant to section 6.1, all controlled paper utilized in the production of the Prescription Forms must be manufactured under tightly controlled security conditions, restricted in its use and distribution, and not readily available on the open market. Vendors must supply a list of the built in security features contained in their proposed security paper.

PROPOSED REGULATIONS

- 8.2 Document Security: Vendors must guard against the loss of forms during the process of manufacture, storage, imprinting and delivery to designated recipients. Vendors must provide document security measures including but not limited to:
- 8.2.1 Security of the area where prescriptions pads and paper are stored.
 - 8.2.2 Destruction of sensitive material waste including but not limited to all samples and test documents.
 - 8.2.3 Accessibility of the printing, handling, imprinting, packaging and distribution area.
 - 8.2.4 Storage of all printing and imprinting plates including the maintenance of a plate log and destruction record of plates.
 - 8.2.5 Building security including but not limited to surveillance within and around the facility.
- 8.3 Technical Environment/Computer.
- 8.3.1 Vendors must provide system security including but not limited to:
 - 8.3.1.1 Robust encryption management process for managing data transfers both internally and externally.
 - 8.3.1.2 Back up data process and recoverability.
 - 8.3.1.3 Password policy.
- 8.4 Vendors shall guarantee that only one copy of each serially numbered set will be produced. NO DUPLICATE OR MISSING NUMBERS ARE ACCEPTABLE.
- 8.5 State of Delaware reserves the right to have DPR representatives enter a Vendor's premises without advance notice during stated hours of daily operation to inspect methods of production, storage and handling of forms, and to determine full compliance with all provisions of these regulations.
- 8.6 Any vendor manufacturing and selling tamper proof prescription forms to a Delaware licensed practitioner or prescriber shall contact the Division of Professional Regulation to:
- 8.6.1 Obtain, for purposes of accurate delivery of tamper proof prescription forms, the registered name, address and telephone number of the practitioner or prescriber;
 - 8.6.2 Register the company, contact person, address and telephone number; and,
 - 8.6.3 The Division of Professional Regulation shall assign a Vendor ID # to a registered vendor, which shall then be included as a prefix to the serial number pursuant to 6.11.
- 8.7 Vendors must provide for the immediate disposal of all damaged or mutilated forms.
- 8.8 Vendors are required to furnish a toll free 800 number operated with the United States available to Practitioners for questions and order information.
- 8.8.1 Vendor staff and equipment must be capable of receiving and servicing all calls received daily.
 - 8.8.2 Vendors must have the ability to track and report calls received, answered, abandoned, average speed of answer, average talk time, call reason, call resolution and call monitoring.
 - 8.8.3 Vendors must have a contingency plan for equipment or service failure.
 - 8.8.4 Vendor staff must have computer equipment capable of accessing the web-based ordering system, so that customer calls can be adequately serviced.
- 8.9 PAYMENT: Vendors must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means.
- 8.10 Quality Assurance: Vendors must notify the DPR of any quality control problems as they occur.
- 8.11 Certified vendors must notify DPR in writing within 30 days of any material changes to its business, systems or processes related to compliance with these rules.

9.0 Order Processing:

- 9.1 Vendors must establish a system to directly receive, verify and process all orders for Prescription forms. Vendors must ensure that Prescriptions Forms are only to be issued to authorized practitioners and institutions. Such authorization shall include a registration process by which DPR registers authorized practitioners/institutions. All such systems, including computer information, shall be housed and maintained in a secure environment.
- 9.2 Vendors must establish a system for order processing that meets all applicable regulations.

- 9.3 Returned Prescriptions: Vendors are responsible for tracking all prescriptions that have been returned to the vendor as being undeliverable or that contain errors. The vendor must maintain a record of all returned prescriptions to include serial numbers, the date of delivery, and the name of the practitioner/institution. Such records shall be made available to the Division of Professional Regulation upon request. When vendors receive prescriptions that have been returned as being undeliverable, they shall notify the practitioner/institution that placed the order immediately. Prescriptions containing errors or otherwise deemed undeliverable must be destroyed by the vendor.
- 9.4 All suspicious incidents involving returned prescriptions, as well as prescriptions that were lost in delivery must be immediately reported to the Division of Professional Regulation.
- 9.5 Tracers: Vendors are responsible for tracing orders not received, claims filed for non-receipt, and providing credit to registered practitioners for the cost of orders not received.
- 9.6 Suspicious Orders: Vendors must maintain records of all suspicious orders which shall be made available for review and inspection by the DPR upon request.
- 9.7 Rush Orders: Vendors shall establish and maintain a system capable of processing and shipping emergency orders overnight.
- 9.8 Ordering Procedure: Vendors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency, practitioner or practitioner's authorized designee is responsible for placing their orders to the Vendor, which may be accomplished by written purchase order, telephone, fax or computer on-line systems. Vendors must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means without imposing any additional fees, costs or conditions.
- 9.9 Order Management Requirements: The system must provide robust management information capabilities to the user such as Viewing Order History, Searching for an Order by various elements, Display of Previous Order Details including a PDF proof of the prescription layout, as well as the flexibility to place a Reorder based on a past order that is still viewable on the system. Previous Order History must be made available for a minimum of 2 years.
- 9.9.1 Order History - The system must be capable of maintaining order history for each Practitioner, Institution, and other authorized users. The system must present the user with a list of orders that can be sorted by order date, order number, or order status. A search engine should be deployed as part of the order history feature that allows user to search for an order by the above criteria. When an order is selected from the order history page, the details of the order must be presented. Details are to include the prescription numbers associated with that order, a shipping tracking number and estimated delivery date and the visible PDF proof of the actual order prescription information that was printed as part of the associated order.
- 9.9.1.1 Order Detail - When an order is selected from the order history page, the details of the order must be presented including the prescription numbers associated with that order, shipping tracking number and estimated delivery date and the visible PDF proof of the actual order script information that was printed as part of the associated order.
- 9.9.1.2 Reorder - The user must have the ability to repurpose past order data to place a reorder for any Practitioner order still active in their Order History Screen. All business rules, especially those relating to active practitioners and account status, need to be reapplied to a new order placed via the Reorder functionality.
- 9.9.2 Reorder forms.
- 9.9.2.1 A reorder form must accompany each shipped order.
- 9.9.2.2 Stock: 20# xerographic bond in colors specified by the DPR
- 9.9.2.3 Size: 8-1/2" x 11", no bleeds
- 9.9.2.4 Presswork/Ink: Prints black ink front and back.
- 9.9.2.5 Variable Information: Reorder forms to be personalized with individual practitioner's/institution's applicable contact information.
- 9.9.2.6 Perforation: a full horizontal perforation is required.

9.9.3 Mailing Container. All forms shall be wrapped in a secure manner suitable for mailing. All packaging must be of such strength, substance and construction suitable for mailing with a return address to vendor. Mailing container shall not contain any markers or labels to indicate that the contents are prescription forms.

10.0 Online Ordering

10.1 Data Transmission: Vendors shall provide authorized registered Practitioners with the order information in electronic format.

10.2 User Profile Requirements: Every Practitioner or designee connecting to the vendor provided software must be linked to a unique profile. The system must provide the capability to profile each user separately. This feature must enable the user to view his/her profile in the system and make modifications to user changeable fields such as password, telephone number, e-mail address. This screen also displays information that is not changeable by the user. These include spending limits, User ID, ship-to code, and user group affiliation (e.g., practitioner, Institutional user, etc.) and ship-to-address.

10.3 Input data validation

11.0 Data Interface Requirements.

Each business day, Vendors must retrieve profile account information about all practitioners and institutions that were added or changed during the current business day. This information shall be available in an electronic format to DPR upon request. Vendors will be provided a detailed field mapping and the associated exception processing that must be performed. The vendor's software must handle exception processing and must ensure all records are either transacted successfully or failed.

12.0 Drug Enforcement Agency (DEA).

Vendors must implement a technical solution for receiving and updating practitioner information from the DPR.

13.0 Delivery.

13.1 Forms shall be shipped via courier which provides a "protective signature service," or the vendor may make direct shipment from their factory by "For Hire" carrier or vendor's truck, provided shipment is made in locked vans and such vans are not left unlocked or unattended while making pickups and deliveries. Delivery may also be made by vendor's vehicles under similar security and delivery requirements. A printer's manifest must accompany the shipment.

13.2 Vendor Prescription Forms must be shipped within 3 days of receipt of order. Delivery must be made to the address approved by DPR. No deliveries will be made to a private residence unless a practitioner's office and business location are attached. A record of delivery must be maintained by the Vendor and shall consist of the name of the practitioner/institution, prescription serial numbers, date of delivery, and the name and signature of the person receiving the delivery. This information must be maintained for a period of at least 5 years. Orders which are not delivered shall be handled as detailed in the section titled "Returned Prescriptions".

14.0 Mandatory Insurance Requirements.

Vendors shall obtain at their own cost and expense and keep in force and effect comprehensive general liability insurance.

15.0 State of Delaware Business License Requirement.

Vendors shall provide proof of and shall maintain a valid State of Delaware Business Licensure. Failure to comply with the State of Delaware licensing requirements may subject the vendor to applicable fines and/or interest penalties.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1700 Board of Medical Licensure and Discipline

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) 24 **Del.C.**, §1713(a)(12)

PUBLIC NOTICE

1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations as mandated by SB 233 (codified at 24 **Del.C.** §1713(f)). The proposal creates new Section **31.0 Disciplinary Guidelines** establishing guidelines for the imposition of disciplinary sanctions against persons certified or licensed to practice medicine or other professions or occupations regulated under the Medical Practice Act.

The Board held a public hearing on May 3, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public offered comments. As a result of those comments, the Board made substantive changes to proposed regulations 31.7.1, 31.7.2, 31.7.3.1 and deleted 31.7.8 as previously published in the register of Regulations on April 1, 2011. The Board has also added a clarifying provision at 31.16 that these regulations apply to all practitioners regulated under the Medical Practice Act. Finally, the Board made several technical corrections to the numbering within the document.

The Board will hold a second public hearing on July 19, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments on the regulations as republished. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

1700 Board of Medical Licensure and Discipline

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

1700 Board of Medical Licensure and Discipline

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

2930 Council on Real Estate Appraisers

Statutory Authority: 24 Delaware Code, Section 2905 (24 **Del.C.**, §2905)
24 **DE Admin. Code** 2930

PUBLIC NOTICE

2930 Council on Real Estate Appraisers

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to develop standards in cooperation with the Delaware Association of Counties and the Executive Director of the League of Local Governments for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards pursuant to 24 **Del.C.** §4019(e).

The Board will hold a public hearing on the proposed rule change on July 19, 2011 at 10:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nicole Williams, Administrator of the Delaware Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

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

[2930 Council on Real Estate Appraisers](#)

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 **Del.C.**, §5106(a)(1))
24 **DE Admin. Code** 5100

PUBLIC NOTICE

5100 Board of Cosmetology and Barbering

Pursuant to 24 **Del.C.** §5106(a)(1), the Board of Cosmetology and Barbering has proposed revisions to its rules and regulations.

A public hearing on proposed revisions published on November 1, 2010 in the *Register of Regulations*, Volume 14, Issue 5 was held on November 29, 2010. The Board of Cosmetology and Barbering decided to make further revisions to the rules and regulations.

A public hearing to address these proposed revisions will be held on June 27, 2011 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 51 of Title 24 of the Delaware Code, which went into effect on June 26, 2010. In particular, certain rules have been revised to implement the enhanced education requirements for nail technicians and aestheticians.

Further, in Rule 2.0, the requirements for temporary work permits are amended to ensure that a permanent license is obtained in a timely manner. The apprenticeship requirements, in Rule 3.0, are also revised to enable the

Board to more effectively monitor apprentices and their status pertaining to completion of the required hours. Rule 11.0, pertaining to the requirements for schools, makes clear that all instructors must be licensed. Finally, Rule 14.7 specifies that nail technicians are prohibited from performing any type of hair removal.

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

5100 Board of Cosmetology and Barbering

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

[5100 Board of Cosmetology and Barbering](#)

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

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

PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Background

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to the current provisions concerning the scope of work for Traffic Impact Studies and Traffic Operational Analyses.

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

The Department previously entered into agreements with county governments regarding traffic impact studies and traffic operational analyses. For New Castle County, for example, the agreement calls for the Department, as part of its scoping of the study areas for TIS work, to assure that the study looks at a minimum number of intersections from the proposed site entrance(s). However, what is considered an intersection for this purpose may be subject to differing interpretations, and may risk unduly limiting or unduly expanding the TIS study area.

The draft regulations are intended to provide sufficient guidance to the state, local governments, the development community, and those interested in development matters in this regard. The Department wishes to assure that the study areas selected match well with what intersections the Department reasonably expects to be significantly affected by the traffic from the subject property, given its proposed uses.

The changes are predominantly limited to amendments of Sections 1.5., 2.1, 2.3.4, and 2.5.2.

Public Comment Period

The Department will take written comments on the proposed Amendment to its Standards and Regulations for Subdivision Streets and State Highway Access from June 1, 2011 through June 30, 2011. The proposed Regulations appear below.

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

Cleon L. Cauley, Sr., Acting Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)
(302) 739-2895 (fax)
cleon.cauley@state.de.us

2309 Standards and Regulations for Subdivision Streets and State Highway Access

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

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

DIVISION OF PLANNING AND POLICY

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

PUBLIC NOTICE

2313 Policies and Procedures for Acquisition of Certain Real Property Interests

Background

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt regulations to ensure that its policies and procedures for the acquisition of real property are transparent, consistent, cost effective and fair.

The Department has broad statutory authority to acquire property in connection with state highway projects. However, an "Advanced Acquisition Committee" must review certain acquisitions of real property after the approval of the preferred alternative. The Department has adopted policies governing such acquisitions; nonetheless, these existing policies only apply to purchases of "fee simple" interests, and do not expressly apply to reservations. While the Committee has the statutory authority to determine whether certain advanced acquisitions are consistent with state planning goals, it does not currently have in place a process for reviewing the merits of such transactions.

The regulations below will implement specific recommendations for advanced acquisitions set forth in the Report of the Governor's Chief of Staff to Governor Markell dated January 7, 2011 (the "Report"). Specifically, the regulations will (1) require that the Committee review not only advanced acquisitions, but reservation agreements as well; (2) provide a process for the Committee to review the merits of advanced acquisitions and reservation agreements; (3) require the Department to obtain independent appraisal for advanced acquisitions and reservations; (4) require that advanced acquisitions and reservations be reviewed by legal counsel; and (5) require that the terms of advanced acquisitions and reservations be reflected in an agreement signed by the Department and the property owner. In addition, the regulations also set out the process for the Committee to conduct its consistency review of certain real property acquisitions proposed by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

The Department previously accepted written comments on the proposed Regulations Establishing Policies and Procedures for Advanced Acquisition of Real Property from February 1, 2011 through March 5, 2011. Based on those comments and other suggestions, the Department drafted additional changes to these proposed regulations. This second draft, submitted for further public comment, incorporates the provisions described above, and further require the Advanced Acquisition Committee to review "Special Property Acquisitions, as defined below."

Public Comment Period

The Department will take written comments on the proposed Regulations Establishing Policies and Procedures for Acquisition of Certain Real Property Interests from June 1, 2011 through June 30, 2011. The proposed Regulations appear below.

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

Cleon L. Cauley, Sr., Acting Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)
(302) 739-2895 (fax)
cleon.cauley@state.de.us

2313 Policies and Procedures for Acquisition of Certain Real Property Interests

1.0 Purpose.

- 1.1 The Department of Transportation has broad statutory authority to acquire public or private property and property rights in connection with the Department's jurisdiction. Traditionally, the Department has acquired the necessary property rights upon final right-of-way plan approval for a project. In certain instances, the best interests of the state and individual property owners may be better served if such interests are either acquired or reserved by the Department prior to right-of-way plan approval. The purpose of this regulation is to enumerate the specific policies and procedures governing the acquisition and reservation of certain real property by the Department. It also sets out the process for the Committee to conduct its consistency review of certain real property acquisitions proposed by the Department, as contemplated by 17 Del.C. §137(a)(2).
- 1.2 In addition, the Department desires to have certain special property transactions reviewed and approved by the Committee established under Section 137(a)(2), that are not necessarily tied to a highway project location. Furthermore, certain other transportation facility acquisitions are carried out pursuant to 2 Del.C. §1309(5), which are not subject to approval by any other public body. Nonetheless, for these transactions, the Department believes it would be in the public interest to obtain a review and comment about the proposed acquisition from the Committee.

2.0 Definitions

"Advanced acquisition" means the acquisition by the Department of any interest in real property prior to final right-of-way plan approval of the project for which such interest is being acquired. For purposes of this regulation and the Department's Real Estate Manual, "advanced acquisitions" shall also include, without limitation, reservations.

"Advanced Acquisition Committee" or "Committee" means the committee created pursuant to 17 Del.C. §137(a)(2) and comprised of the Secretary of the Department of Natural Resources and Environmental Control; the Secretary of the Department of Transportation, the Secretary of the Department of Agriculture; the Director of the Delaware Economic Development Office; the Governor's Chief of Staff; a member of the Senate designated by the President Pro Tempore of the Senate; a member of the House of Representatives designated by the Speaker of the House of Representatives; a member of the public designated by the President Pro Tempore of the Senate; and a member of the public designated by the Speaker of the House of Representatives.

"Consistency review" shall mean the review by the Committee pursuant to 17 Del.C. §137(a)(2) of acquisitions for new corridors, expansion of existing corridors, or the acquisition of real property as part of the Department's Corridor Capacity Preservation Program.

"Corridor" means a particular route of one or more highways of this State, serving predominantly statewide and/or regional travel needs. By way of example and not limitation, State Routes 1, 2, and 141, and U.S. Routes 13, 113, and 202 are corridors under this definition.

"Department" means the Delaware Department of Transportation.

"Expansion of existing corridors" means the proposed construction of additional through lanes for a minimum of three miles, such as to significantly increase the traffic-carrying capacity of a corridor already in existence at the time of the proposed capital improvement. By way of example and not limitation, the dualization of U.S. Route 113 between Milford and Georgetown, and the State Route 1 Third Lane project between Rehoboth Avenue Extended and the Five Points intersection with U.S. Route 9, would have been considered expansions of existing corridors under this definition at the time of their planning and construction.

"Hardship acquisition" shall mean an advanced acquisition to resolve a specific hardship imposed upon the owner as a result of a project including, without limitation, long-term leases and reservations between an owner and the Department. Hardship acquisitions shall include situations in which an owner must relocate for personal reasons (e.g., job transfer, death in the family, retirement plans or medical reasons) and is unable to sell his or her property as a result of a project.

"New corridor" means a proposed capital improvement for a corridor-level highway, all or substantially all of which is to be built on previously unused alignment. By way of example and not limitation, the tolled portion of State Route 1 through Kent and New Castle County would have been considered a new corridor under this definition, at the time of its planning and eventual construction.

"Owner" shall mean the owner of the real property interest, which the Department seeks to acquire or reserve.

"Preferred alternative" shall mean the alternative that the Department believes would fulfill its statutory mission and responsibilities giving consideration to economic, environmental, technical and other factors.

"Project" means an undertaking for a capital improvement by the Department for a new corridor, expansion of an existing corridor, or acquisition of real property as part of the Corridor Capacity Preservation, and which uses state and/or federal funds.

"Protective acquisition" shall mean an advanced acquisition to allow the Department to protect from development real property within a project area in instances where development would increase the eventual cost of property acquisition to taxpayers or would limit location alternatives for the project. Protective acquisitions shall include, without limitation, long-term leases and reservations to allow the Department to protect from development real property within a project area.

"Real Property" means a fee simple interest in real estate for any such acquisition, and shall also include any lesser property interest proposed for acquisition under the Corridor Capacity Preservation Program (17 Del.C. §145).

"Reservation" means a commitment by the Department to compensate an owner of any interest in real property, in exchange for an agreement by the owner to refrain from further developing his or her property or designated portions thereof.

"Special Property Acquisition" shall mean the acquisition of any interest in real property for Department transportation projects that are not necessarily related to the highways and streets under its jurisdiction and control. By way of example and not limitation, such acquisitions shall include acquisitions for transit maintenance facilities, commuter park-and-ride lots and similar facilities for the Delaware Transit Corporation pursuant to 2 Del.C. §1309(5); acquisitions of land to provide clear space for runway approaches for publicly owned or public-use airports; and other acquisitions of interests in real property in connection with Department transportation projects pursuant to 17 Del.C. §137 or any other legal authority.

3.0 Hardship Acquisition.

- 3.1 Depending upon the availability of funding, the Department may consider requests by owners for hardship acquisitions.

- 3.2 Written Request - The owner of the real property must submit to the Department a written request for a hardship acquisition.
- 3.1.1 A request for hardship acquisition of property located in New Castle County shall be submitted to the:
North District Real Estate Manager
Delaware Department of Transportation
250 Bear Christiana Road
Bear, DE 19701
- 3.1.2 A request for hardship acquisition of property located in Kent County or Sussex County shall be submitted to the:
South District Real Estate Manager
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
- 3.3 Criteria. Upon receipt of a written request for a hardship acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria set forth herein. At minimum, the request must demonstrate to the Department's satisfaction that:
- 3.3.1 The property has been marketed for at least six (6) months; and
- 3.3.2 The realtor, or owner in absence of a realtor, must certify and provide evidence that he or she is unable to sell the property at a reasonable price as a result of the proposed project; and
- 3.3.3 The owner must be able to document a compelling reason for his or her move from the property, e.g., job transfer, death in the family, retirement plans or for medical reasons.
- 3.4 If an owner demonstrates to the Department's satisfaction that a hardship acquisition is appropriate, then such proposed acquisition shall be considered in accordance with the procedures set forth in Section 5.0.

4.0 Protective Acquisition.

- 4.1 Depending upon the availability of funding, the Department may consider requests for protective acquisitions.
- 4.2 Written Request - All requests for a protective acquisition must be in writing.
- 4.2.1 A request for protective acquisition of property located in New Castle County shall be submitted to the:
North District Real Estate Manager
Delaware Department of Transportation
250 Bear Christiana Road
Bear, DE 19701
- 4.2.2 A request for protective acquisition of property located in Kent County or Sussex County shall be submitted to the:
South District Real Estate Manager
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
- 4.3 Criteria. Upon receipt of a written request for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:
- 4.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or
- 4.3.2 Development would limit location alternatives for a project.

5.0 Procedures for Review and Approval of Advanced Acquisitions.

- 5.1 For advanced acquisitions satisfying the criteria set forth in Section 3.2 or 4.2, or for Special Property Acquisitions, as the case may be, the Department shall have an appraisal performed by its independent appraisers in accordance with the Department's Real Estate Manual.
- 5.2 Following receipt of the appraisal, the Department and its legal counsel shall discuss the potential terms of an agreement and the justifications therefor, including the nature of the interest to be acquired (i.e., acquisition, reservation, leasehold); the necessity of acquiring such interest and the existence of any alternative transactions; the fair market value of such interest; the amount of land required; the duration of the agreement; and such other factors as may be relevant. Following such discussion, counsel shall prepare a detailed term sheet reflecting the material terms of the proposed transaction.
- 5.3 The Department will present the term sheet to the Advanced Acquisition Committee at a scheduled meeting as soon as reasonably practicable. The Committee shall consider the terms of and rationale for the proposed transaction and may either approve, approve with conditions, or reject such transaction. If the Committee approves the proposed transaction or approves with conditions, the Department shall negotiate the final terms with the owner. For Special Property Acquisitions made under the authority of 2 Del.C. §1309(5), the Committee's review shall be considered an advisory opinion.
- 5.4 The material terms of all advanced acquisitions shall be reflected in an agreement prepared or reviewed by the Department's legal counsel and signed by the owner and an authorized representative of the Department. For any agreements enacted prior to the effective date of this regulation but for which no contract exists that (a) sets forth the material terms of such agreement and (b) is signed by both the Department and owner, the parties thereto shall execute an agreement in conformance with this Section 5.4 no later than July 31, 2011.

6.0 Consistency Review of Certain DeIDOT Real Property Acquisitions

- 6.1 The Committee shall conduct a consistency review for certain proposed real property acquisitions by the Department. These acquisitions consist of those real properties determined by the Department as necessary for its projects for new corridors, expansion of existing corridors, real property affected by the Corridor Capacity Preservation Program, and Special Property Acquisitions. This review shall be conducted under the following time frames:
- 6.1.1 For the preferred alternative for existing corridors or the expansion of existing corridors – After the projects are approved by the Council on Transportation.
- 6.1.2 For the Department's Corridor Capacity Preservation Program and Special Property Acquisitions – Prior to any real property acquisitions.
- 6.2 The consistency review shall confirm that the Department's proposed real property acquisitions further the State's overall goals for land use planning, as expressed by project authorizations and appropriations adopted by the General Assembly.
- 6.3 At the scheduled meeting for the consistency review, the Department shall present to the Committee such evidence as it deems necessary to demonstrate that the proposed acquisitions are consistent with state planning goals. This evidence shall include:
- 6.3.1 a detailed visual depiction of the proposed acquisitions;
- 6.3.2 the relevant project pages from the Capital Improvement Program adopted by the Council on Transportation, pursuant to 29 Del.C. §§8409 and 8419;
- 6.3.3 the relevant project authorizations as described in the relevant Bond and Capital Improvements Acts adopted by the General Assembly;
- 6.3.4 where applicable, the Department's adopted Corridor Capacity Preservation plan for the corridor for which the proposed acquisition would be made, along with other evidence showing how the acquisition furthers the Department's goals under that Program; and
- 6.3.5 where applicable, the relevant project approvals obtained from the Federal Highway Administration.

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- 6.3.6 evidence showing how the proposed acquisition furthers the Department's goals for the particular project purpose, including a cost/benefit analysis and other relevant data;
- 6.3.7 a description of how the project fits within the State's Strategies for Policies and Spending; and
- 6.3.8 documentation of the State Planning Office's approval of the project.
- 6.4 If the Committee determines that the proposed acquisition is consistent with state planning goals, it shall then notify the Department in writing. For Special Property Acquisitions made under the authority of 2 Del.C. §1309(5), the Committee's determination shall be considered an advisory opinion.
- 6.5 If the Committee determines that the proposed acquisition is not consistent with state planning goals, it shall then notify the Department in writing, with an explanation of the basis for the Committee's determination.
-

Symbol Key

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

Final Regulations

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

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

DELAWARE RIVER BASIN COMMISSION

ORDER

Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay

Proposed: Delaware Register of Regulations (14 DE Reg. 70-83 (08/01/2010)) on August 1, 2010.
Adopted: December 8, 2010 by the Delaware River Basin Commission, Pamela M. Bush, Esq., Secretary.
Filed: April 21, 2011.
Authority: Laws of 1961, Chapter 13, Approved May 1, 1961 (*Delaware River Basin Compact*).
Effective Date: Upon publication in the Delaware Register of Regulations. The rule was incorporated by reference into the *Code of Federal Regulations* effective March 23, 2011.
Expiration Date: N/A

The Delaware River Basin Commission ("Commission" or "DRBC") is a Federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the Federal government. The DRBC is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of Delaware in accordance with Section 14.2 of the Delaware River Basin Compact.

Summary: By Resolution No. 2010-13 on December 8, 2010, the Commission approved amendments to its Water Quality Regulations, Water Code and Comprehensive Plan updating the Commission's human health and aquatic life stream quality objectives (also called "water quality criteria") for toxic pollutants in the Delaware Estuary (DRBC

Water Quality Zones 2 through 5) and extended application of the criteria to Delaware Bay (DRBC Water Quality Zone 6).

Supplemental Information: Notice of the proposed amendments appeared in the *Delaware Register of Regulations* (14 DE Reg. 70-83 (08/01/2010)) on August 1, 2010, as well as in the *Federal Register* (75 FR 41106) on July 15, 2010, the *New Jersey Register* (42 N.J.R. 1702(a)) on August 2, 2010, the *New York State Register* (p. 6) on July 21, 2010, and the *Pennsylvania Bulletin* (40 Pa. B. 4208) on July 31, 2010. A public hearing was held on September 23, 2010 and written comments were accepted through October 1, 2010. The commission received two written submissions and no oral testimony on the proposed changes. The Commission made minor revisions to the proposed amendments in response to the comments received. A comment and response document setting forth the Commission's responses and revisions in detail was approved by the Commission simultaneously with adoption of the final rule.

Resolution No. 2010-13, the text of the final rule, a copy of the comment and response document, and a basis and background document published simultaneously with the proposed rule are available on the Commission's web site, at http://www.state.nj.us/drbc/toxics_info.htm.

Rule Text: DRBC Resolution No. 2010-13 amends Article 3 of the Water Code and Administrative Manual - Part III Water Quality Regulations as shown below. Additions to the Water Code and Water Quality Regulations are printed in **BOLD FACE** and deletions are printed in **[BOLD FACE ENCLOSED IN BRACKETS]**. **BOLD FACE UNDERSCORE** indicates changes made in response to comments received during the public comment period. Asterisks indicate ellipsis of rule text retained without changes. [Editor's instructions appear in normal text in brackets.]

Section 3.10.3 Stream Quality Objectives

C. Aquatic Life Objectives for Toxic Pollutants. It is the policy of the Commission to designate numerical stream quality objectives for the protection of aquatic life for the Delaware River Estuary **and Bay (Zones 2 through 6 [5])** which correspond to the designated uses of each zone. Aquatic life objectives for the protection from both acute and chronic effects are herein established on a pollutant-specific basis for:

D. Human Health Objectives for Toxic Pollutants. It is the policy of the Commission to designate numerical stream quality objectives for the protection of human health for the Delaware River Estuary **and Bay (Zones 2 through 6 [5])** which correspond to the designated uses of each zone. Stream quality objectives for protection from both carcinogenic and systemic effects are herein established on a pollutant-specific basis for:

3.10.3.D.6. A rate of ingestion of water of 2.0 liters per day is assumed in calculating objectives for river zones where the designated uses include public water supplies after reasonable treatment. A rate of ingestion of fish of **[6.5] 17.5** grams per day (equivalent to consuming a ½ pound portion every **[35] 13** days) is assumed in calculating freshwater **and marine** stream quality objectives for **the protection of human health**. **[A rate of ingestion of fish of 37 grams per day (equivalent to consuming a ½ pound portion every 6 days) is assumed in calculating marine stream quality objectives for human health.]**

3.10.3.D.8. Numerical criteria for toxic pollutants to protect the taste and odor of ingested water and fish shall be applied as stream quality objectives in **[the Estuary] Zones 2 - 6** if these criteria are more stringent than the calculated human health objectives for carcinogens or systemic toxicants.

Section 3.30 Interstate Streams – Tidal.

3.30.2 Zone 2.

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[Amend Tables 3, 5, 6 and 7 following subsection 3.30.2 as indicated to update current criteria: remove and add compounds.]

TABLE 3: MAXIMUM CONTAMINANT LEVELS TO BE APPLIED AS HUMAN HEALTH STREAM QUALITY OBJECTIVES IN ZONES 2 AND 3 OF THE DELAWARE RIVER ESTUARY.

Parameter	Maximum Contaminant Level (µg/l)
Metals	
[Antimony]	[6]
Arsenic	[50] 10
Barium	[2.0 mg/l] 2000
Beryllium	4
[Cadmium]	[5]
Chromium (trivalent) [(total)]	100
Copper	1300
[Nickel]	[100]
Lead	15
Selenium	50
Pesticides/PCBs	
alpha-BHC	0.2
beta-BHC	0.2
gamma - BHC (Lindane)	[0.2] 2
2,4-Dichloro-phenoxyacetic acid (2,4-D)	70
Methoxychlor	40
Toxaphene	3
Dioxin (2,3,7,8-TCDD)	0.00003
2,4,5 Trichloro-phenoxypropionic acid (2,4,5-TP-Silvex)	50
Volatile Organic Compounds (VOCs)	
Benzene	5
Carbon Tetrachloride	5
1,2-Dichloroethane	5
1,1-Dichloroethylene	7
[1,2 - trans - Dichloroethene] 1,2 - trans - Dichloroethylene	100
Dichloromethane (methylene chloride)	5
[1,2 - Dichloropropane]	[5]
[Ethylbenzene]	[700]
Tetrachloroethylene (PCE)	5
Toluene	1000
Total Trihalomethanes	[100] 80
[1,2,4 - Trichlorobenzene]	[70]
1,1,1-Trichloroethane	200
1,1,2-Trichloroethane	5
Trichloroethylene	5
Vinyl Chloride	2
Polycyclic Aromatic Hydrocarbons (PAHs)	
Benzo(a)Pyrene	0.2
Other Compounds	
Asbestos	7 million fibers/L
Bis(2-Ethylhexyl) Phthalate	6
Fluoride	4,000
Nitrate	10,000
Pentachlorophenol	1
Dioxin (2,3,7,8-TCDD)	0.00003

TABLE 5: STREAM QUALITY OBJECTIVES FOR TOXIC POLLUTANTS FOR THE PROTECTION OF AQUATIC LIFE IN THE DELAWARE RIVER ESTUARY **AND BAY**.

Parameter	Freshwater Objectives (µg/l)		Marine Objectives (µg/l)	
	Acute	Chronic	Acute	Chronic
Metals [(Values indicated are total recoverable; See Section 3.10.3.C.2. for form of metal)]				
Aluminum ^{a,b}	750	87	[-] NA	[-] NA
Arsenic (trivalent) ^c	[360] 340	[190] 150	69	36
Cadmium ^c	$[e^{(1.128 \cdot \text{LN}(\text{Hardness}) - 3.828)}]$ 0.651*EXP(1.0166* LN(hardness)-3.924)	$[e^{(0.7852 \cdot \text{LN}(\text{Hardness}) - 3.49)}]$ 0.651*EXP(0.7409* LN(hardness)-4.719)	[43] 40	[9.3] 8.8
Chromium (trivalent) ^c	$[e^{(0.8190 \cdot \text{LN}(\text{Hardness}) + 3.688)}]$ 0.277*EXP(0.819* LN(hardness)+3.7256)	$[e^{(0.8190 \cdot \text{LN}(\text{Hardness}) + 1.561)}]$] 0.277*EXP(0.819* LN(hardness)+0.6848)	[-] NA	[-] NA
Chromium (hexavalent) ^c	16	11	1,100	50
Copper ^c	$[e^{(0.9422 \cdot \text{LN}(\text{Hardness}) - 1.464)}]$ 0.908*EXP(0.9422* LN(hardness)-1.7)	$[e^{(0.8545 \cdot \text{LN}(\text{Hardness}) - 1.465)}]$ 0.908*EXP(0.8545* LN(hardness)-1.702)	[5.3] 4.8	[3.4] 3.1
Lead ^c	[48] 38	[16] 5.4	[220] 210	[8.5] 8.1
Mercury ^c	[2.4] 1.4	[0.012] 0.77	[2.1] 1.8	[0.025] 0.94
Nickel ^c	$[e^{(0.846 \cdot \text{LN}(\text{Hardness}) + 3.3612)}]$ 0.846*EXP(0.846* LN(hardness)+2.255)	$[e^{(0.846 \cdot \text{LN}(\text{Hardness}) + 1.1645)}]$] 0.846*EXP(0.846* LN(hardness)+0.0584)	[75] 64	[8.3] 22
Selenium ^a	20	5.0	[300] 290	71
Silver ^c	$[e^{(1.72 \cdot \text{LN}(\text{Hardness}) - 6.52)}]$ 0.85*EXP(1.72* LN(hardness)-6.59)	[-] NA	[2.3] 1.9	[-] NA
Zinc ^c	$[e^{(0.8473 \cdot \text{LN}(\text{Hardness}) + 0.8604)}]$ 0.95*EXP(0.8473* LN(hardness)+0.884)	$[e^{(0.8473 \cdot \text{LN}(\text{Hardness}) + 0.7614)}]$ 0.95*EXP(0.8473* LN(hardness)+0.884)	[95] 90	[86] 81
Pesticides/PCBs				
Aldrin	[1.5] 3	[-] NA	[0.65] 1.3	[-] NA
gamma - BHC (Lindane)	[1.0] 0.95	[0.08] NA	[0.08] 0.16	[-] NA
Chlordane	[1.2] 2.4	0.0043	[0.045] 0.09	0.004
Chlorpyrifos (Dursban)	0.083	0.041	0.011	0.0056
DDT and metabolites (DDE & DDD) ^d	[0.55] 1.1	0.001	[0.065] 0.13	0.001
Dieldrin	[1.25] 0.24	[0.0019] 0.056	[0.355] 0.71	0.0019
Endosulfan ^e	[0.11] 0.22	0.056	[0.017] 0.034	0.0087
Endrin	[0.09] 0.086	[0.0023] 0.036	[0.019] 0.037	0.0023
Heptachlor	[0.26] 0.52	0.0038	[0.027] 0.053	0.0036
Heptachlor Epoxide	0.52	0.0038	0.053	0.0036
Parathion	0.065	0.013	[-] NA	[-] NA
PCBs (Total)	1.0	0.014	5.0	0.03
Toxaphene	0.73	0.0002	0.21	0.0002
Other Compounds				
Cyanide (free) [(total)]	22	5.2	[1.0] [2.7] 1	[-] 1
Pentachlorophenol	$e^{(1.005 \cdot \text{pH} - 4.83)}$	$e^{(1.005 \cdot \text{pH} - 5.29)}$	13	7.9
Indicator Parameters				
Whole Effluent Toxicity	0.3 Toxic Units _{acute}	1.0 Toxic Units _{chronic}	0.3 TU _a	1.0 TU _c

Footnotes to Table 5:

^a Total recoverable criteria^b Aluminum criteria listed are restricted to waters with pH between 6.5 and 9.0.^c Dissolved criteria^d Criteria apply to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).^e Values were derived from data for endosulfan and are most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

Criteria for cadmium, chromium (trivalent), copper, nickel, silver and zinc are hardness-dependent and are expressed as the dissolved form (see Section 3.10.3.C.2. on form of metal).

TABLE 6: STREAM QUALITY OBJECTIVES FOR CARCINOGENS FOR THE DELAWARE RIVER ESTUARY AND BAY.

PARAMETER	[EPA class]	FRESHWATER OBJECTIVES (µg/l)		MARINE OBJECTIVES (µg/l)
		FISH & WATER INGESTION	FISH INGESTION ONLY	FISH INGESTION ONLY
Metals				
Arsenic		* [0.017]	NA	NA
[Beryllium]		[0.00767]	[0.132]	[0.0232]
Pesticides/PCBs				
Aldrin	[B2]	[0.00189] 0.000049	[0.0226] 0.000050	[0.00397] 0.000050
Alpha – BHC	[B2]	[0.00391] 0.0026	[0.0132] 0.0049	[0.00231] 0.0049
beta – BHC	[C]	0.0091	0.017	0.017
Chlordane	[B2]	[0.000575] 0.00080	[0.000588] 0.00081	[0.000104] 0.00081
DDD	[B2]	[0.00423] 0.00031	[0.00436] 0.00031	[0.000765] 0.00031
DDE	[B2]	[0.00554] 0.00022	[0.00585] 0.00022	[0.00103] 0.00022
DDT	[B2]	[0.000588] 0.00022	[0.000591] 0.00022	[0.000104] 0.00022
Dieldrin	[B2]	[0.000135] 0.000052	[0.000144] 0.000054	[0.000253] 0.000054
Heptachlor	[B2]	[0.000208] 0.000079	[0.000214] 0.000079	[0.000375] 0.000079
Heptachlor Epoxide	[B2]	[0.000198] 0.000039	[0.000208] 0.000039	[0.000366] 0.000039
PCBs (Total)	[B2]	0.0000444	0.0000448	0.0000079
Toxaphene	[B2]	[0.000730] 0.00028	[0.000747] 0.00028	[0.000131] 0.00028
Volatile Organic Compounds (VOCs)				
Acrylonitrile	[B1]	[0.0591] 0.051	[0.665] 0.25	[0.117] 0.25
Benzene	[A]	[1.19] 0.61	[71.3] 14	[12.5] 14
Benzidine	[A]	[0.000118] 0.000086	[0.000535] 0.00020	[0.000094] 0.00020
Bromoform	[B2]	[4.31] 4.3	[164.0] 140	[28.9] 140
Bromodichloromethane	[B2]	[0.559] 0.55	[55.7] 17	[9.78] 17
Carbon Tetrachloride	[B2]	[0.254] 0.23	[4.42] 1.6	[0.776] 1.6
Chlorodibromomethane	[C]	[0.411] 0.40	[27.8] 13	[4.88] 13
Chloroform	[B2]	[5.67] 5.7	[471.0] 470	[82.7] 470
3,3 – Dichlorobenzidine	[B2]	[0.0386] 0.021	[0.0767] 0.028	[0.0135] 0.028

1,2 – Dichloroethane	[B2]	[0.383] 0.38	[98.6] 37	[17.3] 37
[1,1 – Dichloroethene]	[C]	[0.0573]	[3.20]	[0.562]
1,2 – Dichloropropane	[B2]	0.50	15	15
1,3 – Dichloropropene	[B2]	[87.0] 0.34	[14.1] 21	[2.48] 21
Dichloromethane (Methylene chloride)	[B2]	[4.65] *	[1,580] 590	[277] 590
[Tetrachloroethene]	[B2]	[0.80] 0.69	[8.85] 3.3	[1.55] 3.3
Tetrachloroethylene				
[1,1,1,2 – Tetrachloroethane]	[C]	[1.29]	[29.3]	[5.15]
1,1,2,2 – Tetrachloroethane	[C]	[0.172] 0.17	[10.8] 4.0	[1.89] 4.0
1,1,2 – Trichloroethane	[C]	[0.605] 0.59	[41.6] 16	[7.31] 16
[Trichloroethene] Trichloroethylene	[B2]	[2.70] 2.5	[80.7] 30	[14.2] 30
Vinyl Chloride	[A]	[2.00] 0.025	[525.0] 2.4	[92.9] 2.4
Polycyclic Aromatic Hydrocarbons (PAHs)				
Benz[a]anthracene	[B2]	[0.00171] 0.0038	[0.00177] 0.18	[0.00031] 0.18
Benzo[b]fluoranthene	[B2]	[0.000455] 0.038	[0.000460] 0.18	[0.000081] 0.18
Benzo[k]fluoranthene	[B2]	[0.000280] 0.38	[0.000282] 1.8	[0.000049] 1.8
Benzo[a]pyrene	[B2]	[0.0000644]	[0.0000653]	[0.0000115]
		0.0038	0.018	0.018
Chrysene	[B2]	[0.0214] 3.8	[0.0224] 18	[0.00394] 18
Dibenz[a,h]anthracene	[B2]	[0.0000552]	[0.0000559]	[0.0000098]
		0.0038	0.018	0.018
Indeno[1,2,3-cd]pyrene	[B2]	[0.0000576]	[0.0000576]	[0.0000101] 0.18
		0.038	0.18	
Other Compounds				
Bis (2-chloroethyl) ether	[B2]	[0.0311] 0.03	[1.42] 0.53	[0.249] 0.53
Bis (2-ethylhexyl) phthalate	[B2]	[1.76] 1.2	[5.92] 2.2	[1.04] 2.2
[Dinitrotoluene mixture (2,4 & 2,6)]				
2,4 - Dinitrotoluene	[B2]	[17.3] 0.11	[1420] 3.4	[249] 3.4
1,2 – Diphenylhydrazine	[B2]	[0.0405] 0.036	[0.541] 0.2	[0.095] 0.2
Hexachlorobenzene	[B2]	[0.000748]	[0.000775]	[0.000136]
		0.00028	0.00029	0.00029
Hexachlorobutadiene	[C]	[0.445] 0.44	[49.7] 18	[8.72] 18
Hexachloroethane	[C]	[1.95] 1.4	[8.85] 3.3	[1.56] 3.3
Isophorone	[B2]	[36.3] 35	[2590] 960	[455] 960
N-Nitrosodi-N-butylamine	[B2]	0.0063	14	14
N-Nitrosodi-N-methylamine	[B2]	[0.000686]	[8.12] 3.0	[1.43] 3.0
		0.00069		
N-Nitrosodiethylamine	[B2]	0.0008	1.24	1.24
N-Nitrosodi-N-phenylamine	[B2]	[4.95] 3.3	[16.2] 6	[2.84] 6
N-Nitrosodi-N-propylamine	[B2]	[0.00498] 0.0050	[1.51] 0.51	[0.265] 0.51
N-Nitrosopyrrolidine	[B2]	0.016	34	34
Pentachlorophenol	[B2]	[0.282] 0.27	[8.16] 3.0	[1.43] 3.0
Dioxin (2,3,7,8 – TCDD)	[NA]	[1.3 x 10 ⁻⁸]	[1.4 x 10 ⁻⁸]	[2.4 x 10 ⁻⁹]
		0.000000005	0.0000000051	0.0000000051
2,4,6 – Trichlorophenol	[B2]	[2.14] 1.4	[6.53] 2.4	[1.15] 2.4

* The MCL for this compound applies in Zones 2 and 3 and is listed in Table 3.

TABLE 7: STREAM QUALITY OBJECTIVES FOR SYSTEMIC TOXICANTS FOR THE DELAWARE RIVER ESTUARY AND BAY

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PARAMETER	[EPA Class]	FRESHWATER OBJECTIVES (µg/l)		MARINE OBJECTIVES (µg/l)
		FISH & WATER INGESTION	FISH INGESTION ONLY	FISH INGESTION ONLY
Metals				
Antimony		[14.0] 5.6	[4,310] 640	[757] 640
Arsenic	[A]	[9.19] *	[73.4] NA	[12.9] NA
Beryllium	[B2]	[165] *	[2,830] [42] 420	[498] [42] 420
Cadmium		[14.5] 3.4	[84.1] 16	[14.8] 16
Chromium (trivalent)		[33,000] *	[673,000] 380,000	[118,000] 380,000
[Hexavalent] Chromium (hexavalent)	[A]	[166] 92	[3,370] NA	[591] NA
Chromium (Total)		NA	750	750
Mercury		[0.144] 0.050	[0.144] 0.051	[0.144] 0.051
Methylmercury		0.3 mg/kg fish tissue	0.3 mg/kg fish tissue	0.3 mg/kg fish tissue
Nickel		[607] 500	[4,580] 1,700	[805] 1,700
Selenium		[100] 170	[2,020] 4,200	[355] 4,200
Silver		[175] 170	[108,000] 40,000	[18,900] 40,000
Thallium		[1.70] 0.24	[6.20] 0.47	[1.10] 0.47
Zinc		[9110] 7,400	[68700] 26,000	[12100] 26,000
Pesticides/PCBs				
Aldrin	[B2]	[0.96] 0.025	[11.5] 0.025	[2.03] 0.025
gamma - BHC (Lindane)		[7.38] 0.98	[24.9] 1.8	[4.37] 1.8
Chlordane	[B2]	[0.0448] 0.14	[0.0458] 0.14	[0.00805] 0.14
DDT and Metabolites (DDD and DDE)	[B2]	[0.100] 0.037	[0.100] 0.037	[0.0176] 0.037
Dieldrin	[B2]	[0.108] 0.041	[0.115] 0.043	[0.020] 0.043
[Endosulfan]		[111]	[239]	[42.0]
alpha -Endosulfan		62	89	89
beta- Endosulfan		62	89	89
Endosulfan Sulfate		62	89	89
Endrin	[D]	[0.755] 0.059	[0.814] 0.060	[0.143] 0.060
Endrin Aldehyde		0.29	0.30	0.30
Heptachlor	[B2]	[0.337] 0.18	[0.344] 0.18	[0.060] 0.18
Heptachlor Epoxide	[B2]	[0.0234] 0.0046	[0.0246] 0.0046	[0.00433] 0.0046
Total PCBs	[B2]	0.00839	0.00849	0.00149
Volatile Organic Compounds (VOCs)				
Acrolein		[320] 6.1	[780] 9.3	[137] 9.3
Benzene		*	3,100	3,100
Bromoform	[B2]	[682] 650	[25,900] 9,600	[4,560] 9,600
Bromodichloromethane	[B2]	[693] 680	[69,000] NA	[12,100] NA
Dibromochloromethane	[C]	[690] 680	[46,600] 21,000	[8,190] 21,000
Carbon Tetrachloride	[B2]	[23.1] *	[402] 150	[70.6] 150
Chloroform	[B2]	[346] 68	[28,700] 2,100	[5,050] 2,100

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Chlorobenzene	[D]	[677] 130	[20,900] 1,600	[3,670] 1,600
[1,1 – Dichloroethene] 1,1 – Dichloroethylene	[C]	[309] *	[17,300] 7,100	[3,040] 7,100
[1,2 - trans – Dichloroethene] 1,2 - trans – Dichloroethylene		[696] 140	[136,000] 10,000	[23,900] 10,000
1,3 – Dichloropropene	[B2]	[10.4] 1,000	[1,690] 63,000	[297] 63,000
Ethylbenzene		[3,120] 530	[28,700] 2,100	[5,050] 2,100
Methyl Bromide		[49.0] 47	[N/A] 1,500	[N/A] 1,500
Methylene Chloride	[B2]	[2,090] *	[710,000] 260,000	[125,000] 260,000
1,1,2 – Trichloroethane	[C]	[138] *	[9,490] 3,600	[1,670] 3,600
[Tetrachloroethene] Tetrachloroethylene		[318] *	[3,520] 1,300	[618] 1,300
[1,1,1,2 – Tetrachloroethane]	[C]	[1,000]	[22,400]	[3,940]
Toluene		[6,760] 1,300	[201,000] 15,000	[35,400] 15,000
Polycyclic Aromatic Hydrocarbons (PAHs)				
Anthracene	[D]	[4,110] 8,300	[6,760] 40,000	[1,190] 40,000
Fluoranthene		[296] 130	[375] 140	[65.8] 140
Fluorene	[D]	[730] 1,100	[1,530] 5,300	[268] 5,300
Pyrene	[D]	[228] 830	[291] 4,000	[51.1] 4,000
Other Compounds				
Acenaphthene		[1,180] 670	[2,670] 990	[469] 990
Benzidine	[A]	[81.8] 59	[369] 140	[64.9] 140
Bis (2-chloroisopropyl) ether		[1,390] 1,400	[174,000] 65,000	[30,600] 65,000
Bis (2-ethylhexyl) phthalate	[B2]	[492] *	[1,660] 620	[291] 620
Butylbenzyl phthalate	[C]	[298] 1,500	[520] 1,900	[91.4] 1,900
2 – Chloronaphthalene		1,000	1,600	1,600
2 – Chlorophenol		[122] 81	[402] 150	[70.6] 150
Cyanide		140	140	140
Dibutyl Phthalate	[D]	[2,710] 2,000	[12,100] 4,500	[2,130] 4,500
1,2 – Dichlorobenzene	[D]	[2,670] 420	[17,400] 1,300	[3,060] 1,300
1,3 – Dichlorobenzene	[D]	[414] 420	[3,510] 1,300	[617] 1,300
1,4 – Dichlorobenzene		[419] 63	[3,870] 190	[677] 190
2,4 – Dichlorophenol		[92.7] 77	[794] 290	[139] 290
Diethyl Phthalate	[D]	[22,600] 17,000	[118,000] 44,000	[20,700] 44,000
Dimethyl Phthalate	[D]	[313,000] 270,000	[2,990,000] 1,100,000	[526,000] 1,100,000
2,4 – Dimethylphenol		[536] 380	[2,300] 850	[403] 850
2,4 – Dinitrophenol		[70] 69	[14,300] 5,300	[2,500] 5,300
2,4 – Dinitrotoluene		[69.2] 68	[5670] 2,100	[996] 2,100
Hexachlorobenzene	[B2]	[0.958] 0.35	[0.991] 0.36	[0.174] 0.36
[Hexachlorobutadiene]	[C]	[69.4]	[7,750]	[1,360]
Hexachlorocyclopentadiene		[242] 40	[17,400] 1,100	[3,050] 1,100
Hexachloroethane	[C]	[27.3] 20	[124] 46	[21.7] 46
Isophorone	[C]	[6,900] 6,700	[492,000] 180,000	[86,400] 180,000
2-Methyl-4,6-dinitrophenol		13	280	280
Nitrobenzene	[D]	[17.3] 17	[1,860] 690	[327] 690

FINAL REGULATIONS

Pentachlorobenzene		1.4	1.5	1.5
Pentachlorophenol		[1,010] *	[29,400] 11,000	[5,160] 11,000
Phenol		[20,900] 10,000	[4,620,000]	[811,000]
			860,000	860,000
1,2,4,5-Tetrachlorobenzene		0.97	1.1	1.1
1,2,4 – Trichlorobenzene	[D]	[255] 35	[945] 70	[166] 70
2,4,5-Trichlorophenol		1,800	3,600	3,600
Vinyl Chloride		*	10,000	10,000

* The MCL for this compound applies in Zones 2 and 3 and is listed in Table 3.

3.30.6 Zone 6.

[Add the following text immediately following sub-section 3.30.6 C.10. and preceding sub-section 3.30.6 D.]

11. Toxic Pollutants.

- a. Applicable criteria to protect the taste and odor of ingested water and fish are presented in Table 4.
- b. Applicable marine stream quality objectives for the protection of aquatic life are presented in Table 5.
- c. **Applicable marine stream quality objectives for the protection of human health are presented in Tables 6 and 7.**

Dated: April 21, 2011
Pamela M. Bush, Esquire
Commission Secretary

DEPARTMENT OF AGRICULTURE
Harness Racing Commission

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to statutory authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005); 3 DE Admin. Code 501, the Delaware Harness Racing Commission issues this Final Order adopting proposed amendments to the Commission's Rules, DHRC Rule 3.2.8, by deleting the last sentence of Rule 3.2.8.5. Following notice and a public hearing on April 12, 2011, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 3.2.8.5 in the April 1, 2011 *Register of Regulations* and for two consecutive weeks in the *News Journal* and in the *Delaware State News*. The Commission proposed to update Rule 3.2.8 by deleting the last sentence of Rule 3.2.8.5.
2. The Commission received no written comments. The Commission held a public hearing on April 12, 2011, in which no public comments were made.

FINDINGS OF FACT AND CONCLUSIONS

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

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

5. The effective date of this Final Order will be ten (10) days from the publication of this Final Order in the June 1, 2011 *Register of Regulations*.

IT IS SO ORDERED THIS 12TH DAY OF APRIL, 2011.

Beverly H. Steele, Chairwoman

Robert Brown, Vice Chairman/ Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

Patricia Wagner, Commissioner

501 Harness Racing Rules and Regulations

***Please note that no changes were made to the regulation as originally proposed and published in the April 2011 issue of the *Register* at page 942 (14 DE Reg. 942). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[501 Harness Racing Rules and Regulations](#)

Harness Racing Commission

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to statutory authority: 3 **Delaware Code**, Section 10005 (3 **Del.C.** §10005); 3 **DE Admin. Code** 501, the Delaware Harness Racing Commission issues this Final Order adopting proposed amendments to the Commission's Rules, The DHRC, pursuant to 3 **Del.C.** §10005, proposes to change DHRC Rule 8.3 entitled Medications and Foreign Substances, by inserting new rule 8.3.7 entitled Anabolic / Androgenic Steroids. Following notice and a public hearing on April 12, 2011, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 8.3 in the April 1, 2011 *Register of Regulations* and for two consecutive weeks in the *News Journal* and in the *Delaware State News*. The Delaware Harness Racing commission proposed to change DHRC Rule 8.3 entitled Medications and Foreign Substances, by inserting new rule 8.3.7 entitled Anabolic / Androgenic Steroids.

2. The Commission received written comments. The Commission held a public hearing on April 12, 2011, at which received public comments.

FINDINGS OF FACT AND CONCLUSIONS

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

4. After considering the rule changes as proposed, and in consideration of the comments received in writing and during the public hearing, the Commission hereby adopts the rule change as proposed. The Commission believes that this rule change will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Final Order will be ten (10) days from the publication of this Final Order in the June 1, 2011 *Register of Regulations*.

IT IS SO ORDERED THIS 12TH DAY OF APRIL, 2011.

Beverly H. Steele, Chairwoman

Robert Brown, Vice Chairman/ Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

Patricia Wagner, Commissioner

501 Harness Racing Rules and Regulations

***Please note that no changes were made to the regulation as originally proposed and published in the April 2011 issue of the *Register* at page 945 (14 DE Reg. 945). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[501 Harness Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

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

14 DE Admin. Code 101

REGULATORY IMPLEMENTING ORDER**101 State Assessment System****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 101 Delaware Student Testing Program. The regulation is being amended to reflect changes to the state assessment system.

The Department is proposing several amendments including, but not limited to: 1) replacing the Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS); 2) a definition that identifies the various assessments that are part of the state assessment system including a norm referenced assessment, a college readiness assessment and an assessment for English Language Learners (ELL); 3) changes to reflect four (4) performance levels; 4) changes around the diploma requirement, including information related to other academic indicators; 5) updates to the Security and Confidentiality section; 6) procedures for the review of the assessment in light of the online computer adaptive nature of the assessment; and 7) revisions to the Invalidations and Special Exemptions section.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2011 in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for

Exceptional Citizens and the State Council for Persons with Disabilities. A comment was received regarding language that was removed from the levels of performance in the regulation. The Department believes the subjective nature of the descriptions proposed for deletion is better suited to other information documents provided to the public and parents/guardian. There was a comment related to the deletion of the requirement that within 30 days of receiving student performance levels and diplomas indices that the school district or charter school provide this information to the parent, guardian or Relative Caregiver. This specific requirement was removed primarily because of the longer assessment windows and because the assessment is administered multiple times during the school year. Parents, guardians and Relative Caregivers continue to be provided written reports on student performance. The student consequences for the 2010-2011 school year are suspended through the FY11 Budget Bill Epilogue.

A comment was also received regarding special exemptions and student consequences. This provision was not changed since the 10th grade consequences as written are tied to receiving a diploma rather than summer school.

Another comment encourages the Department to pursue development of a writing assessment and also to revisit the definition of proficiency for the diploma.

The Department has made a change to section 9.2.3.2 that specifically excludes a student that has a special exemption from the participation rate for accountability. Additionally, a change was made to section 2.4 since there would not be a cut point for Performance Level 1 since scores below Performance Level 2 would be Performance Level 1.

The Department contacted the *Register of Regulations* because several non-substantive changes requested by the Department were not published in the April Register of Regulations. The Council identified one of the areas that the Department had proposed but was not published.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Adm in. Code** 101 Delaware Student Testing Program in order to revise the regulation to be consistent with the attributes of the new state assessment system.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Adm in. Code** 101 Delaware Student Testing Program. Therefore, pursuant to 14 **Del.C.** §122nd, 14 **DE Adm in. Code** 101 Delaware Student Testing Program attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 101 Delaware Student Testing Program hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 101 Delaware Student Testing Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 101 Delaware Student Testing Program in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 19, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of May 2011.

Department of Education

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

Approved this 19th day of May 2011**STATE BOARD OF EDUCATION**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

101 Delaware Student Testing Program State Assessment System**1.0 Purpose and Definition**

~~The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades 2 to 10 in the areas of reading and mathematics, grades 3 to 10 in the area of writing and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.~~

~~4.1 All students in said grades shall be tested except that students with disabilities and English Language Learners (ELLs) shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and English Language Learners (ELLs), as the same, may from time to time be amended hereafter.~~

~~4.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.~~

~~1.1 Purpose: The purpose of this regulation is to outline the procedures, criteria and responsibilities related to the state assessment system required pursuant to 14 Del.C. §151.~~

~~1.2 Definitions:~~

~~**"Delaware Comprehensive Assessment System (DCAS)"** means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, used in the Delaware public schools, and a summative assessment measuring student achievement based solely on grade-level academic content standards or the alternate achievement standards, using only on grade-level items and passages.~~

~~The Delaware Comprehensive Assessment System (DCAS) shall include the assessments of all students in grades 2 through 10 in the areas of reading and mathematics; the assessments of all students in grades 5, 8, and 10 in science; and the assessments of all students in grades 4 and 7 in social studies. All districts and charter schools shall participate in all components of the DCAS including field test administrations.~~

~~All students in said grades shall be tested except that students with disabilities and English Language Learners (ELLs) shall be tested according to the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and English Language Learners (ELLs)*, as the same may from time to time be amended hereafter.~~

~~The Department of Education shall determine the dates upon which the DCAS shall be administered, and will advise the school districts and charter schools of those dates.~~

~~**"State Assessment System"** means the statewide assessment used to measure student achievement of the Delaware academic content standards including an alternate assessment~~

based on alternate achievement standards for students with the most significant cognitive disabilities, and other assessments such as, but not limited to, the National Assessment for Educational Progress (NAEP), a college readiness assessment, an assessment for English Language Learners (ELL), a norm-referenced assessment that may be administered or required as determined by the Department of Education.

10 DE Reg. 676 (10/01/06)

2.0 Levels of Performance

- 2.1 There shall be ~~five~~ four levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3 through 10 in reading, ~~and mathematics and writing and~~; to students in grades 4, 6, 8 and 11 in social studies and 5, 8, and 10 in science; ~~and to students in grades 4 and 7 in social studies.~~ There shall be three levels of performance for students in grade 2 in reading and mathematics. The cut points for Distinguished, Exceeds the Standard Advanced, Meets the Standard and, Below the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work assessment data in making the recommendation. Said levels are defined and shall be determined as follows:
- ~~2.1~~ Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education.
- ~~2.2~~ Exceeds the Performance Standard (Level 4) Advanced (Performance Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. ~~Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good."~~ The cut points for Exceeds the Performance Standard Advanced shall be determined by the Department of Education, with the consent of the State Board of Education.
- ~~2.3~~ Meets the Performance Standard (Performance Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. ~~Student performance in this range can be classified as "good."~~ The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.
- ~~2.4~~ Below the Performance Standard (Performance Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. ~~Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient."~~ The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.
- ~~2.5~~ Well Below the Performance Standard (Performance Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of evidence of an inability to apply the fundamental skills and knowledge articulated in the Delaware Content Standards. ~~Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient."~~ **[The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.]**

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

10 DE Reg. 676 (10/01/06)**3.0 Other Indicators of Student Performance**

- 3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153 when determining the placement of students who score at Level 1 or Level ~~2~~ 2 on a mandated retake of a portion of the ~~DSTP~~ DCAS. Pursuant to 14 **Del.C.** §153 ~~and 153~~, local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153; student performance on end of course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153.
- 3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.
- 3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.
- 3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with ~~the Student Assessment and Accountability Committee and~~ the State Board of Education.
- 3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.
- 3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.
- 3.3.2 The supervisor of curriculum or instruction for the school district or charter school or ~~his/her~~ designee shall chair the committee.
- 3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

7 DE Reg. 325 (9/1/03)**10 DE Reg. 676 (10/01/06)****10 DE Reg. 1425 (03/01/07)****4.0 Individual Improvement Plan (IIP)**

- 4.1 The following students are required to have an Individual Improvement Plan:
Students who score below Level 3 Meets the Standard, on the reading portion of the ~~2nd, 3rd, 4th, 5th, 6th, 7th, or 8th grade Delaware Student Testing Program~~ DCAS or the mathematics portion of the 6th, 7th, or 8th grade ~~Delaware Student Testing Program~~ DCAS shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.
- 4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further ~~DSTP~~ DCAS results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).
- 4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to

help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and mentoring programs.

- 4.4 The Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver who must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.
- 4.5 Disputes initiated by a student's parent or legal guardian or Relative Caregiver concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities 14 DE Admin. Code 900.

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

10 DE Reg. 676 (10/01/06)

5.0 Summer School Programs for Students in Grades 3, 5, and 8 as required pursuant to 14 Del.C. §153

- 5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:
 - 5.1.1 Where a student attends another district as a result of school choice or attends a charter school, the district of choice or charter school shall provide the summer school program.
 - 5.1.2 Where by mutual agreement of both districts or a charter school and the student's parent, guardian or Relative Caregiver, another district provides services.
 - 5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent, guardian or Relative Caregiver, the parent, guardian or Relative Caregiver arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent, guardian or Relative Caregiver shall be responsible for the cost of providing nonpublic school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.
 - 5.1.4 Where a student has been offered admission into a career technical school district or charter school, that district or charter school may provide summer school services.

8 DE Reg. 425 (9/1/04)

9 DE Reg. 1175 (2/1/06)

6.0 State of Delaware High School Diploma Requirements

- 6.1 ~~Students who graduate from a Delaware public high school, as members of the class of 2004 through and including the class of 2007 shall be subject to the diploma index for a distinguished diploma as stated herein.~~
 - 6.1.1 ~~Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.~~
- 6.2 ~~A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.~~
- 6.3 ~~The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.~~
 - 6.3.1 ~~Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.~~

- 6.4 Students who graduate as members of the class of 2006 through and including the class of 2007 shall qualify for a State of Delaware Distinguished High School diploma or a traditional State of Delaware High School diploma as follows:
- 6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 and provided that the student has met all of the requirements as specified in 14 **DE Admin. Code** 505, and shall meet any other additional criteria as determined by the local district or charter school
- 6.4.1.1 Beginning with the graduating class of 2006 through and including the graduating class of 2007, "Other Academic Indicators" may be substituted for specific content area DSTP scores. The Other Academic Indicators shall be:
- 6.4.1.1.1 SAT Reasoning Test Verbal score or the SAT Reasoning Test Reading score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;
- 6.4.1.1.2 SAT Reasoning Test Verbal score or the SAT Reasoning Test score of 622 or higher representing a Performance Level 5 on the reading portion of the diploma index;
- 6.4.1.1.3 SAT Reasoning Test Mathematics score between 547 and 617 representing a Performance Level 4 the mathematics portion of the diploma index;
- 6.4.1.1.4 SAT Reasoning Test Mathematics score of 618 or higher representing a Performance Level 5 on the mathematics portion of the diploma index;
- 6.4.1.1.5 SAT Reasoning Test Writing score between 554 and 646 representing a Performance Level 4 on the writing portion of the diploma index];
- 6.4.1.1.6 SAT Reasoning Test Writing score or SAT Subject Test writing score of 647 or higher representing a Performance level of y on the writing portion of the diploma index; -
- 6.4.1.1.7 Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and
- 6.4.1.1.8 Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.
- 6.4.1.1.9 Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.
- 6.4.1.1.10 Other nationally administered tests which have scores that can be converted to the SAT scale may be used if the converted score is equal to or higher than the SAT cut score.
- 6.4.2 A student who does not qualify for a Distinguished diploma based solely on the diploma index may request the high school submit official documentation of the Other Academic Indicators to the Department.
- 6.4.3 A student shall be awarded a traditional State of Delaware Diploma provided the student has met all other requirements for graduation as established by the State and local districts or charter schools.
- 6.5 6.1 Students who graduate from a Delaware public high school, as members of the class of 2008 and beyond shall meet the following requirements for receipt of a traditional State of Delaware diploma:
- 6.51.1 The student shall meet all of the requirements as specified in 14 **DE Admin. Code** 505, and shall meet any other additional criteria as determined by the local district or charter school; and

- 6.5.1.2 The student shall demonstrate proficient levels of performance relative to the State content standards in reading, writing, mathematics, science and social studies. The student may demonstrate proficient levels of performance through the calculated diploma index or Other Academic Indicators, as follows:
- 6.5.2.1 The student shall have a diploma index of 3.0 or higher.
 - 6.5.2.1.1 The Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.
 - 6.5.2.1.2 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight of .20 for each content area and summing the results.
 - 6.5.2.1.3 A student with less than a 3.0 diploma index based on the 10th grade assessments in reading, writing and mathematics shall be required to retest in at least one of the content areas the student received a score below Performance Level 3. A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.
 - 6.5.2.2 The student may use Other Academic Indicators as a substitute for specific content area DSTP scores. A student shall be required to retest in any content area the student received a score below Performance Level 3 before any other academic indicator can be used as a substitute for that content area.
 - 6.5.2.2.1 SAT Reasoning Critical Reading score between 200 and 334 representing a Performance Level 1 on the reading portion of the diploma index;
 - 6.5.2.2.2 SAT Reasoning Critical Reading score between 335 and 430 representing a Performance Level 2 on the reading portion of the diploma index;
 - 6.5.2.2.3 SAT Reasoning Critical Reading score between 431 and 543 representing a Performance Level 3 on the reading portion of the diploma index;
 - 6.5.2.2.4 SAT Reasoning Critical Reading score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;
 - 6.5.2.2.5 SAT Reasoning Critical Reading score between 622 and 800 representing a Performance Level 5 on the reading portion of the diploma index;
 - 6.5.2.2.6 SAT Reasoning Test Mathematics score between 200 and 414 representing a Performance Level 1 the mathematics portion of the diploma index;
 - 6.5.2.2.7 SAT Reasoning Test Mathematics score between 415 and 477 representing a Performance Level 2 the mathematics portion of the diploma index;
 - 6.5.2.2.8 SAT Reasoning Test Mathematics score between 478 and 546 representing a Performance Level 3 the mathematics portion of the diploma index;
 - 6.5.2.2.9 SAT Reasoning Test Mathematics score between 547 and 617 representing a Performance Level 4 on the mathematics portion of the diploma index;
 - 6.5.2.2.10 SAT Reasoning Test Mathematics score between 618 and 800 representing a Performance Level 5 on the mathematics portion of the diploma index;
 - 6.5.2.2.11 SAT Reasoning Test Writing score between 200 and 394 representing a Performance Level 1 on the writing portion of the diploma index;
 - 6.5.2.2.12 SAT Reasoning Test Writing score between 395 and 474 representing a Performance Level 2 on the writing portion of the diploma index;
 - 6.5.2.2.13 SAT Reasoning Test Writing score between 475 and 553 representing a Performance Level 3 on the writing portion of the diploma index;
 - 6.5.2.2.14 SAT Reasoning Test Writing score between 554 and 646 representing a Performance Level 4 on the writing portion of the diploma index;

- 6.5.2.2.15 ~~SAT Reasoning Test Writing score between 647 and 800 representing a Performance Level 5 on the writing portion of the diploma index;~~
- 6.5.2.2.16 ~~Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and~~
- 6.5.2.2.17 ~~Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.~~
- 6.5.2.2.18 ~~Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.~~
- 6.5.2.2.19 ~~ACT English Plus Reading score of 25 or lower representing a Performance Level 1 on the reading portion of the diploma index;~~
- 6.5.2.2.20 ~~ACT English Plus Reading score between 26 and 35 representing a Performance Level 2 on the reading portion of the diploma index;~~
- 6.5.2.2.21 ~~ACT English Plus Reading score between 36 and 47 representing a Performance Level 3 on the reading portion of the diploma index;~~
- 6.5.2.2.22 ~~ACT English Plus Reading score between 48 and 57 representing a Performance Level 4 on the reading portion of the diploma index;~~
- 6.5.2.2.23 ~~ACT English Plus Reading score of 58 or higher representing a Performance Level 5 on the reading portion of the diploma index;~~
- 6.5.2.2.24 ~~ACT Mathematics score of 17 or lower representing a Performance Level 1 on the mathematics portion of the diploma index;~~
- 6.5.2.2.25 ~~ACT Mathematics score of 18 and 19 representing a Performance Level 2 on the mathematics portion of the diploma index;~~
- 6.5.2.2.26 ~~ACT Mathematics score between 20 and 23 representing a Performance Level 3 on the mathematics portion of the diploma index;~~
- 6.5.2.2.27 ~~ACT Mathematics score between 24 and 27 representing a Performance Level 4 on the mathematics portion of the diploma index; and~~
- 6.5.2.2.28 ~~ACT Mathematics score of 28 or higher representing a Performance Level 5 on the mathematics portion of the diploma index.~~
- 6.51.3 A student who does not demonstrate proficient performance relative to the state content standards pursuant to Sections 6.5.2.1 or 6.5.2.2 of this regulation by January 1 of the year in which ~~he/she~~ the student is scheduled to graduate; or who has enrolled from another state or nonpublic school in Delaware during the school year in which the student is scheduled to graduate shall have the school or charter school academic review committee review additional Other Academic Indicators of student performance for purposes of satisfying 6.51.2 of this regulation. The only Other Academic Indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(4); student performance on end of course assessments; student classroom work products; and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a). The district or charter school shall make the determination of whether the student has demonstrated proficient performance relative to the state content standards pursuant to 6.5.2.1 or 6.5.2.2.

- 6.51.3.1 Any local school district or charter school planning to use Other Academic Indicators of student performance shall submit the other academic indicators to the Department of Education, for recording and filing purposes only, by September 1st of each year.
- 6.51.3.2 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the Other Academic Indicators of student performance.
- 6.6 ~~Parent, Guardian or Relative Caregiver Notification: Within 30 days of receiving student performance levels and diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent, guardian or Relative Caregiver.~~

7 DE Reg. 51 (7/1/03)

8 DE Reg. 425 (9/1/04)

9 DE Reg. 1175 (2/1/06)

10 DE Reg. 1425 (03/01/07)

7.0 Security and Confidentiality

In order to assure uniform and secure procedures, the Delaware ~~Student Testing Program Comprehensive Assessment System~~ shall be administered pursuant to the Delaware ~~Student Testing Program Comprehensive Assessment System~~ Coordinators Handbook, as the same, may from time to time be amended hereafter.

- 7.1 Every district superintendent, district ~~test state assessment~~ coordinator, school principal, school ~~test state assessment~~ coordinator and ~~test state assessment~~ administrator shall sign the certification provided by the Department of Education regarding ~~test assessment~~ security before, during and after ~~test assessment~~ administration.
- 7.2 Violation of the security or confidentiality of any ~~test assessment~~ required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.
- 7.3 Procedures for maintaining the security and confidentiality of an ~~test assessment~~ shall be specified in the appropriate ~~test assessment~~ administration materials in 14 **Del.C.** §170 through §174.
- 7.4 Procedures for Reporting Security Breaches
- 7.4.1 School ~~Test State Assessment~~ Coordinators shall report any questionable situations to the District ~~Test State Assessment~~ Coordinators immediately.
- 7.4.2 District Test ~~State Assessment~~ Coordinators, and for charter schools, the School State ~~Assessment Coordinators~~, shall report all situations immediately to the State Director of ~~Assessment and Analysis Accountability Resources~~.
- 7.4.2.1 Within 5 days of the incident the District ~~Test State Assessment~~ Coordinator or charter school School State Assessment Coordinator shall file a written report with the State Director of ~~Assessment and Analysis Accountability Resources~~ that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district or charter school.
- 7.4.2.2 Following a review of the report by the State Director of ~~Assessment and Analysis Accountability Resources~~ and the Associate Secretary of Education for ~~Assessment and Accountability Teaching and Learning~~, an investigator from the State Department of Education will be assigned to verify the district or charter school report.
- 7.4.2.3 Within 20 working days of the receipt of the report from the District ~~Test State Assessment~~ Coordinator or, for a charter school, the School State Assessment Coordinator, the assigned investigator shall meet with the district or charter school personnel involved in the alleged violation. The meeting will be scheduled through the ~~District Test State Assessment~~ Coordinator or, for a charter school, School State Assessment Coordinator and the investigator shall be provided access to all parties involved and to any witnesses.

- 7.4.2.4 The investigator shall report the findings to the Associate Secretary for ~~Assessment and Accountability~~ Teaching and Learning. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.
- 7.4.2.5 The ruling shall be delivered within 20 working days of the receipt of all reports and information and records shall be kept of all investigations.

10 DE Reg. 676 (10/01/06)

8.0 ~~Procedures for Reviewing Questions and Response Sheets from the Delaware Student Testing Program (DSTP)~~ Secure Materials from the State Assessment System

- 8.1 ~~School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. A student's current teacher(s), an eligible student, or a student's parent, guardian, or relative caregiver may request to review the DCAS questions for a specific student or students subject to the following provisions:~~
- 8.1.1 Any request to review a DCAS assessment shall be done on a form developed by the Department of Education. The completed and signed form shall be sent to the State Director of Accountability Resources.
- 8.1.2 A student's teacher's request shall include an appropriate reason for reviewing the student's assessment. Appropriate reasons shall include the following: concerns about incorrect scoring; suspicion of misattribution of scores; or other reasons acceptable to the Department.
- 8.1.3 The Department shall be allowed sufficient time to secure a copy of the student's assessment questions and corresponding responses from the assessment vendor.
- 8.1.4 8.1.1 The Department shall arrange a mutually convenient time and location for a meeting to review the assessment information with the requesting individual(s). At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the ~~test~~ assessment questions and take nothing out of the viewing area.
- 8.1.5 The Department shall review the procedures for reviewing the DCAS questions for a specific student or students, assist the individual(s) as requested, and keep records of all reviews.
- ~~8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.~~
- ~~8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.~~
- 8.2 ~~A student's parent, guardian or Relative Caregiver may request to view the test questions and that student's responses. In order to review the DSTP questions and that student's responses, the student's parent, guardian or Relative Caregiver shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.~~
- ~~8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.~~
- ~~8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.~~
- ~~8.2.3 In the case of the stand alone writing response, the student's parent, guardian or Relative Caregiver may go to the local school district or charter school to view the test responses.~~

4 DE Reg. 464 9/1/00

5 DE Reg. 620 (9/1/01)

8 DE Reg. 425 (9/1/04)

9.0 Invalidations and Special Exemptions

- 9.1 Invalidations for students in grades 2 through 10 for reading and mathematics, ~~grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies~~ students in grades 5, 8, and 10 in science; and students in grades 4 and 7 in social studies; ~~Invalidations are~~ An Invalidation is a response to an event or situations that occurs during the administration of the DSTP DCAS assessments which may result in a statistically unreliable or invalid score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.
- 9.1.1 Reporting of events or situations that occur during testing assessment.
- 9.1.1.1 The school building principal or designee shall notify the District ~~Test~~ State Assessment Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).
- 9.1.1.2 The District ~~Test~~ State Assessment Coordinator or charter school School State Assessment Coordinator shall notify the Department of Education staff person assigned to the district or charter school for ~~test~~ assessment security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).
- 9.1.1.2.1 The District ~~Test~~ State Assessment Coordinator or charter school School State Assessment Coordinator shall submit an DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report.
- 9.1.1.3 The Director of ~~Assessment~~ Assessment Accountability Resources for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.
- 9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district or charter school for test security purposes.
- 9.1.2 Consequences of invalidations.
- 9.1.2.1 Whenever the Director of ~~Assessment~~ Assessment Accountability Resources for the Department of Education determines that a student's assessment ~~test~~ score is invalid as a result of an intentional act of the student, the student ~~will~~ may be assigned a performance level 1 (well below standard) or other action recommended by a review committee, made up of Department of Education staff, and agreed upon by the Secretary of Education for that assessment ~~and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; t~~The assessment ~~test~~ score of any such student shall be reported and counted in the ~~test~~ assessment scores of the student's school for all purposes, including school and district accountability.
- 9.1.2.2 Whenever the Director of ~~Assessment~~ Assessment Accountability Resources for the Department of Education determines that a student's assessment ~~test~~ score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a ~~regularly scheduled test~~ make up assessment, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.
- 9.2 Special Exemptions for students in grades 2 through 10 for reading and mathematics, ~~grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies;~~ students in grades 5, 8, and 10 in science; and students in grades 4 and 7 in social studies. A special exemption may be

~~available when a student's short term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.~~

~~9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and English Language Learners (ELLs) are also available as provided in the Guidelines.~~

~~9.2.2 Requests for special exemptions based on physical or mental condition.~~

~~9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.~~

~~9.2.1 A special exemption may be available when one of the following applies:~~

~~9.2.1.1 The student is suffering from severe illness or injuries or the student has recently experienced severe traumatic events;~~

~~9.2.1.2 The student is receiving services at an out-of-state residential program that is approved by the student's Individual Education Program (IEP), is medically admitted, or is ordered by the court;~~

~~9.2.1.3 The student is receiving services at an in-state program that is not a Consortium Discipline Alternative Program (CDAP) as defined in 14 DE Admin. Code 611, or is not under the supervision of the Division of Services for Children, Youth and their Families (DSCYF). The exemption may apply to a student serving time at an adult prison; or~~

~~9.2.1.4 Other situations identified by the school, and evaluated and approved by the Department of Education.~~

~~9.2.2.2 The District Test State Assessment Coordinator or charter school School State Assessment Coordinator shall submit a Request for Special Exemption to the Director of Assessment Accountability Resources for at the Department of Education at least 60 calendar days before the first day of testing within ten (10) days of the date the school becomes aware of the student's issue. A copy of the physician's statement shall be required for 9.2.1.1 in the preceding subsection and shall be maintained as documentation at the school or district.~~

~~9.2.2.21 The Director of Assessment Accountability Resources shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability Teaching and Learning.~~

~~9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test State Assessment Coordinator or charter school School State Assessment Coordinator of the decision. The Associate Secretary's decision shall be final.~~

~~9.2.3 Request for special exemptions based on emergency.~~

~~9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.~~

~~9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.~~

- ~~9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.~~
- ~~9.2.3.3.1 The District Test Coordinator shall submit a DSTP Request for Special Exemption to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician that shall be maintained as documentation in the school or district.~~
- ~~9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.~~
- ~~9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.~~
- 9.2.43 Consequences of Special Exemptions.
- 9.2.43.1 Any special exemption granted by the Department of Education is limited to the ~~testing~~ assessment period for which it was requested and does not carry forward to future ~~test~~ assessment administrations.
- 9.2.43.2 Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 **DE Admin. Code** 103.2.4 ~~[unless their medical condition prevents them from being in school during the testing assessment period].~~
- 9.2.43.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 2 through 8 for the testing period to which the exemption applies.

5 DE Reg. 2115 (5/1/02)

8 DE Reg. 425 (9/1/04)

10 DE Reg. 676 (10/01/06)

10 DE Reg. 1425 (03/01/07)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 103

REGULATORY IMPLEMENTING ORDER

103 Accountability for Schools, Districts and the State

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State related to the new Delaware Comprehensive Assessment System (DCAS) and changes in the accountability system driven by the new assessment system and federal regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2011 in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the amendments to this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State in order to make changes to be consistent with the new state assessment system.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 19, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of May 2011.

Department of Education

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

Approved this 19th day of May 2011

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

103 Accountability for Schools, Districts and the State

*Please note that no changes were made to the regulation as originally proposed and published in the April 2011 issue of the *Register* at page 959 (14 DE Reg. 959). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[103 Accountability for Schools, Districts and the State](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1556

REGULATORY IMPLEMENTING ORDER

1556 School To Work Transition Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1556 School to Work Transition Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to allow for the Jobs for Delaware Graduate Office to provide necessary professional development to teacher candidates when necessary. This regulation sets forth the requirements for a School to Work Transition Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2011 in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments received from the State Council for Persons with Disabilities and the Governor's Advisory Committee for Exceptional Citizens have been incorporated in the regulation without substantively impacting the published regulation.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1584 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5TH DAY OF APRIL, 2011

Kathleen Thomas, Chair
Michael Casson
Joanne Christian

Lori Hudson
Chris Kenton
David Kohan

Samtra Devard
Stephanie DeWitt
Marilyn Dollard
Karen Gordon
Cristy Greaves

Jill Lewandowski
Wendy Murray
Whitney Price
Shelley Rouser
Jacque Wisnauskas

IT IS SO ORDERED the 19th day of May, 2011.

Department of Education

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

Approved this 19th day of May, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Gregory Coverdale
Terry M. Whittaker, Ed.D.
James L. Wilson, Ed.D.

1556 School To Work Transition Teacher

1.0 Content

- 1.1 This regulation shall apply to the requirements for issuance of a Standard Certificate, pursuant to 14 **Del.C. §1220(a)**, for School to Work Transition Teacher. ~~School to Work Transition Teachers, provide work transition training, counseling and assistance to students in~~ This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 - 8.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- ~~“Department” means the Delaware Department of Education.~~
- ~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~
- ~~“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, or education to practice in a particular area, teach a particular subject, or teach a category of students.~~
- “School to Work Transition” means the provision of work transition training, counseling and assistance to, and support in meeting graduation requirements for public high school students.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a School to Work Transition Teacher to an applicant ~~[who] holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements~~ who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
- 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

4.0 Additional Requirements

[Additional requirements]

- 4.1 An educator must also have met the following additional education requirements:
- 3.1 Educational Requirements:
- 3.1.1 Bachelor's degree from a regionally accredited college or university; and
- 34.1.21 Has completed Eighteen (18) semester hours of or the equivalent in course work in education or professional development, to include three semester hours in each of the following areas:
- 34.1.2.1 Educational Psychology, Human Growth and Development and Adolescent Psychology;
- 34.1.2.2 Tools and Techniques in Counseling;
- 34.1.2.3 Methods of Teaching School to Work Transition Students;
- 34.1.2.4 Job Development Training;
- 34.1.2.5 Career Guidance and Information; and
- 34.1.2.6 Occupational and Educational Information.
- 4.1.2 Professional development programs developed by the Jobs for Delaware Graduates (JDG) Office and approved by the Department may be substituted.
- 34.2 An educator must also have ~~[met the following Experience Requirements;]~~
- 34.2.1 Has] completed A minimum of two years of continuous, full time work experience in trade, business, education, social services or industry; or experience comparable to school to work transition, as approved by the Department.

9 DE Reg. 136 (7/1/05)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1584

REGULATORY IMPLEMENTING ORDER

1584 School Social Worker

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1584 School Social Worker. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to follow current formatting trends and to include references to 1505 Standard Certificate. This regulation sets forth the requirements for a School Social Worker.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2011 in the form hereto attached as Exhibit "A". The notice invited written comments. Positive written comments were received from the State Council for Persons with Disabilities. The Governor's Advisory Committee for Exceptional Citizens asked the Board to consider the elimination of the one year internship in a school setting. As this language has been within the regulation and the Department has not identified this as a concern, the Board chose to maintain the language.

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1584 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5TH DAY OF MAY, 2011

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

IT IS SO ORDERED the 19th day of May, 2011.

Department of Education

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

Approved this 19th day of May, 2011

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Gregory Coverdale
Terry M. Whittaker, Ed.D.
James L. Wilson, Ed.D.

1584 School Social Worker

Effective July 1, 1994

4.0 Content

- 4.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for School Social Worker.

2.0 Definitions

- 2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- “**Certification**” means the issuance of a certificate, which may occur regardless of a recipient’s assignment or employment status.
 - “**Department**” means the Delaware Department of Education.
 - “**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.
 - “**Standard Certificate**” means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 Standard Certificate

In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a School Social Worker to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements.

- 3.1 Master’s Degree School Social Worker (MSW)
- 3.1.1 Master’s degree in Social Work (MSW) from a regionally accredited college or university and,
 - 3.1.2 Two years successful full time work experience as a social worker, and
 - 3.1.3 One year of supervised experience in a school setting, or a one year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.

~~7 DE Reg. 1755 (6/1/04)~~

~~Renumbered effective 6/1/07 – see Conversion Table~~

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for School Social Worker. This certification is required for grades K to 12.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a School Social Worker to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator shall also meet the following:

- 4.1 Master's degree in Social Work (MSW) from a regionally accredited college or university; and
- 4.2 Two years successful full time work experience as a social worker; and
- 4.3 One year of supervised experience in a school setting, or a one year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.

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

Statutory Authority: 16 Delaware Code, Section 1102(7) (16 Del.C. §1102(7))
16 DE Admin. Code 3201; 3225; 3230; 3301; 3305; 3310 & 3315

ORDER

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations to mandate that facilities cooperate fully with protection and advocacy agencies. The Department’s proceedings to amend its regulations were initiated pursuant to 16 **Delaware Code**, Chapter 11, Section 1102, with authority prescribed by 16 **Delaware Code**, Chapter 11, Section 1101.

The Department published its notice of proposed regulatory change pursuant to require facilities to cooperate fully with the state protection and advocacy agency as required by the amendment to 16 **Del.C.** §1102, which added a paragraph (7). The proposed regulatory change was published in the April 2011 *Delaware Register of Regulations*. Written materials and suggestions from the public concerning the proposed regulations were to be produced by May 4, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposal amends existing Regulations 3201 Skilled and Intermediate Care Nursing Facilities, 3225 Assisted Living Facilities, 3230 Rest (Residential) Home Regulations, 3301 Group Home Facilities for Persons with AIDS, 3305 Group Homes for Persons with Mental Illness, 3310 Neighborhood Homes for Persons with Developmental Disabilities, and 3315 Rest (Family) Care Homes. The proposed change will amend the regulation to require facilities to cooperate fully with the state protection and advocacy agency.

Statutory Authority

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

Summary of Comments

The State Council for Persons with Disabilities, the Governor's Advisory Council for Exceptional Citizens and The Delaware Disabilities Council all offered comments that they strongly endorse the proposed regulations.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3220 -Training and Certification of Certified Nursing Assistants, with the modification indicated herein, is adopted and shall be final effective June 1, 2011.

Rita Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the April 2011 issue of the *Register* at page 982 (14 DE Reg. 982). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Long Term Care State Protection and Advocacy](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 **DE Admin. Code** 14300, 14360 and 18100

ORDER

Citizenship and Alienage

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage, specifically, State Funded Benefits*. 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 April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The proposal amends the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage, specifically, State Funded Benefits*.

Statutory Authority

This regulatory action proposes changes to State funded benefits necessitated by State Fiscal Year 2012 Recommended Operating Budget and Capital Improvement Act.

Background

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This does not include long term care services. Coverage for these aliens is subject to the availability of state funding.

Summary of Proposal

The purpose of this rule change is to eliminate state funded full Medicaid benefits for certain legally residing noncitizens and to delete the reference to state funded benefits under the Delaware Healthy Children Program.

Due to budgetary constraints, continued funding for the program was not included in the State Fiscal Year (SFY) 2012 recommendations of the Health Fund Advisory Committee (HFAC). This recommendation is reflected in Volume II of the SFY 2012 Governor's Recommended Budget.

Legally residing noncitizens may be found eligible for coverage of emergency services and labor and delivery only.

The proposed changes are effective July 1, 2011 and affect the following policy sections:

DSSM 14300, *Citizenship and Alienage*

DSSM 14360, *State Funded Benefits*

DSSM 18100.1, *Alien Status*.

Fiscal Impact Statement

A savings of \$1,570,000 in tobacco funds is projected.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

As background, the Division notes that Delaware has historically provided State funding to provide Medicaid coverage to some non-citizens. However, given competing priorities, the Delaware Health Fund Advisory Committee (HFAC) did not approve continued State funding in its FY 12 recommendations. The funding is also omitted from the Governor's proposed FY 12 budget.

Given the projected lack of State funding for coverage of non-citizens, the Division is modifying its regulations to limit Medicaid services eligibility of qualifying legally residing noncitizens to "emergency services and labor and delivery only". The Division is also adopting a minor amendment to its Delaware Healthy Children Program regulation. The DHCP regulation already excluded coverage of noncitizens.

There are obvious "pros and cons" to the initiative. On the one hand, it will eliminate access to a broad range of medical services, including prenatal care, to noncitizens. On the other hand, Delaware faces a budget deficit which is prompting consideration of curtailment of a number of safety-net programs, including General Assistance. Given the Councils strong interest in ensuring access to health care, we recommend that the Division conduct a careful fiscal analysis regarding the impact of the proposed regulation and consider whether prenatal care could be offered as a State-funded benefit.

Agency Response: There is no need for the Division to consider if prenatal care could be offered as a state funded benefit. Effective July 1, 2010, Delaware implemented the option allowed under Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), P. L. 111-3, to provide Medicaid coverage to pregnant women who are lawfully residing in the United States.

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

Additionally, DSSM 17902 was inadvertently omitted as deleted text in the proposed regulation. **[Bracketed Bold language]** indicates deleted text added at the time the final order is issued.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding *Citizenship and Alienage, specifically, State Funded Benefits* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATIONS #11-23 REVISIONS:

14300 Citizenship and Alienage

Medicaid must be provided to eligible citizens or nationals of the United States. An individual qualifies as a U.S. citizen if the person was born in the 50 states and District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. Children of a U.S. citizen who are born outside the U.S. may automatically be eligible for a Certificate of Citizenship.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the U. S. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. Medicaid eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. The term nonqualified alien also includes illegal aliens.

~~In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This coverage is described at Section 14360.~~

All applicants, whether citizens or aliens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, ~~emergency services and labor and delivery only, or the state funded benefits~~ or emergency services and labor and delivery only.

(Break in Continuity of Sections)

14360 State Funded Benefits

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This ~~does~~ did not include long term care services. Coverage for these aliens ~~is~~ was subject to the availability of state funding. ~~In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.~~ Effective July 1, 2011, state funded benefits are no longer available for these certain legally residing noncitizens. These aliens may be found eligible for emergency services and labor and delivery only.

~~The following groups of aliens may be found eligible for state funded benefits:~~

- ~~• Qualified aliens subject to the PRWORA five-year bar~~

- Legally residing nonqualified aliens

~~Ineligible and illegal aliens are not eligible for state-funded benefits.~~

~~State-funded benefits are not provided to the adult expansion population under the 1115 demonstration waiver.~~

(Break in Continuity of Sections)

~~[47902 Alien Status~~

~~MWD does not provide state-funded benefits to qualified aliens subject to the 5-year bar under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) or to legally residing nonqualified aliens.]~~

(Break in Continuity of Sections)

18100.1 Alien Status

The DHCP does not provide ~~state-funded benefits~~ or coverage of emergency services and labor and delivery only.

Receipt of DHCP benefits cannot be considered by the U.S. Citizenship and Immigration Services (USCIS) when making public charge determinations.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20310

ORDER

Long-Term Care Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010. 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 April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

Statutory Authority

- Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312)
- Social Security Administration's Program Operations Manual System (POMS): SI 01130.600, Retroactive Supplemental Security Income (SSI) and Retirement, Survivors and Disability (RSDI) Payments

Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) was signed into law on December 17, 2010. Section 728 of this Act disregards federal tax refunds or advance payments with respect to a refundable tax credit, received after December 31, 2009, as income and as resources (for a period of 12 months after receipt) for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid and the Children's Health Insurance program (CHIP). Section 728 also provides that these tax refunds and advance payments are not to be taken into account in determining the amount or extent of benefits provided under any program subject to this provision, including Medicaid and CHIP. This provision became effective December 17, 2010, and applies to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013.

Summary of Proposal

The purpose of the proposed change is to update the length of time certain resources are excluded. Lump sum retroactive Social Security Act (SSA) payments are now excluded for nine (9) months. Tax refunds and advance payments received on or after January 1, 2010 are excluded for a period of twelve (12) months.

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

There are two (2) changes.

First, the unspent portion of a retroactive SSI, SSDI, or Social Security retirement benefit is currently disregarded for six (6) months following the month of receipt. The proposed amendment would extend that time period to nine (9) months following the month of receipt.

Second, federal income tax refunds received between January 1, 2010 and December 31, 2012 will be excluded from countable resources for a period of twelve (12) months following the month of receipt.

GACEC and SCPD endorse the proposed regulation since both changes would benefit Medicaid beneficiaries.

Agency Response: DMMA thanks the Councils for their endorsement.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding *Federal Tax Refunds or Advance Payments* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #11-22
REVISIONS:**

20310.9 Retroactive Social Security Administration Lump Sum Payments

The unspent portion of retroactive SSI and Title II Retirement, Survivors, and Disability insurance (RSDI) benefits is excluded from resources for the ~~six~~ nine calendar months following the month of receipt. (See Social Security Administration's Program Operations Manual System (POMS) SI 01130.600 for exclusion of retroactive RSDI benefits.)

(Break in Continuity of Sections)

20310.18 Tax Refunds and Advance Payments

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P. L. 111-312), which was signed into law on December 17, 2010, includes a provision that requires all programs funded in whole or in part with Federal funds, to disregard Federal tax refunds for a period of twelve months from the month of receipt.

Tax refunds and advance payments with respect to a refundable tax credit received after December 31, 2009 through December 31, 2012 are excluded from resources for the twelve calendar months following the month of receipt.

Any portion of the refund or payment that is still retained after that twelve- month period will be a countable resource.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 4002, 4006, 8026 & 8030

ORDER**Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance (RCA) Programs****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 Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance programs specifically, *Excluded Income and Excluded Resources*. 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 April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance programs specifically, *Excluded Income and Excluded Resources*.

Statutory Authority

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)

Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) made changes in the manner federal tax refunds may be considered when determining eligibility for federally funded programs. The law includes a provision that mandates disregarding tax refunds received after December 31, 2009, as income and as resources (for a period of 12 months) in programs funded in whole or in part with federal funds. Under the new law, the total amount of a federal tax refund received after December 31, 2009 – regardless of whether the refund is the result of a refundable credit, over-withholding, or both – is disregarded as income and resources in the month received. This resource exclusion is to last for 12 months from the date of receipt of the refund.

Summary of Proposed Change

The proposed change in policy brings Delaware's TANF and Refugee Cash Assistance programs into compliance with new federal law. Federal tax refunds received after December 31, 2009 are disregarded as income the month they are received and disregarded as a resource for 12 months from date of receipt.

The proposed changes affect the following policy sections:

DSSM 4002.5, *Excluded Resources*

DSSM 4006, *Excluded Income*

DSSM 8026.5, *Excluded Resources*

DSSM 8030, *Excluded Income*

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The amendments would result in the disregard of federal income tax refunds from countable income and resources for a period of twelve (12) months following the month of receipt. The proposed regulation was published as 14 DE Reg. 1011 in the April 1, 2011 issue of the *Register of Regulations*.

GACEC and SCPD endorse the proposed regulation since the changes would benefit participants in the TANF and RCA programs.

Agency Response: DSS thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2011 *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 TANF and Refugee Cash Assistance programs specifically, *Excluded Income and Excluded Resources* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #11-20

REVISIONS:

4002.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed \$10,000.00 for TANF cases or \$1,000.00 for General Assistance cases. Resources excluded from the resource limitation are:

1. The home which is the usual residence of the family budget group.

2. Automobiles:

An automobile is defined as any motorized vehicle used:

A. for transportation via public roadways or

B. to produce income.

The automobiles owned by members of a cash assistance household are disregarded.

3. One burial plot for each member of the assistance unit.

4. Bona fide funeral agreements (e.g., pre paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.

6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 4002.6).

7. Tools and equipment necessary to produce income in a self employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.

8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100 - 707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100 383.

10. Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100 383.

11. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. All federal income tax refunds, including Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.

Recipients:

Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.

The refund is disregarded regardless of whether the refund is a result of a refundable credit, over withholding, or both.

Federal tax refunds received during the previous 12 month period by any case member are disregarded.

13. Cash Value of Life Insurance Policies.

14. The designated Education and Business Account (EBIA) is excluded up to the \$5000 maximum. In addition to the current resource limit, Delaware's Temporary Assistance For Needy Families Program (TANF) and General Assistance (GA) Program families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5000.00, including interest.

Do not consider funds in such accounts as a resource for TANF, GA, or ~~Food Stamp~~ food benefit purposes. Withdrawals from such accounts as a resource must be for approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, education expenses, employment start-up needs, entrepreneurship, and to purchase a vehicle or home. If staff is unsure if the withdrawal meets an approved purpose, contact the ~~policy unit~~ Policy Unit for clarification.

Furthermore, a Saving for Education, Entrepreneurship, and Downpayment (SEED) accounts is considered an EBIA account and is excluded up to the \$5000.00 limit.

(Break in Continuity of Sections)

4006 Excluded Income

- The following kinds of income are disregarded in determining financial eligibility and grant amounts in TANF and GA:
- The value of USDA donated foods.
- The value of food ~~stamps~~ benefits.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- A one-time bonus payment of \$50.00 will be paid from, Delaware's Temporary Assistance For Needy Families Program funds to teens who graduate from high school by age 19. This bonus will be paid directly to the high school graduate. Disregard as income and resource the bonus payment, for TANF and ~~Food Stamp~~ Benefit purposes.
- A cash payment made to the TANF unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:
 1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
 2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
 - a. Borrower's acknowledgement of obligation to repay; or
 - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
 - c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.
- Money received in the form of a non-recurring lump sum payment is to be counted as a resource in the month received unless specifically excluded from consideration as a resource by other Federal law or regulations.
- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training related expenses derived from participation in Institutional and Work Experience Training or special work projects.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.

- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100-383.
- Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100-383.
- Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E. D. N. Y.).
- Payments of supportive services or reimbursement of out of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.
- Payments of Experimental Housing Allowance Program made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended.
- Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of P.L. 94-114.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:

Kingswood Community Center

Peoples' Settlement Association

Catholic Social Services, Inc.

Neighborhood House, Inc.

Community Housing, Inc.

Jewish Family Service of Delaware

Salvation Army

Community Action (Sussex County)

- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- For the TANF program: All federal tax refunds.
- Earned Income Tax Credits (EITC).
- Income received from the Census Bureau April 01, 2000 through December 31, 2000.

(Break in Continuity of Sections)

8026.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed \$1,000.00. Resources excluded from the \$1,000.00 resource limitation are:

1. The home which is the usual residence of the family budget group.
2. One automobile, the equity value of which does not exceed \$1,500.00. The equity value is the difference between the automobile's fair market value and the amount still owed for it. The equity value in excess of \$1,500.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.

NOTE: The fair market value of an automobile is determined by finding the car's trade-in value in the NADA Used Car Guide. If the client disagrees with this valuation, he/she may obtain a statement of the car's value from an automobile dealer.

The increased value of a motor vehicle specially equipped with devices for the handicapped is not counted. Farm vehicles that are used to produce income are excluded from consideration as a resource.

EXAMPLE: A client owns a car which has a fair market value of \$5,000.00. The client owes \$3,000.00 on it. The car's equity value is \$2,000.00. Its resource value for financial assistance purposes is \$500.00 (\$2,000.00 - \$1,500.00).

3. One burial plot for each member of the assistance unit.
4. Bona fide funeral agreements (e.g., pre-paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.
6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 8026.6).
7. Tools and equipment necessary to produce income in a self-employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.
8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. All federal income tax refunds, including Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

~~Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.~~

Recipients:

~~Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.~~

The refund is disregarded regardless of whether the refund is a result of a refundable credit, over withholding, or both.

Federal tax refunds received during the previous 12 month period by any case member are disregarded.

10. A sponsor's resources cannot be considered available solely because the person is serving as a sponsor.
11. Cash value of Life Insurance Policies.

(Break in Continuity of Sections)

8030 Excluded income

The following kinds of income are disregarded in determining financial eligibility and grant amounts in RCA:

- The value of USDA donated foods.
- The value of food stamps benefits.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- Earnings received by children under the Summer Youth Program of the Job Training Partnership Act of 1982 for a period not to exceed six (6) months.
- A cash payment made to the RCA unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:

1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.

2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:

- a. Borrower's acknowledgement of obligation to repay; or
- b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
- c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.

- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training related expenses derived from participation in Institutional and Work Experience Training or special work projects under the Work Incentive Program.
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is are equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the

efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Payments of supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
 - Kingswood Community Center
 - Peoples' Settlement Association
 - Catholic Social Services, Inc.
 - Neighborhood House, Inc.
 - Community Housing, Inc.
 - Jewish Family Service of Delaware
 - Salvation Army
 - Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- All federal tax refunds, including Earned Income Tax Credits (EITC).
- Income of an individual acting as a refugee's sponsor.
- Income received from the Census Bureau from April 1, 2000 through December 31, 2000

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11003.2.1

ORDER**Child Care Subsidy Program, DSSM 11003.2.1, Sanctioning TANF and Transitional Work Program Recipients****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program specifically, *Sanctioning TANF and Transitional Work Program Recipients*. 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 April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Sanctioning TANF and Transition Work Program Recipients*.

Statutory Authority

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

Summary of Proposed Change

DSSM 11003.2.1, ~~TANF and Transition Work Program Sanctions~~ Sanctioning TANF and Transitional Work Program Recipients: This rule revision restricts TANF and Transitional Work Program (TWP) recipients to self-arranged care when cooperating to cure a second TANF or TWP sanction. An additional change is proposed to rename this section to better describe its content.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received. Further analysis by Department and Division staff resulted in adding text to clarify that clients working to cure a second or subsequent sanction must use self arranged child care each time they are sanctioned.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program specifically, *Sanctioning TANF and Transitional Work Program Recipients* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #11-21**REVISIONS:****11003.2.1 ~~TANF and Transitional Work Program Sanctions~~ Sanctioning TANF and Transitional Work Program Recipients**

Recipients who fail without good cause to meet requirements for the TANF Employment and Training or Transitional Work Program are sanctioned.

When TANF recipients receive a full family sanction or fail without good cause to comply with the Transitional Work Program (TWP), they lose their TANF Child Care. This means their child care case will ~~be closed~~ close. In order to regain TANF Child Care, recipients must work to cure the sanction, ~~meaning they must cooperate~~ by cooperating with their TANF or TWP requirements.

Clients curing their TANF sanction may be eligible for child care under Presumptive Child Care Services (DSSM 11004.8).

Clients working to cure ~~their~~ a second or subsequent] TANF and/or TWP sanction[s] may only use self arranged care. Clients may choose any child care option beginning the month after the sanction is cured.

[NOTE: Clients must use self arranged care each time they are sanctioned. This requirement applies until they cooperate with their TANF or TWP requirements for 12 consecutive months.]

See 11003.2.1 TANF & Transitional Work Program - History

See 11003.7.8 Special Needs

See 3017.1 Transitional Work Program

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11003.7.8 & 11003.8

ORDER

Child Care Subsidy Program, DSSM 11003.7.8 and 11003.8

NATURE OF THE PROCEEDINGS:

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

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

As a reminder, the proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Special Needs* and *Necessity of Child Care*.

Statutory Authority

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

Summary of Proposed Changes

DSSM 11003.7.8, *Special Needs*: The Special Needs rule is being revised by eliminating Special Needs for children and maintaining it for adults.

DSSM 11003.8, *Necessity of Child Care*: This section is being revised to clarify what constitutes a need for child care. Parents and caretakers must have a need as defined by the Division of Social Services in order to receive subsidized child care. In the case of a two-parent family both parents must have a need.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

Upon initial review of the regulation, it appeared that the main thrust of the initiative is to completely eliminate standards allowing special needs children to be eligible for the Child Care Subsidy Program. For example, the "Summary of Proposed Changes" section recites as follows: "The Special Needs rule is being revised by eliminating Special Needs for children while maintaining it for adults." Moreover, the following authorization is being stricken altogether:

Children with Special Needs:

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's physical, medical or emotional condition is such that he is unable to care for himself. Children under age 13 may qualify for Special Needs Child Care if they have a need that cannot be met in a regular daycare setting. Children 13 years of age and older are only eligible for Special Needs Childcare.

Consistent with the attached 45 C.F.R. §98.20, DSS has the discretion to cover or not cover such children:

(a) In order to be eligible for services under §98.50, a child shall:

(i) Be under 13 years of age; or

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself of herself, or under court supervision; ...

Agency Response: DSS is not eliminating the standards allowing children with special needs to be eligible for the Child Care Subsidy Program. The Division is revising its eligibility criteria so that a child with a special need must have a parent or caretaker with a DSS qualifying need before services will be approved. Children with special needs between the ages of 13 through 18 will continue to receive Special Needs services as long their parent/caretaker has a DSS qualifying need. In addition, children with special needs under the age of 13 may be eligible if the parent/caretaker meets the financial and technical criteria.

Secondarily, the regulation ostensibly narrows the "necessity of child care" standards for two-parent households. See proposed changes to §11003.8.

Agency Response: The policy is revised to clarify that, for two-parent families, both parents must have a need before child care will be approved.

SCPD appreciates the participation of the DSS Division Director at its April 18 meeting, but opposes the regulation in its current form. It would be preferable for DSS to republish a more informative revised regulation. Moreover, if DSS intends to eliminate "special needs for children" status, there are multiple inconsistent regulations.

Agency Response: Thank you for your observation concerning the inconsistencies in the policy. We will make the appropriate changes to bring consistency to all cited policy sections as expeditiously as possible.

Finally, since the program is partially funded by a federal block grant, it is possible that the Division has provided written assurances in its application that it covers special needs children. If so, DSS could potentially violate grant assurances by changing standards "midstream".

Agency Response: It is true the policy is partially funded by a federal block grant. However, the CCDF plan may be amended at any time with approval from the Administration of Children and Families. A general practice is to amend the plan within 90 days after policy has been approved.

Further analysis by Division staff resulted in changes to the rule as proposed at *DSSM 11003.7.8*. Language is inserted to further clarify/change expectations as follows.

[Children with Special Needs:

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's parent/caretaker has a need and is financially eligible. The child's physical, medical or emotional condition must be such that the child is unable to care for himself or herself.

A child that is younger than 13 years of age who has a special need may be eligible for care if the child's parent/caretaker has a need and is financially eligible.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.]

[Bracketed Bold language] indicates added text at the time the final order is issued.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Special Needs* and *Necessity of Child Care* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #11-24**REVISIONS:****11003.7.8 Special Needs**

45 CFR 98.20

Eligibility

Families requesting Special Needs Child Care must be technically and financially eligible.

EXCEPTION: DFS referrals do not have to meet financial criteria.

~~If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child under age 13 requires care that cannot be provided in a regular day care.~~

The parent/caretaker must meet the need criteria as listed in 11003.8.

To be eligible for Special Needs care the parent/caretaker ~~or child~~ must meet the definition of need as explained below.

~~Children with Special Needs:~~

~~A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's physical, medical or emotional condition is such that he is unable to care for himself. Children under age 13 may qualify for Special Needs Child Care if they have a need that cannot be met in a regular daycare setting. Children 13 years of age and older are only eligible for Special Needs Childcare.~~

~~Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.~~

Adults with Special Needs:

A parent/caretaker may be eligible for Special Needs Child Care services if the parent/caretaker has a condition which makes him/her the parent/caretaker unable to care for his/her child for some portion of the day.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

[Children with Special Needs:

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's parent/caretaker has a need and is financially eligible. The child's physical, medical or emotional condition must be such that the child is unable to care for himself or herself.

A child that is younger than 13 years of age who has a special need may be eligible for care if the child's parent/caretaker has a need and is financially eligible.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.]

Families with Protective Child Care Needs:

Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.

A child that is active with and referred by DFS for child care:

1. is considered to have met the need criteria;
2. does not have to meet the financial criteria;
3. may receive child care regardless of citizenship status.

Families with Transitional Work Program Needs:

Children referred by the Transitional Work Program (TWP) may be eligible for Special Needs Child Care.

A parent/caretaker that is active with and referred by TWP for child care:

1. is considered to have met the need criteria;
2. must have gross household income at or below 200% FPL;
3. is not required to provide a Medical Certification Form or a Special Needs Form.

DSS staff will authorize childcare for 5 days part time with extended care. Please refer to policy section 11004.9 Authorizing Service. Authorize care for additional time if the parent's/caretaker's activities with TWP require more than part time care.

11003.8 Necessity Of of Child Care

~~For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:~~

- A. ~~the child is not in school during the hours of the parent/caretaker's employment; or~~
- B. ~~the child is not in school during the hours of the parent/caretaker's participation in a training or education component of a DSS Food Stamp or TANF Employment and Training program; or~~
- C. ~~both parents in a two parent household have a need for child care. For example:~~
 1. ~~in two parent households both parents work; or~~
 2. ~~one works and the other has another need (such as education or training), is incapacitated (a parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable (such as one parent works the late shift and needs to sleep during the day while the other parent works).~~

45 CFR 98.20

For parents/caretakers to receive child care services, DSS must determine if child care is necessary. For two-parent households, both parents must have a need for child care. Child care is necessary when:

- A. The child is not in school during the hours of the parent's/caretaker's employment
 - B. The child is not in school during the hours of the parent's/caretaker's participation in a training or education component of a DSS Employment and Training program
 - C. The child is active with and referred by DFS for child care (See DSSM 11003.7.8)
 - D. The parent/caretaker is active with and referred by the DSS Transitional Work Program for child care (See DSSM 11003.7.8)
 - E. The parent/caretaker has a special need (See DSSM 11003.7.8)
-

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Office of Workers' Compensation

Statutory Authority: 19 Delaware Code, Sections 2322B, C, E, and F
(19 **Del.C.** §§2322B, C, E, and F)
19 **DE Admin Code** 1341

ORDER

1341 Workers' Compensation Regulations

A public meeting was held on May 2, 2011, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, and Utilization Review. The members of the Health Care Advisory Panel ("HCAP"), signed below, recommend that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 14, Issue 10 (April 2011).

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Exhibits Admitted:

Exhibit 1 – *News Journal*, Affidavit of publication of notice of public meeting.

Exhibit 2 – *Delaware State News*, Affidavit of publication of notice of public meeting.

No written comments were received by the Delaware Department of Labor. After the Panel concluded with their introductions, the public was invited to share their comments. No members of the public were in attendance at the public meeting.

The following comments were made during the public meeting.

Fee Schedule Instructions:

No Public Comment

Forms:

No Public Comment

Utilization Review:

No Public Comment

Therefore, the HCAP agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, and Utilization Review.

RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The HCAP is persuaded that the proposals are consistent with administering the statutory directives in the workers' compensation law.

RECOMMENDATION

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 2nd day of May, 2011.

HEALTH CARE ADVISORY PANEL

George B. Heckler, Esq., Chair

Harry Gravell

Glenn Brown, MMSC, PT

James Downing, M.D.

A. Richard Heffron

Bruce Rudin, M.D.

R. Walter Power, M.D.

Douglas Briggs, D.C.

Josette Covington, M.D., MPH

Wayne Smith

DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt revisions of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, and Utilization Review. The Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, and Utilization Review are hereby adopted by the Delaware Department of Labor and made effective **June 13, 2011**.

TEXT AND CITATION

The proposed Fee Schedule Instructions and Guidelines; Forms; Utilization Review appeared in the *Register of Regulations*, Volume 14, Issue 10 (April 1, 2011). The Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, Utilization Review, and Lower Extremities Practice Guideline are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: www.delawareworks.com.

DEPARTMENT OF LABOR

John McMahon, Secretary of Labor

1341 Workers' Compensation Regulations

*Please note that no changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1018 (14 DE Reg. 1018). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1341 Workers' Compensation Regulations](#)

Division of Industrial Affairs**Office of Workers' Compensation**

Statutory Authority: 19 Delaware Code, Sections 2322B, C, E, and F
(19 **Del.C.** §§2322B, C, E, and F)
19 **DE Admin Code** 1342

ORDER**1342 Health Care Practice Guidelines; PART G Lower Extremity Treatment Guidelines**

A public meeting was held on May 2, 2011, by the Department of Labor to receive public comments relating to a 7th health care practice guideline – Lower Extremities. The members of the Health Care Advisory Panel (“HCAP”), signed below, recommend that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 14, Issue 10 (April 2011).

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Exhibits Admitted:

Exhibit 1 – *News Journal*, Affidavit of publication of notice of public meeting.

Exhibit 2 – *Delaware State News*, Affidavit of publication of notice of public meeting.

No written comments were received by the Delaware Department of Labor. After the Panel concluded with their introductions, the public was invited to share their comments. No members of the public were in attendance at the public meeting.

The following comments were made during the public meeting.

Lower Extremities Health Care Practice Guidelines:

No Public Comment

The Panel voted unanimously to recommend approval of the Lower Extremities Health Care Practice Guidelines.

Therefore, the HCAP agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the 7th health care practice guideline – Lower Extremities.

RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The HCAP is persuaded that the proposals are consistent with administering the statutory directives in the workers' compensation law.

RECOMMENDATION

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 2nd day of May, 2011.

HEALTH CARE ADVISORY PANEL

George B. Heckler, Esq., Chair
 Harry Gravell
 Glenn Brown, MMSC, PT
 James Downing, M.D.
 A. Richard Heffron

Bruce Rudin, M.D.
 R. Walter Power, M.D.
 Douglas Briggs, D.C.
 Josette Covington, M.D., MPH
 Wayne Smith

DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt revisions adding a 7th health care practice guideline – Lower Extremities. The Guidelines are hereby adopted by the Delaware Department of Labor and made effective **June 13, 2011**.

TEXT AND CITATION

The proposed Lower Extremities health care practice guideline notice appeared in the *Register of Regulations*, Volume 14, Issue 10 (April 1, 2011). The Lower Extremities Practice Guideline are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: www.delawareworks.com.

DEPARTMENT OF LABOR

John McMahon, Secretary of Labor

1342 Health Care Practice Guidelines PART G Lower Extremity Treatment Guidelines

*Please note that no changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1018 (14 DE Reg. 1018). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1342 Health Care Practice Guidelines](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a (7 Del.C. §903(e)(2)a)
 7 DE Admin. Code 3507

Secretary's Order No. 2011-F-0030

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

Withdrawal of Proposed Amendments

Date of Issuance: May 17, 2011

Effective Date: June 11, 2011

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 *et seq.*, 29 Del.C. §§10111 *et seq.* and 7 Del.C. §6010 (a), the

following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On January 10, 2011, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2011-05 to promulgate regulation amendments Tidal Finfish Regulation 3507 concerning black sea bass. At that time, the Atlantic States Marine Fisheries Commission's (ASMFC) Management Board for Black Sea Bass for Flounder, Scup and Black Sea Bass was in the process of developing an Addendum to the Interstate Fisheries Management Plan. The Addendum would recommend management strategies necessary to reduce recreational harvest to levels recommended by the National Marine Fisheries Service to prevent overfishing. The aforementioned SAN was initiated with specific management recommendations in the form of seasons, minimum size limits, and creel limits, in anticipation of the State or Regional-specific management measures decreed by the ASMFC. The Department had planned that, at the time of the public hearing on March 24, 2011, the ASMFC-approved options that would allow Delaware to remain in compliance with the Interstate Management Plan for the upcoming season would be presented to the public for comment.

At the time of the ASMFC Board Meeting (which, by coincidence, was ultimately held in Alexandria, Virginia, just hours before the aforementioned public hearing on March 24, 2011), the Board recognized the inequities associates in coast-wide management for black sea bass, due primarily to the differences in the size distribution from north to south. Sea bass in the northern states tend to grow much larger than those in the southern region. Thus, increases in the minimum size range affect anglers in the south much more. As an example, during 2009 and 2010, landings from Delaware through Virginia declined by 56% with the larger minimum size limit in place. During that same period, however, recreational landings in the north increased up to 149%. To remedy this problem, and to meet the new Federal quota, the NMFS was requiring states to reduce their catch by almost one million fish.

In light of the above issues, the Board chose to adopt state-by-state measures (as opposed to regional measures as anticipated) to manage black sea bass for 2011. As a result of this Board action, the states from Massachusetts through New Jersey will have to significantly reduce landings, by as much as 43% over recent levels. States to the south, however, which includes Delaware, Maryland and Virginia, will *not* be required to adjust their regulations from those that were in place during 2010 for the 2011 season.

As a result of the Board actions as noted above, it is no longer necessary for the Department to move forward with the proposed regulation amendments that were previously thought to be needed in order for Delaware to remain in compliance with the aforementioned Interstate Management Plan for this species. Thus, the Department hereby withdraws the proposed regulation amendments to Tidal Finfish Regulation 3507 regarding black sea bass, as published in the March 2011 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby withdraws the proposed regulation amendments to 7 **DE Admin. Code** 3507 as published in the *Delaware Register of Regulations* on March 1, 2011; and

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

Collin P. O'Mara, Secretary

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)~~ (TBD) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

12 DE Reg. 1430 (5/1/09)

- 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, 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.
- 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.

1 DE Reg.1767 (5/1/98)**2 DE Reg. 1900 (4/1/99)****3 DE Reg. 1088 (2/1/00)****4 DE Reg. 1665 (4/1/01)****4 DE Reg. 1859 (5/1/01)****5 DE Reg. 2142 (5/1/02)****6 DE Reg. 348 (9/1/02)****6 DE Reg. 1230 (3/1/03)**

- 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. ~~January 1, and ending midnight May 21, and beginning at 12:01 a.m. October 12 and ending mid-night October 31 (TBD).~~
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than ~~25 (TBD)~~ 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.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

11 DE Reg. 1662 (6/1/08)

14 DE Reg. 113 (8/1/10)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(3) (7 **Del.C.** §903(e)(3))
7 DE Admin. Code 3541

Secretary's Order No.: 2011-F-0029

Date of Issuance: May 17, 2011

Effective Date of the Amendment: June 11, 2011

3541 Atlantic Sharks

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 3541**, *Atlantic Sharks*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2011-03. The Department published its initial proposed regulation Amendments in the March 1, 2011 *Delaware Register of Regulations*, and held a public hearing on March 25, 2011. Public comment was received by the Department during all phases of this promulgation (pre-hearing, post-hearing and at that time of the public hearing), and the Department responded fully and thoroughly to all questions from the public regarding this proposed promulgation.

In the summer of 2010, the Department became aware of increased fishing activities directed at catching large coastal sharks off of Delaware's beaches classified by the Atlantic States Marine Fisheries Commission ("ASMFC") as Prohibited Species, including sand tigers (*Odontaspis taurus*), which are also listed as a Species of Concern by the National Oceanic and Atmospheric Administration/National Marine Fisheries Service. Studies have shown sand tigers suffer significant injury and occasionally die as a result of being caught by hook and line fishermen, even when circle-hooks are used. While it is sometimes difficult to ascertain fishing intent or what species are

actually being sought, these large sharks are being targeted using large baits and large hooks from Delaware's beaches where sand tigers are known to occur. After being hooked and landed, the sharks are dragged up on the beach and handled inappropriately, and for an extended period, before being hauled back into the surf. Some sand tiger mortalities have been reported, and thus State and Federal agencies responsible for the protection and conservation of this species are concerned.

The Department is proposing to amend Tidal Finfish Regulation 3541 concerning Atlantic Sharks in order to minimize potential injury to these protected and prohibited species by making it unlawful to remove them from the water, and to require their immediate release. The adoption and enforcement of this regulation would reduce some of the handling-related trauma and may discourage targeting these Prohibited Species.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 9, 2011 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

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

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will (1) minimize potential injury to these protected and prohibited species by making it unlawful to remove them from the water and require their immediate release; and (2) would reduce some of the handling-related trauma, and may discourage targeting this 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 25, 2011;
- 3.) The Department held a public hearing on March 25, 2011 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) minimize potential injury to these protected and prohibited species by making it unlawful to remove them from the water and require their immediate release; and (2) would reduce some of the handling-related trauma, and may discourage targeting this species.; 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

3541 Atlantic Sharks

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions:

"**Fillet**" shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

“Land or Landing” shall mean to put or cause to go on shore from a vessel.

“Management Unit” shall mean any of the non-sandbar large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation. Smooth dogfish (*Mustelus canus*), although they are a species of shark, are not presently part of the management unit as defined above, and are not subject to minimum size or daily harvest restrictions. They are subject to the provisions of Regulation 3541, Sections 3.0 and 4.0.

“Non-Sandbar Large Coastal Species” shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Nurse shark, *Ginglymostoma cirratum*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Lemon shark, *Neqaprion brevirostris*
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

“Pelagic Species” shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Blue shark, *Prionace glauca*
Oceanic whitetip shark, *Carcharhinus longimanus*
Thresher shark, *Alopias vulpinus*

“Prohibited Species” shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*
White shark, *Carcharodon carcharias*
Bigeye sand tiger, *Odontaspis noronhai*
Sand tiger, *Odontaspis taurus*
Whale shark, *Rhincodon typus*
Bignose shark, *Carcharhinus altimus*
Caribbean reef shark, *Carcharhinus perezi*
Dusky shark, *Carcharhinus obscurus*
Galapagos shark, *Carcharhinus galapagensis*
Narrowtooth shark, *Carcharhinus brachyurus*
Night shark, *Carcharhinus signatus*
Atlantic angel shark, *Squatina dumerili*
Caribbean sharpnose shark, *Rhizoprionodon porosus*
Smalltail shark, *Carcharhinus porosus*
Bigeye sixgill shark, *Hexanchus vitulus*
Sevengill shark, *Heptranchias perlo*
Sixgill shark, *Hexanchus griseus*
Longfin mako, *Isurus paucus*
Bigeye thresher, *Alopias superciliosus*

“Sandbar shark” shall mean *Carcharhinus plumbeus*

“Shore fishing” shall mean any fishing that does not take place on board a vessel. The terms "shore fishing" and "shore angler" are synonymous.

“**Small Coastal Species**” shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Blacknose shark, *Carcharhinus acronotus*

Finetooth shark, *Carcharhinus isodon*

3 DE Reg. 1088 (02/01/00)

12 DE Reg. 1517 (06/01/09)

2.0 It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

2.1 It shall be unlawful for any hook and line fisherman to remove from the water sandbar shark, or any other species of shark when prohibited from harvest under §3541.

3.0 It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.

4.0 It shall be unlawful for any person to fish for any shark while in state waters with any fishing equipment or by any method, except: (1) Hook and Line; (2) Gill Net.

14 DE Reg. 193 (09/01/10)

5.0 It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, except that commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

6.0 It shall be unlawful to release any shark in the management unit or any sandbar shark in a manner that will not ensure said sharks maximum probability of survival. All species of shark when prohibited from harvest under §3541 must be immediately released.

14 DE Reg. 193 (09/01/10)

7.0 It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit, regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, and one Atlantic sharpnose shark per trip.

7.1 It shall be unlawful for any shark caught in state waters to be bought and sold without a federal Commercial Shark Dealer Permit.

1 DE Reg. 345 (10/1/97)

3 DE Reg. 1088 (2/1/00)

8 DE Reg. 1718 (6/1/05)

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

8.0 It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited shark from among those species in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S.

Department of Commerce. Further, it shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-sandbar large coastal sharks, small coastal sharks, or pelagic sharks in excess of current federal daily harvest limits administered by the National Marine Fisheries Service.

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

9.0 It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

14 DE Reg. 193 (09/01/10)

10.0 It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any non-prohibited shark from among those species in the management unit that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies.

3 DE Reg. 1088 (2/1/00)

1 DE Reg. 850 (1/1/98)

1 DE Reg. 1005 (2/1/98)

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

11.0 It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession any non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies.

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

12.0 It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

8 DE Reg. 1718 (6/1/05)

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

13.0 It shall be unlawful for any recreational or commercial fisherman to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

14.0 It shall be unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

- 15.0 It shall unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters. Presently it is unlawful for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

- 16.0 The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit. Applicants must annually report the number, weight, species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

8 DE Reg. 1718 (06/01/05)

12 DE Reg. 1517 (06/01/09)

14 DE Reg. 193 (09/01/10)

14 DE Reg. 193 (09/01/10)

DIVISION OF SOIL AND WATER CONSERVATION

DELAWARE COASTAL PROGRAMS

Statutory Authority: 7 Delaware Code, Section 903(e)(3) (7 Del.C. §903(e)(3))
7 DE Admin. Code 5104

Secretary's Order No.: 2011-S-0028

Date of Issuance: May 13, 2011

Effective Date: June 11, 2011

5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures

I. BACKGROUND

The Department of Natural Resources and Environmental Control's (DNREC or Department) Delaware Coastal Management Program (DCMP) within the Office of the Secretary commenced the proposed regulation procedure on September 11, 2009, when Start Action Notice #2009-20 was approved. The proposed regulation was to issue a Routine Program Change required by Section 306 of the Coastal Zone Management Act (CZMA) and the National Oceanic and Atmospheric Administration's (NOAA) regulations issued thereunder. NOAA also delegated to the Department certain federal authority under the CZMA to administer federal regulatory authority in Delaware subject to NOAA's oversight.

On October 18, 2010, DCMP submitted to NOAA its proposed Routine Program Change, which NOAA approved in a February 3, 2011 letter. The Department published the proposed regulation in the March 1, 2011 *Delaware Register of Regulations*. The Department held a public hearing on March 22, 2011, at DNREC's Delaware National Estuarine Research Reserve facility, 818 Kitts Hummock Road, Dover, Delaware. The public comment period for written comments remained opened until March 30, 2011, but no one attended the public hearing or submitted written public comments.

II. FINDINGS AND REASONS

The Routine Program Change amends the *Delaware Coastal Management Program Federal Consistency Policies and Procedures*. 7 **DE Admin. Code** 5104 (Regulations), which was the subject of the last Routine Program Change authorized by Secretary's Order No. 2009-S-0047 issued December 15, 2009. NOAA established the Routine Program Change procedure under its Regulations, 15 CFR 923.84(a), in order to provide a routine update process by States of their state regulations for regulatory changes not considered substantial, as defined by NOAA regulation at 15 CFR 923.80 (d).

In this case there were no public comments and no one attended the public hearing. The Department's Tricia Arndt from DCMP developed the record with documents, which established that NOAA approved the Routine Program Change. The Routine Program Change adopted by this Order reflects the following changes: 1) modifying the procedures for submittal of federal consistency certifications and supporting documents; 2) modifying the document to include a description of the interstate consistency review process; 3) modification for the geographic location description for the review of authorizations of alternative energy projects in federal waters, and 4) modification for the geographic location descriptions for the review of federal authorization in interstate waters for dredging and dredged material disposal, offshore alternative energy development and the placement of fill for purposes of introducing non-native shellfish. All of the policies contained within the FCPP document have already been promulgated and adopted (i.e., they are existing regulations, statutes, and/or Executive Orders). The Routine Program Change does not reflect any new change to state regulation that is different from that already required under federal law and regulation.

I find that the record supports adopting the Routine Program Change, which is also required under the federal regulatory authority. Should the DCMP decide to amend its Regulations in the future for a Routine Program Change, then the Department may elect to do so by using the informal process provided in the Administrative Procedures Act by the Department issuing a Secretary's Order with the final regulation amendment, which will be published in the *Delaware Register of Regulations*. This process was recommended by the presiding hearing officer to avoid the time and expense of a public hearing when the change merely reflects a Routine Program Change and is required to be made under the federal authority.

I find that the proposed regulation is properly a Routine Program Change and that the proposed regulation is not substantial, as defined by the NOAA regulation. I have reviewed the presiding Hearing Officer's Report and agree that this and subsequent Routine Program Change proposed regulations should be exempt from the public hearing process under the Administrative Procedures Act, which allows an informal regulation promulgation process for "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations." 29 **Del.C.** §10113(5). Moreover, to the changes are required by NOAA, the federal agency that has federal preemption in this area, and that the Routine Program Change may also qualify for the public hearing exemption for codification of existing agency decisions such as NOAA's approval of the Routine Program Change. Thus, even if there were any public comments, the federal laws and regulations require that the Department reflect the changes as part of the Routine Program Change.

III. Order

The Department has the statutory authority to promulgate regulations under the delegated federal authority in the CZMA and the Department's authority in 7 *Del. C. Chap. 60*, requires that the Department to revise its regulations as part of the Routine Program Change procedure. I agree that the Routine Program Change adopted by this Order is appropriate and based upon the record developed and the recommendations of the Department's DCMP and the Report. The following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 **Del.C.**, Chapter 60, specifically, 7 **Del.C.**, §6010, as well as 15 *CFR Part 930* (Federal Consistency with Approved Coastal Management Programs) and 15 *CFR 923.84(a)* (Routine Program Changes to the Coastal Management Program) to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department received no public comment on the proposed regulation;

5. The Routine Program Change has been reviewed under the Regulatory Flexibility Act, and the Department finds that it will not have any impact on small businesses that would warrant not promulgating the regulation;
6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary and that future Routine Program Changes may be promulgated using the informal rulemaking procedure allowed under Delaware law;
7. The Department's proposed regulation, as published in the *Delaware Register of Regulations* and attached to the Report is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;
8. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

Collin P. O'Mara, Secretary

5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures

***Please note that no changes were made to the regulation as originally proposed and published in the March 2011 issue of the *Register* at page 868 (14 DE Reg. 868). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures](#)

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C. §6010)
7 DE Admin. Code 7401

Secretary's Amended and Superseding Order 2010-W-0035

Date of Issuance: May 17, 2011

Effective Date of the Amendment: June 11, 2011

7401 Surface Water Quality Standards

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under Chapter 60 and the *State of Delaware Surface Water Quality Standards* (as amended July 11, 2004), the following findings, reasons and conclusions are entered as an Amended and Superseding Order of the Secretary in the above-referenced rulemaking proceeding.

Whereas, Secretary's Order No. 2010-W-0035 (the "Original Order") was signed by Secretary O'Mara on November 9, 2010, and forwarded to the *State of Delaware Register of Regulations* for publication in the December 1, 2010 *Register*. The Original Order recommended that the Department's proposed Amendments should be adopted as final regulations because Delaware would then be enabled to (1) ensure compliance with the federal Clean Water Act and will satisfy EPA requirements; and would then be able to (2) retain its ability to perform site-specific studies on inorganic arsenic in fish and shellfish when warranted, and to issue public health advisories when and where appropriate, to not only reduce the public's exposure to inorganic arsenic, but to also provide the means to justify water quality based controls. Moreover, the regulation amendments were well supported by documents in the record; and

Whereas, subsequent to the Department forwarding the Original Order to the *Delaware Register of Regulations*, it was realized that the entire promulgation process involved with this particular action had been

pending for over 12 months, with the public hearing having been held on September 2, 2009. Pursuant to 29 **Del.C.**, §10118(f), "No agency shall adopt a regulation if more than 12 months have elapsed since the end of the public comment period or the last public hearing, whichever is later, on the proposed regulation."; and

Whereas, in order to correct the record in this matter and have this promulgation be compliant with 29 **Del.C.**, §10118(f) as noted above, the Department re-opened the comment period to the public for additional comments on the proposed Amendments to the *State of Delaware Surface Water Quality Standards* (as amended July 11, 2004) for a period of 30 days, beginning on March 1, 2011, and ending at close of business on April 1, 2011. Accordingly, the Department published a formal notice of the re-opening of this record in the Delaware Register of Regulations, and made all information (i.e., the proposed regulation and all supporting documents) available for review once again on the Department's website; and

Whereas, on April 14, 2011, the Watershed Assessment Section of the Department provided an email to Hearing Officer Lisa A. Vest, which confirmed that the Department had received no additional comments whatsoever on the proposed Amendments to the *State of Delaware Surface Water Quality Standards* during the aforementioned 30 day period (from March 1, 2011 through April 1, 2011); and

Whereas, given the fact that no additional comment was received by the Department during the aforementioned 30 day period, no changes have been made to the proposed regulatory language as set forth previously in the August 1, 2009 *Delaware Register of Regulations*; and

Therefore, the Original Order is hereby amended and superseded by this *revised* Order, so as to reflect the correction of the record by the re-opening of the record to include an additional 30-day comment period as noted above, thereby making this promulgation compliant with 29 **Del.C.**, §10118(f) as noted above.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 **DE Admin. Code** 7401, ***State of Delaware Surface Water Quality Standards***. The purpose of this regulatory action is to ensure federal compliance with the Clean Water Act, and to satisfy current EPA requirements regarding same. It is the policy of the Department to maintain within its jurisdiction surface waters of the State of Delaware of satisfactory quality, consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water. Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment are paramount in determining the required stream criteria, which, in turn, become the basis of specific discharge limits or other necessary controls. Additionally, where existing facilities operating under a permit from this Department are required to reduce pollution concentrations or loadings due to the implementation of these Standards, a reasonable schedule for compliance may be granted by DNREC, in accordance with standards or requirements established in applicable statutes and regulations. It is also the intent of the Department, in accordance with these Standards, to develop an agency-wide program to assess, manage, and communicate human health cancer risks from the major categories of environmental pollution under its jurisdiction.

The aforementioned proposed amendments to Delaware's existing Surface Water Quality Standards are the result of an exhaustive and comprehensive triennial review that started with DNREC Start Action Notice #2008-24, approved by the Secretary on October 29, 2008. The Department published the proposed regulatory amendments in the August 1, 2009 *Delaware Register of Regulation* and held a public hearing on September 2, 2009. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated October 12, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Subsequently, in order to correct the record in this matter and have this promulgation be compliant with 29 **Del.C.**, §10118(f) as noted above, the Department re-opened the comment period to the public for additional comments on the proposed Amendments to the *State of Delaware Surface Water Quality Standards* (as amended July 11, 2004) for a period of 30 days, beginning on March 1, 2011, and ending at close of business on April 1, 2011. On April 14, 2011, the Watershed Assessment Section of the Department provided an email to Hearing Officer Lisa A. Vest, which confirmed that the Department had received no additional comments whatsoever on the proposed Amendments to the *State of Delaware Surface Water Quality Standards* during the aforementioned 30

day period, and therefore no changes have been made to the proposed regulatory language as set forth previously in the August 1, 2009 *Delaware Register of Regulations*.

Findings and Discussion

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

I find that the Department's experts in the Watershed Assessment Section of the Division of Watershed Stewardship fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendments to 7 DE Admin. Code 7401, ***State of Delaware Surface Water Quality Standards***, Delaware will be able to ensure compliance with the federal Clean Water Act and will satisfy EPA requirements.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
- 3.) The Department held a public hearing on September 2, 2009 on the proposed Amendments in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments do not reflect any substantive change from the proposed regulation Amendment as published in the August 1, 2009, *Delaware Register of Regulations*;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) ensure compliance with the federal Clean Water Act and will satisfy EPA requirements; and will (2) retain its ability to perform site-specific studies on inorganic arsenic in fish and shellfish when warranted, and to issue public health advisories when and where appropriate, to not only reduce the public's exposure to inorganic arsenic, but to also provide the means to justify water quality based controls. Moreover, the regulation amendments are well supported by documents in the record; and
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

7401 Surface Water Quality Standards

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

[**7401 Surface Water Quality Standards**](#)

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE**

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

ORDER**1300 Board of Examiners of Private Investigators & Private Security Agencies**

Pursuant to the Guidelines in 29 **Del.C.** Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rules 1.0 – Firearm's Policy, 7.0 - Employment Notification, and 8.0 - Criminal Offenses, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify the requirement of three (3) qualifying shoots within a calendar year.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify the requirement of three (3) qualifying shoots within a calendar year.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify the requirement of three (3) qualifying shoots within a calendar.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** Section 1304 et seq. and, in particular, 24 **Del.C.** Section 1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** Section 1304 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** Section 1304(b)(3) and guidelines of 29 **Del.C.** Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be June 11, 2011.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 2nd day of May, 2011.

Lt. Colonel James Paige, Designated Chairman

APPROVED AS TO FORM:

W. Michael Tupman, Esquire

Deputy Attorney General

May 2, 2011

1300 Board of Examiners of Private Investigators & Private Security Agencies

***Please note that no changes were made to the regulation as originally proposed and published in the April 2011 issue of the *Register* at page 1018 (14 DE Reg. 1018). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1300 Board of Examiners of Private Investigators & Private Security Agencies](#)

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**

700 BOARD OF CHIROPRACTIC

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10)

(24 **Del.C.** §706(a)(1) and (10))

24 **DE Admin. Code** 700

ORDER

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §700, the Delaware Board of Chiropractic issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearings on November 4, 2010 and April 7, 2011 the Board makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the October 1, 2010 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. The Board proposed to completely rework its regulations in an attempt to better organize and clearly establish the standards governing licensed chiropractors in the State of Delaware.

2. The Board received no written comments during October 2010. The Board held a public hearing on November 4, 2010 and received two public comments: one regarding the amount of CE credit that could be obtained through webinars and one regarding the requirement that licensees closing down their practice notify their patients via newspaper and regular mail. As a result of these public comments, the Board made substantial changes to their proposed regulations, and republished them on March 1, 2011 in the *Register of Regulations* and posed public notice in the *Delaware News Journal* and *Delaware State News*. The Board received no written or public comment during this time. The Board received no public comment at its hearing on April 7, 2011.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on March 1, 2011.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on June 1, 2011.

700 Board of Chiropractic

***Please note that no changes were made to the regulation as originally proposed and published in the March 2011 issue of the *Register* at page 880 (14 DE Reg. 880). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

700 Board of Chiropractic

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 1008

IN THE MATTER OF THE ADOPTION OF RULES AND
REGULATIONS GOVERNING THE PROCEDURE FOR
INSPECTION AND COPYING OF PUBLIC RECORDS
UNDER THE FREEDOM OF INFORMATION ACT, 29
Del.C. §§10001-10006 (OPENED AUGUST 17, 2010;
REOPENED MAY 10, 2011)

PSC REGULATION DOCKET NO. 62

ORDER NO. 7963

AND NOW, this 10th day of May, 2011:

WHEREAS, by Order No. 7868 dated November 18, 2010, the Delaware Public Service Commission (the "Commission") adopted Rules and Regulations Governing the Procedure for Inspection and Copying of Public Records Under the Freedom of Information Act, 29 **Del.C.** §§10001-10006 (the "FOIA Regulations"); and

WHEREAS, the FOIA Regulations became effective on December 1, 2010; and

WHEREAS, on April 15, 2011, the Governor signed House Bill No. 5, which amended Section 10003 of the Freedom of Information Act, 29 **Del.C.** §§10001-10006; and

WHEREAS, the Commission's FOIA Regulations require amendment in order to be consistent with the recent amendment to Section 10003 of the Freedom of Information Act; and

WHEREAS, the amendment to the FOIA Regulations is not a substantive amendment that would require publication and a public comment period under Subchapter II of the Administrative Procedures Act, 29 **Del.C.** §§10101 *et seq.*;

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

1. That, pursuant to 26 **Del.C.** §§209(a) and 821, and 29 **Del.C.** §§10113(b)(5), the Commission hereby adopts the amended *Delaware Public Service Commission Freedom of Information Act Regulations Governing the Procedure for Inspection and Copying of Public Records*, a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 **Del.C.** §1132.

2. That, pursuant to 26 **Del.C.** §§10113 and 10118, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order (with the attached amended FOIA Regulations). An exact copy of the FOIA Regulations attached hereto shall be published as final, official regulations in the *Delaware Register*.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST: William F. O'Brien, Executive Director

1008 Regulations Governing Requests Made Pursuant to the Freedom of Information Act

1.0 Definitions

Capitalized terms not otherwise defined in these regulations shall have the meanings given those terms in FOIA and the Commission's Rules of Practice and Procedure (see 26 **DE Admin. Code** §1001), as applicable.

"**Affected Party**" means any party who has submitted Third Party Confidential Records.

"**FOIA**" shall mean the Freedom of Information Act, 29 **Del.C.**, Ch. 100, as may be amended from time to time.

"**Third Party Confidential Records**" are records submitted to the Commission by a third party under a claim of confidentiality pursuant to the Commission's Rules of Practice and Procedure. Records will not be considered Third Party Confidential Records for purpose of these regulations if the records were not identified and submitted as confidential in accordance with the Commission's Rules of Practice and Procedure.

2.0 General

- 2.1 The Commission promulgates these regulations, pursuant to 29 **Del.C.** §10003(b), to establish procedures regarding requests made to the Commission pursuant to FOIA for public records in the possession of the Commission. The Commission is under no obligation under FOIA to answer written questions, analyze data, create documents not already in its possession or compile information in a record. FOIA requests shall be made for the purposes of obtaining existing documents in the Commission's possession.
- 2.2 Consistent with FOIA, it is the Commission's desire that the public have access to the Commission's public records under reasonable terms and conditions. These regulations establish reasonable fees for compiling and photo-copying public records and provide instructions regarding how to make FOIA requests with the Commission and how such requests will be processed.
- 2.3 Commission staff may perform the duties of the Commission under these regulations.

3.0 Requests

- 3.1 Persons requesting requests for records pursuant to FOIA shall submit an original and one copy of a written letter request indicating that the request is being made pursuant to FOIA. The written request shall be addressed to:

Delaware Public Service Commission
Attn.: Commission Secretary
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Requests by electronic mail will not be entertained.

- 3.2 Requests shall indicate clearly where records are to be sent.
- 3.3 Requests for records shall describe the records sought in sufficient detail to enable their location with reasonable effort.
- 3.4 Records may not be produced to any person who has an outstanding balance with the Commission relating to a prior FOIA request.
- 3.5 Requests that do not comply with these regulations may be denied in whole or in part.

4.0 Responses

- 4.1 The Commission shall respond to a request made under these regulations within ~~ten (10)~~ fifteen (15) days of receipt of the request. Such response may include the requested records, deny the request in whole or in part, or indicate when the requested records will be produced and under what, if any, conditions. A response to a request for Third Party Confidential Records shall be made pursuant to the procedures and the timeframe set forth in Rule 6 below.
- 4.2 Additional time shall be allowed beyond the fifteen business days provided for in Section 4.1 when a request is for voluminous records, requires legal advice or a record is in storage or archived. In any of these cases, the requestor shall be advised by the custodian of a record, within fifteen business days after the custodian of a record receives the request, stating the need for additional time. Such additional time provided for in this section 4.2 shall be reasonable.
- 4.23 To the extent a FOIA request seeks documents that the Commission, in its sole discretion, may consider voluminous, the Commission may require that the party requesting the records inspect and copy the records at the Commission's office during its regular business hours. Alternatively, the Commission may, in its sole discretion, employ the assistance of an outside vendor to copy the requested records, in which case the requester will be required to pay the copy charges assessed by such vendor.

5.0 Fees for Photocopying Performed by Commission and Administrative Fees.

- 5.1 Administrative Fees. The Commission may assess administrative fees incurred in responding to a FOIA request as set forth herein. Such fees include:
- 5.1.1 Staff time associated with processing FOIA requests, including, but not limited to, time spent locating and reviewing files, monitoring file reviews, and generating computer records.
- 5.1.2 Administrative fees will be billed per quarter hour and will be billed at the current, hourly pay grade rate of the personnel performing the service. Administrative charges will be in addition to any copying charges.
- 5.2 Photocopy Charges
- 5.2.1 Standard Size Copies. The charge for copying standard size black and white public records shall be \$0.50 per printed page (i.e., single-sided copies are \$0.50 and double-sided copies are \$1.00). The charge for color copies or printouts shall be \$2.00 per page. This charge applies to copies on the following standard paper sizes: 8.5 x 11; 8.5 x 14; and 11 x 17.

- 5.2.2 Oversized Copies/Printouts. The charge for copying oversized public records (including but not limited to blueprints, engineering drawings, GIS printouts and maps) shall be as follows: 24 x 26: \$2.00 each; 24 x 36: \$3.00 each; 30 x 42: \$5.00 each; and all larger documents: \$1.00 per square foot. An additional charge of \$1.50 per page will be assessed to color copies.
 - 5.2.3 Microfilm/Microfiche Printouts. Microfilm and/or microfiche printouts made by Commission personnel and printed on standard sized paper will be \$1.00 per page.
 - 5.2.4 Electronically-Generated Records. Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies, including but not limited to magnetic tape, diskette or compact disc costs and third-party costs.
- 5.3 Payment for copies and/or administrative charges are due at the time the records are released.

6.0 Requests Seeking Non-Public and Third Party Confidential Records.

- 6.1 Records identified as non-public pursuant to 29 Del.C. §10002(g) shall not be produced in response to a FOIA request. In addition, the following procedures shall apply to requests seeking records that the Commission believes are non-public because they are Third Party Confidential Records:
- 6.1.1 Upon receipt of a request seeking Third Party Confidential Records, the Commission will notify the Affected Party in writing of the request, identifying the party making the request and the Third Party Confidential Records sought.
 - 6.1.2 Within ten (10) days of receipt of the notice required by Rule 6.1, the Affected Party shall advise the Commission in writing whether it opposes the disclosure of the Third Party Confidential Records. If the Commission is not so notified, it will produce the Third Party Confidential Records.
 - 6.1.3 If the Affected Party timely objects to the production of the Third Party Confidential Records, the Affected Party shall, at the time of notifying the Commission of its objection, provide in writing information sufficient to justify a claim of confidentiality under FOIA. Such information shall include, but not be limited to, the following:
 - 6.1.3.1 Any measures taken by the Affected Party to guard against disclosure of the Third Party Confidential Records;
 - 6.1.3.2 Whether the Third Party Confidential Records have been intentionally or inadvertently disclosed since their submission to the Commission and any actions or precautions taken in connection with such disclosure; and
 - 6.1.3.3 Whether the disclosure of the Third Party Confidential Records would result in substantial or harmful effects on the Affected Party's commercial or financial interests, and if so: (a) what those harmful effects would be; (b) why the effects should be viewed as substantial; and (c) how the disclosure would cause such harmful effects.
 - 6.1.4 The Affected Party bears the burden of establishing confidentiality under FOIA. A unilateral assertion that records are confidential or otherwise not subject to a FOIA request is insufficient to support a finding that requested information is in fact non-public.
 - 6.1.5 Within a reasonable time after receiving the Affected Party's response filed pursuant to Rule 5.1.2, the Commission shall determine whether the Third Party Confidential Documents should be produced pursuant to FOIA despite the Affected Party's claim of confidentiality. Written notice of the Commission's decision shall be provided to the party making the FOIA request and the Affected Party.

7.0 Appeals of Commission's Decision.

As authorized by 29 Del.C. §10005, any person denied access to requested records may (i) bring suit in a court of competent jurisdiction within sixty (60) days of such denial or (ii) petition the Attorney General to determine whether a violation of FOIA has occurred. The procedures applicable to such petition are provided in 29 Del.C. §10005.

14 DE Reg. 584 (02/01/10)

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER****EXECUTIVE ORDER
NUMBER TWENTY-SIX****RE: DELAWARE STRATEGIES FOR STATE POLICIES AND SPENDING**

WHEREAS, land use policy plays a critical role in building strong local communities, supporting diverse economic opportunities and providing a high quality of life for residents and businesses today and those considering whether to locate in Delaware in the future;

WHEREAS, the State has a responsibility to the taxpayers of the State of Delaware to ensure that each tax dollar is appropriately utilized;

WHEREAS, private businesses base their long-term investment decisions on transparent, predictable, sustainable growth strategies in areas with high quality communities and adequate infrastructure;

WHEREAS, all Delaware counties and incorporated municipalities must prepare comprehensive plans to encourage appropriate uses of physical and fiscal resources and to coordinate growth, development, and infrastructure investment actions with those of other local governments and the State;

WHEREAS, State government plays a critical role in supporting the implementation of these comprehensive plans through its capital investment program, funding of schools, allocation of grants and loans, purchase of open space and development rights, and distribution of state resources;

WHEREAS, the Delaware Strategies for State Policies and Spending are found in the adopted and certified comprehensive plans of local governments in Delaware and are intended to provide coordination of expenditures of tax dollars in support of the implementation of these comprehensive plans;

WHEREAS, the investment of State taxpayer dollars should be strategically and purposely directed to areas that maintain or enhance economic opportunity and community well-being while protecting and restoring the natural environment upon which citizens and economies depend;

WHEREAS, Delaware's cities and towns have significant capacity for growth and redevelopment opportunities for brownfields, greyfields, and other sites near existing infrastructure;

WHEREAS, Delaware faces significant environmental and public health challenges in assuring cleaner air, cleaner water, quality open spaces, and recognizing potential threats from flooding and sea-level rise;

WHEREAS, agriculture is a vital part of Delaware's economy and should be supported to remain viable and profitable;

WHEREAS, there is a need to expand the array of housing and transportation choices to nurture cohesive communities, provide infrastructure more cost-effectively, and enable older citizens to live independently; and

WHEREAS, on September 28, 2010 the Cabinet Committee on State Planning Issues approved and updated set of State Strategies for State Policies and Spending to ensure efficient, rational and cost-effective investment in necessary infrastructure.

NOW, THEREFORE I, JACK MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that: The Office of State Planning Coordination shall publish on-line, the updated State Strategies for State Policies and Spending document ("Strategies document") and maps, including geospatial data (with full metadata) representing the various investment level areas recommended in the Strategies document;

- All state departments and agencies shall use the Strategies document and maps as a guide to making all decisions on policy, infrastructure and other investments, and resource management;
- The Office of Management and Budget shall use the Strategies document and maps as a guide in developing and reviewing state department and agency spending plans;
- The Strategies document and maps shall be made available to all county and municipal government agencies for use in all planning-related endeavors, including, but not limited to, comprehensive plan development and strategic planning;
- The Strategies document and maps shall be used in the Preliminary Land Use Service (PLUS) process as a tool for helping developers, land-owners, and local governments create efficient, rational and complete communities/smart-growth development options in those areas most ready to receive and

serve new development;

- The Office of State Planning Coordination shall, in conjunction with the Cabinet Committee on State Planning Issues, plan and carry out an update of the Strategies document and maps within five years of the effective date of this order; and
- Executive Order No. Fifty-Nine, issued by Governor Ruth Ann Minner, dated September 23, 2004, is hereby rescinded.

APPROVED this 1st day of April, 2011

Jack A. Markell, Governor

DEPARTMENT OF AGRICULTURE**PLANT INDUSTRIES SECTION****803 Rules and Regulations for the Control and Suppression of the White Pine Blister Rust****PUBLIC NOTICE**

The Delaware Department of Agriculture proposes these amended regulations in accordance with the General Assembly's mandate to enforce Chapter 11 of Title 3 of the Delaware Code and to specify the means by which citizens of the State of Delaware may cultivate plants of the genus *Ribes* within the state.

Any comments concerning these proposed amended regulations should be submitted to the Plant Industries Administrator, Faith Kuehn, at the Delaware Department of Agriculture, 2320 S. Dupont Highway, Dover, DE 19901 on or before June 30, 2011. Copies of the proposed amended regulations are available on request.

THOROUGHBRED RACING COMMISSION**1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations****PUBLIC NOTICE**

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposed changes for Rule 2.1.2.2 amend retired member eligibility, eliminating the minimum number of career mounts. The proposed changes for Rule 2.1.3.1 amend eligibility defined for permanently disabled members, by removing the existing language and replacing it with new language.

A public hearing will be held on June 21, 2011, beginning at 9:00 AM, in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive comments will be June 21, 2011, during the public hearing. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, June 16, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF SOCIAL SERVICES****DSSM 11002.9, Definition and Explanation of Terms****PUBLIC NOTICE**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware

19720-0906 or by fax to (302) 255-4425 by June 30, 2011.

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

DIVISION OF SOCIAL SERVICES
DSSM 11006.5.1 Terminating Teachers
PUBLIC NOTICE

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2011.

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

DEPARTMENT OF JUSTICE
DIVISION OF SECURITIES
Delaware Securities Act
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA Title 29, Chapter 101 of the **Delaware Code**) and section 7325(b) of Title 6 of the **Delaware Code**, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division hereby proposes numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

Peter O. Jamison, III
Securities Commissioner
Department of Justice
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the *Delaware Register of Regulations*.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**OFFICE OF THE SECRETARY****Regulations Governing the Statewide Authorized Tamper Resistant Prescription Forms****PUBLIC NOTICE**

The Delaware Department of Homeland Security is promulgating rules and regulations pursuant to 16 Del. C. § 4797(c) of the Delaware Code affecting professionals licensed or registered under Title 24 and Title 16 of the Delaware Code having prescriptive authority. The proposed rules and regulations establish security requirements for a blank prescription form used by a prescriber or practitioner in this State. The primary objective of these rules and regulations is to reduce prescription fraud by decreasing the potential for forgery or alteration of a prescription form. The regulations shall be known as "Regulations Governing the Statewide Authorized Tamper Resistant Prescription Forms".

A public hearing will be held on July 13, 2011 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover before James L. Collins, Director of the Division of Professional Regulation, where members of the public can offer comments. The Director will also receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to James Collins, Director, Division of Professional Regulation, at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Shauna Slaughter, Administrative Specialist, at the above address or by calling (302) 744-4502.

The Department through the Director may consider promulgating the proposed regulations immediately following the public hearing.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****1700 Board of Medical Licensure and Discipline****PUBLIC NOTICE**

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations as mandated by SB 233 (codified at 24 **Del.C.** §1713(f)). The proposal creates new Regulation 31 - Disciplinary Guidelines establishing guidelines for the imposition of disciplinary sanctions against persons certified or licensed to practice medicine or other professions or occupations regulated under the Medical Practice Act.

The Board held a public hearing on May 3, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public offered comments. As a result of those comments, the Board made substantive changes to proposed regulations 31.7.1, 31.7.2, 31.7.3.1 and deleted 31.7.8 as previously published in the register of Regulations on April 1, 2011. The Board has also added a clarifying provision at 31.16 that these regulations apply to all practitioners regulated under the Medical Practice Act. Finally, the Board made several technical corrections to the numbering within the document.

The Board will hold a second public hearing on July 19, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments on the regulations as republished. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION
2930 Council on Real Estate Appraisers
PUBLIC NOTICE

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to develop standards in cooperation with the Delaware Association of Counties and the Executive Director of the League of Local Governments for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards pursuant to 24 **Del.C.** §4019(e).

The Board will hold a public hearing on the proposed rule change on July 19, 2011 at 10:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nicole Williams, Administrator of the Delaware Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION
5100 Board of Cosmetology and Barbering
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §5106(a)(1), the Board of Cosmetology and Barbering has proposed revisions to its rules and regulations.

A public hearing on proposed revisions published on November 1, 2010 in the *Register of Regulations*, Volume 14, Issue 5 was held on November 29, 2010. The Board of Cosmetology and Barbering decided to make further revisions to the rules and regulations.

A public hearing to address these proposed revisions will be held on June 27, 2011 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND POLICY
2309 Standards and Regulations for Subdivision Streets and State Highway Access
PUBLIC NOTICE

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to the current provisions concerning the scope of work for Traffic Impact Studies and Traffic Operational Analyses.

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

The Department previously entered into agreements with county governments regarding traffic impact studies and traffic operational analyses. For New Castle County, for example, the agreement calls for the Department, as part of its scoping of the study areas for TIS work, to assure that the study looks at a minimum number of intersections from the proposed site entrance(s). However, what is considered an intersection for this purpose may be subject to differing interpretations, and may risk unduly limiting or unduly expanding the TIS study area.

The draft regulations are intended to provide sufficient guidance to the state, local governments, the

development community, and those interested in development matters in this regard. The Department wishes to assure that the study areas selected match well with what intersections the Department reasonably expects to be significantly affected by the traffic from the subject property, given its proposed uses.

The Department will take written comments on the proposed Amendment to its Standards and Regulations for Subdivision Streets and State Highway Access from June 1, 2011 through June 30, 2011.

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

Cleon L. Cauley, Sr., Acting Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)
(302) 739-2895 (fax)
cleon.cauley@state.de.us

DIVISION OF PLANNING AND POLICY

2313 Policies and Procedures for Acquisition of Certain Real Property Interests PUBLIC NOTICE

Background

The Delaware Department of Transportation, through its Division of Planning, seeks to adopt regulations to ensure that its policies and procedures for the acquisition of real property are transparent, consistent, cost effective and fair.

The regulations will implement specific recommendations for advanced acquisitions set forth in the Report of the Governor's Chief of Staff to Governor Markell dated January 7, 2011 (the "Report"). Specifically, the regulations will (1) require that the Committee review not only advanced acquisitions, but reservation agreements as well; (2) provide a process for the Committee to review the merits of advanced acquisitions and reservation agreements; (3) require the Department to obtain independent appraisal for advanced acquisitions and reservations; (4) require that advanced acquisitions and reservations be reviewed by legal counsel; and (5) require that the terms of advanced acquisitions and reservations be reflected in an agreement signed by the Department and the property owner. In addition, the regulations also set out the process for the Committee to conduct its consistency review of certain real property acquisitions proposed by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

The Department previously accepted written comments on the proposed Regulations Establishing Policies and Procedures for Advanced Acquisition of Real Property from February 1, 2011 through March 5, 2011. Based on those comments and other suggestions, the Department drafted additional changes to these proposed regulations. This second draft, submitted for further public comment, incorporates the provisions described above, and further require the Advanced Acquisition Committee to review "Special Property Acquisitions, as defined below."

The Department will take written comments on the proposed Regulations Establishing Policies and Procedures for Acquisition of Certain Real Property Interests from June 1, 2011 through June 30, 2011. The proposed Regulations appear below.

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

Cleon L. Cauley, Sr., Acting Secretary
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2303 (telephone)
(302) 739-2895 (fax)
cleon.cauley@state.de.us