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# Delaware Register of Regulations

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Issue Date: March 1, 2011

Volume 14 - Issue 9, Pages 837 - 928

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## IN THIS ISSUE:

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Proposed  
Final

Calendar of Events &  
Hearing Notices



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

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# 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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.
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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## 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.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 16	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

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**Symbol Key**

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

**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.

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 764

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing****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 14 **DE Admin. Code** 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing. The regulation was reviewed as part of the 5 year review cycle. Amendments included, but are not limited to the requirement that Permits for Interpreter/Tutor for the Deaf/Hard of Hearing are to be renewed every five years. In addition, changes were made to the requirements for a Permit. An individual with a current Permit for an Interpreter Tutor for the Deaf and Hard of Hearing shall be grandfathered for 5 years from the effective date of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 4, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to the permits for interpreter tutors for the deaf/hard of hearing and not specifically related to student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to the permits for interpreter tutors for the deaf/hard of hearing and should assist in all students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to the permits for interpreter tutors for the deaf/hard of hearing and not specifically related to students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to the permits for interpreter tutors for the deaf/hard of hearing and should assist to ensure all students' legal rights are respected.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation is related to the permits for interpreter tutors for the deaf/hard of hearing and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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

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

### **764 Credentials for an Interpreter/Tutor for the Deaf and/Hard of Hearing**

#### **1.0 Content Purpose**

1.1 This regulation shall apply to the requirements for a permit, pursuant to 14 Del.C. §1331(b), for Interpreter/Tutor for the Deaf and/Hard of Hearing in public schools.

1.2 No person shall be employed by a public school as an Interpreter/Tutor for the Deaf/Hard of hearing without obtaining a permit under this section.

#### **2.0 Definitions**

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.

“**EIPA**” means Educational Interpreter Performance Assessment. For purposes of this regulation, EIPA includes both the Written Test and video stimulus tapes evaluation.

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

“**Permit**” means a document issued by the Department of Education that verifies an individual's qualifications and training to serve as an Interpreter/Tutor for the Deaf and/Hard of Hearing. Interpreter/Tutors shall renew permits every five years by meeting the minimum standards required by the RID Certification Maintenance Program.

“**RID**” means the National Registry of Interpreters for the Deaf.

“**Secretary**” means the Secretary of the Delaware Department of Education.

“**Unfit**” means ~~lack of good moral character~~ immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, willful and persistent insubordination or falsification of credentials.

### 3.0 Requirements for a Permit

- 3.1 ~~Subject to the provisions in 6.0 below, t~~The Department shall issue a Permit as an Interpreter/Tutor for the Deaf ~~and~~/Hard of Hearing to an individual who has a minimum of a Bachelor's degree in any field from a regionally accredited college or university and:
- 3.2 ~~A minimum of a Bachelor's degree in any field from a regionally accredited college or university; and maintains~~ Holds national certification as an Interpreter for the Deaf and Hard of Hearing a Generalist by RID, ~~or;~~ or
- 3.3 ~~Maintains a current and valid license and is certified as a Teacher of the Hearing Impaired. Is a certified member of RID as an EIPA credentialed interpreter who achieved a level 4.0 or higher on the Elementary or Secondary American Sign Language video stimulus tapes evaluation.~~

### 4.0 Application Procedures

- 4.1 Applicants for a Permit as an Interpreter/Tutor for the Deaf ~~and~~/Hard of Hearing shall submit to the Department:
- 4.1.1 Official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.
- 4.1.2 Evidence of national certification as ~~an Interpreter for the Deaf and Hard of Hearing~~ a Generalist from RID or evidence which documents that the applicant has met the requirements defined in Section 3.2.

### 5.0 Criminal Conviction History

An applicant shall disclose his or her criminal conviction history upon application for the Permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a Permit.

### 6.0 Denial of Permit

- 6.1 An applicant ~~may~~ shall be denied a Permit for an Interpreter/Tutor for the Deaf ~~and~~/Hard of Hearing upon a finding that the applicant ~~has:~~
- 6.1.1 ~~Failed to meet the requirements set forth herein; or is unfit to be issued a permit in this State.~~
- 6.1.2 Is Unfit; or
- 6.1.3 Had a Permit, certificate or license revoked in another jurisdiction; or
- 6.1.4 Is under official investigation by any state or local authority with the power to issue educator licenses, permits, or certifications, where the alleged conduct involves immorality, misconduct in office, incompetence, neglect of duty, disloyalty, willful and persistent insubordination or falsification of credentials, until the applicant provides evidence of the investigation's resolution.
- 6.4 ~~6.2~~ The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.
- 6.2 ~~Notwithstanding any other provision stated herein, no Permit shall be issued to an applicant if:~~
- 6.2.1 ~~There is legal evidence that the applicant is not of good moral character;~~
- 6.2.2 ~~The applicant has had an educator Permit, certificate or license revoked in another jurisdiction for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.~~

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## 7.0 Revocation of Permit

- 7.1 A Permit issued under the provisions of this regulation may be revoked upon a finding of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials and must be revoked upon finding that the permit holder made a materially false or misleading statement in his or her permit application or upon finding that the permit holder failed to maintain the requirements for a permit as designated in 3.0 herein.
- 7.2 The Secretary shall give written notice to the permit holder of the proposed revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary, or his or her designee, within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.

## 8.0 Effect on Current Certificate or Permit Holders

- 8.1 This regulation shall be effective immediately. ~~Notwithstanding this provision, the Department shall recognize a Certification Interpreter Tutor for the Hearing Impaired that is otherwise valid if issued prior to July 11, 2005, provided that the Certificate holder is employed as an interpreter tutor as of July 11, 2005. If a holder of a Certification Interpreter Tutor for the Hearing Impaired issued prior to July 11, 2005, should leave employment as an interpreter tutor, such individual shall meet the then in effect permit requirements upon reapplication.~~
- 8.2 Notwithstanding this provision, individuals who are employed as Interpreter/Tutors on May 11, 2011 shall be grandfathered for 5 years subsequent to May 11, 2011. After May 11, 2011, any Delaware Interpreter/Tutor shall meet the requirements of 3.0 herein.

9 DE Reg. 113 (7/1/05)

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 765

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

### 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing

#### 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 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing. The regulation was reviewed pursuant to the five year review cycle. The amendments are to provide consistency across other regulations relating to permits and other educator credentials and State law.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 4, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to permits for resident advisors in the statewide programs for autism

and for the deaf/hard of hearing and not specifically related to student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to permits for resident advisors in the statewide programs for autism and for the deaf/hard of hearing and should assist in all students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to permits for resident advisors in the statewide programs for autism and for the deaf/hard of hearing and should assist in ensuring 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 related to permits for resident advisors in the statewide programs for autism and for the deaf/hard of hearing and should assist to ensure all students' legal rights are respected.

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

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

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

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

## 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and/Hard of Hearing

### 1.0 Content

This regulation shall apply to the requirements for a Permit for Resident Advisor in the Statewide Programs for Autism and for the Deaf and/Hard of Hearing

### 2.0 Definitions

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.

**“Immorality”** means conduct which is inconsistent with the rules and principals of morality expected of a resident advisor in the Statewide Programs for Autism and for the Deaf and/Hard of Hearing and may reasonably be found to impair an individual's effectiveness by reason of his or her unfitness or otherwise.

**“Permit”** means a document issued by the Department of Education that verifies an individual's qualifications and training to serve as a Resident Advisor in the Statewide Programs for Autism and for the Deaf and/Hard of Hearing.

**“Secretary”** means the Secretary of the Delaware Department of Education.

**“Unfit”** means ~~lack of good moral character~~ immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, willful and persistent insubordination or falsification of credentials.

## 3.0 Requirement for a Permit

Subject to the provisions in 6.0 below, ~~t~~The Department shall issue a Permit as a Resident Advisor in the Statewide Programs for Autism and for the Deaf ~~and~~/Hard of Hearing to an applicant who has a minimum of a Bachelor's degree in any field from a regionally accredited college or university.

## 4.0 Application Procedures

Applicants for a Permit as a Resident Advisor in the Statewide Programs for Autism and for the Deaf ~~and~~/Hard of Hearing shall submit to the Department official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

## 5.0 Criminal Conviction History

An applicant shall disclose his or her criminal conviction history upon application for the Permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a Permit.

## 6.0 Denial of a Permit

6.1 An applicant ~~may~~ shall be denied a permit for Resident Advisor in the Statewide Programs for Autism and for the Deaf ~~and~~/Hard of Hearing upon a finding that the applicant; ~~has failed to meet the requirements set forth herein or is unfit to be issued a permit in this State.~~

6.1.1 ~~Failed to meet the requirements set forth herein; or~~

6.1.2 ~~Is Unfit; or~~

6.1.3 ~~Had a Permit, certificate or license revoked in another jurisdiction; or~~

6.1.4 ~~Is under official investigation by any state or local authority with the power to issue educator licenses, permits, or certifications, where the alleged conduct involves immorality, misconduct in office, incompetence, neglect of duty, disloyalty, willful and persistent insubordination or falsification of credentials, until the applicant provides evidence of the investigation's resolution.~~

6.12 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of receipt of the notice of denial. The Secretary's decision shall be final.

6.2 ~~Notwithstanding any other provision stated herein, no Permit shall be issued to an applicant if:~~

6.2.1 ~~There is legal evidence that the applicant is not of good moral character;~~

6.2.2 ~~The applicant has had an educator Permit, certificate or license revoked in another jurisdiction for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.~~

## 7.0 Revocation of Permit

7.1 A Permit issued under the provisions of this regulation may be revoked upon a finding of immorality, misconduct in office, incompetence, ~~willful~~ neglect of duty, disloyalty or falsification of credentials and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application.

7.2 The Secretary shall give written notice to the permit holder of the proposed revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary, or his or her designee, within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.

**9 DE Reg. 115 (7/1/05)**

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# PROPOSED REGULATIONS

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u (16 Del.C. §122(3)u)  
16 DE Admin. Code 4461

### PUBLIC NOTICE

#### 2011 State of Delaware Milk Code Regulations

The Department of Health and Social Services, Division of Public Health is proposing revisions to the State of Delaware Regulations governing Milk and Milk Products. The Division of Public Health proposes to repeal the current 2003 State of Delaware Milk Code in its entirety and in its place adopt with amendments the *United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance 2009 Revision* to be known as the 2011 State of Delaware Milk Code. On March 1, 2011, the Division plans to publish the proposed 2011 State of Delaware Milk Code and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the March 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

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

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

#### 4461 Milk And Milk Products (Pasteurized Milk Ordinance)

#### 4.0 General Provisions

##### 4.1 Purpose

It is hereby declared that the purpose of this Regulation is to protect, preserve and promote the public health and wellbeing of the people, to minimize the incidence of communicable diseases and to regulate the inspection of dairy farms, milk and milk product plants and provide for the examination, labeling, pasteurization, distribution and sale of milk and milk products. It is hereby further declared that the purpose of this Regulation is to establish minimum chemical, bacteriological and temperature standards for milk and milk products and an adequate level of operation and maintenance and provision for the administrative and enforcement thereof.

##### 4.2 Definitions

~~“Regulatory Agency”~~: as defined in the PMO, Section 1, Definition II, shall mean the Secretary, Delaware Health and Social Services or his official designee.

##### 4.3 Application and Scope

The requirements of this section shall apply to the construction, alteration, addition, establishment maintenance and or the operation of all dairy farms, milk and milk product plants in the State of Delaware, and also to any milk and milk products from outside the boundaries of the state that are sold in Delaware.

~~The Regulatory Agency may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of the Regulatory Agency a health hazard or nuisance will not result from the variance or waiver.~~

~~Enforcement: It shall be the duty of the Regulatory Agency to enforce the provisions of these Regulations~~

~~Repeal and Date of Effect: All current or previous regulations or parts of regulations in conflict with these Regulations are hereby repealed; and these Regulations shall be in full force and effective on May 10, 2005.~~

~~Severability: Should any section, paragraph, sentence, clause or phrase of these Regulations be declared unconstitutional or invalid for any reason, the remainder of the Regulation shall not be affected in any way.~~

#### 1.4 Imminent Danger to Public Health: Suspension of Permit

~~If some condition(s) is/are determined to exist which present(s) an imminent health hazard to the public, the Regulatory Agency may suspend the operating permit of the facility, without hearing, for a period not to exceed ten (10) government business days. The suspension shall be effective upon receipt of written notice by the permit holder or another reasonably responsible employee. A suspension statement recorded on an inspection report by the inspecting Regulatory Agency representative constitutes written notice. The permit shall not be suspended for a period longer than ten (10) government business days without a hearing. Failure to hold a hearing within ten (10) government business days shall automatically terminate the suspension.~~

~~The permit holder of the Facility may request, in writing, a hearing before the Regulatory Agency at any time during the period of suspension, for the purpose of demonstrating the imminent health hazard(s) no longer exist. The request for hearing shall not stay the suspension.~~

#### 1.5 Unsanitary Conditions: Suspension, Revocation or Refusal to Reissue Permit

~~The Regulatory Agency, may after providing an opportunity for a hearing, suspend, for a period not to exceed ninety (90) days, revoke, or recommend non-reissuance of a permit to operate a Facility for serious or repeated violations of any requirements of these Regulations or refusing access to representatives of the Regulatory Agency.~~

~~This section is not intended to preclude enforcement of this Regulation through the institution of court action by the Regulatory Agency.~~

#### 1.6 Global Footnote Clarification

~~Whereas indicated in the PMO as footnote 2, page v, of the introduction and footnote 1, pages 1, 8, 9 and 113 of the body, insert "the State of Delaware".~~

## 2.0 ~~Grade "A" Pasteurized Milk Ordinance 2003 Revision~~

~~This section incorporates by reference the U.S. Public Health Service/Food and Drug Administration's Grade "A" Pasteurized Milk Ordinance, 2003 Revision. For copies contact the Division of Public Health or the Registrar of Regulations.~~

~~6 DE Reg. 1220 (3/1/03)~~

~~8 DE Reg. 1615 (5/1/05)~~

### 4461 State of Delaware Milk Code

## 1.0 State of Delaware Food Code

1.1 Name. These Regulations shall hereby be known as the "State of Delaware Milk Code".

1.2 Variance. The Regulatory Agency may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of the Regulatory Agency a health hazard or nuisance will not result from the variance or waiver.

1.3 Location. A copy of the complete State of Delaware Milk Code is available for public view at the following location: Office of Food Protection, 417 Federal Street, Dover, Delaware 19903. A copy is also available online at

<http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMoelDocuments/UCM209789.pdf>

**2.0 Adoption of United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance 2009 Revision.**

2.1 The State of Delaware Milk Code adopts, as if fully set forth herein, the United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance 2009 Revision as amended herein. The production, transportation, processing, handling, sampling, examination, labeling and sale of all Grade "A" milk and milk products sold for the ultimate consumption within the State of Delaware; the inspection of dairy farms, milk plants, receiving stations, transfer stations, milk tank truck cleaning facilities, milk tank trucks and bulk milk hauler/samplers; and the issuing and revocation of permits to milk producers, bulk milk hauler/samplers, milk tank trucks, milk transportation companies, milk plants, receiving stations, transfer stations, milk tank truck cleaning facilities, haulers, and distributors shall be regulated in accordance with the provisions of the current edition of the Grade "A" PMO.

2.2 Insert as footnote 1 the phrase "State of Delaware".

2.3 Amend Section 1, Subpart JJ "Regulatory Agency" by deleting the first sentence in its entirety and substituting in lieu thereof the following, "The Regulatory Agency shall mean the Secretary of the Delaware Department of Health and Social Services or their authorized representative."

2.4 Amend Section 3 by deleting the phrase "seventy-two (72) hours" as it appears therein and substituting in lieu thereof the following "ten (10) government business days".

2.5 Amend Section 16 by deleting the section in its entirety and substituting in lieu thereof the following, "Any person who shall violate any of the provisions of these Regulations shall be penalized in accordance with these Regulations and Title 16 of the Delaware Code."

2.6 Amend Section 17 by deleting the section in its entirety and substituting in lieu thereof the following, "All current or previous regulations or parts of regulations in conflict with these Regulations are hereby repealed and these Regulations shall be in full force and effect on May 10, 2011."

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## **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

#### **REGISTER NOTICE #2011-05**

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

##### **1. TYPE OF ACTION:**

Amend Tidal Finfish Regulation 3507 Black Sea Bass Size Limit; Trip limit; Seasons; Quotas

##### **2. PURPOSE OF ACTION:**

The Atlantic States Marine Fisheries Commission's (ASMFC) Management Board for Black Sea Bass is in the process of developing an Addendum to the Interstate Fisheries Management Plan. The Addendum will recommend management strategies necessary to reduce recreational harvest to levels recommended by the National Marine Fisheries Service to prevent overfishing. The Department's Start Action Notice was initiated with specific

management recommendations in the form of seasons, minimum size limits, and creel limits. Since that time, the ASMFC has taken an alternate approach that may result in a variety of options for States to consider rather than the original set of regulations and guidelines. It is anticipated that these State or Regional-specific management measures will be defined and available for public comment by the time of the public hearing. The Department will present the approved options that will allow the State to remain in compliance with the interstate management plan at the public hearing or as soon as they are available.

**3. STATUTORY BASIS:**

Title 7 **Delaware Code** §903(e)(2)a

**4. LIKELY AFFECTED PUBLIC:**

Recreational fishermen; bait and tackle dealers; party and head boat operators.

**5. NOTICE OF PUBLIC COMMENT:**

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendment will be held on March 24, 2011 at the Department of Natural Resources and Environmental Control auditorium beginning immediately following the summer flounder public hearing that begins at 6 PM, located at 89 Kings Highway, Dover, DE 19901.

**6. REVIEW COMMITTEE:**

Advisory Council on Tidal Finfisheries

**7. RESPONSIBLE STAFF MEMBER(s):**

Richard Cole (office) 302-735-2960; (fax) 302-739-6780; email richard.cole@state.de.us  
Craig Shirey (office) 302-739-9914; (fax) 302-739-6157; email craig.shirey@state.de.us

**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 (05/01/09)**

- 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 (06/01/08)

14 DE Reg. 113 (08/01/10)

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## 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 3511

### REGISTER NOTICE #2011-04

#### 3511 Summer Flounder Size Limits; Possession Limits

#### 1. TYPE OF ACTION:

Amend Tidal Finfish Regulation 3511

#### 2. PURPOSE OF ACTION:

The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid Atlantic Fishery Management Council and the National Marine Fisheries Service are to use for conservation equivalency in the recreational summer flounder fishery. These agencies agreed at their joint meeting on December 15, 2010 that the states would implement conservation equivalent measures rather than a coastwide management program for summer flounder in 2011. The total allowable harvest quota has been increased for 2011 based on the latest scientific data that indicates that the stock is not overfished and overfishing is not occurring. Delaware's harvest cap for 2011 will be 107,000 fish which is higher than the 80,000-fish target in 2010. In addition, it is estimated, based on the Marine Recreational Fisheries Statistics survey data, that approximately 76,000 summer flounder were harvested in Delaware during the 2010 fishing season. Two options have been approved and will be considered at public hearing with the following size limits, creel limits and season.

Option A	18.5" minimum TL	4 fish creel	All Year
Option B	18.0" minimum TL	4 fish creel	Jan.1 – Oct.23

These two approved options are designed to restrain the harvest at or below the harvest cap of 107,000 fish.

Currently, 3511 subsection 3.0 is a flounder dismemberment clause that makes it unlawful for anyone to have in possession any part of a flounder that is less than the minimum size unless they also have the head and backbone and tail (rack) to go along with it. This regulation was intended to cover all anglers. The Division plans to amend subsection 3.0 to allow for better shore-based enforcement.

#### 3. STATUTORY BASIS:

§903(e)(2)a, 7 Delaware Code

## 4. LIKELY AFFECTED PUBLIC:

Recreational fishermen, bait and tackle dealers.

## 5. PROPOSED SCHEDULE OF ACTIVITIES:

The public hearing on the proposed amendment will be held on March 24, 2011 beginning at 6 pm in DNREC's R & R Building, Auditorium, located at 89 Kings Highway, Dover, DE 19901.

## 6. REVIEW COMMITTEE:

Advisory Council on Tidal Finfisheries

## 7. RESPONSIBLE STAFF MEMBER(s):

Richard Cole 735-2960 (work), 739-6780 (fax) [Richard.cole@state.de.us](mailto:Richard.cole@state.de.us)

Craig Shirey 739-9914 [craig.shirey@state.de.us](mailto:craig.shirey@state.de.us)

## 8. Synopsis

The size limit, possession limit, and open season of the existing summer flounder regulations below will be amended based on the approved options established by the Summer Flounder Technical Committee, and the Summer Flounder Management Board of ASMFC. The two options include an 18-inch minimum size with a season ending October 23, or 18.5-inch minimum with no closed season. The final options will be selected following a public hearing scheduled for March 24, 2011 at 6PM in the DNREC auditorium. Additionally, subsection 3.0 is proposed to be amended to remove the ambiguous language regarding flounder dismemberment thereby improving enforcement of this regulation.

### 3511 Summer Flounder Size Limits; Possession Limits

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

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~eighteen and one half (18 1/2)~~ inches between the tip of the snout and the furthest tip of the tail.

#### 7 DE Reg. 1575 (5/1/04)

#### 12 DE Reg. 1430 (05/01/09)

#### 13 DE Reg. 1468 (05/01/10)

- 3.0 It shall be unlawful for any person ~~while on board a vessel~~, to have in possession any part of a summer flounder that measures less than ~~eighteen and one half (18 1/2) inches~~ the current minimum size limits between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

#### 13 DE Reg. 1468 (05/01/10)

- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
  - 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
  - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
  - 4.3 A bill of lading while transporting fresh or frozen summer flounder.

- 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.
- 8.0 Notwithstanding section 4.0 of this regulation, it shall be unlawful for any recreational or commercial hook and line fisherman to take and reduce to possession or to land any summer flounder ~~during the closed season beginning 12:01 a.m. October 13 and ending 12:00 p.m. December 31 next ensuing.~~ (Note: creel limit to be determined in combination with size limit and season.)

**1 DE Reg. 1767 (5/1/98)**

**2 DE Reg. 1900 (4/1/99)**

**3 DE Reg. 1088 (2/1/00)**

**4 DE Reg. 1552 (3/1/01)**

**5 DE Reg. 462 (8/1/01)**

**5 DE Reg. 2142 (5/1/02)**

**6 DE Reg. 1358 (4/1/03)**

**7 DE Reg. 1575 (5/1/04)**

**8 DE Reg. 1488 (4/1/05)**

**9 DE Reg. 1759 (5/1/06)**

**10 DE Reg. 1722 (05/01/07)**

**11 DE Reg. 1493 (05/01/08)**

**12 DE Reg. 1430 (05/01/09)**

**13 DE Reg. 1468 (05/01/10)**

**3512 Winter Flounder Size Limit; Possession Limit; Seasons.**

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any person to possess any winter flounder, (*Pseudopleuronectes americanus*), that measure less than twelve (12) inches, total length.
- 2.0 It shall be unlawful for any recreational fisherman to have in possession more than two (2) winter flounder per day (a day being 24 hours) at or between the place where said winter flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 3.0 It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.
- 4.0 It shall be unlawful for any non-federally licensed commercial fishermen to harvest, land or possess more than 50 pounds of winter flounder per day. Federally licensed commercial fishermen are subject to current federal winter flounder harvest, landing, and possession limits.

**8 DE Reg. 1718 (6/1/05)**

**13 DE Reg. 672 (11/01/09)**

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# PROPOSED REGULATIONS

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## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(1)g (7 Del.C. §903(e)(1)g)  
7 DE Admin. Code 3536

### REGISTER NOTICE #2011-02

#### 3536 Fish Pot Requirements

#### 1. TYPE OF ACTION:

Amend Tidal Finfish Regulation 3536 Fish Pot Requirements to include new subsection 5.0.

#### 2. PURPOSE OF ACTION:

Complaints and conflicts have surfaced between recreational hook and line fishermen, charter and head boat operators, and commercial fish pot fishermen on some of the artificial reef sites developed in the Delaware Bay as part of Delaware's Artificial Reef Program. The abundance of fish pots, their marking lines and floats have in some instances prevented or interfered with normal hook and line angling opportunities. The Department has legislative authority to regulate the type of fishing gear that can be used on artificial reef sites within Delaware waters. This proposed regulation is intended to eliminate existing conflicts between hook and line gear and other fishing gear types currently being deployed on artificial reef sites. It is also intended to address concerns of the funding agency (US Fish and Wildlife Service) that some fishing gear presently being fished on Delaware artificial reef sites is incompatible with the intent of the funding agency in providing support to the Division of Fish and Wildlife for the State's reef program.

#### 3. STATUTORY BASIS:

Title 7 DE Code §903(e)(1)g

#### 4. LIKELY AFFECTED PUBLIC:

Hook and line anglers, charter and head boat captains, commercial fish and crab potters.

#### 5. NOTICE OF PUBLIC COMMENT:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendment will be held on March 25, 2011 at the Department of Natural Resources and Environmental Control auditorium beginning at 6 PM, located at 89 Kings Highway, Dover, DE 19901.

#### 6. REVIEW COMMITTEE:

Advisory Council on Tidal Finfisheries

#### 7. RESPONSIBLE STAFF MEMBER(s):

Jeffery Tinsman (office) 302-735-2974; (fax) 302-739-6780; email jeffrey.tinsman@state.de.us  
Craig Shirey (office) 302-739-9914; (fax) 302-739-6157; email craig.shirey@state.de.us

#### 3536 Fish Pot Requirements

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has two escape vents placed in the parlor portion of said pot which complies with one of the following minimum sizes: 1.375 inches by 5.75 inches; or a circular vent 2.5 inches in

diameter; or a square vent with sides of 2 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.375 inches between one set of lathes.

- 2.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:
- 2.1 Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or
  - 2.2 Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or
  - 2.3 Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.
- 3.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her crab pot provided said food fish is not otherwise illegal to possess at that time.
- 4.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her blue crab dredge provided said food fish is not otherwise illegal to possess at that time.
- 5.0 It shall be unlawful to take or attempt to take any finfish within the geographic boundaries of any permitted artificial reef site under Delaware jurisdiction by any method other than hook and line or spear. The coordinates of Delaware permitted reef sites are defined in U.S. Army Corps of Engineers permit CENAP-OP-R-200500059-1 and any updated permits subsequently issued and are depicted on NOAA charts 12304 and 12214. An Artificial Reef Guide is also available to the public upon request and on-line.

**2 DE Reg. 1905 (4/1/99)**

**6 DE Reg. 350 (9/1/02)**

**10 DE Reg. 1035 (12/01/06)**

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**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**

**REGISTER NOTICE #2011-03**

**3541 Atlantic Sharks**

**1. TYPE OF ACTION:**

Amend the Tidal Finfish Regulations for Atlantic sharks (Title 7 §3541)

**2. PURPOSE OF ACTION:**

A number of shark species, including sandbar shark (*Carcharhinus plumbeus*) and sand tiger (*Odontaspis taurus*), are prohibited from harvest and should not be targeted by recreational anglers. These species are extremely vulnerable to fishing pressure and Delaware's nearshore waters serve as important pupping, nursery, and feeding grounds. Studies indicate that these sharks suffer significant injury or death as a result of being caught by hook and line and need to be treated with the utmost care when hooked. It has become evident that a growing segment of the recreational fishery is illegally targeting these species for sport, despite the fact that this activity is expressly prohibited under §3541 (2.0). Further, many anglers are not immediately releasing these species in a manner that ensures the greatest chance of survival. Unfortunately, it is difficult to enforce fishing intent. Thus, the Department is seeking to amend the regulations in Title 7 §3541 to improve enforceability of the shark regulations and to better define measures that will ensure a shark's maximum probability of survival.

**3. STATUTORY BASIS:**

Title 7 **Delaware Code** §903(e)(3)

**4. LIKELY AFFECTED PUBLIC:**

Recreational shark fishermen

**5. NOTICE OF PUBLIC COMMENT:**

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendment will be held in the Department of Natural Resources and Environmental Control auditorium located at 89 Kings Highway, Dover, DE 19901 on March 25, 2011. Members hearing will begin immediately following the artificial reef gear restriction public hearing that begins at 6 PM.

**6. REVIEW COMMITTEE:**

Advisory Council on Tidal Finfisheries

**7. RESPONSIBLE STAFF MEMBER(s):**

Craig Shirey (office) 302-739-9914; (fax) 302-739-6157; email [craig.shirey@state.de.us](mailto:craig.shirey@state.de.us)

Scott Newlin (office) 302-735-2960; (fax) 302-739-6780; email [scott.newlin@state.de.us](mailto:scott.newlin@state.de.us)

### 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, *Neqapron 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, *Hepranchias 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 be 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)**

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# PROPOSED REGULATIONS

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## 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

#### REGISTER NOTICE SAN #2009-20

#### 5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures

**1. TITLE OF THE REGULATIONS:**

5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures

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

The Delaware Coastal Management Program, as dictated by the National Oceanic and Atmospheric Administration's (NOAA), Federal Consistency Regulations (15 CFR 930 subpart D), must develop a list of Federal Licenses and Permits that have likely coastal zone effects and that the DCMP intends to review for consistency with its coastal zone management policies. The regulations (15 CFR 930 subpart I) also require that DCMP establish a separate list of Federal activities occurring outside of the State boundary that have interstate coastal effects and for which DCMP intends to review for consistency with its coastal zone management policies.

This action will update the existing list of Federal licenses and permits for which DCMP conducts Federal Consistency reviews and will establish a new list of federal activities occurring outside of State boundaries for which DCMP will conduct Federal Consistency reviews. There are no new regulations being introduced through this process. The update and changes to the Delaware Federal Consistency Policies and Procedures are considered a Routine Program Change under the NOAA Statute (15 CFR 923.84(a)).

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

N/A

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

15 CFR Part 930 – Federal Consistency with Approved Coastal Management Programs

15 CFR 923.84(a) – Routine Program Changes to the Coastal Management Program

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The public hearing will be held on March 22, 2011, at 6 pm at the St Jones Reserve, located at 818 Kitts Hummock Road, Dover, Delaware 19901. Written comments may be mailed to Tricia Arndt, Delaware Coastal Programs, 89 Kings Highway, Dover, Delaware, 19901

**7. PREPARED BY:**

Tricia Arndt 302-739-9283 February 10, 2011

Email address [Tricia.Arndt@state.de.us](mailto:Tricia.Arndt@state.de.us)

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

**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

### REGISTER NOTICE

#### 7401 Surface Water Quality Standards

##### 1. Brief Synopsis of the Subject, Substance and Issues:

The amended Surface Water Quality Standards presented here are the result of a comprehensive review of the Standards that started with SAN #2008-24 in 2008. Department staff conducted a review of water quality criteria and current EPA documents and prepared a draft markup of amended Water Quality Standards in advance of a workshop held January 7, 2009 in the DNREC auditorium. Department staff kept interested parties abreast of developments and the workshop using a combination of e-mail notices, internet postings of documents and relevant links, and public notices. Preceding and during the workshop, written comments were requested, received and considered for inclusion in the proposed Standards presented here. A public hearing was held September 2, 2009 with comments accepted until September 11, 2009. To ensure compliance with the Clean Water Act and satisfy EPA requirements, the State of Delaware, in accordance with 7 Del.C. §6010, will amend the State of Delaware Surface Water Quality Standards (as amended July 11, 2004).

##### 2. Possible Terms of the Agency Action:

N/A

##### 3. Statutory Basis or Legal Authority to Act:

7 Del.C. §6010

##### 4. List of Other Regulations That May be Impacted or Affected by the Proposal:

Regulations Governing the Control of Water Pollution

##### 5. Notice Of Public Comment:

Because it has been longer than one year since the last Departmental action, The Department of Natural Resources and Environmental Control, Division of Watershed Stewardship, is reopening the comment period for 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. Comments already submitted need not be resubmitted. New comments will be accepted through 4:30 PM, April 1, 2011.

Additional information, the proposed regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed regulation, please contact David Wolanski, Watershed Assessment Section, at (302) 739-9939 or by email at [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us).

Please direct comments to David Wolanski, Water Quality Standards Coordinator, DNREC Watershed Assessment Section, 820 Silver Lake Blvd, Suite 220, Dover, DE 19904, FAX to 302-739-6140, or by e-mail to [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us). Electronic submissions are preferred.

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

**7401 Surface Water Quality Standards**

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# PROPOSED REGULATIONS

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF COMMUNICATIONS

Statutory Authority: 9 Delaware Code Sections 2616, 4927, 6927 & 22 Delaware Code Section 311  
(9 Del.C. §2616, 4927 & 6927; 22 Del.C. §311)

### PUBLIC NOTICE

#### **2500 In-Building Communications Systems Regulation**

The Delaware Department of Safety and Homeland Security Division of Communications, proposes these regulations in accordance with the General Assembly's mandate to maintain quality in-building communications and prevent "dead-zone" areas in new buildings thus protecting the citizens of Delaware by enabling emergency public safety personnel to communicate effectively while responding to emergencies.

The Delaware Department of Safety and Homeland Security, Division of Communications solicits written comments from the general public concerning these proposed regulations. Any such written comments should be submitted to: Mark Grubb, Director of the Division of Communications, at 3050 Upper King Rd., Dover, DE 19904 on or before April 1, 2011.

Copies of the proposed regulations are available upon request.

#### **2500 In-Building Communications Systems Regulation**

#### **1.0 Scope and Purpose**

- 1.1 These rules and regulations ensure the quality of the State's emergency communications system by maintaining quality in-building communications to prevent "dead zone" areas and helping to protect the citizens of the State so emergency public safety personnel can communicate during a response to an emergency situation.
- 1.2 These rules and regulations apply to all newly constructed buildings of 25,000 square feet or more.

#### **2.0 Definitions**

"Contiguous structures" shall mean two structures that share a common wall or floor.

"Newly constructed buildings" shall not be construed as a renovation or modification of a building, or an expansion or addition to a building which is contiguous to an existing building.

#### **3.0 In-Building System Architectures:**

Systems can consist of, but are not limited to, simple passive systems or an internal antenna system with or without FCC certified Bi-Directional Amplifiers for multiple-band, multiple-carrier use.

#### **4.0 Interference:**

If a flaw in the system design causes interference to other systems the building owner or their representative will make necessary adjustments.

#### **5.0 Alarm and Control:**

- 5.1 Systems shall be capable of sensing a primary failure in the system, and reporting this failure to an approved monitoring company via auto-dialer devices over the public switched network. The alarm unit shall provide reporting, at a minimum, for the following conditions:
  - 5.1.1 Main power disruption
  - 5.1.2 Back-up power failure

## 5.1.3 Transmitter/Receiver failure

- 5.2 The monitoring company must notify DE State Police Communication Headquarters at 302-659-2341 in the event of a BDA alarm.

## **6.0 Power Source:**

- 6.1 All systems shall be connected to a dedicated power source from the building's AC power distribution panel.
- 6.2 If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least two (2) hours without external power input. The battery system shall automatically charge in the presence of external power input.
- 6.3 In the event that a bi-directional amplifier is employed, it shall be fully encased within a NEMA 4 (or equivalent) dust/waterproof case.

## **7.0 Environmental Controls:**

- 7.1 Systems must have adequate environmental controls to meet the heating, ventilation, cooling and humidity requirements of the equipment that will be utilized to meet the coverage requirements.
- 7.2 All systems, cables and antenna systems shall be grounded with a single point ground system of five (5) ohms or less.
- 7.3 System transient suppression for the telephone circuits, ac power, radio frequency (RF) cabling are required.

## **8.0 Initial Coverage Testing and Acceptance:**

- 8.1 Initial testing and acceptance will be completed as described in Appendix A
- 8.2 A copy of the test shall be retained on the inspected premises. (Official testing form can be found within Appendix A.)
- 8.3 A copy of the test shall be sent to:  
State of Delaware  
Division of Communications  
3050 Upper King Rd.  
Dover, DE 19904

## **9.0 Annual Test:**

- 9.1 When an in-building system is installed, the building owner or their representative shall test all active components of the system, including, but not limited to, the amplifier, power supplies, and back-up batteries, a minimum of once every twelve (12) months. Annual testing will include:
- 9.1.1 Amplifiers shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance.
- 9.1.2 Back-up batteries and power supplies shall be tested under load for a period of one hour to verify that they will operate during an actual power outage.
- 9.1.3 All other active components shall be checked to determine that they are operating within the manufacturers specifications for their intended purposes.
- 9.2 Sampling Coverage Test – A transmit / receive coverage testing of 10% of the building grid will be required. Tests will be conducted in a different area of the building each year so that every 10 years the building has been completely tested. The testing area must be spread out throughout the building randomly. In that way, we are testing every amplifier in the system.
- 9.2.1 Test results tabulation form is attached.
- 9.2.2 Test results must be completed within 30 days of the previous annual inspection.
- 9.3 A copy of the test shall be retained on the inspected premises.

9.4 A copy of the test shall be sent to:  
State of Delaware  
Division of Communications  
3050 Upper King Rd.  
Dover, DE 19904

**10.0 Testing Authority:**

All tests shall be conducted, by a company or technician with a valid FCC license or equivalent, for two-way radio.

**11.0 Fire Department Inspections:**

Fire Department personnel or their designated representatives, after providing reasonable notice (24 hours) to the owner or representative, shall have the right during normal business hours to enter onto the property to verify compliance and that the required level of coverage is present. This inspection will be performed at no cost to the owner. Any noted deficiencies shall be provided in an inspection report to the owner or the owner's representative.

**12.0 Temporary Certificate of Occupancy**

A recommendation for temporary (CofO) Certificate of Occupancy may be issued in the event that initial coverage testing fails. To receive a consideration for a temporary Certificate of Occupancy the facility owner must submit a plan of corrective action to the Delaware Division of Communications.

**13.0 Maintenance Responsibilities:**

The owner or their representative shall be responsible for maintenance of the system and upgrades or replacements should the system fail or no longer work in the future.

**14.0 Effective Date**

**Appendix A**

**Coverage/Acceptance Test Plan**  
**For Original Installation**

**Test Plan Overview:**

The purpose of this test plan is to determine if newly constructed buildings in excess of 25,000 square feet have been designed and/or constructed so that emergency personnel can send and receive communications from within all areas of those buildings; or alternately, to verify the performance of buildings equipped with emergency communications equipment (i.e., radiating cable, passive antennas, bi-directional amplifiers, distributed antenna systems) so that emergency personnel can send and receive communications from all areas within the building.

A Grid Acceptance Test (GAT) will be used to demonstrate that the required reliability of communication is provided among 95% of the total number of grid cells at a Delivered Audio Quality (DAQ) of 3.4., (i.e., speech understandable with repetition only rarely required. Some Noise/Distortion).

Terms and testing methodology described within the GAT are based on the Telecommunications Industry Association (TIA) Telecommunications Systems Bulletin TSB-88-B, "Wireless Communications System - Performance in Noise and Interference-Limited Situations - Recommended Methods for Technology - Independent Modeling, Simulation, and Verifications."

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## Grid Acceptance Test:

1. The Facility Owner is responsible to have a Grid Acceptance Test (GAT) prior to requesting a certificate of occupancy (C of O).
2. The GAT shall be performed by an Approved Vendor (AV).
  - An approved vendor list shall be published by the Divisions of Communications and will be maintained on their website at [www.Delaware.gov](http://www.Delaware.gov)
3. The approved vendor shall be responsible to submit the results of the GAT directly to the Division of Communications.
4. If the facility has passed the GAT or the Division of Communications determines that the facility is worthy of a Temporary Certificate of Occupancy (TCO), the Division of Communications shall forward an approval form to the responsible Building Code Official (BCO) with the Division of Communications approval.
5. If the Division of Communications issued a TCO approval, the facility owner will be required to submit a passed GAT to the Division of Communications prior to the Building Code Official issuing a C of O.

### Comment:

- In the case of a shell and core – tenant fitout construction arrangement the process shall be as follows:
- The facility owner shall commission a complete GAT test for shell and core C of O.
- The approved vendor shall submit the results of the shell and core GAT to the Division of Communications for a pass/fail designation.
- If the facility has passed the GAT, the Division of Communications shall forward an approval form to the responsible Building Code Official with the Division of Communications approval for “Shell and Core Only”.
- The facility owner shall commission additional, complete GAT test for each “initial tenant fit-out” following the same processes discuss above.
- Any subsequent tenant fitout that may occur to an existing tenant fitout that was previously approved by the Division of Communications for C of O, would not be required to have a complete GAT test. The renovation impact upon the 800 MHz system will be discovered during the annual testing required by the In Building Regulations.

The test will be conducted after exterior walls, roofs, windows and doors have been constructed/installed and all interior rooms, their walls and ceilings, are in place and doors have been hung as appropriate for the C of O application being sought i.e., shell & core or complete tenant fitout.

The test will be conducted using portable radios which operate on the State of Delaware’s Emergency Radio Communications System.

The test team will verify that the test radios are functioning properly and meet minimum manufacturer’s performance standards prior to test execution.

All tests will be performed using a lapel microphone with the portable radio/antenna installed in a standard swivel case mounted on the hip belt with the operator remaining stationary during the test.

The building floor plan for all floors shall be overlaid with a uniform test grid. The test grid shall be established with each grid unit measuring 25 ft. by 25 ft. Each grid unit (cell) shall be uniquely identified and the results will be recorded in the Grid Acceptance Test Log (GAT Log). **The grid map must be attached to the grid acceptance test log.**

Grids in areas where electromagnetic interference (EMI’s) will interfere with the efficient operation of equipment sensitive to EMI’s will be excluded from the test and reliability calculations. When determining the coverage percentage, the total number of grids to be tested will be based on the total number of grids in a building minus the number of grids in EMI areas.

Stairwells, elevators and holding/jail cells are critical areas where Communication on both forward and reverse (transmit Tx & Receive Rx) paths must meet or exceed the DAQ 3.4 level to pass the requirements of this test. If an elevator or holding/jail cell falls in a grid area the grid and elevator or holding/jail cell will be tested separately. The test results for elevators and holding/jail cells are not included in the calculation for coverage determination.

## PROPOSED REGULATIONS

When acceptance testing is performed in elevators, the internal and external doors shall be closed, and the test will be repeated on each floor. Tests in holding/jail cells shall be performed with the door to the cell in the closed and locked position.

The test procedure shall require the quality of communication to be judged by a stationary tester and mobile tester while the mobile tester move from grid unit (cell) to grid unit (cell), throughout the building, covering all grid units (cells) on all floors. The procedure has the following attributes:

- The test requires two testers. One tester shall be stationary and located in a known good reception area (the stationary tester). The mobile tester shall systematically roam all floors through the building.
- From each grid unit (cell), at least one (1) test calls shall be made to the stationary operator in a known good reception area.
- Tests will be conducted at the center of the grid. If the centermost point of the grid is not accessible the next closest area to the center of the grid will be used. Any grids not accessible will be excluded from the test and reliability calculations.
- The mobile tester shall verbally count from one to five and then five to one (for a total of ten numbers verbalized). The stationary receiver shall be required to acknowledge whether reception is or is not acceptable.
- The stationary tester shall verbally count from one to five and then five to one (for a total of ten numbers verbalized). The receiver (the mobile tester) shall be required to acknowledge whether reception is or is not acceptable.
- The test will consider both forward and reverse (Tx & Rx) communication paths. Communication on both forward and reverse paths shall meet or exceed the DAQ 3.4 level to meet the requirements of this test.
- The tester initiating the call from within each grid unit (cell) shall determine the success or failure of the call. Results will be recorded in the GAT log with a pass/fail rating system.
- The mobile tester must issue a "pass" decision to constitute a successful result for each tested grid unit (cell). This process will be repeated for each grid unit (cell) that is part of the grid acceptance test.
- TSB-88-B defines DAQ 3.4 as, "Speech understandable with repetition only rarely required. Some Noise/Distortion." "Rarely" shall be quantified as no greater than 10 percent re-test. This means a maximum of 10% of all the grids will be allowed a repeated transmission within three feet of the original test location.
- In the event that a specific grid unit yields a fail decision, a quantitative measurement will be taken to be the final determination of grid acceptance. A Spectrum Analyzer shall be used to measure the received signal power from the Emergency Radio Communication System's control channel frequency within the grid unit. If it is found that received signal power is greater than or equal to -95.0dBm, then the grid unit shall be considered a pass decision. Once all data is collected, coverage percentage, CP, will be determined by Equation 1:

$$CP = (T_P)/(T_C) \times 100\%$$

CP = Coverage Percentage  
 $T_C$  = Total Number of Grid Units (cells)  
 $T_P$  = Total Number of Grid Units Passed (cells)

Note: CP is a function of the Pass/Fail results for each grid unit tested within the building, not the ratio of successful calls to unsuccessful calls within each specific grid unit.

- State, County & Municipal Emergency Services Personnel and The State of Delaware Division of Communications may at their discretion, witness coverage testing

# PROPOSED REGULATIONS

## Emergency Radio Communications System In-Building Coverage Grid Acceptance Test Log

**INITIAL TEST**

Building Name _____	Bldg Owner of Record _____
Building Address _____	City _____ County _____
Testing Contractor _____	FCC#: _____
Building Permit # _____	Test Date _____
Signature of Test Professional _____, I hereby certify that this test was conducted in accordance with FCC guidelines and State of Delaware guidelines as outlined in the 800MHz in-building coverage rules and regulations.	

**NOTE : Completed grid map must be attached to this log when submitting for approval.**

Tester	Name	Affiliation	Comments
Stationary 1			
Mobile 1			
Mobile 2			

Grid Point	RESULT P/F	Signal Strength	Comments	Coverage %
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

**Division of Communications Use:**

	<b>Pass</b> - This facility has met Division of Communications requirements and is approved for Certificate of Occupancy subject to Code Officials approval
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	<b>Fail W/TO</b> - This facility has NOT met Division of Communications requirements but is suitable for a Temporary Certificate of Occupancy subject to Code Officials approval. TCO Valid for _____ Days.
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	<b>Fail No/TO</b> - This facility has NOT met Division of Communications requirements and is <b>NOT</b> suitable for a Temporary Certificate of Occupancy subject to Code Officials approval
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Date: \_\_\_\_\_ DivComm Authorization: \_\_\_\_\_

*Please return form to: State of Delaware Division of Communications - 3050 Upper King Rd., Dover, DE 19904 for approval.*

# PROPOSED REGULATIONS

## Emergency Radio Communications System In-Building Coverage Grid Acceptance Test Log

**ANNUAL TEST**

Building Name _____	Bldng Owner of Record _____
Building Address _____	City _____ County _____
Testing Contractor _____	FCC#: _____
Building Permit # _____	Test Date _____
Signature of Test Professional _____, I hereby certify that this test was conducted in accordance with FCC guidelines and State of Delaware guidelines as outlined in the 800MHz in-building coverage rules and regulations.	

**NOTE : Completed grid map must be attached to this log when submitting for approval.**

Tester	Name	Affiliation	Comments
Stationary 1			
Mobile 1			
Mobile 2			

**\*10% of the subject building must receive coverage testing annually.**

Grid Point	RESULT P/F	Signal Strength	Comments	Coverage %
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Amplifier gain / Initial Install:

Amplifier gain:

Back-up battery load test results:   
PASS

FAIL

Division of Communications Use:

Annual Test Results   
PASS

FAIL

Date: \_\_\_\_\_ DivComm Authorization: \_\_\_\_\_

*Please return form to: State of Delaware Division of Communications - 3050 Upper King Rd., Dover, DE 19904 for approval.*

## Emergency Radio Communications System In-Building Coverage System Frequencies

New Castle

WPSI864-WQDN950		TX	RX
N 1	768	868.2125	823.2125
N 2	828	868.9625	823.9625
N 3	826	868.9375	823.9375
N 4	618	866.2375	821.2375
N 5	782	868.3875	823.3875
N 6	732	867.7375	822.7375
N 7	730	867.7125	822.7125
N 8	714	867.4875	822.4875
N 9	694	867.2375	822.2375
N 10	678	867.0375	822.0375
N 11	655	866.7250	821.7250
N 12	642	866.5625	821.5625
N 13	638	866.4875	821.4875
N 14	808	868.7125	823.7125

Kent

WPIZ596-WQDN677		TX	RX
K1	823	868.9000	823.9000
K2	811	868.7500	823.7500
K3	803	868.6500	823.6500
K4	605	866.0750	821.0700
K5	727	867.6750	822.6750
K6	725	867.6500	822.6500
K7	685	867.1250	822.1250
K8	651	866.6750	821.6750
K9	649	866.6500	821.6500
K10	749	867.9500	822.9500

Sussex

WPIQ290-WQDR545		TX	RX
S1	798	868.5875	823.5875
S2	779	868.3500	823.3500
S3	760	868.1125	823.1125
S4	607	866.1000	821.1000
S5	740	867.8375	822.8375
S6	721	867.6000	822.6000
S7	703	867.3500	822.3500
S8	682	867.0875	822.0875
S9	628	866.3625	821.3625
S10	758	868.0875	823.0875

Statewide

		TX	RX
1	ITAC 1	866.5125	821.5125
2	ITAC 2	867.0125	822.0125
3	ITAC 3	867.5125	822.5125
4	ITAC 4	868.0125	823.0125
5	911HLP	866.0125	821.0125

Note: TX is the specific frequencies transmitted from the State of Delaware to be received inside the building.  
RX is the specific frequencies received by the State of Delaware to be transmitted inside the building.

\*NOTE – These frequencies are pre rebanding and will change 15MHz once rebanding is complete it is estimated that rebanding in DE will be completed by YE2011.

**Emergency Radio Communications System****SAMPLE RFP****In-Building Coverage  
For Informational Purposes Only  
Request for Proposals/Equipment specifications****Scope of Work:****General:**

The building owner and/or owner's representative shall request services to design, install, test and make operational an in-building Communications System (the "System" -- including, but not limited to, radiating cable, passive antennas, bi-directional amplifiers, and distributed antenna systems) on all levels of the building. The implementation of the System shall require work throughout all floors, including levels below grade, and shall result in a specified, minimum level of signal strength on all floors of the building, as well as the ability to successfully transmit and receive using typical hand-held audio transceivers used by the State of Delaware. The minimum acceptable signal strength and ability to successfully communicate shall be achieved 95% of the time and, with certain exceptions, among 95% of the 25' X 25' cells into which each floor is divided for testing and validation purposes. As part of the scope of work, the building owner and/or owner's representative and the contractor shall identify specific, critical areas on each floor that shall be required to have the minimum acceptable level of signal strength at all times as long as the System and external (to the building) Emergency Communications System are operational. These critical areas shall include, but shall not be limited to, all stairwells, elevators and holding/jail cells.

1. The contractor shall participate in interviews with appropriate representatives of the owner to identify critical areas of the building on all levels that will be required to have an acceptable level of 800 MHz signal strength and signal propagation characteristics 100% of the time as long as the System and external (to the building) Emergency Communications System are functioning. The areas shall be identified as specific cells identified in Attachment C that are used for system testing and validation purposes and shall be referred to as "critical cells."
2. The contractor shall evaluate the building drawings, 25' X 25' cell layout, location of critical cells noted in paragraph 1, frequencies used by the State of Delaware (see Attachment A), minimum equipment specifications, rules and regulations (see Attachment B), and established specifications for signal strength and voice transmission criteria (see Attachment C) to engineer the placement of all equipment and antennas on all floors of the building.
3. The contractor shall specify all equipment and cable to be used to implement the system, installation locations, power requirements, interconnections to other systems, schematic wiring diagrams and a plan of installation. The plan of installation may be divided into multiple phases that will enable portions of the system to be installed, tested, validated and activated in sequential fashion.
4. The contractor shall present its design for the System to the owner's representative for approval prior to the start of work. The owner's representative shall not unreasonably withhold approval, but the owner's representative may request information from the contractor concerning the engineering assumptions on which the system design is based, and may require the contractor to make reasonable changes to its design before approval to proceed is granted.
5. Once the System design is approved by the owner's representative, the contractor may proceed with the acquisition of supplies and materials, the installation of wiring, cabling, equipment and antennas, and the testing and validation of each phase of the System.

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## **Deliverables:**

1. Drawings of each floor of the building that are divided into 25' by 25' cells and note the critical cells identified through interviews with appropriate personnel identified by the owner's representative.
2. A proposed System design that shows the location of all equipment, interconnections to other systems, power sources, proposed cabling routes and the location of all distribution antennas.
3. A final, approved System design that shows the location of all equipment, interconnections to other systems, power sources, cabling routes and the location of all distribution antennas.
4. All goods, materials, equipment, supplies, services and labor required to install, implement, test and validate the operation of the System according to the approved design noted in paragraph 3.
5. Completed test and System validation reports specified in Attachment "C." A completed set of test and validation reports shall be required at the completion of each phase of system installation.
6. As-built drawings of the entire System at the completion of the project.

## **Warranty:**

The contractor warrants that the signal strength and the ability to acceptably communicate according to the test procedures noted in Attachment "C" shall be at or above minimum acceptable levels in 95% of the 25' X 25' test cells into which each floor of the building is divided 95% of the time with the following exceptions:

- Signal strength and the ability to communicate will be at or above minimum acceptable levels in all stairwells, elevators, holding/jail cells and critical cells on all floors of the building. This requirement shall be achieved 100% of the time as long as the System is functioning and as long as the external (to the building) Emergency Communications System is operating.

The contractor shall warrant all materials, labor and workmanship for a period of at least one-year from the date the testing and validation report for the final phase of installation is accepted by the owner's representative. The contractor shall warrant all materials and components for a period of at least one-year unless the manufacturer provides a longer warrantee period. If so, the contractor warrantee shall continue until the manufacturer's warrantee has expired. The warrantee shall include all components of the in-building System installed on each floor (including components located on the roof and cabling between the roof and lower levels).

## **Information to be included in the Bidder's Proposal:**

1. A description of the Bidder's experience and abilities as it relates to in-building RF systems.
2. A description of other similar projects completed within the last two years. Include project description, scope, outcome, cost and a contact name and phone number.
3. Business references including name, telephone number and relationship to bidder.
4. Project methodology including a description and technical overview for the proposed installation of the System. Include diagrams, schematics, a list of proposed equipment, power requirements and proposed interconnections to the existing system.
5. Project price as proposed.
6. An implementation plan including phases of work and time required to complete the project.

# PROPOSED REGULATIONS

7. A price for an annual service contract for the System to be effective one year after the date that the owner's representative accepts the testing and validation report for the last phase of installation. Pricing shall include an escalation factor to be used to calculate the cost of annual service agreements for a period of four additional years beyond the first year service agreement. Include a description of the service agreement and a proposed list of services and responsibilities.

## 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

### PUBLIC NOTICE

The Delaware Board of Chiropractic, pursuant to 24 Del.C. §706(a)(1), proposes to revise their rules and regulations. The proposed revisions reorganize the rules as a whole, and make two additional substantive changes suggested at the public hearing in November. First, the rules reincorporate the requirement that professionals notice current patients of his/her intent to close his/her office by mail if the patient has not already picked up his/her records. Second, the proposed revisions now clarify the distance learning limitation by limiting asynchronous continuing education credits accepted to 6 hours, with no restriction on synchronous continuing education credits.

The Board will hold a public hearing on the proposed rule change on April 7, 2011 at 09:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Administrator of the Delaware Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 6, 2011.

### 700 Board of Chiropractic

#### 1.0 Chiropractic Defined; Limitations of Chiropractic License

An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

- Acupuncture Procedures
- Physiological Therapeutics
- Diet and Nutritional Programs
- Rehabilitation/Exercise Programs

4 DE Reg. 1940 (6/1/01)

#### 2.0 Officers; Meetings; Quorum

~~The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.~~

#### 2.0 Continuing Education (CE) Requirements

- 2.1 Completion of the required continuing education (CE) hours is a prerequisite for renewing a license. Licensees shall complete 24 hours of approved CE during each biennial licensing period, except as otherwise provided in these regulations for new licensees.

- 2.1.1 The deadline for completion of all required CE hours is the license renewal deadline, unless extended or waived pursuant to regulation 2.3. CE hours must be completed and approved by the Board before applying for renewal.
- 2.1.2 CE hours must be completed within the biennial licensure period for which they are being applied. Only six CE hours can be carried over into a subsequent licensure period.
- 2.1.3 The same course shall not count more than once during a single licensing period. For courses completed multiple times in one licensing period, credit shall only be given for the first course completion.
- 2.1.4 Licensees shall retain their CE course attendance documentation for at least two years after the renewal deadline.
- 2.1.5 At least 3 of the credit hours required for renewal must contain ethics, recordkeeping, or risk management.
- 2.1.6 The required CE can be taken online or by home study which includes video- or tele-conference, so long as the teaching is live, and the interaction between the instructor and the licensee is interactive and synchronous. Asynchronous education including video replay or on-line courses are limited to 6 hours per renewal period.
- 2.1.7 Only courses co-sponsored by accredited Chiropractic colleges, national or states organizations are presumptively approved so long as the course relates to the field of Chiropractic. Excepted from this presumptive approval are courses in practice management subjects.
- 2.1.8 The subject matter of all Continuing Education must contribute directly to the competency of a person licensed to practice as a Chiropractor. The activity must have a significant intellectual or practical content and deal with chiropractic techniques, issues or ethical standards relevant to the practice of chiropractic.
- 2.2 New Licensee Exception:
  - 2.2.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. For these individuals only, the continuing education hours will be pro-rated based on when the license was issued.
    - 2.2.1.1 If the new license was issued during the first year of the renewal period, July 1 – December 31 of the odd year, the licensee must complete 24 CE hours.
    - 2.2.1.2 If the new license was issued during the first year of the renewal period, January 1 – June 30 of the even year, the licensee must complete 18 CE hours.
    - 2.2.1.3 If the new license was issued during the second year of the renewal period, July 1 – December 31 of the even year, the licensee must complete 12 CE hours.
    - 2.2.1.4 If the new license was issued during the second year of the renewal period, January 1 – June 30 of the odd year, the licensee must complete 24 CE hours.
- 2.3 Hardship. For good cause, the Board may grant extensions of the CE deadline or may grant waivers of the CE requirements. **Good cause** includes, but is not limited to disability, serious illness, extended absence from the country, exceptional family responsibilities, or unique personal hardship that is not the result of professional negligence or inadvertence. Requests for hardship extensions or waivers must be submitted to the Board in writing before the end of the licensing period for which the request is sought.
- 2.4 Board approval for Continuing Education (CE) Courses
  - 2.4.1 CE courses that are presented by a Chiropractic college accredited by the Council on Chiropractic Education (CCE) and are related to the practice of Chiropractic are approved, except courses on practice management or law other than Delaware law. These colleges and organizations do not have to submit Continuing Education Approval forms. It is the provider's responsibility to post and advertise their CE courses available.
  - 2.4.2 In order for licensees to receive credit for CE courses not sponsored by a Chiropractic college accredited by the CCE or presented by any other national or state Chiropractic organization, the course must be approved by the Board before the deadline for submission of a licensee's renewal application.

# PROPOSED REGULATIONS

2.4.2.1 CE course participants and providers may apply for pre-approval of courses by submitting a written request for approval that must include a program agenda, a syllabus indicating the time spent on each topic, the names and resumes of the presenters, and the number of CE hours requested. The Board may approve less than the number of hours requested.

2.5 Board approval of a licensee's CE hours in a specialty area is not a Board endorsement of the licensee's competence to practice that specialty.

## 3.0 Certification

~~Certification in any nationally recognized specialty for a licensee requires a minimum of 100 or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the American Chiropractic Association, the International Chiropractic Association, or any Board approved nationally recognized certification body.~~

**11-DE-Reg-348 (09/01/07)**

## 3.0 Renewal Requirements

3.1 The biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed sixty days; however, it is illegal to practice Chiropractic in the State of Delaware beyond the expiration date. Licensees who do not renew their license within sixty days of the expiration date must reapply under the licensure requirements of a new licensee and have 24 credits of continued education from the previous licensing period

3.2 Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.

3.3 Post-Renewal Audit. The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate of attendance or completion that must be signed by the course presenter or by a designated official of the sponsoring organization. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. All licensees renewing during the late renewal period shall be audited.

## 4.0 Continuing Education

4.4 Continuing Education for New Licensees:

4.1.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be pro-rated as follows:

<b>License Granted During First Year:</b>	<b>Credit Hours Required:</b>
July 1 – December 31	24 hours
January 1 – June 30	18 hours
<b>License Granted During Second Year:</b>	<b>Credit Hours Required:</b>
July 1 – December 31	12 hours
January 1 – June 30	0 hours

## 4.2 Continuing Education for Licensees other than new licensees:

4.2.1 ~~Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must attest to the satisfactory completion of twenty four (24) credit hours of Board approved continuing education within the immediately preceding two (2) year period. Effective July 1, 2006, of the required twenty four (24) credit hours of Board approved continuing education, a maximum of twelve (12) credit hours may be fulfilled by participating in online courses.~~

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

4.2.2 ~~Attestation of continuing education shall be submitted to the Division of Professional Regulation, Dover, Delaware, no later than June 30<sup>th</sup> of the reporting year and shall be received every two (2) years after such date. Continuing education completed before June 30<sup>th</sup> of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.~~

4.2.2.1 ~~All licensees shall maintain documentation of continuing education during the licensure period to be submitted if their renewal application is selected for audit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit the log and attendance verification.~~

~~4 DE Reg. 1940 (6/1/04)~~

~~8 DE Reg. 1586 (5/1/05)~~

~~9 DE Reg. 1766 (5/1/06)~~

~~10 DE Reg. 146 (7/1/06)~~

## 5.2 4.0 Inactive Status ~~and or~~ Termination of Practice.

4.1 Any licensee who seeks to be placed on inactive status or who is terminating his or her practice in this State or who is leaving this State and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three (3) years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his or her duly authorized representative. Except in an emergency situation where as much notice as is reasonably possible shall be given, the notice by publication shall be made at least ninety (90) days prior to termination of the practice or leaving the State and must be published at least 3 times over this ninety (90) day period and must explain how a patient can procure his or her patient records. All patients who have not requested their records thirty (30) days prior to the termination of the licensee's practice or the licensee leaving the State shall be notified by first class mail by the licensee to permit patients to procure their records. Any patient records that have not been procured within 7 years after the licensee terminates his or her practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

4.2 In order to reactivate an inactive license, the licensee must make a written request to the Board, submit 24 continuing education hours, and pay the renewal fee before the expiration date of the inactive status. If the written request to become active is not received before the expiration date, the licensee will have to reapply and meet the requirements of a new applicant regardless of the way they were originally licensed.

## 5.0 ~~Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records~~

5.1 ~~The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to~~

~~notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year. Licenses renewal may be accomplished online at <http://dpr.delaware.gov>.~~

## 5.3 5.0 Retention of Patient Records.

- ~~5.1~~ 5.1 Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for seven (7) years from the date of the last treatment.
- ~~5.4~~ 5.2 Whenever a patient changes from the care of one Chiropractor to another Chiropractor and upon the request of either the new Chiropractor or the patient the previous Chiropractor (a) may charge for the reasonable expenses of copying the patient's records and upon receiving payment for such expenses, shall transfer the patient's records to the new Chiropractor, or (b) if there is no copying charge, shall transfer the records of the patient to the new Chiropractor, within a reasonable time frame. Alternatively, if the patient and new Chiropractor agree, the Chiropractor may forward to the new Chiropractor a summary of the patient's records in lieu of the entire record at no charge to the patient. If a patient changes care from one Chiropractor to another Chiropractor, and fails to notify the previous Chiropractor or leaves the care of the previous Chiropractor for a period of 7 years from the date of the last treatment and fails to notify the previous Chiropractor, or fails to request the transfer of records to the new Chiropractor, then the previous Chiropractor shall maintain said records for a period of 7 years from the date of last treatment, after which time the records may be permanently disposed of in a manner that ensures confidentiality of the records.
- ~~5.5~~ 5.3 This rule shall not apply to a Chiropractor who has seen or treated a patient on referral from another Chiropractor and who has provided a record of the diagnosis or treatment to another chiropractor, hospital or agency which has provided treatment for the patient.
- ~~5.6~~ 5.4 A Chiropractor or the personal representative of the estate of a Chiropractor who disposes of patient records in accordance with the provisions of this rule is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

**4 DE Reg. 1940 (6/1/01)**

**5 DE Reg. 270 (9/1/01)**

**7 DE Reg. 36 (7/1/03)**

**10 DE Reg. 146 (7/1/06)**

## 6.0 Grounds for Discipline

- 6.1 Unprofessional Conduct in Advertising. Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.
- 6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:
- 6.2.1 The use of testimonials without written permission of that doctor's patient.
- 6.2.2 Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.
- 6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.
- 6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic Physician.
- 6.3 Unprofessional conduct with Patient, Employees, or Co-workers. Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place,

involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

**4 DE Reg. 1940 (6/1/01)**

**5 DE Reg. 270 (9/1/01)**

### **7.0 License to Practice Consulting**

A Chiropractor licensed ~~elsewhere~~ in another state, but not licensed in the State of Delaware may only practice chiropractic within the State of Delaware ~~only~~ in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period. The, which consultations shall be limited to examination, recommendation, or testimony in litigation. The Delaware licensed Chiropractor must inform the Board that a consulting Chiropractor is consulting with them and inform the Board of the terms of the consulting agreement.

### **8.0 Voluntary Treatment Option**

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 **Del.C.** §8807(n).

- 8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in section 8.8.
- 8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
  - 8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board.

Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

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

**4 DE Reg. 1940 (6/1/01)**

## 9.0 Crimes Substantially Related to the Practice of Chiropractic

- 9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of chiropractic in the State of Delaware without regard to the place of conviction:
- 9.1.1 ~~Manslaughter. 11 Del.C. §632.~~
  - 9.1.2 ~~Murder by abuse or neglect in the first degree. 11 Del.C. §634.~~
  - 9.1.3 ~~Murder in the second degree. 11 Del.C. §635.~~
  - 9.1.4 ~~Murder in the first degree. 11 Del.C. §636.~~
  - 9.1.5 ~~Rape in the second degree. 11 Del.C. §772.~~
  - 9.1.6 ~~Rape in the first degree. 11 Del.C. §773.~~
  - 9.1.7 ~~Continuous sexual abuse of a child. 11 Del.C. §778.~~
  - 9.1.8 ~~Dangerous crime against a child. 11 Del.C. §779.~~
  - 9.1.9 ~~Sexual exploitation of a child. 11 Del.C. §1108.~~
  - 9.1.10 ~~Unlawfully dealing in child pornography. 11 Del.C. §1109.~~

- 9.2 ~~Crimes substantially related to the practice of chiropractic shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.~~

### **8 DE Reg. 997 (1/1/05)**

- 9.1 The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Chiropractic in the State of Delaware without regard to the place of conviction:

- 9.2 For the purposes of this section the following definitions shall apply:

“Conviction” means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a “Robinson” or “Alford” plea unless the individual has been discharged under §4218 of Title 11 of the Delaware Code (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

“Jurisdiction” [Substantially similar crimes in another State or Jurisdiction] including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

- 9.3 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the Delaware Code Annotated:

#### Assaults and Related Offenses

- 9.3.1 §601. Offensive touching;
- 9.3.2 §602. Menacing;
- 9.3.3 §603. Reckless endangering in the second degree;
- 9.3.4 §604. Reckless endangering in the first degree;
- 9.3.5 §605. Abuse of a pregnant female in the second degree;
- 9.3.6 §606. Abuse of a pregnant female in the first degree;
- 9.3.7 §611. Assault in the third degree;
- 9.3.8 §612. Assault in the second degree;
- 9.3.9 §613. Assault in the first degree;
- 9.3.10 §614. Assault on a sports official.
- 9.3.11 §615. Assault by abuse or neglect;
- 9.3.12 §621. Terroristic threatening;

- 9.3.13 §625. Unlawfully administering drugs:
- 9.3.14 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs:
- 9.3.15 §629. Vehicular assault in the first degree;
- 9.3.16 §630. Vehicular homicide in the second degree;
- 9.3.17 §630A. Vehicular homicide in the first degree;
- 9.3.18 §631. Criminally negligent homicide;
- 9.3.19 §632. Manslaughter;
- 9.3.20 §633. Murder by abuse or neglect in the second degree;
- 9.3.21 §634. Murder by abuse or neglect in the first degree;
- 9.3.22 §635. Murder in the second degree;
- 9.3.23 §636. Murder in the first degree;
- 9.3.24 §645. Promoting suicide.

#### Abortion and Related Offenses

- 9.3.25 §651. Abortion;
- 9.3.26 §653. Issuing abortifacient articles.

#### Sexual Offenses

- 9.3.27 §763. Sexual harassment;
- 9.3.28 §765. Indecent exposure in the first degree;
- 9.3.29 §766. Incest;
- 9.3.30 §767. Unlawful sexual contact in the third degree;
- 9.3.31 §768. Unlawful sexual contact in the second degree;
- 9.3.32 §769. Unlawful sexual contact in the first degree;
- 9.3.33 §770. Rape in the fourth degree;
- 9.3.34 §771. Rape in the third degree;
- 9.3.35 §772. Rape in the second degree;
- 9.3.36 §773. Rape in the first degree;
- 9.3.37 §776. Sexual extortion;
- 9.3.38 §777. Bestiality;
- 9.3.39 §778. Continuous sexual abuse of a child;
- 9.3.40 §780. Female genital mutilation.

#### Kidnapping and Related Offenses

- 9.3.41 §781. Unlawful imprisonment in the second degree;
- 9.3.42 §782. Unlawful imprisonment in the first degree;
- 9.3.43 §783. Kidnapping in the second degree;
- 9.3.44 §783A. Kidnapping in the first degree;
- 9.3.45 §785. Interference with custody;

#### Coercion

- 9.3.46 §791. Acts constituting coercion;

- 9.4 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

#### Arson and Related Offenses

- 9.4.1 §801. Arson in the third degree;
- 9.4.2 §802. Arson in the second degree;
- 9.4.3 §803. Arson in the first degree;

#### Criminal Trespass and Burglary

9.4.4 §820. Trespassing with intent to peer or peep into a window or door of another:

9.4.5 §824. Burglary in the third degree:

9.4.6 §825. Burglary in the second degree:

9.4.7 §826. Burglary in the first degree:

9.4.8 §828. Possession of burglar's tools or instruments facilitating theft:

## Robbery

9.4.9 §831. Robbery in the second degree:

9.4.10 §832. Robbery in the first degree.

9.4.11 §835. Carjacking in the second degree:

9.4.12 §836. Carjacking in the first degree:

## Theft and Related Offenses

9.4.13 §840. Shoplifting; class G felony:

9.4.14 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.

9.4.15 §841. Theft:

9.4.16 §842. Theft; lost or mislaid property; mistaken delivery.

9.4.17 §843. Theft; false pretense.

9.4.18 §844. Theft; false promise.

9.4.19 §845. Theft of services.

9.4.20 §846. Extortion:

9.4.21 §848. Misapplication of property:

9.4.22 §849. Theft of rented property:

9.4.23 §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.

9.4.24 §851. Receiving stolen property:

9.4.25 §854. Identity theft:

9.4.26 §860. Possession of shoplifter's tools or instruments facilitating theft:

## Forgery and Related Offenses

9.4.27 §861. Forgery; class F felony:

9.4.28 §862. Possession of forgery devices:

## Offenses Involving Falsification of Records

9.4.29 §871. Falsifying business records:

9.4.30 §872. Falsifying business records:

9.4.31 §873. Tampering with public records in the second degree:

9.4.32 §876. Tampering with public records in the first degree:

9.4.33 §877. Offering a false instrument for filing:

9.4.34 §878. Issuing a false certificate:

## Bribery Not Involving Public Servants

9.4.35 §881. Bribery:

9.4.36 §882. Bribe receiving:

## Frauds on Creditors

### Other Frauds and Cheats

9.4.37 §900. Issuing a bad check:

9.4.38 §903. Unlawful use of credit card:

9.4.39 §903A. Reencoder and scanning devices:

9.4.40 §906. Deceptive business practices:

9.4.41 §907. Criminal impersonation:

- 9.4.42 §907A. Criminal impersonation, accident related;
- 9.4.43 §907B. Criminal impersonation of a police officer;
- 9.4.44 §909. Securing execution of documents by deception;
- 9.4.45 §911. Fraudulent conveyance of public lands;
- 9.4.46 §912. Fraudulent receipt of public lands;
- 9.4.47 §913. Insurance fraud;
- 9.4.48 §913A. Health care fraud;

#### Computer Related Offenses

- 9.4.49 §933. Theft of computer services.
- 9.4.50 §934. Interruption of computer services.
- 9.4.51 §938. Failure to promptly cease electronic communication upon request.

#### Offenses Relating to Marriage

- 9.4.52 §1001. Bigamy;
- 9.4.53 §1003. Bigamous marriage contracted outside the State.

- 9.5 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

#### Child Welfare; Sexual Offenses, Animal Offenses

- 9.5.1 §1100. Dealing in children;
- 9.5.2 §1101. Abandonment of child;
- 9.5.3 §1102. Endangering the welfare of a child;
- 9.5.4 §1105. Endangering the welfare of an incompetent person;
- 9.5.5 §1106. Unlawfully dealing with a child;
- 9.5.6 §1107. Endangering children;
- 9.5.7 §1108. Sexual exploitation of a child;
- 9.5.8 §1109. Unlawfully dealing in child pornography;
- 9.5.9 §1111. Possession of child pornography;
- 9.5.10 §1112. Sexual offenders; prohibitions from school zones.
- 9.5.11 §1112A. Sexual solicitation of a child;
- 9.5.12 §1113. Criminal non-support and aggravated criminal non-support.
- 9.5.13 §1117. Notice;
- 9.5.14 §1325. Cruelty to animals;
- 9.5.15 §1326. Animals; fighting and baiting prohibited (Felony only);

- 9.6 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

#### Bribery and Improper Influence

- 9.6.1 §1201. Bribery;
- 9.6.2 §1203. Receiving a bribe;

#### Perjury and related offenses

- 9.6.3 §1221. Perjury in the third degree;
- 9.6.4 §1222. Perjury in the second degree;
- 9.6.5 §1223. Perjury in the first degree;
- 9.6.6 §1233. Making a false written statement;
- 9.6.7 §1239. Wearing a disguise during the commission of a felony;
- 9.6.8 §1240. Terroristic threatening of public officials or public servants;
- 9.6.9 §1243. Obstructing fire-fighting operations;

- 9.6.10 §1244. Hindering prosecution;
  - 9.6.11 §1245. Falsely reporting an incident;
  - 9.6.12 §1249. Abetting the violation of driver's license restrictions;
  - 9.6.13 §1250. Offenses against law-enforcement animals;
  - 9.6.14 §1254. Assault in a detention facility (Felony only)
  - 9.6.15 §1257A. Use of an animal to avoid capture (Felony only);
  - 9.6.16 §1259. Sexual relations in detention facility;
- Offenses Relating to Judicial and Similar Proceedings

- 9.6.17 §1261. Bribing a witness;
- 9.6.18 §1262. Bribe receiving by a witness;
- 9.6.19 §1263. Tampering with a witness;
- 9.6.20 §1263A. Interfering with child witness.
- 9.6.21 §1264. Bribing a juror;
- 9.6.22 §1265. Bribe receiving by a juror;
- 9.6.23 §1266. Tampering with a juror;
- 9.6.24 §1267. Misconduct by a juror;
- 9.6.25 §1269. Tampering with physical evidence;
- 9.6.26 §1271A. Criminal contempt of a domestic violence protective order;
- 9.6.27 §1273. Unlawful grand jury disclosure.

- 9.7 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the **Delaware Code Annotated** which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

- 9.7.1 §1302. Riot;
- 9.7.2 §1304. Hate crimes;
- 9.7.3 §1311. Harassment;
- 9.7.4 §1312. Aggravated harassment;
- 9.7.5 §1312A. Stalking;
- 9.7.6 §1313. Malicious interference with emergency communications;
- 9.7.7 §1335. Violation of privacy (Felony only);
- 9.7.8 §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;
- 9.7.9 §1339. Adulteration;

Offenses Involving Public Indecency

- 9.7.10 §1342. Prostitution;
- 9.7.11 §1343. Patronizing a prostitute prohibited.
- 9.7.12 §1351. Promoting prostitution in the third degree;
- 9.7.13 §1352. Promoting prostitution in the second degree;
- 9.7.14 §1353. Promoting prostitution in the first degree;
- 9.7.15 §1355. Permitting prostitution;

Obscenity

- 9.7.16 §1361. Obscenity; acts constituting;
- 9.7.17 §1365. Obscene literature harmful to minors;

- 9.8 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or

# PROPOSED REGULATIONS

judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:

- 9.8.1 §4751. Prohibited acts A;
  - 9.8.2 §4752. Prohibited acts B;
  - 9.8.3 §4752A. Unlawful delivery of noncontrolled substance.
  - 9.8.4 §4753. Prohibited acts C.
  - 9.8.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.
  - 9.8.6 §4754. Prohibited acts D;
  - 9.8.7 §4754A. Possession and delivery of noncontrolled prescription drug.
  - 9.8.8 §4755. Prohibited acts E;
  - 9.8.9 §4756. Prohibited acts;
  - 9.8.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;
  - 9.8.11 §4761. Distribution to persons under 21 years of age;
  - 9.8.12 §4761A. Purchase of drugs from minors;
  - 9.8.13 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;
  - 9.8.14 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship.
- 9.9 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

## Offenses Involving Deadly Weapons and Dangerous Instruments

- 9.9.1 §1442. Carrying a concealed deadly weapon;
- 9.9.2 §1443. Carrying a concealed dangerous instrument;
- 9.9.3 §1444. Possessing a destructive weapon;
- 9.9.4 §1445. Unlawfully dealing with a dangerous weapon;
- 9.9.5 §1447. Possession of a deadly weapon during commission of a felony;
- 9.9.6 §1447A. Possession of a firearm during commission of a felony;
- 9.9.7 §1448. Possession and purchase of deadly weapons by persons prohibited;
- 9.9.8 §1448A. Criminal history record checks for sales or firearms;
- 9.9.9 §1449. Wearing body armor during commission of felony;
- 9.9.10 §1450. Receiving a stolen firearm;
- 9.9.11 §1451. Theft of a firearm;
- 9.9.12 §1452. Unlawfully dealing with knuckles-combination knife;
- 9.9.13 §1454. Giving a firearm to person prohibited;
- 9.9.14 §1455. Engaging in a firearms transaction on behalf of another;
- 9.9.15 §1456. Unlawfully permitting a minor access to a firearm;
- 9.9.16 §1457. Possession of a weapon in a Safe School and Recreation Zone;
- 9.9.17 §1458. Removing a firearm from the possession of a law enforcement officer;
- 9.9.18 §1459. Possession of a weapon with a removed, obliterated or altered serial number;

## Offenses Involving Drug Paraphernalia

- 9.9.19 §4774. Penalties.

## Offenses Involving Organized Crime and Racketeering

- 9.9.20 §1504. Criminal Penalties for Organized Crime & Racketeering

## Offenses Involving Intimidation of Victims or Witnesses

- 9.9.21 §3532. Acts of Intimidation: Class E felony

- 9.9.22 §3533. Aggravated act of intimidation, Class D felony  
Other Crimes
- 9.9.23 §3532. Act of intimidation;
- 9.9.24 §3533. Aggravated act of intimidation;
- 9.9.25 §3534. Attempt to intimidate;
- 9.9.26 §8523. Penalties [for violation of reporting provision re: SBI];
- 9.9.27 Title 21 §2118A. Unlawful possession or manufacture of proof of insurance;
- 9.9.28 §2133. Penalties; jurisdiction of justices of the peace.
- 9.9.29 §2315. False statements;
- 9.9.30 §2620. False statements; incorrect or incomplete information;
- 9.9.31 §2752. False statements;
- 9.9.32 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.
- 9.9.33 Title 23 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs (Felony only);
- 9.9.34 §4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties (Felony only).
- 9.9.35 §4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs (Felony only);
- 9.9.36 §4202. Duty of driver involved in accident resulting in injury or death to any person;
- 9.9.37 §6704. Receiving or transferring stolen vehicle;
- 9.9.38 Title 30 §571. Attempt to evade or defeat tax;
- 9.9.39 §572. Failure to collect or pay over tax;
- 9.9.40 §573. Failure to file return, supply information or pay tax;
- 9.9.41 §574. Fraud and false statements;
- 9.9.42 §3913. Welfare violations [knowing or reckless abuse of an infirm adult]
- 9.10 Any crime which is a violation of Title 24, Chapter 7 as it may be amended from time to time.
- 9.11 The Board reserves the jurisdiction and authority to modify this regulation as necessary and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 **Del.C.** §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by an applicant for licensure as a chiropractor and to determine whether to waive the disqualification under 24 **Del.C.** §707(a)(5).
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**Symbol Key**

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

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**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 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on February 8, 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 Rules 2.3.2 and 5.1.22.4 in the January 1, 2011 *Register of Regulations* (Volume 13, issue 3) and for two consecutive weeks in January in the *News Journal* and in the *Delaware State News*. The Commission proposed to update Rules 2.3.2 and 5.1.22.4 in its entirety after Rules Committee review.
2. The Commission received no written comments. The Commission held a public hearing on February 8, 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 changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

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

IT IS SO ORDERED THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2011.

\*Please note that no changes were made to the regulation as originally proposed and published in the January 2011 issue of the *Register* at page 9602 (14 DE Reg. 602). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**501 Harness Racing Rules and Regulations**

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

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

**ORDER**

**Long-Term Care Program – Pre-Admission Screening and Resident Review**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend Long-Term Care program policies in the Division of Social Services Manual (DSSM) regarding *Pre-Admission Screening and Resident Review (PASRR)*. 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 January 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care Program, specifically, *Pre-Admission Screening and Resident Review*.

**Statutory Authority**

- The Omnibus Budget Reconciliation Act of 1987
- Social Security Act §1919(e)(7), *State requirements for preadmission screening and resident review*.
- 42 CFR §§483.100 – 483.116, Preadmission Screening and Annual review of Mentally Ill and Mentally Retarded Individuals

**Background**

The Omnibus Reconciliation Act of 1987 (OBRA) and P.L. 100-203, Section 4211(c)(7), and OBRA 1990 contain provisions with major implications for persons with mental illness or mental retardation who are applying to

or residing in a nursing facility. The provisions were designed to eliminate the practice of inappropriately placing persons with mental illness, mental retardation and related conditions in Medicaid-certified nursing facilities.

Specifically, the PASRR program must ensure that the following conditions are met.

- That no person may be admitted to a Medicaid-certified nursing facility without first being screened for mental illness and mental retardation. This provision applies to the source of nursing facility placement.
- That as a result of this preadmission screening, referred to as the Level I, persons who appear to have a mental illness, mental retardation or related condition will undergo additional screening, referred to as the Level II, to determine if their needs can be met safely in a Medicaid certified nursing facility, with or without specialized services.

Public Law 104-315, signed into law on October 19, 1996, amends Title XIX of the Social Security Act to repeal the requirement for an annual resident review. The amendment requires nursing facilities to notify the state mental health or mental retardation authority, as applicable, of a significant change in the physical or mental condition of a resident who has a serious mental illness or mental retardation. The change in condition must affect either the resident's need for continued nursing facility placement or for specialized services. A review and determination under Section 1919(e)(7) of the Act must be done promptly after the nursing facility notifies the state mental health or mental retardation authority of the significant change in condition.

### Summary of Proposed Change

The Division of Medicaid and Medical Assistance (DMMA) proposes to amend DSSM 20102 to add language at new **DSSM 20102.3**, *Pre-Admission Screening and Resident Review Overview* and new **DSSM 20102.3.1**, *Pre-Admission Screening and Resident Reviews* to reflect current Medicaid policy regarding preadmission screening and resident review (PASRR) for all persons applying for admission to or residing in a nursing facility. The addition of this new rule is consistent with current PASRR evaluation policy and procedures that determines whether (1) the person requires nursing facility level of care and, if so, (2) whether the person also requires specialized services (active treatment).

### Fiscal Impact Statement

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

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

### GACEC and SCPD

As background, Congress enacted legislation in the 1980s and 1990s to address "dumping" of persons with mental retardation (a/k/a intellectual disability) and mental illness in nursing homes. Federal law requires screening of persons with mental illness, mental retardation, or related conditions prior to admission to a Medicaid-certified nursing facility. The State has implemented this requirement by conducting Pre-admission Screenings and Resident Reviews (PASRR). DMMA is now adopting a regulation which further defines responsibilities and the process. The Councils have the following observations.

First, the regulation is inconsistent. It sometimes mentions "related conditions" (PAS POL 20102.3.1, §3) and sometimes omits the reference (PAS POL 20102.3; and PAS POL 20102.3.1, §§2 and 5). DMMA may wish to insert a reference to "related conditions" in the sections in which the reference is omitted. Alternatively, some states subsume "mental retardation and related conditions" under the rubric of "developmental disability" which is defined. See attached Wisconsin form. Other states (e.g. N.C.) use acronyms of MI, MR, and RC. Delaware's DLTCRP

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refers to screening of individuals with “mental illness, mental retardation, and developmental disabilities”. See 16 DE Admin. Code 3201, §6.3.4.

**Agency Response:** The regulation is amended and indicated by **[Bracketed Bold Text]**. DMMA will add “related condition” to the following sections of PAS POL 20102.3, 20102.3.1 #2, #5 and #7.

Second, in PAS POL 20102.3.1, §7, it is particularly important to include a reference to “related conditions” to ensure that DDDS is not only reviewing to identify mental retardation to the exclusion of TBI, autism, etc. Section 7 would also benefit from inclusion of a sentence similar to the first sentence in §6. Consider some variation of the following: “DDDS will assess individual and review documentation to verify whether the individual meets diagnostic criteria of mental retardation or related condition.”

**Agency Response:** DMMA agrees and will add the following sentence to PAS POL 20102.3.1 #7: *DDDS will assess individual and review documentation to verify whether or not diagnostic criteria of mental retardation or related conditions are met.* The amended regulation is indicated by **[Bracketed Bold Text]**.

Third, PAS POL 20102.3.1, §10 indicates that DMMA will issue the final determination letter. It would be preferable to include a recital that the letter (a/k/a “notice”) will include appeal rights. Parenthetically, there appears to be some inconsistency between the §10 recital that DMMA will issue the final determination and the DSS regulation reproduced below contemplating appeals of the DSAMH and DDDS decisions to DSS with no mention of DMMA decisions. DMMA may wish to review this ostensible inconsistency with DSS.

#### **5304.1 Jurisdiction for PASARR Hearings**

1. An individual who has been adversely affected by any determination made by either the Division of Mental Health (DMH) or the Division of Developmental Disabilities Services (DDDS) as a result of a pre-admission screening or an annual resident review (PASARR) of any applicant for or recipient of residential nursing services may appeal the determination decision under these rules. The hearing will be conducted by the Division of Social Services and the hearing decision is binding on the Department of Health and Social Services. For hearings on PASARR determinations which have a specific affect on Medicaid Program eligibility, DSS will appear as a witness for DDDS or DMH if requested by a party to the hearing. For appeals initiated by non-Medicaid claimants or appellants, the State's case will be presented by DDDS or by DMH as appropriate.

**Agency Response:** This section of policy refers to a final determination letter that is issued by the DMMA medical unit. This is not an official denial notice. A denial notice is generated as part of the application process and does include information regarding appeal rights. Additionally, DMMA will add the following sentence to PAS POL 20102.3.1, §10: *Final PASRR determinations will be issued by DMMA.*

#### **DHCFA**

Overall, we welcome the Regulations which mirror Federal Regulations, specifically, the Omnibus Reconciliation Act of 1987 (OBRA) and P.L. 100-203, Section 4211 (c)(7), and OBRA 1990 that contain provision with major implications for persons with mental illness or mental retardation and related conditions in Medicaid-certified nursing facilities.

In the proposed language it states that the addition of this new rule is consistent with current State PASRR evaluation policy and procedures that determines whether (1) the person requires nursing facility level of care and, if so, (2) whether the person also requires specialized services (active treatment).

We offer comment because over the years many of our providers have experienced difficulties with regard to what was initially declared to have been short term rehabilitation admissions from group homes through DDDS, from psych group homes, short term respite admissions through APS, short term rehabilitation admissions from the community through Diamond State, DPCI and Unison and some that are coming in directly from the community with undiagnosed or under diagnosed psych and behavioral issues which then end up being longer or long term admissions that fall beyond the scope of the Convalescent Care Exemption (30 days).

In many cases, group homes and or families were not willing to accept these individuals back and providers could not discharge them because of our residents' rights and because of lack of services for MI/MR.

Today, many providers do not even consider these types of admits because of this ongoing and unresolved issue which causes facilities in many cases to have to apply for emergency guardianships to be able to apply for long term care Medicaid to be assured payment while at the same time having to pursue a safe discharge plan to a more appropriate setting, which is often nonexistent.

We respectfully request clarification on how Delaware's process will address these concerns in view of the fact that Delaware's Residents Rights is very prescriptive and makes discharge from any LTC facility near impossible.

It is our opinion that Delaware's Residents Rights must be revisited and addressed to avoid the negative impact these practices are having on the quality of care and life of the very individuals they attempt to protect and to balance the scales of fairness with providers who are often stuck for doing the right thing.

When the Residents Rights Statute was drafted, it was claimed that they were needed because LTC Providers were "patient dumping". It appears that now unfortunately others are doing just this without any legal ramification.

Finally, we have concerns with CMS's latest documents regarding PASRR. Both are attached. The first is the critical element pathway for PASRR. The second is the new entrance conference worksheet where providers will list residents who receive level 2 services.

The problems that exist in Delaware is that even when there is a psychologist or assessing professional recommending specialized services for MI/MR, the individual will go on a list to wait for services- because they are scarce if not non-existent. So we have a double issue, we can't discharge because of resident rights, and even if we could discharge there is no place to send them. Meanwhile our facility staff does the best that they can while hoping to receive payment and praying they are not cited.

We respectfully request clarification on how Delaware's process will address these concerns in view of the fact that payment may well be declined as a result of CMS's latest PASRR documentation processes.

In conclusion, DHCFA membership considers itself a partner with the State of Delaware and wants to work with the State and its agencies to do what is best for those requiring services throughout the continuum, however balance and fair processes must be put in place. It is time to address the "elephant in the room"- lack of services for those with M/I and to come up with a workable plan to care for these individuals. They are deserving of no less.

**Agency Response:** DMMA thanks the DHCFA for expressing these concerns. We respectfully advise that your comments are about subjects that are outside the scope of the proposed regulation, for example, Delaware Resident's Rights, CMS documents, availability of, or lack thereof MI/MR specialized services; and, therefore, will not be addressed in the final regulation. No change to the regulation was made as a result of these comments.

### FINDINGS OF FACT

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation regarding the Long-Term Care Program, specifically, *Pre-Admission Screening and Resident Review (PASRR)* is adopted and shall be final effective March 10, 2011.

Rita M. Landgraf, Secretary, DHSS

### DMMA FINAL ORDER REGULATION #11-06

#### REVISION:

#### **PAS POL 20102.3 PRE-ADMISSION SCREENING AND RESIDENT REVIEWS (PASRR) OVERVIEW**

By Federal mandate, all individuals applying for placement in a Medicaid certified nursing facility, regardless of pay source, must have a Level I Pre-Admission Screening and Resident Review (PASRR) for Mental Illness (MI) or Mental Retardation (MR)[/Related Condition (RC)].

Based on results of a Level I PASRR Screening, the PAS RN may determine that further screening, a Level II PASRR, is warranted. A Level II PASRR evaluates clients with MI and MR[/RC] and determines if nursing home placement, either with or without specialized services, is appropriate. In addition to the PAS RN, an Independent

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Contracted Psychiatrist also makes placement recommendations. However, the final decision on appropriate placement for individuals with MI or MR[/RC] is made by the State Mental Health Authority for MI or the Division of Developmental Disabilities Services for MR[/RC].

## **PAS POL 20102.3.1 PRE-ADMISSION SCREENING AND RESIDENT REVIEWS (PASRR)**

This applies to all nursing home applicants or residents of a Medicaid certified nursing facility (NF) regardless of payment source or diagnoses.

### **1. DMMA is Responsible for PASRR Oversight**

DMMA will assure PASRR program operates in accordance with federal regulations.

### **2. A Level I PASRR Screening is completed on all residents or potential residents of a Medicaid certified Nursing home.**

A Level I screening is the process of identifying individuals who are suspected of having a mental illness or mental retardation or if categorical determinations are met.

The Nursing Facility is responsible for completing the Level I screening for non-Medicaid individuals.

The Division of Medicaid and Medical Assistance is responsible for completing the Level I screening for Medicaid and potential Medicaid individuals when notified.

### **3. Determination is made regarding the need for a Level II PASRR screening.**

Based on the Level I screening, the individual will meet one of three categories:

- No indication of mental illness/mental retardation/related condition – nursing home admission/continued stay is appropriate - No further evaluation is needed.
- There are indicators of mental illness/mental retardation/related condition however individual meets any of the following Physician's Exemption Criteria:
  - Primary Diagnosis of Dementia or related disorder.
  - Convalescent Care not to exceed 30 days - PAS nurses will track this exemption and initiate Level II PASRR evaluation prior to expiration if continued NF stay is warranted.
  - Terminal Illness – a life expectancy of 6 months or less if the illness runs its normal course.
  - Medical dependency with a severe physical illness.

No further evaluation is needed at this time.

- There are indicators of mental illness, mental retardation/related conditions – Needs complete PASRR Assessment (Level II).

### **4. DMMA will coordinate the Level II screening for all Medicaid and non-Medicaid individuals.**

DMMA PAS nurse will gather data for Level II PASRR screening.

Data is reviewed with DMMA Nurse Supervisor for approval to continue with the Level II screening.

### **5. The individual and/or legal representatives must receive written notice that further evaluation is needed.**

The notice must inform them that the individual is being referred for Level II Evaluation to DSAMH due to mental illness indicators or to DDDS due to mental retardation[/related condition].

### **6. An Independent Psychiatric Consultant (IPC) will complete the Level II Evaluation for those with mental illness/indicators.**

The IPC will assess individual and review documentation to verify whether or not there is a serious MI.

**[DDDS will assess individual and review documentation to verify whether or not diagnostic criteria of mental retardation or related conditions are met.]**

The Level II evaluation may be terminated at any time if the evaluator determines that no Mental Illness is present.

**7. DDDS will complete the Level II Evaluation for those with mental retardation/indicators.**

[DDDS will assess individual and review documentation to verify whether or not diagnostic criteria of mental retardation or related conditions are met.]

The Level II evaluation may be terminated at any time if the evaluator determines that no Mental Retardation [or related conditions] is present.

**8. DSAMH or DDDS Determines Need For Specialized Services and /or NF Services.**

DSAMH will review IPC's recommendations and determine need for Specialized Services and/or NF services.

**9. DMMA is notified by DSAMH/DDDS of final determination.****10. DMMA will send final determination letter to:**

- Individual/applicant;
- Legal Representative;
- Admitting or retaining NF;
- Attending Physician;
- Discharging hospital – if exemption is not applicable.

[Final PASRR determinations will be issued by DMMA.]

14 DE Reg. 616 (01/01/11)

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**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**Food Supplement Program**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Mandatory Verifications*. 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 January 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGES**

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Mandatory Verification*.

**Statutory Authority**

7 CFR §273.2(f)(1), *Mandatory verification*

## Summary of Proposed Changes

**DSSM 9032: *Mandatory Requiring Verification*:** The purpose and effect of the proposed amendment is to change the policy to allow self-declaration of shelter, utility and dependent care expenses. Additional changes are proposed to rename this section to better describe its content and to reformat and reorganize original text to simplify language and improve readability.

## 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.

First, the Councils appreciate that there are multiple consumer-oriented provisions. For example, §1.B.1 recites as follows: "If an alien does not wish DSS to contact INS to verify his or her immigration status, give the household the option of withdrawing its application or participating without that member."

**Agency Response:** Thank you; DSS acknowledges your appreciation.

Second, §1.H. 1 could be cause for concern. It recites as follows: "The disability must be one considered permanent under the Social Security Act." The Social Security Administration general standard for SSI and SSDI benefits is that the disability must either be expected to last for at least 1 year or result in death. See attached Q&A document. The second SSA attachment recites as follows:

Most of the listed impairments are permanent or expected to result in death, or the listing includes a specific statement of duration is made. For all other listings, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.

In many cases, an individual will not know the precise "listing" upon which his/her SSI/SSDI benefits are based. Moreover, individuals may be found eligible if their condition(s) do not meet a listing but are functionally equivalent to a listing. Unless USDA regulations require DSS to limit disability eligibility to SSI/SSDI beneficiaries with a "permanent" disability as juxtaposed to beneficiaries awaiting death or with 12-month+ conditions, we recommend amending this section. Consider the following alternative: "The disability must be one considered permanent or expected to last more than 12 months or result in death under the Social Security Act."

**Agency Response:** No change is being made to this section. Title 7 CFR §271.2 establishes the standard which is contained in this section of the manual. It requires a food benefit applicant to meet disability requirements as defined under Section 221 (i) of the Social Security Act.

Third, in §1.H.2.ii, consider substituting "chronic" for "permanent". Alternatively, consider the following substitute: "...s/he suffers from some other severe physical or mental disease or non-disease related disability considered permanent or expected to last more than 12 months or result in death."

**Agency Response:** No change is being made to this section. We are again required to use the standard which is contained at Title 7 CFR §271.2. The standard uses the word "permanent".

Fourth, in §1.H.2.ii, consider the following amendment: "...statement from a physician, advanced practice nurse, or licensed or certified psychologist...". As a practical matter, many individuals are now primarily treated by an advanced practice nurse rather than a traditional physician. Advanced practice nurses are authorized to perform independent acts of diagnosis and prescribe drugs. See Title 24 Del.C. §1902(b)(1). State law bars health insurers from denying benefits for eligible services when provided by an advanced practice nurse instead of a physician. See Title 18 Del.C. §2318. The attached December 28, 2010 News Journal article underscores that many individuals are primarily treated by advanced practice nurses.

**Agency Response:** DSS is also required to use the FNS Title 7 CFR§273.2 (f) (1) (viii) (4) standard which is reflected in the language of the proposed regulation. No change to the regulation was made as a result of this comment.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 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 Food Supplement Program (FSP), specifically, *Requiring Verification* is adopted and shall be final effective March 10, 2011.

Rita M. Landgraf, Secretary, DHSS

\*Please note that no changes were made to the regulation as originally proposed and published in the January 2011 issue of the *Register* at page 620 (14 DE Reg. 620. Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Food Supplement Program**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)  
7 DE Admin. Code 1124

Secretary's Order No.: 2011-A-0003

#### 1124 Control of Volatile Organic Compound Emissions

Section 8.0, "Handling, Storage, and Disposal of Volatile Organic Compounds";  
Section 13.0, "Automobile and Light-Duty Truck Coating Operations"; Section 16.0, "Paper Coating";  
Section 23.0, "Coating of Flat Wood Paneling"; Section 37.0, "Graphic Art Systems";  
and Section 45.0, "Industrial Cleaning Solvents"

Date of Issuance: January 20, 2011

Effective Date of the Amendment: March 11, 2011

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

#### Background and Procedural History

This Order considers proposed regulation amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions: Section 8.0, "Handling, Storage, and Disposal of Volatile Organic Compounds"; Section 13.0, "Automobile and Light-Duty Truck Coating Operations"; Section 16.0, "Paper Coating"; Section 23.0, "Coating of Flat Wood Paneling"; Section 37.0, "Graphic Art Systems"; and Section 45.0, "Industrial Cleaning Solvents". It should be noted that this regulatory promulgation initially included additional proposed amendments to be made to 7 DE Admin. Code 1124, at Section 47.0, "Offset Lithographic Printing". The Department has, at this

time, formally withdrawn the proposed amendments to Section 47.0, as substantive changes to the same were necessitated as a result of the public comment received by the Department in this matter. The Department will be addressing its revised proposed amendments to Section 47.0 of 7 **DE Admin. Code** 1124 in a separate regulatory promulgation in the immediate future.

Section 182(b)(2) of the Clean Air Act requires that all ozone non-attainment areas, including Delaware, must develop or update relevant regulations to implement Reasonably Available Control Technology controls on emission sources covered in the U.S. Environmental Protection Agency ("EPA")'s Control Techniques Guidelines ("CTG"), or Alternative Control Techniques, and submit the regulations to EPA as State Implementation Plan revisions.

The aforementioned six sections of 7 **DE Admin. Code** 1124 addressed within these proposed regulation amendments were originally developed in the early 1990's, based on EPA's CTGs. From September 2006 to September 2008, the EPA updated relevant CTGs to reflect technology developments or to expand Volatile Organic Compound ("VOC") emission controls. The aforementioned proposed revisions reflect DNREC's incorporation of the recent CTG information into existing Delaware Regulation 1124.

The Department's Air Quality Management (AQM) Section of the Division of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notices 2009-14, 2009-22, 2009-23, 2009-26, 2009-24, and 2009-25. The Department published the proposed regulatory amendments in the May 1, 2010 *Delaware Register of Regulations* and held a public hearing on June 2, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 12, 2010 (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 adopt the Report to the extent it is consistent with this Order. The Department's experts in AQM developed the record and drafted the proposed Amendments. It should be noted that the Department received no public comments with regard to the proposed amendments to the aforementioned Sections to 7 **DE Admin. Code** 1124.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of these Amendments. With the adoption of these regulatory amendments, Delaware will have the Department's regulations conform to EPA's regulations, as required by the Clean Air Act.

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 June 2, 2010 on the proposed Amendments in order to consider public comments 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 do not reflect any substantive changes from the proposed regulation Amendments as published in the May 1, 2010, *Delaware Register of Regulations*;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to conform to new CTG as issued by the EPA; (2) the Department's revisions to 7 **DE Admin. Code** 1124 will enable Delaware to do the following: (i) add a new definition section and update the existing work practice standards according to the new CTGs with regard to the handling, storage, and disposal of VOC [Section 8.0]; (ii) set more stringent VOC limits for automobile and light-duty truck coating operations [Section 13.0]; (iii) expand the regulated scope from paper coating units only to "paper, film and foil coating units" [Section 16.0]; (iv) create a more stringent and

uniform standard for all 5 coatings of flat wood paneling products [Section 23.0]; (v) add provisions for flexible packaging printing presses and establish efficiency requirements for control systems to be installed on the flexible packaging printing presses [Section 37.0]; and (vi) clarifies that the regulatory requirements for industrial cleaning solvents are triggered based on a limit of "VOC emissions" rather than "solvent used" [Section 45.0]; and (3) the regulation amendments are well supported by documents in the record; and that

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

Collin P. O'Mara, Secretary

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

**1124 Control of Volatile Organic Compound Emissions**

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 2701 (7 Del.C. §2701)  
7 DE Admin. Code 3214

**Secretary's Order No.: 2010-F-0043**

**3214 Horseshoe Crab Annual Harvest Limit**

**Date of Issuance: December 21, 2010**

**Effective Date of the Amendment: March 11, 2011**

**I. Background:**

A public hearing was held on Wednesday, November 23, 2010, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to amend 7 DE Admin. Code 3214, Horseshoe Crabs – Annual Harvest Limit. The Department is proposing these regulation amendments in order to be in compliance with the provisions of the Atlantic States Marine Fisheries Commission, Addendum VI, to the Interstate Fishery Management Plan for Horseshoe Crab. Failure to comply with said provisions could result in complete closure of a specific fishery in Delaware.

Horseshoe crabs are managed under an Interstate Fisheries Management Plan ("IFMP") developed and implemented by the Atlantic States Marine Fisheries Commission ("ASMFC"), of which Delaware is fully represented. The previous addendum (Addendum V) has now expired, and the Horseshoe Management Board has adopted Addendum VI to the IFMP. The development of this newest Addendum was based on input from multiple sources, including the Horseshoe Crab Technical Committee, the Shorebird Technical Committee, Adaptive Research Management Work Group, Horseshoe Crab Advisory Panel, the Horseshoe Crab Stock Assessment Subcommittee, the Stock Assessment Peer Review Panel, and testimony from four public hearings held in Delaware, Maryland, New Jersey and Virginia.

The protocol for horseshoe crab management included in IFMP's Addendum VI is precautionary, due to the uncertainty surrounding the recovery of the Delaware Bay Region population and the importance of the species and its ecological role throughout the region. Addendum VI maintains the existing management for the Delaware Bay Region. Under the provisions of Addendum VI, Delaware's annual quota allocation will remain at 100,000 male-only horseshoe crabs. The Department's proposed amendments to Delaware's existing regulations regarding

this species will allow male horseshoe crabs to be harvested from June 8 through December 31, or until Delaware's annual quota is landed. No female horseshoe crabs may be taken and/or harvested at any time. The above provisions for horseshoe crab management here in Delaware will remain in effect through April of 2013, unless changed through another IFMP Addendum prior to that time. It should be noted that, if Delaware's annual horseshoe crab quota allocation is exceeded in any calendar year, the overage is deducted from the following year's quota.

The Department published the proposed regulatory amendments in the November 1, 2010 *Delaware Register of Regulations*. Public comments were received from the public during the pre-hearing phase of this proceeding, as well as at the time of the public hearing held on November 23, 2010. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on November 23, 2010, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated December 13, 2010, and that Report in its entirety is expressly incorporated herein by reference.

## **II. Findings:**

The Department has provided sound reasoning with regard to the proposed amendments to **7 DE Admin. Code 3214, Horseshoe Crabs – Annual Harvest Limit**, as reflected in the Hearing Officer's Memorandum of November 23, 2010, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, **7 Del.C. §2701** to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of the aforementioned proposed amendments to **7 DE Admin. Code 3214** will enable Delaware to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission, thus preventing any closures of specific fisheries in Delaware;
7. The aforementioned proposed amendments to **7 DE Admin. Code 3214** will extend the effective date of Delaware's annual horseshoe crab quota allocation through April 30, 2013, in accordance with the provisions of Addendum VI to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab, to wit: the annual harvest limit for horseshoe crabs taken and/or landed in Delaware shall be 100,000 males, for a period extending from November 1, 2010 through April 30, 2013, or whatever the ASMFC has approved as Delaware's current annual quota. No female horseshoe crabs may be taken/landed at any time;
8. Additionally, if Delaware's annual horseshoe crab quota allocation is exceeded in any calendar year, the aforementioned proposed amendments to **7 DE Admin. Code 3214** will cause any year's allocation overage to be deducted from the following year's allocation, thus keeping Delaware in compliance with the ASMFC's IFMP for Horseshoe Crab;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
10. The Department's proposed regulation, as published in the November 1, 2010 *Delaware Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*; and

11. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

### III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated December 13, 2010 and expressly incorporated herein, it is hereby ordered that the proposed amendments to 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit be promulgated in final form in the customary manner and established rule-making procedure required by law.

### IV. Reasons:

The promulgation of the amendments to 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit will enable Delaware to remain in compliance with the provisions of the Atlantic States Marine Fisheries Commission, Addendum VI, to the Interstate Fishery Management Plan for Horseshoe Crab. As noted above, failure to comply with said provisions would result in federal sanctions being taken against Delaware, including, but not limited to, the federal government closing Delaware's horseshoe crab fishery. Such actions would result in economic detriment to Delaware's fishermen, and therefore it is reasonable to enact these regulatory amendments at this time to prevent such detriments to Delaware's economy from occurring.

It should also be noted that conservation measures with regard to the harvesting of the horseshoe crab began to be applied in Delaware by ASMFC starting in 1999. Over the years subsequent to those measures being implemented, there are data indicating that the horseshoe crab population has begun to stabilize. Extending the current annual harvest quota of 100,000 male horseshoe crabs would result in the taking of a very small percentage of this species' overall population, and thus it is believed to not be detrimental to the overall population of this species. The estimated stock size in the Delaware Bay Region has increased significantly, from approximately 3 million to 9.6 million females, with exploitation rates down from 15% to 1%. In Delaware Bay proper, the results of the horseshoe crab spawning activity indicate that female spawning activity has remained stable from 1999 through 2009, while male spawning activity has significantly increased through the same time series. The increase in male horseshoe crabs is a good sign of recovery, and it is hoped that the female component of the stock exhibits a similar trend, as these newer year classes begin to mature.

Protection of the horseshoe crab here in Delaware is a responsibility which the Department does not take lightly. In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of DNREC's mission of responsible environmental stewardship to ensure the sustainability of Delaware's natural resources for the appreciation and enjoyment of future generations.

Collin P. O'Mara, Secretary

### 3214 Horseshoe Crab Annual Harvest Limit

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

- 1.0 The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be 100,000 male horseshoe crabs for a period of ~~one year beginning January 1, 2009~~ extending from November 1, 2010 through April 30, 2013 or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, ~~whichever number is less. The annual harvest limit of 100,000 male horseshoe crabs may be extended for a second year if approved by the Atlantic States Marine Fisheries Commission.~~ No female horseshoe crabs may be taken/landed at any time.
- 2.0 When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

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7 DE Reg. 220 (8/1/03)  
10 DE Reg. 1029 (12/01/06)  
11 DE Reg. 685 (11/01/07)  
12 DE Reg. 975 (01/01/09)

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4177D (21 **Del.C.**, §4177D)  
2 **DE Admin. Code** 1201; 2 **DE Admin. Code** 1204

### ORDER

#### 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees; 1204 Drinking Driver Programs Standard Operating Procedures

##### 1. NATURE OF PROCEEDINGS

Pursuant to its authority under 21 **Del.C.** §4177D, the State of Delaware, Department of Safety and Homeland Security, Office of Highway Safety, proposed to amend regulations. The Department's purpose in proposing amended regulations was to increase the fees for DUI Evaluation, Education, and Outpatient Treatment programs. These programs are fee-for-service and providers have not been permitted a fee increase since 2001. Proposed fee increases are below the fair market value of these services in the private sector.

Notice of public comment period of thirty (30) days related to the Department's proposed amended regulations was published in the *Delaware Register of Regulations* on November 1, 2010.

##### II. PUBLIC COMMENTS

The Department received the following public comments in response to its notice of intention to adopt the proposed amended regulations and offers the following responses thereto:

- A public comment was received recommending posted warnings at liquor stores with penalties for impaired driving. In the past, the Office of Highway Safety has provided these materials to retail liquor establishments. Updated materials will be made available via the OHS website for retailers.
- The State Council for Persons with Disabilities commented that the substitution of "DSAMH" for "DADAMH" was overlooked in references in §6.4 and §6.4.5. The Office of Highway Safety realizes this was a typographical error and has corrected those sections.
- The State Council for Persons with Disabilities noted that the fee structure was not consistent for administrative re-screening charges between Regulation 1201 and 1204. The Office of Highway Safety realizes there was a typographical error in Regulation 1204 and has made the correction.
- The State Council for Persons with Disabilities indicated there are references that imply fees will not be charged for missed appointments if an offender has a valid excuse/good cause for the absence. The Council further believes the definitions assigned are "weak" as to what constitutes a "no show." The Office of Highway Safety defers these decisions to the counselor. Counselor discretion is necessary as the counselor knows the clinical history of the specific client, how often they have missed appointments, as well as client demeanor. For this reason, we decline to amend the regulation as written.

## III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Division's intent to adopt the proposed amended regulations and was given the opportunity to provide the Division with comments concerning them. Thus, the Division concludes that its consideration of the proposed regulations was entirely within its prerogatives and statutory authority and, having received and considered public comments that did not lead to substantive change, is now free to adopt the proposed regulations.

## IV. ORDER

AND NOW, this 19th day of January, 2011 it is hereby ordered that:

- The proposed regulations are adopted;
- The text of the proposed regulations shall be in the form attached hereto as Exhibit A;
- The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and
- The Department reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

## IT IS SO ORDERED:

By: Lewis B. Schirilo, Secretary  
Department of Safety and Homeland Security

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2010 issue of the *Register* at page 971 (14 DE Reg. 419). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees; 1204 Drinking Driver Programs Standard Operating Procedures**

## OFFICE OF THE SECRETARY

Statutory Authority: 20 Delaware Code, Sections 3116(b)(12) and 3121  
(20 **Del.C.**, §§3116(b)(12), 3121)  
2 **DE Admin. Code** 1206

## ORDER

**1101 Regulations Governing Travel Restrictions During A State Of Emergency**

## I. NATURE OF THE PROCEEDINGS

Pursuant to its authority under 20 **Del.C.** §3116(b)(12)b., the State of Delaware Department of Safety and Homeland Security proposed new regulations as they relate to travel restrictions during a State of Emergency. The Department's purpose in creating new regulations was to develop a predictable and consistent system and structure for the activation of travel restrictions during a State of Emergency. Additionally, the creation of new regulations provides an avenue for the Secretary of Safety and Homeland Security to grant waivers to persons and/or entities which meet the criteria for obtaining such a waiver.

Notice of the public comment period of thirty (30) days related to the Department's proposed regulations was published in the *Delaware Register of Regulations* on October 29, 2010.

**II. PUBLIC COMMENTS**

- The Department received the following public comments in response to its notice of intention to adopt the proposed regulations and offers the following responses thereto:
- A public comment was received concerning the ability of healthcare agencies, facilities and providers to provide services to vulnerable Delawareans not only residing in life-saving facilities, but also residing in life-sustaining facilities. The commentors expressed a trend in Delaware to provide services to vulnerable Delawareans who reside in a residential setting, rather than at an agency or facility. After discussion with the commentors, all parties recognized the need to shelter in place to the extent possible to ensure the safety of their employees and the first responders. The Department of Safety and Homeland Security also recognizes the need for vulnerable Delawareans who are in need of life-saving and life sustaining services to receive those services, and have amended the regulations to ensure that those services are provided.
- A public comment was received requesting that the Office of the Chief Medical Examiner staff be exempt as essential personnel, since by law, OCME staff must investigate deaths that occur during a State of Emergency. The OCME is identified in the Delaware Emergency Operations Plan. Additionally, personnel within the OCME are critical to the DHSS Mass-Casualty Incident Plan. To the extent that deaths occur during a State of Emergency which must be investigated by the OCME, any request for the OCME shall be considered a resource request to DEMA through DHSS. Upon approval by DEMA, the OCME shall be permitted to travel or shall be provided transportation. The Department declines to amend the regulations.
- A public comment was received expressing concern that service providers will have to shelter in place as soon as a Level 3 Ban has been imposed and they will not be given the time to travel home or to a safe location. To the extent possible, the public will be given advance notice of the imposition of a Level 3 Travel Ban to allow them to prepare for the event or to leave their workplace to return to their home or other safe location.
- A public comment was received requesting that "additional essential personnel" of a chemical company be permitted to travel during a Level 3 Travel Ban to mitigate on-site emergencies during a State of Emergency. The purpose of allowing the additional personnel to travel would be to supplement or relieve staff already on site. Pursuant to 20 **Del.C.** §3116(b)(12), the Department of Safety and Homeland Security only has authority to grant exemptions or waivers during a Level 2 Travel Restriction. A Level 3 Travel Ban would indicate that conditions are so severe that it requires persons and entities who are not exempted in a Level 3 Travel Ban to shelter-in-place. Sheltering-in place not only includes sheltering in the person's actual workplace, but also at a location within a 2 mile radius of the person's workplace as long as the employer assumes responsibility for the transportation of that employee. Additionally, although it is possible that a Level 3 Travel Ban may be activated statewide, it is the State's intention that the activation of a Level 3 Travel Ban will, in most cases, be limited in duration, scope and geography.
- A public comment was received requesting that specific criteria be included in the regulations which would clearly define the circumstances in which each of the three levels of travel restrictions would be implemented. 20 **Del.C.** §3116(b)(12) and the regulations pertaining to the activation of travel restrictions during a state of emergency is meant to be applied to all natural or man-made hazards to the extent possible. As a result, the activation of a travel restriction or warning is based on the specific circumstances of the state of emergency. It is therefore not possible to establish specific criteria which would trigger one level of travel restriction over another. The Department, in coordination with the Governor and DEMA, will provide as much advance notice as possible of the implementation of a specific travel restriction or warning.
- A public comment was received requesting amendment of the definition of "essential personnel" under section 3.0 of the regulations. The Department declines to amend the definition after careful review of the language. The definition specifically defines who will be considered essential personnel based upon the language in 20 **Del.C.** §3116(b)(12).
- A public comment was received requesting that entities providing support services to organizations deemed exempt under these regulations also be exempt during the activation of a Level 2 Travel

Restriction. The Department declines to amend the regulations to provide an exemption for such entities. If an entity who provides support service to an exempt organization does not meet the criteria to be considered exempt from a Level 2 Travel Restriction, it may apply for a waiver based upon a significant health, safety or business necessity as defined in section 3.0 of the regulations.

- A public comment was received requesting clarification on the validity of a waiver during a Level 3 Travel Ban. A waiver is not valid during a Level 3 Travel Ban. Additionally, it is not required during a Level 1 Travel Warning.
- A public comment was received requesting that funeral homes be considered exempt from a Level 2 Travel Restriction. Members of the Delaware State Funeral Directors Association are specifically mentioned in Delaware Public Health Preparedness Section Plans including the Mass Casualty Incident Plan. If the plans requesting Funeral Directors Association member services were activated during a declared state of emergency that resulted in a travel ban, the requested Funeral directors and employees would be permitted to drive pursuant to an approved resource request from DEMA or the Department of Health and Social Services. The Department declines to amend the regulations to include funeral homes as exempt under a Level 2 Travel Restriction.
- A public comment was received as to whether an organization's volunteers and paid staff reporting to DEMA or County 911 Centers and opened shelters were exempt from the travel restrictions. To the extent that an organization has been activated by DEMA through the Delaware Emergency Operations Plan, they will be exempt from the regulations by virtue of the request made by DEMA. The organization's essential personnel must have valid employee identification as they travel during the activation of a Level 3 or Level 2 travel restriction.
- A public comment was received requesting who would be responsible for obtaining the waiver, the employee or the company. Additionally, the commentor asked whether the employee would be required to have the waiver on their person when traveling during a Level 2 Travel Restriction. In that situation, the company would apply for the waiver requesting that their essential employees be waived from the travel restrictions. Once a waiver has been obtained, the employee will be required to carry a certification indicating that they are essential personnel of that company. The employee must also have valid employee identification on their person. The waiver application and certification process is being developed. It is expected to be available to the public by March 31 st, 2011 on the DEMA website.
- A public comment was received requesting whether food deliveries could be made to retail grocery stores during Level 1, 2, or 3 travel restrictions. A Level I Travel Warning is not a travel restriction, but a warning urging people to use extra caution when traveling on the roadways. During a Level 2 Travel Restriction, an exempt organization, entity or individual does not have to apply for a waiver. However, the name of their entity must be retained on a list at DEMA. Section 3.0 specifically exempts pharmacies under the health care services definition. Under the definition of "Food Deliveries", any entity or person traveling for the purpose of delivering "perishable food items to prevent spoilage and for the purpose of restocking inventory in anticipation of the expiration of the travel restriction" shall be exempt from a Level 2 Travel Restriction. The only persons or entities exempt from a Level 3 Travel Ban are those described in 20 **Del.C.** §3116(b)(12) and these regulations. All those not exempt under a Level 3 Travel Ban are encouraged to prepare in advance of the state of emergency to the extent possible and to shelter-in-place for the duration of the state of emergency, unless otherwise directed via the Governor's executive order.
- A public comment was received requesting whether an organization, entity or individual who is exempt under these regulations would still have to apply for a waiver. An organization, entity or individual that is exempt from a Level 2 Travel Restriction does not have to apply for a waiver. However, the name of their entity must be retained on a list at DEMA.
- A public comment was received requesting whether an organization or entity, such as a retailer or grocery store must close during a Level 1, 2, or 3 Travel Restriction. Neither these regulations nor 20 **Del.C.** §3116(b)(12) addresses the issue of whether an organization or entity must close during a Level 1, 2, or 3 travel restriction. Rather, the primary purpose of 20 **Del.C.** §3116(b)(12) and these regulations is to restrict the travel of motorists on the State's roadways during a state of emergency to ensure people's safety and the safety of first responders. An entity that has not received a waiver may

remain open for business without jeopardizing the safety of its employees or customers if the employees or customers do not have to drive in a motor vehicle.

- A public comment was received regarding the ability of a company to take action against a non-essential employee who has been ordered to report to work. An employer may not take any adverse employment action against a nonessential employee who fails, or refuses, to report to work after being ordered to do so.
- A public comment was received requesting clarification of "State emergency response plans" section 2.3.1 of these regulations. "State emergency response plans," pursuant to 20 **Del.C.** Chap. 31, refer specifically to the Delaware Emergency Operations Plans developed and promulgated by the Delaware Emergency Management Agency. The Department amended section 2.3.1 to correctly reflection this clarification.
- A public comment was received suggesting that the Department adopt a uniform ID "exempt" template for use by State personnel who have been identified as first responders or essential. Each agency would be responsible for producing the ID cards for their essential personnel. The Department appreciates the suggestion and will take it under consideration.

### III. FINDINGS AND CONCLUSION

Based on the comments received, the Secretary of the Department of Safety and Homeland Security finds that the amendments made in response thereto do not change the intent or meaning of these regulations. Therefore, based on the foregoing, the proposed regulations, as amended, shall be adopted.

### IV. ORDER

AND NOW, this 10 day of February, 2011, it is hereby ordered that:

The proposed regulations, as amended, are adopted;

The text of the proposed regulations shall be in the form attached as Exhibit A;

The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10115(e); and,

The Department reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

#### IT IS SO ORDERED.

Lewis B. Schiliro, Secretary

Department of Safety and Homeland Security

DATED: January 10, 2011

### **1101 Regulations Governing Travel Restrictions During A State Of Emergency**

It is the intent of the Department, pursuant to 20 **Del.C.** §3116(b)(12) and §3121, to establish rules and regulations which will ensure that any driving restriction imposed in Delaware during a declared state of emergency will be conducted in a manner and under conditions that will reduce the risk of physical harm to persons and property, and to first responders, while minimizing any limitation of movement throughout the State. It is the intent of these regulations to provide the most expeditious means to ensure the safety of the State's public roadways.

#### **1.0 Purpose.**

- 1.1 To provide specific direction to both the people and first responders in Delaware during a declared state of emergency by clearly defining the three tiers of driving restrictions;

- 1.2 To provide the people in Delaware with adequate notice prior to any driving ban or restriction being issued;
- 1.3 To ensure that the State provides the best mechanisms for people to get back on the roads in the most expeditious manner possible while ensuring the safety of people on the State's public roadways;
- 1.4 To issue a driving restriction in the most efficient and least restrictive manner possible in an effort to balance the needs of maintaining the public safety and the needs of people to freely and safely travel upon Delaware roadways;
- 1.5 To ensure that the first responders are not placed in a situation of undue risk; and
- 1.6 To encourage and educate organizations, entities and individuals to develop and maintain shelter-in-place contingency plans for use during the most severe conditions.

## **2.0 Scope and Applicability**

- 2.1 Authority. These regulations are enacted pursuant to 20 **Del.C.** §§3116(b)(12) and 3121. These regulations shall be known as "Regulations Governing Travel Restrictions during a State of Emergency".
- 2.2 Applicability. These regulations apply to persons operating a motor vehicle on public roadways during a declared state of emergency.
- 2.3 Exemptions: The following persons/entities are exempted from these regulations:
  - 2.3.1 First responders: "First responders" shall mean federal, state and local governmental and non-governmental police, fire, and emergency personnel, including, but not limited to, other skilled personnel such as emergency management, public health and public works staff as defined in the ~~[State emergency response plans~~ **Delaware Emergency Operations Plan**] promulgated [by the **Delaware Emergency Management Agency**] pursuant to 20 **Del.C.** Ch. 31 and by federal regulation, who are responsible for the protection and preservation of life, property, evidence, and the environment;
  - 2.3.2 Operators of snow [and/or debris] removal equipment employed or contracted by a public or private entity;
  - 2.3.3 Public utilities as defined in 26 **Del.C.** §102(2).
  - 2.3.4 Individuals identified by providers of Voice Over IP service, as defined in 26 **Del.C.** §202(i)(2) or Cellular telephone service, who are necessary to maintain the integrity of such providers' networks or assist first responders and essential personnel as specified in these regulations.
  - 2.3.5 Persons or entities identified as essential in ~~[State emergency response plans set forth the Delaware Emergency Operations Plan promulgated by DEMA]~~ pursuant to 20 **Del.C.** Ch. 31 of the Delaware Code. Those entities who have been pre-determined by the first responders as necessary for supporting their services and those government employees designated by federal, state, and/or local governmental agencies as essential to maintaining core governmental functions.
  - 2.3.6 Constables as defined by Title 10, Chapter 27 of the Delaware Code.

## **3.0 Definitions.**

The following words, phrases, and terms as used in these regulations have the meanings given below:

**["Department" shall mean the "Delaware Department of Safety and Homeland Security or its designee as authorized by the Secretary."]**

**"Essential Personnel"** shall mean the following during the declaration of the driving restrictions listed below:

- 1. Level 3 Driving Ban: those employees and/or personnel listed under section 2.3 of these rules and regulations.
- 2. Level 2 Driving Restriction: those employees and/or personnel who:
  - a. are exempt under the definition of "Essential Personnel, Level 3 Driving Ban" and under section 2.3 of these regulations;

- b. are necessary to maintain the core functions of a governmental body or entity;
- c. are necessary to maintain the health and safety of the people of Delaware by providing healthcare services, food deliveries, and fuel deliveries, during a state of emergency, regardless of whether they are employed by a public or private entity;
- d. have received a waiver as defined in section 3.0 and under section 8.0.

**“Exempt/Exemption”** shall mean any person or entity which has been specifically identified in sections 2.3, 5.1.1, 7.1 ~~[and,] 7.2[, 7.3, and 7.4].~~

**“Food Deliveries”** shall mean the delivery of any perishable food items to prevent spoilage and for the purpose of restocking inventory in anticipation of the expiration of the travel ban. For purposes of these regulations, “food deliveries” shall not include deliveries to a retailer, taproom or tavern, as those terms are defined in 4 **Del.C. § 101.**

**“Fuel Deliveries”** shall mean any delivery of fuel to include propane, oil, natural gas, or motor fuel for the purpose of maintaining heat and fueling vehicles permitted to operate during the state of emergency.

**“Healthcare service[s]”** for the purposes of this regulation shall **[not include any routine outpatient services related to healthcare maintenance or managed care. Healthcare services shall]** mean the following:

- ~~[1. Hospitals~~
  - ~~2. Healthcare facilities licensed primarily as emergent or critical care facilities~~
  - ~~3. Skilled nursing facilities~~
    - 1. Healthcare facilities licensed primarily to provide life-saving (emergency or critical care) or life sustaining services, specifically:
      - a. Hospitals;
      - b. Licensed skilled nursing home facilities; and,
      - c. Facilities primarily licensed to provide dialysis services.
    - 2. Any clinical provider licensed by the State and employed by a licensed and certified hospice or skilled home health care agency.
  - ~~43]. Private ambulance services primarily used for emergency medical transport. This shall mean any privately owned vehicle, as certified by the Delaware State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded or otherwise incapacitated or helpless; or any ambulance service which provides routine transport for persons who are sick, convalescent, incapacitated and non-ambulatory but do not ordinarily require emergency medical treatment while in transit.~~
  - ~~[54]. Pharmacies.~~
  - ~~[6. Facilities primarily licensed to provide dialysis services.~~
- It shall not include any routine outpatient services related to healthcare maintenance or managed care.]**

**“Incident”** shall mean an occurrence, natural or human-caused, that may require an emergency response to protect life or property.

**“Public Utilities”** shall mean any public utility as defined in 26 **Del.C. § 102(2).**

**“Response”** shall mean activities that address the short term, direct effects of an incident, to include immediate actions to save lives, protect property, and meet basic human needs, as well as the execution of emergency operations plans.

**“Secretary”** shall mean the **Secretary of the Delaware Department of Safety and Homeland Security.]**

**“Shelter in Place”** shall mean ~~[sheltering providing facilities for]~~ those individuals essential to maintain core functions of an organization for the duration of a Level 3 Driving Ban:

- 1. within the confines of the requisite facility necessary to maintain business continuity; or,

# FINAL REGULATIONS

2. within a contracted ~~[shelter location]~~ located within a 2 mile radius of the requisite facility necessary to maintain business continuity upon the following conditions being met:
  - a. the entity has obtained a health, safety or business necessity waiver as defined by sections 3.0 and 8.0; and,
  - b. the entity is authorized to provide ~~[transportation and assumes responsibility for providing]~~ safe and appropriate transportation of essential employees to and from the ~~[shelter contracted location]~~ and requisite facility.

**“Significant health, safety or business necessity”** shall mean the following:

1. Health: A “significant health necessity” means all other healthcare related services that are not expressly exempted in these regulations or by the ~~[state emergency response plans Delaware Emergency Operations Plans promulgated by DEMA]~~ pursuant to 20 Del.C. Ch. 31. It shall also mean activities by the commercial poultry or dairy industry that are necessary to maintain their operations, including but not limited to the delivery of feed, in order to minimize or eliminate the risk of death or injury to poultry or livestock, which could result in conditions hazardous to human health.
2. Safety: A “significant safety necessity” means activities by persons or entities which seek to minimize or to eliminate hazardous conditions where there is a real and significant impact on risk of death or injury.
3. Business Necessity: A “significant business necessity” means that a business may suffer irreparable financial or economic harm during the pendency of a driving ban or restriction. As a practical matter, because clientele/customers are restricted from driving during the pendency of a driving ban or restriction, a loss of retail sales is not sufficient, in and of itself, to constitute an irreparable financial or economic loss or harm.

**“Waiver”** shall mean a written release to all persons and entities meeting the criteria under section 8.10, not otherwise expressly exempted under section 2.3, 5.1.1, 7.1 ~~[and 7.2, 7.2, 7.3 and 7.4]~~ or the ~~[state emergency response plans Delaware Emergency Operations Plans promulgated by DEMA]~~ pursuant to 20 Del.C. Ch. 31.

## **4.0 General Provisions.**

- 4.1 The Governor may issue separate levels of driving restrictions throughout the State based on the severity of conditions in any given area of the State.
- 4.2 As a result of conditions which could impact the State’s roadways, DEMA, to the extent possible, shall inform the public and businesses to begin initiating contingency plans. Such plans could encompass shelter-in-place provisions in response to the potential severity in road conditions in the event a State of Emergency is issued.

## **5.0 Level 3 Driving Ban or Level 2 Driving Restriction.**

- 5.1 Unless otherwise modified by executive order issued by the Governor, in the event of a Level 3 Driving Ban or a Level 2 Driving Restriction, the following shall apply:
  - 5.1.1 Level 3 Driving Ban. No person shall operate a motor vehicle on Delaware roadways when a Level 3 Driving Ban has been activated, except for the following:
    - 5.1.1.1 Persons designated as first responders and essential personnel as specified in the Delaware Emergency Operations Plans **[promulgated]** pursuant to Title 20, Chapter 31 of the Delaware Code;
    - 5.1.1.2 Persons designated as first responders and essential personnel by executive order of the Governor;
    - 5.1.1.3 Operators of snow **[and/or debris]** removal equipment employed or contracted by a public or private entity;
    - 5.1.1.4 Persons designated as essential personnel for a public utility as defined in 26 Del.C. §102(2).

5.1.1.5 Individuals identified by providers of Voice Over IP service, as defined in 26 Del.C. §202(i)(2) or Cellular telephone service who are necessary to maintain the integrity of such providers' networks or assist first responders and essential personnel as specified in these regulations.

5.1.1.6 Constables as defined in Title 10, Chapter 27 of the Delaware Code.

5.1.2 All businesses, professional offices, organizations, entities, individuals, etc., not otherwise exempted under subsection 5.1.1 shall take appropriate protective actions to protect themselves, their customers, their employees and the people in Delaware by:

5.1.2.1 Temporarily terminating all travel for the duration of a Level 3 Driving Ban and providing shelter-in-place to their employees as defined in section 3.0; or,

5.1.2.2 Temporarily shutting down operations for the duration of the Level 3 Driving Ban.

5.1.3 To the extent possible, a Level 3 Driving Ban shall only be issued in an area where the conditions are most severe for a limited duration, with the limited purpose of clearing the restricted area to allow for safe travel through that area.

5.1.4 Level 2 Driving Restriction. No person shall operate a motor vehicle on Delaware roadways when a Level 2 Driving Restriction has been activated, except for the following:

5.1.4.1 Any entity or person exempted from the Level 3 Driving Ban in section 2.3, 5.1.1, 7.1 ~~and 7.2, 7.2, 7.3 and 7.4~~;

5.1.4.2 Organizations, entities and/or persons that have obtained a waiver pursuant to section 8.0 of these regulations.

## **6.0 Level 1 Driving Warning.**

6.1 All persons operating a motor vehicle when a Level 1 Driving Warning has been activated shall exercise extra caution in the operation of their motor vehicle.

6.2 Non-essential personnel, regardless of whether employed by a public or private entity, are encouraged not to operate a motor vehicle on public roadways when a Level 1 Driving Warning has been activated, unless there is a significant health, safety or business necessity reason for doing so.

## **7.0 Exemptions [under a Level 2 Travel Restriction].**

7.1 Pursuant to Section 3.0, essential ~~employees personnel~~ with valid employee identification from the following healthcare services shall be exempt from these regulations:

7.1.1 Bayhealth Medical Center;

7.1.2 Beebe Medical Center;

7.1.3 Nanticoke Memorial Hospital, Inc.;

7.1.4 VA Medical & Regional Office Center;

7.1.5 St. Francis Hospital;

7.1.6 Alfred I. DuPont Hospital for Children;

7.1.7 Christiana Care;

7.1.8 Rockford Center;

7.1.9 Dover Behavioral Health System[;].

~~7.1.10 Delaware Hospice.~~

7.2 Any clinical provider licensed by the State to provide hospice care, employed by the following, and with valid employee identification, shall also be exempt from these regulations:

7.2.1 Angel Care Hospice, LLC;

7.2.2 Compassionate Care Hospice;

7.2.3 Delaware Hospice, Inc.;

7.2.3 Heartland Hospice House of Delaware;

7.2.4 Heartland Hospice Services, Inc.

- 7.2.5 **Odyssey Hospice;**
- 7.2.6 **Seasons Hospice and Palliative Care of DE, LLC;**
- 7.2.7 **Taylor Hospice;**
- 7.2.8 **Vitas Healthcare Corporation Atlantic.**

**7.3 Any clinical provider licensed by the State to provide skilled home health care.]**

- 7.~~[24]~~ Any person, organization or entity that provides healthcare services, or provides food delivery services or fuel delivery services as defined in Section 3.0 shall apply to have the name or the person, organization or entity placed on a list exempting that person, organization or entity from these regulations. Application shall be made to the Delaware Emergency Management Agency.
- 7.~~[35]~~ All persons, organizations and entities listed as exempt from these regulations pursuant to this subsection shall provide their essential personnel with appropriate employment identification.
- 7.~~[46]~~ All other persons or entities not otherwise included in this section shall first apply for a waiver pursuant to 20 Del.C. § 3116(b)(12) and section 8.0 of these regulations

**8.0 Waivers and Administrative Procedures [under a Level 2 Travel Restriction]:**

- 8.1 No person or entity shall operate a motor vehicle during a Level 2 Driving Restriction unless expressly exempted from these regulations, without first obtaining a waiver from the Secretary of the Department of Safety and Homeland Security.
- 8.2 Any organization, entity or person subject to these regulations that violates 20 Del.C. § 3116(12) and/or these regulations shall be sanctioned pursuant to 20 Del.C. § 3125 and/or cited for a violation of 21 Del.C. § 4176(C).
- 8.3 All persons and entities receiving a waiver from these regulations shall abide by the conditions of their waiver issued by the Department.
- 8.4 Application: All applications for waivers shall be submitted to the Department of Safety and Homeland Security beginning on ~~[October 1<sup>st</sup> of each year~~ **March 31<sup>st</sup>, 2011**]. Applications may be completed and downloaded on the State of Delaware Emergency Management Agency website **[at <http://dema.delaware.gov>]**.
- 8.5 Approval/Denial: ~~[The Department shall act upon an application for a waiver within 15 days. No waiver application shall be granted within 21 days]~~ after receipt of the application for waiver. When a final determination has been made on an application, the Department shall issue a notification of approval or denial via email. If the Department issues a letter of denial, the letter shall explain the reasons for such denial. The Department shall maintain a record of the notification of approval or denial for a period of 2 years.
- 8.6 Duration of Waiver: A waiver shall be valid for ~~[one (1) year~~ **two (2) years**] from the date of issuance.
- 8.7 Renewal of Waiver: Any organization, entity or person wishing to renew an existing waiver that is ready to expire shall, not less than 60 days prior to the expiration date of the existing waiver, submit to the Department, a waiver renewal application ~~[from form]~~ **[from form]** with all supporting documentation ~~[and appropriate fees]~~ **[and appropriate fees]** as required by these regulations.
- 8.8 Modification or Termination of a Waiver:
  - 8.8.1 Any request for a modification of the waiver must be made in writing to the Department.
  - 8.8.2 The Department may terminate a waiver if it finds that it does not meet the standard as set forth in section 8.10.
- 8.9 Waivers are non-transferable.
- 8.10 Standard. Any person who has authority to legally bind an organization or entity, or a person representing him or herself as an individual or sole proprietorship, may apply for a waiver to be exempt from these regulations when a significant health, safety or business necessity as defined in section 3.0 of these regulations is shown ~~[for issuing such a waiver]~~ **[for issuing such a waiver]**. An organization, entity or individual may also apply for a waiver upon the recommendation from either the Kent, Sussex, New Castle County, or City of Wilmington emergency management agency.]

- 8.11 All persons or entities that receive a waiver from these regulations shall provide in their application for a waiver to the Delaware Emergency Management Agency the number of essential personnel pursuant to these regulations. Persons and entities applying for a waiver shall also provide in their application the essential functions necessary to maintain core operations and the allocation of their essential personnel to those operations. **[All persons or entities who have received a waiver shall maintain records of the waiver certificate(s) for purposes of validation.]**
- 8.12 Persons or entities that receive a waiver under these regulations shall provide appropriate employee identification indicating that the employee is essential under a significant health, safety or business necessity.
- [8.13** No person or individual shall falsify information in their application for a waiver, or submit false documents in support of their application for a waiver. Any individual in violation of this section may be criminally sanctioned pursuant to 11 Del.C. §877.]

**9.0** Limitations of the Regulations.

- 9.1 Nothing in these regulations shall limit the power or authority of the Governor pursuant to 20 Del.C. Ch. 31.
- 9.2 Nothing in these regulations shall create in any person or entity additional rights against the State for a claim of damages, from civil, criminal or administrative actions resulting from the enforcement of these rules and regulations.

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**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 17 Delaware Code, Section 141; 29 Delaware Code, Section 8404(8)  
(17 Del.C. §141; 29 Del.C. §8404(8))

**ORDER**

**2403 Special Events Policies and Procedures—Traffic Management**

Under Title 17 of the **Delaware Code**, Section 141, as well as 29 **Delaware Code** Section 8404(8), the Traffic Section of the Delaware Department of Transportation (DelDOT), has the authority to regulate the traffic impacts of special events that affect the safe movement of traffic on the State's transportation network. The Department has drafted regulations for this purpose and the draft regulations were placed on the *Delaware Register of Regulations* for public comment from December 1, 2010 through December 31, 2010.

**Summary of the Evidence and Information Submitted**

No comments were received regarding the draft regulations.

**Findings of Fact**

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

1. The proposed regulation for Special Events Policies and Procedures – Traffic Management are useful and proper, pursuant to the comment period process required under the Administrative Procedures Act.
2. The adoption of this proposed regulation is in the best interests of the State of Delaware.

**Decision and Effective Date**

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the Special Events Policies and Procedures – Traffic Management regulation, as set forth in the version attached hereto, to be effective on February 11, 2011.

**IT IS SO ORDERED** this 15<sup>th</sup> day of January 2011.

Carolann Wicks, Secretary

Delaware Department of Transportation

**2403 Special Events Policies and Procedures—Traffic Management****1.0 Introduction**

- 1.1 Planned special events include, but are not limited to, sporting events, concerts, festivals and conventions occurring at permanent multi-use venues. They also include less frequent public events such as parades, fireworks displays, bicycle races, sporting games, motorcycle rallies, marathons, seasonal festivals and block parties which may occur at temporary venues. A planned special event often creates the need to establish altered traffic patterns to handle the increased traffic volumes generated by the event and traffic diverted due to the event. The size of the temporary traffic control (TTC) zone associated with a planned special event can be small, such as closing a street for a festival, or can extend throughout a municipality for larger events.
- 1.2 Planned special events can have direct and indirect impacts on the transportation system. Events that have direct impacts to the transportation system are those that require full roadway or lane closures to accommodate the needs of the event. Events having indirect impacts to the transportation system are those types of events that attract large crowds affecting normal traffic flow on Delaware's roadways.
- 1.3 The purpose of this Special Events Policy is to outline the requirements for obtaining a permit to conduct a special event that will impact roadways in the State of Delaware and to describe the temporary traffic control that may be required to ensure the least impact to the traveling public and to provide a reasonably safe venue for the event. In addition, the policy identifies the requirements for developing necessary temporary traffic control plans as well as identifying the parties responsible for providing temporary traffic control and determining who pays the costs of such temporary traffic control.

**2.0 Legal Authority**

- 2.1 Title 17, Chapter 1, Subchapter III, Section 141 of the Delaware Code gives the Delaware Department of Transportation jurisdiction and control over all state highways outside the limits of incorporated cities and towns for the purpose of regulating traffic and for the use and operation of all vehicles thereover, and gives the Department the authority to adopt any and all rules and regulations respecting the use of such highways and the operation of all vehicles upon the same.
- 2.2 For state maintained roadways within the corporate limits of municipalities, the local government is responsible for approving the special event after consultation with the Department of Transportation. All temporary traffic control for special events inside the limits of municipalities shall comply with the requirements of the Delaware Manual on Uniform Traffic Control Devices (DE MUTCD). For those events occurring on state maintained roadways within the corporate limits of municipalities, the temporary traffic control shall be reviewed and approved by DeIDOT. DeIDOT shall also be consulted for those events that occur on non state maintained roadways, but divert traffic to state maintained roadways.

**3.0 Special Event Permit Application**

- 3.1 The Delaware Department of Transportation (DelDOT) requires the organizer of a planned special event that impacts the transportation system to get approval from the Department to hold such events and to review any temporary traffic control that is necessary for the event to occur. Event organizers are required to fill out DelDOT's *Special Event Permit Application* and submit the completed application to the Special Events Coordinator in the Traffic Safety Section. This form can be emailed by clicking the appropriate button at the top of the application. The Department's Special Events Coordinator will review the application and the location of the event and determine if temporary traffic control measures or other requirements are needed to safely conduct the event and to minimize the impacts to the transportation system. If additional information is needed, the Special Events Coordinator will coordinate that information with the event organizer. Once all requirements are satisfied, an approved copy of the *Special Event Permit Application* will be provided to the event organizer. An approved copy will be held by the Traffic Safety Section.
- 3.1.1 The following types of Planned Special Events require a Special Events Permit from the DelDOT:
- 3.1.1.1 Events with a direct impact on the transportation system. These events typically require lane and/or complete road closures.
- 3.1.1.2 Events with an indirect impact on the transportation system. These events typically occur off of the roadway but attract large crowds which could affect normal traffic flow on Delaware's roadways
- 3.2 Special Event Permit Application Procedures
- 3.2.1 The *Special Event Permit Application* shall be filled out by the event organizer and submitted to the Department no fewer than 90 days prior to the beginning of the event. The Special Event Permit Application can be found at:  
[http://www.deldot.gov/information/community\\_programs\\_and\\_services/planned\\_spec\\_events/index.shtml](http://www.deldot.gov/information/community_programs_and_services/planned_spec_events/index.shtml)
- 3.2.2 The following information is required to be shown on the permit application:
- 3.2.2.1 Event Organizer Information
- 3.2.2.1.1 Applicant's name, address, phone number and e-mail address
- 3.2.2.1.2 Organization name, address and phone number, if applicable
- 3.2.2.2 Event Information
- 3.2.2.2.1 Name and location of event
- 3.2.2.2.2 Type of event
- 3.2.2.2.3 Date of event (start and end dates)
- 3.2.2.2.4 Time of event (start and end times)
- 3.2.2.2.5 Name of a contact person that will be the Department's direct contact during the planning stages of the event. A phone number and email address should also be provided.
- 3.2.2.2.6 Name of a contact person including address and a phone number at which that person can be reached during the day(s) of the event.
- 3.2.2.2.7 Proposed routing for the event, if the event is a bike race, marathon or other on-roadway event.
- 3.2.2.3 Temporary Traffic Control Plan
- 3.2.2.3.1 Identify if the event will require the closure of any State maintained roadways or intersections. If yes, list the roads or intersections that will be closed.
- 3.2.2.3.2 Identify if the event will require the closure of any lanes on State maintained roadways. If yes, list the lanes to be closed on each roadway.
- 3.2.2.3.3 A temporary traffic control plan, if lanes or entire roadways will be closed. Information regarding temporary traffic control plans can be found in Section III and IV of this policy.
- 3.2.2.3.4 Detailed temporary traffic control plans shall be submitted to the Department's Special Events Coordinator no less than six (6) weeks prior to the start of the event.

### 3.2.2.4 Additional Information

- 3.2.2.4.1 Identify provisions for medical treatment during the event
  - 3.2.2.4.2 Identify provisions for sanitary facilities during the event
  - 3.2.2.4.3 Identify provisions for police or fire police assistance during the event. If a signed agreement exists between the police agency and the event organizer, a copy of the agreement should be included with the application.
- 3.2.3 The completed application can be electronically submitted to the Special Events Coordinator by clicking on the email button at the top of the application. If the applicant desires to mail a printed version of the application, it can be sent to the following address:
- Delaware Department of Transportation
  - Traffic Safety Section
  - Special Events Coordinator
  - 169 Brickstore Landing Road
  - Smyrna, DE 19977

## **4.0 Event Traffic Control**

- 4.1 Planned special events typically have impacts on the transportation system and these impacts can be classified as either direct or indirect. Some events have both types of impacts. This section describes the necessary temporary traffic control that is required for those events that have direct impacts on the transportation system. In addition, it describes how the event organizer works with DeIDOT on the development of a Transportation Operations Plan for those events with an indirect impact on the transportation system. Guidelines for the use of law enforcement and the use of Portable Changeable Message Signs (PCMS) are also provided.
- 4.2 Events with Direct Impacts on the Transportation System:
- 4.2.1 Planned special events with direct impacts on the transportation system are those events that require a lane or roadway closure in order for the event to take place. These types of events may include but are not limited to bike races/tours, marathons, block parties, parades and festivals. In order to safely and efficiently move traffic around the event area, temporary traffic control is required and shall comply with the provisions of Part 6 of the Delaware Manual on Uniform Traffic Control Devices (DE MUTCD). This information can be found at:  
[http://www.deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/index.shtml](http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/index.shtml)
  - 4.2.2 For events that have direct impacts on the transportation system, the event organizer shall submit a temporary traffic control plan to DeIDOT for review and approval.
  - 4.2.3 Special Events Requiring Lane or Shoulder Closures:
    - 4.2.3.1 Planned special events with direct impacts on the transportation system may require the closure of one or more travel lanes or a shoulder on a two-lane roadway or multi-lane highway. In order to move traffic safely around the event area, temporary traffic control is required. In most situations, typical temporary traffic control cases from the DE MUTCD should be used and the applicable cases are listed below:
      - 4.2.3.1.1 Two-Lane, Two-Way Traffic Shoulder Closure
      - 4.2.3.1.2 Multilane, Divided, Non-Access Controlled Highways – Shoulder Closure
      - 4.2.3.1.3 Two-Lane, Two-Way Traffic Lane Closure
      - 4.2.3.1.4 Multilane, Divided Highways and Interstates – Lane Closure
    - 4.2.3.2 In most situations a copy of the standard temporary traffic control case and the accompanying standard notes can be submitted for review by DeIDOT. There are some instances that may require additional temporary traffic control devices and this will be determined by DeIDOT through consultation with the applicant. Temporary traffic control plans must be submitted no fewer than six (6) weeks prior to the event.
    - 4.2.3.3 Several of the standard temporary traffic control cases noted above allow the use of flaggers or require the use of flaggers to move traffic through the affected area. Due to the dangers

associated with directing traffic, the only people allowed to perform flagging operations on Delaware's roadways are the following:

4.2.3.3.1 A person with a valid flagger registration card from the American Traffic Safety Services Association (ATSSA). That person shall have their flagger card in their possession while performing flagging duties.

4.2.3.3.2 Uniformed Fire Police

4.2.3.3.3 Uniformed Local Police

4.2.3.3.4 Uniformed State Police

4.2.3.4 All personnel performing flagging duties shall wear a safety vest in accordance with the Delaware MUTCD. All temporary traffic control devices shall conform to the requirements of the Delaware MUTCD.

#### 4.2.4 Special Events Requiring Roadway Closures

4.2.4.1 Planned special events with direct impacts on the transportation system may require the full closure of one or more roadways. In order to move traffic safely around the event area, temporary traffic control and a signed detour route is required. Detour routes shall be determined by DeIDOT and an official detour plan with the proper approval signatures will be developed by DeIDOT for the applicant. Requests for detour plans shall be submitted to DeIDOT no less than six (6) weeks prior to the event. Depending upon the duration of the closure, law enforcement personnel may be used to direct traffic around the closure area, in lieu of providing a signed detour route. The use of law enforcement officers in lieu of a signed detour will be determined by DeIDOT in consultation with the applicant.

#### 4.3 Events with Indirect Impacts on the Transportation System

4.3.1 Planned Special Events may have an indirect impact on the transportation system based on the number of event participants or attendees. Events that have indirect impacts on the transportation system include concerts, sporting events, fairs/carnivals and other events that attract large crowds of people. While these events may not require the closure of roads or lanes, they do create an impact to existing traffic due to the increased traffic volumes (vehicular and/or pedestrian volumes) that are experienced, sometimes on roadways that are not designed for the increased traffic or pedestrians. To mitigate these impacts, it is necessary to develop a Transportation Operations Plan to determine how traffic will be managed when patrons are arriving at or leaving the event and how the event traffic will interact with existing traffic. If in addition, to having indirect impacts on the transportation system, the event requires the closure of roadways or lanes, please refer to the previous section for additional information.

4.3.2 The development of the Transportation Operations Plan will typically be completed by DeIDOT's Traffic Section with input provided by Safety and Transportation Management Center staff and the event organizer. DeIDOT and the event organizer will also meet with the state police to discuss the plan. If the event is within the limits of a municipality, DeIDOT and the event organizer will also meet with the local police and other local authorities having jurisdiction. The following items are typically reviewed and determined during the plan development:

4.3.2.1 Location of event, event parking and entrances/exits to/from the event area.

4.3.2.2 Roadways surrounding the event area and expected road closures

4.3.2.3 Locations for traffic control points during entry and exit

4.3.2.4 Locations for parking payment, credential checks, etc.

4.3.2.5 Lane closures to accommodate entry and exit maneuvers from the event area to minimize impacts to existing traffic and to allow for free flow movements.

4.3.2.6 Pedestrian movements around the event area to provide reasonably safe pedestrian passage

4.3.2.7 Locations for portable changeable message signs to direct road users to and around the event.

4.3.2.8 Locations for traffic management devices such as portable traffic cameras, portable detection units, etc.

4.3.3 The planning process for these types of events needs to start early in order to ensure a smooth event. The event organizer shall submit the Special Event Permit Application to DeIDOT no fewer than 90 days prior to the beginning of the event. Once the permit is received by DeIDOT, a meeting will be scheduled with the event organizer and other applicable parties to discuss the event and any operational concerns. This meeting will be scheduled eight (8) weeks prior to the event date. The final transportation operations plan, with approved permit, will be completed four (4) weeks prior to the event date. The Transportation Operations Plan will include locations of all devices necessary to carry out the plan, including locations of all lane or roadway closures that may be necessary to facilitate event traffic around the event area.

**4.4 Use of Law Enforcement for Planned Special Events**

4.4.1 Law enforcement officers (State Police, Local Police and/or Fire Police) may be needed to assist with traffic control during a planned special event. Law enforcement may also be needed to provide escorts for certain types of events such as foot races, bike races or parades. It is the responsibility of the event organizer to secure the appropriate number of law enforcement officers that are needed for the event and the costs of using law enforcement officers, if applicable, are the responsibility of the event organizer.

**4.5 Use of Portable Changeable Message Signs**

4.5.1 Portable Changeable Message Signs (PCMS) are portable devices that can display a variety of transportation related messages. These devices may be useful for a planned special event to direct attendees to parking areas and to direct other road users around the event to avoid traffic delays. The use of PCMS is governed by the Delaware MUTCD and these devices may only display transportation related messages. They cannot be used to advertise the event or provide other non-transportation related messages to the traveling public as the device themselves can present a distraction to motorists if not used properly.

4.5.2 DeIDOT has developed an approval form that must be submitted to receive approval to use PCMS in DeIDOT's right-of-way. This form can be found at:

[http://www.deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/pdf/PCMS\\_Approval\\_Form.doc](http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/pdf/PCMS_Approval_Form.doc)

4.5.3 Additional information regarding the use of PCMS can be found in Part 6 of the Delaware MUTCD and in the memorandum titled "Portable Changeable Message Signs," which can be found at:

[http://www.deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/pdf/Portable\\_Changeable\\_Message\\_Signs.pdf](http://www.deldot.gov/information/pubs_forms/manuals/de_mutcd/pdf/Portable_Changeable_Message_Signs.pdf)

**5.0 Event Organizer Responsibilities**

5.1 The event organizer must ensure that the following pre-event and event day activities have been conducted:

5.1.1 Pre-Event Activities

5.1.1.1 Submit the Special Events Application to the Traffic Safety Section no fewer than 90 days prior to the event.

5.1.1.2 Meet with representatives from DeIDOT, no fewer than eight weeks prior to the event, to discuss and develop a transportation operations plan, if one is required for the event.

5.1.1.3 Submit the Temporary Traffic Control Plan to the Traffic Safety Section no fewer than six weeks prior to the event.

5.1.1.4 Notify the local or state police and fire companies no fewer than 60 days prior to the event regarding the proposed lane closures and event location.

5.1.1.5 Notify DeIDOT's Public Relations Section no fewer than 10 days prior to the event to have a press release issued notifying the public that lanes or roads will be closed within the event area. The Public Relations Section can be reached at (302) 760-2080

5.1.2 Event Day Activities

5.1.2.1 Contact the DeIDOT Transportation Management Center no fewer than one hour prior to the event to notify of the impending lane closures. The Transportation Management Center can be reached at (302) 659-4600.

5.1.2.2 Place all temporary traffic control devices in accordance with the approved temporary traffic control plan and the Transportation Operations Plan, if an operations plan was developed.

5.1.2.3 A designated person must monitor the temporary traffic control devices and adjust as needed.

5.1.2.4 At the conclusion of the event, all temporary traffic control devices must immediately be removed from the roadway and the roadway restored to its normal conditions.

5.1.2.5 Contact the DeIDOT Transportation Management Center upon restoring the roadway to normal conditions to notify of the completed event and removal of traffic restrictions.

5.2 In the event of an emergency, the event organizer may be required to immediately reopen the roadway. Upon notification by a DeIDOT official or law enforcement personnel, the event organizer shall immediately restore the roadway to normal operations.

5.3 The event organizer or event participants shall not erect any advertising signs or other non-traffic control signs within DeIDOT's right-of-way. The event organizer or event participants shall not paint any markings on the roadway(s) within the event location.

## **6.0 Costs**

6.1 As of this time, there are no permit fees for the Special Events Permit Application. In addition, there are no fees charged by DeIDOT to develop temporary traffic control plans, detour plans or transportation operations plans.

6.2 The event organizer is responsible for the costs associated with temporary traffic control for a particular planned special event. These costs may include, but will not be limited to, the procurement of the required compliant temporary traffic control devices, the use of portable changeable message signs and labor associated with the installation and removal of temporary traffic control devices. The event organizer may request DeIDOT's assistance with the deployment of the temporary traffic control plan and/or the transportation operations plan, however, the Department must be reimbursed for all equipment and labor costs associated with the event. If the event organizer requests DeIDOT assistance, the Department will generate a cost estimate and will send the cost estimate and a concurrence letter to the event organizer for review. If the event organizer concurs with the cost estimate, the event organizer shall sign the concurrence letter and send it back to DeIDOT. No charges will be incurred until after the event is completed. Upon completion of the event, the Department will contact the event organizer, review all costs incurred and then the Department will send the event organizer a bill for services rendered.

6.3 If the event organizer does not utilize DeIDOT forces for the deployment of the temporary traffic control plan or transportation operations plan, the event organizer shall procure the necessary devices and labor from entities that have experience with temporary traffic control. Failure to have the necessary provisions in place for the day of the event will result in the revocation of the Special Events Permit and will result in the removal of all event participants from DeIDOT's right-of-way.

## **7.0 Coordination of Special Events**

There may be instances where two or more planned special events occurring in close proximity to each other will be scheduled for the same day(s). If this is the case, the Special Events Manager for DeIDOT will meet with the event organizers from each event and determine how best to manage potential conflicts between events. This may require modifications to event routes, event traffic control plans and event schedules. DeIDOT reserves the right to direct these changes to prevent event traffic control and event routes from overlapping. Failure to comply with DeIDOT's changes will result in revocation of the Special Events Permit.

## **8.0 Revocation of Permit by DeIDOT**

8.1 Failure to comply with the approved temporary traffic control plan, the provisions of the approved Special Events Permit or failure to complete the pre-event and/or event day activities will result in revocation of the approved Special Events Permit. DeIDOT reserves the right to stop the event activities and restore the roadway to normal conditions if the approved temporary traffic control is

conducted in an unsafe manner or if there are unforeseen traffic delays experienced as a result of the special event.

- 8.2 The event organizer or event participants shall not erect any advertising signs or other non-traffic control signs within DeIDOT's right-of-way. The event organizer or event participants shall not paint any markings on the roadway(s) within the event location. Failure to comply will result in the revocation of the Special Events Permit, immediate removal of all participants from DeIDOT's right-of-way.
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**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, Wednesday, March 2, 2011, beginning at 10:30 a.m. The meeting will be held at the West Trenton Volunteer Fire Company, West Upper Ferry Road, West Trenton, NJ. For more information, visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, March 17, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH****2011 State of Delaware Milk Code Regulations****PUBLIC NOTICE**

The Department of Health and Social Services, Division of Public Health is proposing revisions to the State of Delaware Regulations governing Milk and Milk Products. The Division of Public Health proposes to repeal the current 2003 State of Delaware Milk Code in its entirety and in its place adopt with amendments the *United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance 2009 Revision* to be known as the 2011 State of Delaware Milk Code. On March 1, 2011, the Division plans to publish the proposed 2011 State of Delaware Milk Code and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the March 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

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

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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE****3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas****PUBLIC NOTICE**

The Atlantic States Marine Fisheries Commission's (ASMFC) Management Board for Black Sea Bass is in the process of developing an Addendum to the Interstate Fisheries Management Plan. The Addendum will recommend management strategies necessary to reduce recreational harvest to levels recommended by the National Marine Fisheries Service to prevent overfishing. The Department's Start Action Notice was initiated with

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specific management recommendations in the form of seasons, minimum size limits, and creel limits. Since that time, the ASMFC has taken an alternate approach that may result in a variety of options for States to consider rather than the original set of regulations and guidelines. It is anticipated that these State or Regional-specific management measures will be defined and available for public comment by the time of the public hearing. The Department will present the approved options that will allow the State to remain in compliance with the interstate management plan at the public hearing or as soon as they are available.

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendment will be held on March 24, 2011 at the Department of Natural Resources and Environmental Control auditorium beginning immediately following the summer flounder public hearing that begins at 6 PM, located at 89 Kings Highway, Dover, DE 19901.

**DIVISION OF FISH AND WILDLIFE**  
**3511 Summer Flounder Size Limits; Possession Limits**  
**PUBLIC NOTICE**

The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid Atlantic Fishery Management Council and the National Marine Fisheries Service are to use for conservation equivalency in the recreational summer flounder fishery. These agencies agreed at their joint meeting on December 15, 2010 that the states would implement conservation equivalent measures rather than a coastwide management program for summer flounder in 2011. The total allowable harvest quota has been increased for 2011 based on the latest scientific data that indicates that the stock is not overfished and overfishing is not occurring. Delaware's harvest cap for 2011 will be 107,000 fish which is higher than the 80,000-fish target in 2010. In addition, it is estimated, based on the Marine Recreational Fisheries Statistics survey data, that approximately 76,000 summer flounder were harvested in Delaware during the 2010 fishing season. Two options have been approved and will be considered at public hearing with the following size limits, creel limits and season.

Currently, 3511 subsection 3.0 is a flounder dismemberment clause that makes it unlawful for anyone to have in possession any part of a flounder that is less than the minimum size unless they also have the head and backbone and tail (rack) to go along with it. This regulation was intended to cover all anglers. The Division plans to amend subsection 3.0 to allow for better shore-based enforcement.

The public hearing on the proposed amendment will be held on March 24, 2011 beginning at 6 pm in DNREC's R & R Building, Auditorium, located at 89 Kings Highway, Dover, DE 19901.

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**DIVISION OF FISH AND WILDLIFE**  
**3536 Fish Pot Requirements**  
**PUBLIC NOTICE**

Complaints and conflicts have surfaced between recreational hook and line fishermen, charter and head boat operators, and commercial fish pot fishermen on some of the artificial reef sites developed in the Delaware Bay as part of Delaware's Artificial Reef Program. The abundance of fish pots, their marking lines and floats have in some instances prevented or interfered with normal hook and line angling opportunities. The Department has legislative authority to regulate the type of fishing gear that can be used on artificial reef sites within Delaware waters. This proposed regulation is intended to eliminate existing conflicts between hook and line gear and other fishing gear types currently being deployed on artificial reef sites. It is also intended to address concerns of the funding agency (US Fish and Wildlife Service) that some fishing gear presently being fished on Delaware artificial reef sites is incompatible with the intent of the funding agency in providing support to the Division of Fish and Wildlife for the State's reef program.

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendment will be held on March 25, 2011 at the Department of Natural Resources and Environmental Control auditorium beginning at 6 PM, located at 89 Kings Highway, Dover, DE 19901.

**DIVISION OF FISH AND WILDLIFE****3541 Atlantic Sharks****PUBLIC NOTICE**

A number of shark species, including sandbar shark (*Carcharhinus plumbeus*) and sand tiger (*Odontaspis taurus*), are prohibited from harvest and should not be targeted by recreational anglers. These species are extremely vulnerable to fishing pressure and Delaware's nearshore waters serve as important pupping, nursery, and feeding grounds. Studies indicate that these sharks suffer significant injury or death as a result of being caught by hook and line and need to be treated with the utmost care when hooked. It has become evident that a growing segment of the recreational fishery is illegally targeting these species for sport, despite the fact that this activity is expressly prohibited under §3541 (2.0). Further, many anglers are not immediately releasing these species in a manner that ensures the greatest chance of survival. Unfortunately, it is difficult to enforce fishing intent. Thus, the Department is seeking to amend the regulations in Title 7 §3541 to improve enforceability of the shark regulations and to better define measures that will ensure a shark's maximum probability of survival.

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on the proposed amendment will be held in the Department of Natural Resources and Environmental Control auditorium located at 89 Kings Highway, Dover, DE 19901 on March 25, 2011. Members hearing will begin immediately following the artificial reef gear restriction public hearing that begins at 6 PM.

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**DIVISION OF SOIL AND WATER CONSERVATION****DELAWARE COASTAL PROGRAMS****5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures****PUBLIC NOTICE**

The Delaware Coastal Management Program, as dictated by the National Oceanic and Atmospheric Administration's (NOAA), Federal Consistency Regulations (15 CFR 930 subpart D), must develop a list of Federal Licenses and Permits that have likely coastal zone effects and that the DCMP intends to review for consistency with its coastal zone management policies. The regulations (15 CFR 930 subpart I) also require that DCMP establish a separate list of Federal activities occurring outside of the State boundary that have interstate coastal effects and for which DCMP intends to review for consistency with its coastal zone management policies.

This action will update the existing list of Federal licenses and permits for which DCMP conducts Federal Consistency reviews and will establish a new list of federal activities occurring outside of State boundaries for which DCMP will conduct Federal Consistency reviews. There are no new regulations being introduced through this process. The update and changes to the Delaware Federal Consistency Policies and Procedures are considered a Routine Program Change under the NOAA Statute (15 CFR 923.84(a)).

The public hearing will be held on March 22, 2011, at 6 pm at the St Jones Reserve, located at 818 Kitts Hummock Road, Dover, Delaware 19901. Written comments may be mailed to Tricia Arndt, Delaware Coastal Programs, 89 Kings Highway, Dover, Delaware, 19901

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**DIVISION OF WATER RESOURCES****7401 Surface Water Quality Standards****PUBLIC NOTICE**

The amended Surface Water Quality Standards presented here are the result of a comprehensive review of the Standards that started with SAN #2008-24 in 2008. Department staff conducted a review of water quality criteria and current EPA documents and prepared a draft markup of amended Water Quality Standards in advance of a workshop held January 7, 2009 in the DNREC auditorium. Department staff kept interested parties abreast of developments and the workshop using a combination of e-mail notices, internet postings of documents and relevant links, and public notices. Preceding and during the workshop, written comments were requested, received and considered for inclusion in the proposed Standards presented here. A public hearing was held September 2, 2009 with comments accepted until September 11, 2009. To ensure compliance with the Clean Water Act and satisfy EPA requirements, the State of Delaware, in accordance with 7 Del.C. §6010, will amend the State of

Delaware Surface Water Quality Standards (as amended July 11, 2004).

Because it has been longer than one year since the last Departmental action, The Department of Natural Resources and Environmental Control, Division of Watershed Stewardship, is reopening the comment period for 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. Comments already submitted need not be resubmitted. New comments will be accepted through 4:30 PM, April 1, 2011.

Additional information, the proposed regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed regulation, please contact David Wolanski, Watershed Assessment Section, at (302) 739-9939 or by email at [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us).

Please direct comments to David Wolanski, Water Quality Standards Coordinator, DNREC Watershed Assessment Section, 820 Silver Lake Blvd, Suite 220, Dover, DE 19904, FAX to 302-739-6140, or by e-mail to [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us). Electronic submissions are preferred.

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF COMMUNICATIONS**  
**2500 In-Building Communications Systems Regulation**  
**PUBLIC NOTICE**

The Delaware Department of Safety and Homeland Security Division of Communications, proposes these regulations in accordance with the General Assembly's mandate to maintain quality in-building communications and prevent "dead-zone" areas in new buildings thus protecting the citizens of Delaware by enabling emergency public safety personnel to communicate effectively while responding to emergencies.

The Delaware Department of Safety and Homeland Security, Division of Communications solicits written comments from the general public concerning these proposed regulations. Any such written comments should be submitted to: Mark Grubb, Director of the Division of Communications, at 3050 Upper King Rd., Dover, DE 19904 on or before April 1, 2011.

Copies of the proposed regulations are available upon request.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**700 BOARD OF CHIROPRACTIC**  
**PUBLIC NOTICE**

The Delaware Board of Chiropractic, pursuant to 24 Del.C. §706(a)(1), proposes to revise their rules and regulations. The proposed revisions reorganize the rules as a whole, and make two additional substantive changes suggested at the public hearing in November. First, the rules reincorporate the requirement that professionals notice current patients of his/her intent to close his/her office by mail if the patient has not already picked up his/her records. Second, the proposed revisions now clarify the distance learning limitation by limiting asynchronous continuing education credits accepted to 6 hours, with no restriction on synchronous continuing education credits.

The Board will hold a public hearing on the proposed rule change on April 7, 2011 at 09:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Administrator of the Delaware Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 6, 2011.

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