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# Delaware Register of Regulations

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Issue Date: May 1, 2011

Volume 14 - Issue 11, Pages 1140 - 1257

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- Errata
- Proposed
- Final

### Governor:

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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
June 1	May 16	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.

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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 1142

**ERRATA****REGISTER NOTICE****SAN # 2010-22**

\* **Please Note:** The April 2011 issue of the Register contained incorrect text for the Order adopting the proposed regulation. The correct text is printed below.

**1142 Specific Emission Control Requirements**

Date of Issuance: March 16, 2011  
Effective Date of the Amendment: April 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 Section 2.0 of 7 DE Admin. Code 1142, Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries; and Proposed State Implementation Plan (SIP) revision, "Demonstration that Amendments to Section 2.0 of 7 DE Admin. Code 1142, 'Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries', Do Not Interfere with Any Applicable Requirement of the Clean Air Act (CAA)".

Section 2.0 of 7 DE Admin. Code 1142 was first promulgated on July 11, 2007. Subsequently, Regulation 1142 was revised in 2009, consistent with a DNREC/Premcor settlement agreement, and was then submitted to the EPA as a SIP revision. In 2010, Section 2.0 of Regulation 1142 was approved by the EPA into Delaware's SIP.

In 2009, the operations of equipment at the Delaware City Refinery were discontinued, and in 2010 the refinery ownership changed from Premcor Refining Group, Inc., to Delaware City Refining Company, LLC ("DCRC"). Two actions related to this change in ownership impact Delaware's SIP:

- On May 28, 2010, the Department reached an enforcement settlement with Premcor. This settlement, among other things, terminated the 2008 FCCU NOx Agreement which had required the Premcor fluid catalytic cracking unit CO boiler to meet a 20 parts per million (ppm) NOx emission limitation by May 1, 2009.
- On May 31, 2010, the Department and DCRC reached an agreement on DCRC's acquisition, restart and operation of the Delaware City Refinery. One element of that agreement provides that the Department will propose to revise Section 2.0 of 7 DE Admin. Code 1142 to provide for a facility-wide NOx emission cap compliance alternative.

This proposed promulgation seeks to revise Section 2.0 of 7 DE Admin. Code 1142 to (1) provide for the control of NOx from the Fluid Catalytic Cracking Unit CO boiler to the level that was previously required by the 2008 consent agreement; and to (2) provide for a facility-wide NOx emission cap compliance alternative. Additionally, the Department is proposing a SIP document that demonstrates that these two revisions to Regulation 1142 will not interfere with attainment or maintenance of any NAAQS, or any other applicable requirement of the CAA.

The Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start

Action Notice #2010-22. The Department published the proposed regulatory amendments in the January 1, 2011 Delaware Register of Regulations and held a public hearing on February 1, 2011. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 11, 2011 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

### Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in DAQ developed the record and drafted the proposed Amendments. It should be noted that the Department received public comment from the Delaware City Refining Company, LLC ("DCRC"), and provided thorough and well-reasoned responses to the same in the Department's original Technical Response Memorandum (TRM) of February 4, 2011, and again in its supplemental TRM of March 10, 2011, both of which were expressly incorporated into the Hearing Officer's Report generated in this matter. It should also be noted that the Department received no public comments with regard to the proposed SIP document submission in this matter.

I find that the Department's experts in the DAQ fully developed the record to support adoption of the Amendments. These proposed amendments are based upon a May 31, 2010 agreement ("Agreement") between DNREC and the Delaware City Refining Company, LLC ("DCRC") which states that DNREC will propose to revise Section 2.0 of 7 DE Admin. Code 1142 to provide for compliance with a facility-wide NO<sub>x</sub> emission cap as an alternative to the existing unit specific NO<sub>x</sub> emission limitations. With the adoption of these regulatory amendments, Delaware will have the Department's regulations provide for compliance as stated above. Furthermore, with the adoption of the proposed SIP submission, Delaware will demonstrate that the revisions to Regulation 1142 as noted above will not interfere with attainment or maintenance of any NAAQS, or any other applicable requirement of 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, and associated SIP document, as final;
2. The Department provided adequate public notice of the proposed Amendments and associated SIP document, and provided the public with an adequate opportunity to comment on the same, including at a public hearing;
3. The Department held a public hearing on February 1, 2011 on the proposed Amendments and associated SIP document, 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 January 1, 2011, Delaware Register of Regulations;
6. The recommended Amendments should be adopted as final regulation Amendments because said revisions to Section 2.0 of 7 DE Admin. Code 1142 will (1) provide for the control of NO<sub>x</sub> from the Fluid Catalytic Cracking Unit CO boiler to the level that was previously required by the 2008 consent agreement; and (2) provide for a facility-wide NO<sub>x</sub> emission cap compliance alternative. Additionally, the adoption of the recommended SIP document submission will demonstrate that these two revisions to Regulation 1142 will not interfere with attainment or maintenance of any NAAQS, or any other applicable requirement of the CAA; 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.

**14 DE Reg. 1153 (05/01/11)**

**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** 505

**Education Impact Analysis Pursuant To 14 Del.C. §122(d)****505 High School Graduation Requirements and Diplomas****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 or intends to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas to add specific course names. The addition of the specific course names is aligning the graduation requirements to the Delaware Comprehensive Assessment System (DCAS) end-of-course exams.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **June 3, 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 designed to assist in improving 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 designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is not intended to affect students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The 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 not intended to place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority does not change with the amendment.
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. Specifically, it relates to the design of the DCAS that had broad stakeholder input.
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 school boards for compliance.

## 505 High School Graduation Requirements and Diplomas

### 1.0 Definitions:

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

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

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

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

**"Department"** means the Delaware Department of Education.

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

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

**"High School"** means grades 9 through 12.

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

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

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

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

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

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

**"World Languages"** RESERVED

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

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

## **2.0 Current Graduation Requirements**

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

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

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

- ~~32.1 Beginning with the graduating class of 2011, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two (22) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics; three (3) credits in Science, three (3) credits in Social Studies, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 1/2) credits in elective courses.~~
- ~~32.1.1 Students shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.~~
- ~~32.1.2 Scientific investigations related to the State Science Standards shall be included in all three science course requirements.~~
- ~~32.1.3 During the senior year students shall maintain a credit load each semester that earns them at least a majority of credits that could be taken that semester including one (1) of the four credits required in Mathematics. A credit in Mathematics shall be earned during the senior year.~~
- ~~32.1.3.1 Senior year credits shall include regular high school course offerings, the options available in 8.0<sub>1</sub> or a combination of both.~~

~~3.1.3.1.1 Options for the senior year in 3.1.3.1 that the districts and charter schools provide shall be submitted to the Department with a copy to the office of the State Board of Education for review.~~

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

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

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

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

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

- 4.1 Beginning with the graduating class of 2016, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.
- 4.1.1 The student shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses. The student shall complete an Algebra II or Integrated Mathematics III course as one of the Mathematics credits.
- 4.1.2 Scientific investigations related to the State Science Standards shall be included in a ll three science course requirements. The student shall complete a Biology course as one of the Science credits.
- 4.1.3 The student shall complete an English II course as one of the English Language Arts credits.
- 4.1.4 The student shall complete a U. S. History course as one of the Social Studies credits.
- 4.1.5 During the senior year the student shall maintain a credit load each semester that earns the student at least a majority of credits that could be taken that semester. A credit in Mathematics shall be earned during the senior year.
- 4.1.5.1 Senior year credits shall include regular high school course offerings, the options available in 8.0, or a combination of both.

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

4.2.1 Earning a minimum of two (2) World Language credits in the same language or,

4.2.2 Demonstrating Novice-high or higher proficiency level on a nationally recognized assessment of language proficiency, except English, in the skill areas of speaking, reading and writing, that uses the levels of proficiency as identified by the American Council for the Teaching of Foreign Language, or as approved for use by the Delaware Department of Education.

## **45.0 Monitoring Student Progress (Personalizing the High School Experience)**

~~45.1~~ Beginning with the 2007-2008 school year, every eighth and ninth grade student shall have a Student Success Plan (SSP) developed by the student, the student's advisor, at least one other school staff member and the student's parent(s), guardian(s) or relative caregiver. Each school year thereafter a grade shall be added so that by the 2011-2012 school year, every student in grades 8 through 12 shall have a Student Success Plan. [For a student with an Individualized Education Program (IEP) the Student Success Plan (SSP) shall also incorporate the other aspects of the transition plan required by 14 DE Admin. Code 925.

~~45.2~~ Each local school district and charter school shall establish a process for developing Student Success Plans that includes:

~~45.2.1~~ Actively monitoring student progress, on an ongoing basis and, at a minimum, by the end of each marking period in those courses required for graduation,

~~45.2.2~~ Providing support services if a student is failing or in danger of failing courses required for graduation, and

~~45.2.3~~ Annual updating of the Student Success ~~plans~~ Plan by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver] and others as appropriate.

~~45.2.4~~ Following the guidelines for Career and Technical Education (CTE) programs of study outlined in the CTE State Plan.

~~45.2.5~~ Reviewing each student's transcript at the end of the first and second year of high school to determine if the student is on track to graduate based on the following criteria:

~~45.2.5.1~~ At the end of the first year of high school the student has earned at least three (3) core course credits and two (2) other course credits for a total of five (5) course credits; and

~~45.2.5.2~~ At the end of the second year of high school the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits.

~~45.2.5.3~~ For a student with an Individualized Education Program (IEP), on track to graduate shall be consistent with ~~45.2.5.1~~ and ~~45.2.5.2~~ unless otherwise determined by the student's IEP Team.

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

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

## **6.0 Career Pathway**

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

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

## **7.0 Additional Credit Requirements**

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

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

**8.0 Options for Awarding Credit Toward High School Graduation**

- 8.1 District and charter school boards are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.
- 8.1.1 Courses taken at or through an accredited community college, two or four year college.
  - 8.1.2 Voluntary community service as defined in 14 **Del.C.** §§8901A and 8902A.
  - 8.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.
  - 8.1.4 Independent study.
  - 8.1.5 Correspondence Courses.
  - 8.1.6 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.
  - 8.1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district or to a charter school.
  - 8.1.8 Course credit transferred from another high school.
  - 8.1.9 Course credit earned through summer or evening school classes, as a member of the military service or as part of the James H. Groves Adult High School.
  - 8.1.10 Tutoring programs taught by a teacher certified in the subject being taught.
  - 8.1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.

**9.0 High School Diplomas and the Certificate of Performance**

- 9.1 A State sanctioned diploma shall be granted to students who meet the state and local district or charter school requirements for graduation pursuant to 14 **Del.C.** §152.
- 9.2 A State sanctioned Certificate of Performance shall be granted to students who meet the requirements of 14 **Del.C.** §152.
- 9.3 Diplomas from one school year shall not be issued after December 31 of the next school year.
- 9.4 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).
- 9.5 State High School Diploma for World War II Veterans Pursuant to 14 **Del.C.** §159
- 9.5.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.
  - 9.5.2 The Department shall provide a high school diploma to any World War II veteran who:
    - 9.5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.
    - 9.5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,
    - 9.5.2.3 Was discharged from the armed forces under honorable circumstances.

9.5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 9.5.2.1 through 9.5.2.3.

9.5.4 Applications for this high school diploma shall be made on forms designated by the Department and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

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

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

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

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

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

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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 701

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

#### 701 Unit Count

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of the Regulation

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 3, 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 legislation codifying the needs based unit funding. Funding will be based on the needs of the child rather than their disability category. This should support improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to legislation codifying the needs based unit funding. Funding will be based on the needs of the child rather than their disability category. This should ensure all student receive and 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 legislation codifying the needs based unit funding. Funding will be based on the needs of the child rather than their disability category. This should ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to legislation codifying the needs based unit funding. Funding will be based on the needs of the child rather than their disability category. This should 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 assists in flexibility of decision making at the local board and school level, especially as it relates to providing services based on need.

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 for addressing the subject remains in the same entity.

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 the regulation.

## 701 Unit Count

### 1.0 Forms and Record Keeping

- 1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.
- 1.3 Records to substantiate students with disabilities included in the enrollment count shall contain a student Individual Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as special education students as per 14 **DE Admin. Code** 925.

**8 DE Reg. 1473 (4/1/05)**

**13 DE Reg. 1452 (05/01/10)**

### 2.0 Special Situations Regarding Enrollment

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.
- 2.2 ~~Students with multiple disabilities shall be reported in the category that corresponds to their primary eligibility category.~~
- 2.3 Students with disabilities included in the special education unit count under the placement provisions of Transfer Students or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.
- 2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

**8 DE Reg. 1473 (4/1/05)**

**13 DE Reg. 1452 (05/01/10)**

**3.0 Accounting for Students Not in Attendance the Last Ten Days in September**

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:
- 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.
  - 3.1.2 Reason to believe that student will be returning to school prior to November 1st.
  - 3.1.3 Districts and Charter Schools enrolling an intra-state transfer student during the last 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first year charter agreement before enrolling the student. If said obligation exists, "good cause" pursuant to 14 **Del.C.** §402 and §506(d) respectively must be determined before the receiving district/charter school can enroll the student. Districts and charter schools enrolling an in-state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow up letter to the previous district/charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the fax transmittals and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

**8 DE Reg. 1473 (4/1/05)**

**13 DE Reg. 1452 (05/01/10)**

**4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count**

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:
- 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
    - 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
    - 4.1.1.2 Students shall receive the level of special education service as defined by the current IEP.
    - 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
  - 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In school Credit Program (14 **DE Admin. Code** 915.2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
  - 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1st.
  - 4.1.4 Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.
    - 4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a special education student if, in the child's placement immediately preceding the homebound placement, the child had an IEP in effect during the last week of school in September.
  - 4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1<sup>st</sup>.

- 4.1.6 Consortium Discipline Alternative Program:
- 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.
  - 4.1.6.2 Students shall receive the level of special education service as defined by the current IEP.
  - 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 ~~Students enrolled in kindergarten pursuant to 14 **DE Admin. Code** 940 shall be counted in the grade level enrollment group to which they are assigned.~~
- 4.1.87 Except as provided in section 5.0 and 7.21, all pre kindergarten children with disabilities shall be counted as full time in the appropriate eligibility category in the Preschool Pre K-12 Intensive Special Education (Intensive), or Pre K-12 Complex Special Education (complex) units.
- 4.1.98 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.
- 4.1.109 Regular Programs, Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.
- 4.1.140 Special Education Services, special education services include students who have been properly identified and have an IEP in effect during the last week of school in September. Students with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.
- 4.1.121 Career and Technical Education (CTE) Programs, A maximum of 900 minutes of career and technical education time per week per student shall be credited toward the career and technical education unit determination. However, units shall be counted on the basis of 1 unit for each 30 students ~~or major fraction thereof~~ for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

**8 DE Reg. 1473 (4/1/05)**

**13 DE Reg. 1452 (05/01/10)**

## 5.0 Programs and Situations that Do Not Qualify for the Unit Count

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
- 5.1.1 Students who have not attended school during the last 10 days of September
  - 5.1.2 Students who are enrolled in General Education Development (GED) programs
  - 5.1.3 Students who are enrolled in other than Department of Education approved programs
  - 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District/Charter School unless that District/Charter School operates the facility's instructional program; otherwise the student must be treated as a withdrawal
  - 5.1.5 Students enrolled in a Homeschool as defined in 14 **Del.C.** §2703A.

**8 DE Reg. 1473 (4/1/05)**

**13 DE Reg. 1452 (05/01/10)**

## 6.0 Nontraditional High School Schedules

- 6.1 For unit count purposes if a career technical student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week.

6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.

Fall and Spring Career Technical= 300 minutes per week

Spring and Fall Career Technical= 1500 minutes per week

1800 /2 = 900 minutes  
per week

6.2 For unit count purposes a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30<sup>th</sup> unit count. For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:

6.2.1 Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program;

or

6.2.2 Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site;

or

6.2.3 The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in 6.2.4 through 6.2.11;

6.2.4 Students and their parent(s)/guardian(s) must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.

6.2.5 Students must be enrolled for a minimum of three courses.

6.2.6 Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three hours per week.

6.2.7 Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.

6.2.8 The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.

6.2.9 The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their parents/guardians.

6.2.10 The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.

6.2.11 An audit file containing information listed in 6.2 and its sub sections must be maintained on all students participating in the program and must be presented upon request to the Department of Education and/or the State Auditor's Office.

**8 DE Reg. 1473 (4/1/05)**

**13 DE Reg. 1452 (05/01/10)**

## **7.0 Charter Schools**

~~7.1 Charter schools shall be allowed the following options in calculating their unit count:~~

~~7.1.1 Using the standard public school procedure: major fraction unit rounding rule in each category; or~~

~~7.1.2 Adding the fractional units in each category, fractional units will be funded~~

Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any Pre K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll Pre K students.

**8 DE Reg. 1473 (4/1/05)**

### **8.0 Unit Adjustments After Audit**

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

**2 DE Reg. 382 (9/1/98)**

**5 DE Reg. 627 (9/1/01)**

**6 DE Reg. 74 (7/1/02)**

**8 DE Reg. 1473 (4/1/05)**

### **OFFICE OF THE SECRETARY**

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

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

**1006 Delaware Interscholastic Athletic Association (DIAA)**

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 3, 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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Delaware Interscholastic Athletic Association and continues 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve 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 regulation is related to the Delaware Interscholastic Athletic Association and does not place any unnecessary reporting or administrative requirements or mandates and continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to the Delaware Interscholastic Athletic Association and continues to locate the decision making authority and accountability in the same entity.

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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any 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 of addressing the purpose of this regulation.

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

**1006 Delaware Interscholastic Athletic Association (DIAA)****1.0 Organization Name, Purpose, and Definitions**

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

**1.2 Definitions**

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

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

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

**"Department"** means the Delaware Department of Education.

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

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

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

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

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

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

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

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

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

## 2.0 Membership in DIAA

- 2.1 Full Member Schools: Any secondary and middle school located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, including nonpublic, private, and public, career technical, and charter schools, as authorized by Title 14 of the Delaware Code Ch. 5, may become a full member school of DIAA. Membership requires the by payment of dues and a signed affirmation of the obligations of membership.
- 2.1.1 A full member school is a non voting member of DIAA and does not participate in its day to day governance. A full member school may at any time make appropriate recommendations for policy action to the DIAA Board of Directors for its consideration.
- 2.1.2 Membership shall include all secondary and middle public schools participating in interscholastic athletics and such nonpublic schools that may elect to become full or associate members.
- 2.2 Associate Member School: Any school, not a full member school, located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, may apply for status as an associate member school provided the applicant sets forth good cause and sufficient justification why such school cannot become a full member school. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.
- 2.2.1 Associate Membership Criteria: The membership application shall contain a statement that the school will abide by the Rules and Regulations of the Department of Education and the Delaware Interscholastic Athletic Association and in those cases wherein the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate member school competes with a full member school of DIAA or a comparable state association; participates in DIAA sanctioned tournaments and meets in cross country, indoor track, wrestling (except dual team tournaments), outdoor track, and golf involving the aforementioned full member schools; or participates in a state championship event.
- 2.2.2 Such associate member schools, after initial approval, shall be reviewed each year by the DIAA Board of Directors for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.
- 2.3 Membership Dues Schedule: Yearly dues for full member and associate member schools shall be as follows:
- 2.3.1 \$500 for middle schools.

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

**11 DE Reg. 1632 (06/01/08)****3.0 DIAA Board of Directors**

- 3.1 Conflict of Interest: Any member of the Board of Directors who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse himself or herself from consideration of the matter and shall not vote on that appeal or waiver request. The Chairperson of the Board is responsible for maintaining the integrity of the decision making process.
- 3.2 Committees of the DIAA Board of Directors
- 3.2.1 DIAA Board standing committees include: Rules and Regulations, Officials, Sports Medicine; Sportsmanship and one for each DIAA recognized sport. The Chairperson of the DIAA Board may appoint additional short term committees with specific assignments when deemed necessary.
- 3.2.1.1 The committee for each DIAA recognized sport shall have, in writing, procedures for determining tournament berths and selecting tournament sites. Such procedures shall be on file with the Executive Director and sent to the administrative head of each member school.
- 3.3 Committee Membership
- 3.3.1 The Chairperson of the DIAA Board of Directors and the Executive Director shall be *ex officio* members of all committees. Committee membership shall be geographically representative and

committee membership may include administrators, athletic directors, coaches, local school board members, officials and public members.

- 3.3.2 The Chairperson of the DIAA Board of Directors shall appoint individuals to serve as committee chairpersons. The individuals appointed shall serve for an indefinite period of time. The Chairperson of the Board, however, with the advice of the Executive Director, in his or her discretion, may remove a committee chairperson.
- 3.3.3 The Committee Chairperson, with the advice and consent of the Executive Director, shall appoint individuals to serve on the committee. The individuals so appointed shall serve for an indefinite period of time. The Committee Chairperson, however, with the advice and consent of the Executive Director, may, in his or her discretion, remove individuals from the committee.

#### 4.0 Responsibilities of the Executive Director

- 4.1 The Executive Director shall interpret the rules and regulations and may grant waivers of rules and regulations: Any waiver granted shall be temporary and shall be subject to review and approval by the DIAA Board at a subsequent or special meeting. All decisions or actions as noted above shall be documented and shall be a part of any hearing or appeal procedure.
- 4.2 The Executive Director may Decide issues between meetings of the Board of Directors. The Executive Director shall initiate a review of or fully investigate an alleged violation of the Rules and Regulations that he/she has seen, heard or read about, or which has been reported to him/her. The Executive Director may also refer investigations to committees referenced in 3.2.1 or employ special investigators as necessary to conduct such investigations. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a player, team, coach or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.
- 4.3 The Executive Director shall carry on the business of the DIAA Board and DIAA between meetings: Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board of Directors. No school or individual shall be penalized in any case in which the DIAA Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the day to day operation of the organization.
- 4.4 In the event that the Executive Director is unavailable to perform his or her duties due to a conflict of interest or otherwise, and a matter requires immediate action, the Executive Director may delegate the matter to a subordinate, the Sportsmanship Committee, special committees referenced in 3.2.1, or to the Chairperson or Vice Chairperson of the DIAA Board of Directors. In such a case, the action shall be treated as the action of the Executive Director under the DIAA rules and regulations.

#### 5.0 Responsibilities, Powers, and Duties of the Administrative Head of School

- 5.1 Responsibilities of Administrative Head of School
- 5.1.1 The administrative head of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individuals and teams. The administrative head may delegate his or her authority, but such delegation will not negate the responsibility for a violation of the DIAA Regulations by his/her school.
- 5.2 Powers and Duties of Administrative Head of School
- 5.2.1 The administrative head of each member school shall exercise general control over all of the interscholastic athletic matters of his/her school which include but are not limited to the following:
- 5.2.1.1 Sanctioning all interscholastic athletic contests in which his/her school participates.
- 5.2.1.2 Excluding any contestant because of improper conduct or ineligibility.
- 5.2.1.3 Excluding any contestant whose physical health would be jeopardized by such participation, because of illness or injury suffered, until such time as the contestant is declared physically fit by the school or attending physician.

- 5.2.1.4 Protecting the well being of all visitors and officials attending interscholastic athletic contests conducted by his/her school. Administrative heads of member schools shall be expected to provide adequate security and, in the absence of such provisions, penalties may be imposed.
- 5.2.1.4.1 When a contest is conducted at a neutral site, the administrative heads of the participating schools shall be held jointly responsible for the protection and well being of all visitors and officials. In the absence of adequate security, penalties may be imposed upon either or both of the schools.
- 5.2.1.5 Protecting the well being of the school's participants by providing them with safe and suitable uniforms and equipment and conducting practices and contests in a manner which minimizes risk to the health and safety of student athletes.
- 5.2.1.6 Ensuring that all required contracts for athletic contests in which the school participates are in writing and bear the proper signatures.
- 5.2.1.7 Designating a staff member of the school as the faculty manager for the teams representing the school or to serve as the faculty manager. If no such designation is made, the coach shall serve as the faculty manager.
- 5.2.1.8 Ensuring that an authorized representative accompanies the school's teams to all contests.
- 5.2.1.9 Certifying in writing the eligibility of his/her school's contestants in accordance with the Regulations of the Department of Education.
- 5.2.1.10 Exercising such other powers regarding the interscholastic athletic program of the school as are consistent with the needs of the school and with the provisions and spirit of the Regulations of the Department of Education.
- 5.2.1.11 Urging all students competing on the school's teams to obtain medical accident insurance which covers athletic participation.
- 5.2.1.12 Notification to DIAA of any official delegation of authority.

## **6.0 Amendments to Department of Education Regulations**

- 6.1 The DIAA Board, the Secretary of Education, the Executive Director of DIAA or any member school may propose changes, additions or deletions to the Department of Education regulations.
  - 6.1.1 Proposed changes shall be submitted in writing by a member school(s) to the Executive Director and these proposed changes and any other changes submitted by the Secretary of Education or the Executive Director of DIAA or the DIAA Board of Directors shall be reviewed by the Rules and Regulations Committee.
  - 6.1.2 Any proposed changes to the Regulations along with comments received from the Rules and Regulations Committee, shall be considered at a scheduled meeting of the DIAA Board. Proposed changes adopted by the Board shall thereafter be submitted to the Secretary of Education who will place them on the State Board of Education agenda for review and final approval.
    - 6.1.2.1 All member schools shall then be advised in writing of any proposed changes. The member schools and the public shall have an opportunity to review and comment on the proposed changes during the thirty day period that the regulations are advertised in the Register of Regulations (as per the Administrative Procedures Act).

## **7.0 Reporting Violations of Department of Education Regulations and Protests and Complaints to DIAA**

- 7.1 Reporting violations of Department of Education regulations
  - 7.1.1 If a school violates a provision of the Department of Education regulations the administrative head or his/her designee shall notify the Executive Director in writing of the violation. The Executive Director may impose immediate penalties. All violations shall be reviewed by the DIAA Board of Directors which may impose additional penalties.

7.1.1.1 ~~The Executive Director or DIAA Board of Directors may impose a~~ Additional penalties ~~may be imposed for repeat offences or above the automatic penalties listed within the specific regulation violated~~ as deemed necessary to assure proper conduct of interscholastic athletics ~~or for repeat offenses.~~

## 7.2 Reporting Protests and Complaints

7.2.1 All protests involving game competition that are allowable as defined in the NFHS (name of sport) Rule Book, and deemed by the Executive Director to be the responsibility of DIAA, and not a local conference, shall be heard by a three person protest panel. This panel will include the DIAA Executive Director, the DIAA Chairman or Vice Chairman of the Board and the State Tournament Director of the given sport. Protests must be submitted in writing within 48 hours of the conclusion of the contest or earlier if required by NFHS rules. The decisions of the DIAA protest panel may not be appealed.

7.2.2 All ~~complaints other than~~ protests ~~other than those~~ involving game competition ~~and complaints brought before DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors shall follow the procedures in 1006 8.0 and 1007 2.1.~~

### 9 DE Reg. 117 (7/1/2005)

## 8.0 DIAA Board of Directors Investigative Procedure

8.1 The following investigative procedure shall be followed when the DIAA office receives information indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of DIAA.

8.1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.

8.1.1.1 If such complaint is regarding the administrative head of school, the complaint may be referred directly to the superintendent, governing body or the equivalent supervising authority.

8.1.2 Permission shall be ~~obtained sought~~ from the administrative head of the member school to interview students and staff members and each person interviewed shall be informed of the nature of the investigation. Parents may also provide permission to interview their child.

8.1.3 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).

8.1.4 When immediate punitive action by the Executive Director is necessary, the action taken shall be stated in writing.

8.1.5 When charges are to be presented to the DIAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

## 9.0 Waiver of DIAA Rules and Regulations

### 9.1 General

9.1.1 The DIAA Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:

9.1.1.1 In the case of eligibility waiver requests, there exists a hardship as defined by 9.2.1;

9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the Rule;

9.1.1.3 The spirit of the rule being waived will not be offended or compromised;

- 9.1.1.4 The principle of educational balance over athletics will not be offended or compromised; and
- 9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.
- 9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant (the student, his/her parents or guardians, principal, headmaster or other affected party) to show extenuating circumstances warranting waiver.
- 9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient data to make it possible to reach a decision without further investigation. It is not the duty of the Executive Director or the DIAA Board to produce or collect information.
- 9.1.4 Waiver requests would be filed promptly when it becomes apparent to the student, principal, headmaster or other affected party, that a waiver will be required. In any event, all requests for a waiver of the rules, with all documentation complete, must be received by the Executive Director at least 21 calendar days before the next regularly scheduled meeting of the DIAA Board in order to be placed on the agenda for that meeting.
  - 9.1.4.1 Notwithstanding this requirement, the Chairperson of the DIAA Board may at his/her discretion add a waiver request to an agenda in an emergency situation. Failure to file a waiver request in a timely manner when all information is available shall not be considered an emergency situation.
- 9.1.5 The applicant is entitled to a hearing on his/her waiver request. Waiver hearings shall be conducted in an informal manner that affords all parties the opportunity to present all information and all relevant arguments.
  - 9.1.5.1 The DIAA Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.
  - 9.1.5.2 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.
  - 9.1.5.3 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
  - 9.1.5.4 Any document introduced into evidence at the hearing shall be marked by the Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the Board members present for the hearing unless otherwise directed.
  - 9.1.5.5 Any request by the DIAA Board for additional information pertaining to a waiver request shall be promptly supplied by the affected students, coaches, and member schools.
  - 9.1.5.6 DIAA shall provide a stenographic reporter at a hearing at its own expense.
- 9.1.6 The DIAA Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, a decision made on a waiver request shall be effective immediately.
- 9.1.7 The DIAA Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.
- 9.2 Eligibility Rule Waiver Request
  - 9.2.1 Unless specifically defined in the eligibility rule in question, "hardship" means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

- 9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the DIAA Board and in accordance with the following procedures:
- 9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student to the involved member school's principal, headmaster or their designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student or the administrator, or both, for granting the waiver.
- 9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principal or Headmaster indicating whether the school supports the waiver request.
- 9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The DIAA Board, however, may take into consideration the school's position on the waiver request when rendering its decision.
- 9.2.2.2 To aid the DIAA Board in making an informed decision, the waiver request shall include the student's:
- 9.2.2.2.1 Official transcripts from the sixth grade through the current school year and semester grades for the current school year;
- 9.2.2.2.2 Attendance records for the last two (2) years;
- 9.2.2.2.3 A letter from the Principal or Headmaster of the school requesting the waiver either supporting or not supporting the waiver request;
- 9.2.2.2.4 Any documentation specifically required by the rule;
- 9.2.2.2.5 Medical records (if applicable);
- 9.2.2.2.6 Legal documentation (if applicable);
- 9.2.2.2.7 IEP's (if applicable); and
- 9.2.2.2.8 Any documentation or evidence to substantiate a hardship or extenuating circumstance exists.
- 9.2.2.2.9 For waiver requests involving 1008.2.4 or 1009.2.4, documentation of official withdrawal from the sending school and official registration or acceptance to the receiving school.
- 9.2.3 An appearance by the student and his or her parent, guardian or Relative Caregiver before the DIAA Board is mandatory on requests for an eligibility waiver. An appearance by a school representative is strongly encouraged.
- 9.3 Waiver Requests of Non eligibility Rules
- 9.3.1 The Principal or Headmaster of a member school, or any other individual may request a waiver of a rule, regulation, guideline, policy or procedure of DIAA not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule.
- 9.3.2 All requests for non eligibility waivers must be in writing, signed by the Principal or Headmaster.
- 9.3.3 An appearance by the Principal or Headmaster or his/her designee or other individual requesting the non eligibility waiver is optional. If the Principal or Headmaster or his/her designee or other individual requesting the non eligibility waiver choose to appear before the DIAA Board he/she must notify the Executive Director of his/her intent to do so at the time the request for waiver is filed. Otherwise, the principal or his/her designee, or other individual, may attend the meeting but may not be permitted to address the DIAA Board.
- 9.3.4 If the waiver requested would affect more than one member school, the waiver applicant shall provide the position of the other affected member schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

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

**10.0 Appeal Procedure to the DIAA Board of Directors**

10.1 Decisions of the Executive Director or Sportsmanship Committee, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the DIAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics.

**10.1.1 Initiation of an Appeal to the DIAA Board**

10.1.1.1 Whenever a right of appeal of a decision to the DIAA Board of Directors is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in no event shall a notice be filed more than thirty (30) calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or body.

10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten (10) calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 **DE Admin. Code** 1007.

10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the next meeting agenda of DIAA.

10.1.1.6 An appeal shall not stay the decision of the Executive Director, the Sportsmanship Committee, or any other subordinate.

**10.1.2 Record of Prior Proceedings**

10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.

10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.

10.1.2.3 The record shall be filed with the Executive Director within ten (10) calendar days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.

**10.1.3 DIAA Board Hearing Procedures for Appeals****10.1.3.1 Record Review**

10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the DIAA Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten (10) calendar days after the notice was filed.

- 10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten (10) calendar days before the consideration date, unless otherwise directed.
- 10.1.3.1.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.
- 10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the DIAA Board's decision shall be based on the existing record, the written statements and oral argument, if any.
- 10.1.3.2 Evidentiary Hearings
- 10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the DIAA Board otherwise decides to receive additional evidence.
- 10.1.3.2.2 The Chairperson or his/her designated representative shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.
- 10.1.3.2.3 The DIAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.
- 10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.
- 10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.
- 10.1.3.2.6 Opening and closing arguments and posthearing submissions of briefs or legal memoranda will be permitted in the discretion of the DIAA Board.
- 10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the DIAA Board.
- 10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.
- 10.1.3.2.9 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.
- 10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- 10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the DIAA Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the DIAA Board members present for the hearing unless otherwise directed.
- 10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.
- 10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) calendar days of the hearing.

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

**11.0 Appeal to the State Board of Education**

- 11.1 Any party to a controversy involving the athletic rules and regulations, including a waiver thereof, may appeal to the State Board of Education by setting forth such grievance in a petition. The petition or notice of appeal shall be served on the Secretary of Education no later than thirty (30) calendar days after receipt of the decision. In addition, a copy of the petition or notice of appeal shall be served on the Executive Director of DIAA by certified or registered mail. Any decision shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See 14 Del.C. §312 and the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education). An appeal shall not stay the decision of the DIAA Board of Directors.

**1 DE Reg. 725 (12/1/97)**

**6 DE Reg. 280 (9/1/02)**

**7 DE Reg. 1692 (6/1/04)**

**9 DE Reg. 117 (7/1/05)**

**11 DE Reg. 1632 (6/1/08)**

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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 1007**

**Education Impact Analysis Pursuant To 14 Del.C. §122(d)****1007 DIAA Sportsmanship****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 1007 DIAA Sportsmanship. The amendments include: creating and implementing athletic policies relating to bullying, hazing and taunting; provision to allow an expedited investigation for violations of the sportsmanship code when warranted; clarifying language prohibiting suspended athletes and coaches from being present at athletic contests during their suspension; provision to appeal a suspension resulting from a game ejection and stipulating those decisions may not be appealed to the Board of Directors; and other changes intended to be editorial in nature.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 3, 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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Delaware Interscholastic Athletic Association and continues 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve 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 regulation is related to the Delaware Interscholastic Athletic Association and does not place any unnecessary reporting or administrative requirements or mandates and continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to the Delaware Interscholastic Athletic Association and continues to locate the decision making authority and accountability in the same entity.

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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any 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 of addressing the purpose of this regulation.

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

## 1007 DIAA Sportsmanship

### 1.0 Definitions and Sportsmanship

#### 1.1 Definitions

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

**“Administrative Head of School”** means the chief or head individual in charge of the school traditionally referred to or generally known as the principal.

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

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

**“Guardian or Legal Guardian”** means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and shall ~~shall~~ must be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

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

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

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

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

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

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

1.2 Sportsmanship

1.2.1 Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.2.1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

1.2.1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

1.2.1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

1.2.1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.

1.2.1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

1.2.1.5.1 The School Administrator and Athletic Director shall:

1.2.1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.

1.2.1.5.1.2 Review the Sportsmanship Rule with all athletic staff.

1.2.1.5.1.3 Insist upon strict compliance with all DIAA rules and regulations.

1.2.1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

1.2.1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

1.2.1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

1.2.1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.

1.2.1.5.1.8 Develop and implement policies for their interscholastic athletic programs to discourage acts of bullying, hazing, and taunting.

1.2.1.5.2 The Coach shall:

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## PROPOSED REGULATIONS

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- 1.2.1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.
- 1.2.1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well being of the individual players and that the most important values of competition are derived from playing the game fairly.
- 1.2.1.5.2.3 Be a modest winner and a gracious loser.
- 1.2.1.5.2.4 Maintain self control at all times and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels.
- 1.2.1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.
- 1.2.1.5.2.6 Pay close attention to the physical well being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.
- 1.2.1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.
- 1.2.1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.
- 1.2.1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.
- 1.2.1.5.2.10 Properly supervise the athletes under his/her immediate care.
- 1.2.1.5.2.11 Enforce school policies regarding bullying, hazing, and taunting.
- 1.2.1.5.3 The Participant (athletes and cheerleaders) shall:
  - 1.2.1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of your school and community.
  - 1.2.1.5.3.2 Be courteous to the visiting team. Your opponents wish to excel as much as you do. Respect their efforts.
  - 1.2.1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.
  - 1.2.1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.
  - 1.2.1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.
  - 1.2.1.5.3.6 Respect the integrity and judgment of the officials and accept their decisions without complaint.
  - 1.2.1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.
  - 1.2.1.5.3.8 Refrain from participating in or encouraging the acts of bullying, hazing, and taunting.
- 1.2.1.5.4 The Official shall:
  - 1.2.1.5.4.1 Know the rules and interpretations and be thoroughly trained to administer them.
  - 1.2.1.5.4.2 Maintain self control in all situations.
  - 1.2.1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches.
  - 1.2.1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.
  - 1.2.1.5.4.5 Refrain from commenting upon or discussing a team, player, or game situation with those not immediately concerned.

1.2.1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship.

1.2.1.5.4.7 Refrain from participating in or encouraging the acts of bullying, hazing, and taunting.

1.2.1.5.5 The Spectator shall:

1.2.1.5.5.1 Realize that he/she represents the school just as definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman and to encourage through his/her behavior the practice of good sportsmanship by others.

1.2.1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:

1.2.1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, or derogatory remarks.

1.2.1.5.5.2.2 Throwing objects.

1.2.1.5.5.2.3 Going onto the playing surface and interrupting a contest.

1.2.1.5.5.2.4 Use of alcohol or other controlled substances.

1.2.1.5.5.3 Respect the judgment and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.

1.2.1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

1.2.1.5.5.5 Be modest in victory and gracious in defeat.

1.2.1.5.5.6 Refrain from participating in or encouraging the acts of bullying, hazing, and taunting.

## 11 DE Reg. 1635 (06/01/08)

## 2.0 Processing Violations

### 2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.

2.1.2.1 However, investigations involving contest ejections or altercations involving students or coaches may require an expedited procedure and must be reported to the Executive Director within 24 hours. The Executive Director is authorized to expedite the procedure in order to assure a ruling prior to the next contest played at that level of competition.

2.1.3 The Executive Director shall transmit a copy of the report to the principal or headmaster or official designee of the school(s) involved.

2.1.4 Each principal or headmaster concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide member schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and inform the school(s) involved of his/her disposition of the matter. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DIAA regulations, but as an effort to

keep all parties properly informed. Penalties up to and including suspensions of member schools may be imposed by the Sportsmanship Committee.

- 2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

## 2.2 Policies

- 2.2.1 The basis for the following policy statement is that a member school shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Inter-scholastic Athletics as well as the following guidelines:

- 2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:
- 2.2.1.1.1 Reprimanding its administrator or athletic director and providing written documentation to the Executive Director, or
  - 2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 school days, or
  - 2.2.1.1.3 Having the entire school disciplined by DIAA.
- 2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the principal, headmaster, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 school days.
- 2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking punitive action against the offender or accepting discipline from DIAA.
- 2.2.1.4 Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DIAA.
- 2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:
- 2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or
  - 2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 school days, or
  - 2.2.1.5.3 Having the entire school disciplined by DIAA.
- 2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:
- 2.2.1.6.1 He/she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or
  - 2.2.1.6.2 He/she argues with the official or indicates with gestures or other physical actions his/her dislike for a decision, or
  - 2.2.1.6.3 He/she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or
  - 2.2.1.6.4 He/she makes disparaging or unprofessional remarks about another school's personnel.
- 2.2.1.7 All actions by a member school resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director or the Sportsmanship Committee.

## 2.3 Penalties

- 2.3.1 Game Ejection

- 2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconducts shall be suspended from the next complete (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which DIAA or a conference may impose. During the suspension, the coach or player may not be present at any game at any level of competition in that sport involving his/her school. In addition, the coach or player may not be present at any game-related activities immediately before the contest, during the intermission, or immediately after the contest. The coach or player must be "out of sight and sound" of the game and game-related activities regardless of whether the coach or player is physically on school premises. If the offending coach or player is present at a game or game-related activity during the suspension in any capacity, including but not limited to: manager, statistician, site worker, spectator, etc., the individual will be suspended for one additional game at that level of competition.
- 2.3.1.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next complete contest at that level of competition and all other complete or suspended contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.
- 2.3.1.2 A disqualified player or coach may not be physically present at any contest in that sport during his/her the suspension.
- 2.3.1.3 If a coach is disqualified from the final contest of the season, his/her the suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility in that sport.
- 2.3.1.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.
- 2.3.1.3.2 Seniors shall fulfill their penalty in the post season all star game in that sport. If not chosen to participate in the all star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.
- 2.3.1.4 A player or coach ejected for a second time during the same season shall be subjected to a two game suspension and meet, in a timely fashion, with the Sportsmanship Committee accompanied by his/her the principal or designee and, in the case of an athlete, by his/her the coach.
- 2.3.1.5 Appeal of a contest suspension resulting from a game ejection.
- 2.3.1.5.1 A coach or player may appeal a contest suspension resulting from a game ejection to the DIAA Executive Director. Contest suspensions that may be appealed include suspensions from game ejections under the individual sport playing rules, other DIAA policies, or a suspension under section 2.3.1.1 or 2.3.1.1.1. The Executive Director may decide the appeal or in his discretion refer it to the Sportsmanship Committee or subcommittee.
- 2.3.1.5.2 If the Executive Director is unable to make a decision before the next contest, the suspension remains in effect. The Executive Director's, or Sportsmanship Committee's, or subcommittee's decision to uphold or rescind the suspension resulting from a game ejection is final and may not be appealed.
- 2.3.2 Unless otherwise limited, the Executive Director and Sportsmanship Committee may impose any penalties as deemed necessary based on the particular circumstances. The following are examples of possible penalties and represent degrees of discipline in enforcing the Sportsmanship Rule:

# PROPOSED REGULATIONS

- 2.3.2.1 Reprimand, a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.
- 2.3.2.2 Probation, probation is a more severe penalty and may be imposed by the Executive Director or the Sportsmanship Committee on a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:
- 2.3.2.2.1 Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he or she or the school files with DIAA a plan indicating the measures that shall be taken to alleviate the problem which caused him or her or the school to be placed on probation, or
- 2.3.2.2.2 Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.
- 2.3.2.3 Suspension, a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DIAA sanctioned interscholastic competition.

## 2.4 Appeals

- 2.4.1 Decisions of the Executive Director or Sportsmanship Committee with the exception of those to uphold or rescind the suspension resulting from a game ejection may be appealed to the DIAA Board of Directors in accordance with the procedure found in 14 **DE Admin. Code** 1006.10. In accordance with subsection 1006.10.1.1.3.1, the notice of appeal shall be served by certified mail within ten (10) calendar days after the appellant's receipt of the written notice that official action has been taken by the Executive Director or Sportsmanship Committee. An appeal shall not stay the decision of the Executive Director, the Sportsmanship Committee, or any other subordinate.

3 DE Reg. 436 (9/1/99)

6 DE Reg. 285 (9/1/02)

7 DE Reg. 1692 (6/1/04)

11 DE Reg. 1635 (6/1/08)

### OFFICE OF THE SECRETARY

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

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

### 1008 DIAA Junior High and Middle School Interscholastic Athletics

#### 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** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The amendments include: language intended to clarify the process to appeal for a forfeit; language intended to clarify scrimmage rules and restrictions regarding grade levels of opponents; a new definition of "Attendance Zone"; language intended to clarify residency requirements for students with shared placement or no placement order; striking change of course of study as an

exemption to the transfer rule; addition of the “internet and other forms of media” to amateur eligibility rules; provisions to allow four semesters of eligibility for students attending schools competing in non-weight classified football; language intended to clarify member school and executive director responsibilities for determining eligibility; establishing April 1 as the earliest date for a preparticipation physical evaluation (PPE), students without a PPE are ineligible athletes and language intended to clarify who may act as a qualified healthcare professional; establishing a concussion protocol; relaxing requirements for the first 3 days of football practice and an expanded definition of a “practice” incorporating additional health and safety protective measures for student-athletes; adding the definition of a week; clarifying when two sports are different; moving language from an FAQ to regulation regarding who may participate in “open gym” and “conditioning” programs; revisions to coaching out of season regulations; revisions regarding use of influence for athletic purposes; and other changes intended to be editorial in nature.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 3, 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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive a equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Delaware Interscholastic Athletic Association and continues 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve 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 regulation is related to the Delaware Interscholastic Athletic Association and does not place any unnecessary reporting or administrative requirements or mandates and continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to the Delaware Interscholastic Athletic Association and continues to locate the decision making authority and accountability in the same entity.

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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any 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 of addressing the purpose of this regulation.

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

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

**1008 DIAA Junior High and Middle School Interscholastic Athletics**

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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 1009

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

**1009 DIAA High School Interscholastic Athletics**

**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 1009 DIAA High School Interscholastic Athletics. The amendments include: language intended to clarify the process to appeal for a forfeit; language intended to clarify scrimmage rules and restrictions regarding grade levels of opponents; a new definition of "Attendance Zone"; language intended to clarify residency requirements for students with shared placement or no placement order; expanding the number exemptions to the transfer rule, adding language regarding transfers for athletic advantage and striking change of course of study as an exemption to the transfer rule; addition of the "internet and other forms of media" to amateur eligibility rules; language intended to clarify member school and executive director responsibilities for determining eligibility; establishing April 1 as the earliest date for a preparticipation physical evaluation (PPE), students without a PPE are ineligible athletes and language intended to clarify who may act as a qualified healthcare professional; establishing a concussion protocol; updating the wrestling weight control program; relaxing requirements for the first 3 days of football practice and an expanded definition of a "practice" incorporating additional health and safety protective measures for student-athletes; clarifying when two sports are different; moving language from an FAQ to regulation regarding who may participate in "open gym" and "conditioning" programs; revisions to coaching out of season regulations; revisions regarding use of influence for athletic purposes; and other changes intended to be editorial in nature.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 3, 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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive a equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Delaware Interscholastic Athletic Association and continues 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve 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 regulation is related to the Delaware Interscholastic Athletic Association and does not place any unnecessary reporting or administrative requirements or mandates and continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to the Delaware Interscholastic Athletic Association and continues to locate the decision making authority and accountability in the same entity.

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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any 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 of addressing the purpose of this regulation.

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

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

**1009 DIAA High School Interscholastic Athletics**

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## PROFESSIONAL STANDARDS BOARD

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

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

#### 1598 Delaware Professional Development Standards

#### A. Type of Regulatory Action Requested

New Regulation

#### B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt regulation 14 **DE Admin. Code** 1598 Delaware Professional Development Standards. The Department of Education has encouraged the adoption of this regulation in order to establish State-wide expectations for professional development and to meet one of many Delaware *Race To The Top* pledges. This regulation sets forth the standards for educator's professional development in Delaware.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, June 1, 2011 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The

Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

### **C. Impact Criteria**

1. Will the adopted regulation help improve student achievement as measured against state achievement standards? The adopted regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the adopted regulation help ensure that all students receive an equitable education? The adopted regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the adopted regulation help to ensure that all students' health and safety are adequately protected? The adopted regulation addresses educator certification, not students' health and safety.

4. Will the adopted regulation help to ensure that all student s' legal rights are respected? The adopted regulation addresses educator certification, not students' legal rights.

5. Will the adopted regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The adopted r egulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the adopted regulation be consistent with and not an impediment to the implementation of other state educational policies, in p articular to state educational p olicies a ddressing a chievement in the core academic subjects of mathematics, science, language arts and social studies? The adopted regulatio n will be consistent with, and not an impediment to, the implementation of ot her state educational po licies, in p articular to st ate educational policies addressing achievement in the core academic subjects of m athematics, science, la nguage arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local sc hool boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

## **1598 Delaware Professional Development Standards**

### **1.0 Content**

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

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

### **2.0 Context Standards**

2.1 Professional Development that improves the learning of all students:

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

### **3.0 Process Standards**

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

### **4.0 Content Standards**

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

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

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

#### **PUBLIC NOTICE**

#### **3201 Skilled and Intermediate Care Nursing Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend policies for tuberculin testing and the filing of the results thereof for residents and employees of skilled and intermediate care nursing facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Susan DePescio, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291 by Wednesday, June 1, 2011.

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

# PROPOSED REGULATIONS

## SUMMARY OF PROPOSED CHANGES

The proposal amends policies regarding Long Term Care Residents Protection to require tuberculin testing and maintenance of the results thereof for residents and employees of skilled and intermediate care nursing facilities. In addition to updating the regulation it permits the regulation to adapt with changes to, the Centers for Disease Control requirements.

The proposed changes affect the following policy sections:

3201 Skilled and Intermediate Care Nursing Facilities

### Statutory Authority

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

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

**3201 Skilled and Intermediate Care Nursing Facilities**

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### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

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

### PUBLIC NOTICE

#### 3225 Assisted Living Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3225, Assisted Living Facilities, Section 9.0, Infection Control, governing the tuberculin testing for employees and newly admitted residents to mirror and adapt with changes to the Centers for Disease Control requirements, as well as to make some minor technical changes to other regulations.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Susan DelPesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291 by Wednesday, June 1, 2011.

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

## SUMMARY OF PROPOSED CHANGES

The proposal amends Regulation 3225 at the following sections:

- 3.0, Glossary of Terms, Assistance with Self-Administration of Medication.
- 6.6. Resident Waivers
- 8.1.5. Medication Management.
- 9.4.1. Infection Control
- 9.4.2. “ “

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- 9.5.1. “ “
  - 9.5.2. “ “
  - 9.5.2.3. “ “
  - 9.5.2.4. “ “
  - 9.8. “ “
  - 9.9. “ “

## Statutory Authority

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

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

**3225 Assisted Living Facilities**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Title XIX Medicaid State Plan Program Integrity

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Program Integrity, specifically, *prohibition on payments to institutions or entities located outside of the United States*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2011.

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

### SUMMARY OF PROPOSAL

The proposal amends the Title XIX Medicaid State Plan regarding Program Integrity. Specifically, this plan amendment implements a Medicaid payment provision entitled, *Prohibition on Payments to Institutions or Entities Located Outside of the United States*.

## Statutory Authority

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

**Background**

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

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

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

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

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

**Summary of Proposed Change**

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

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

**Fiscal Impact Statement**

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

**DMMA PROPOSED REGULATION #11-16****REVISION:**

Revision:

CMS

OMB No.

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT****State/Territory DELAWARE**

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

**4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States****Table 1:**Citation

Section 1902(a)(80)  
of the Social Security Act,  
P.L. 111-148 (Section 6505)

X

The State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside the United States.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE****Estate Recovery**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2011.

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

**SUMMARY OF PROPOSAL**

The proposal amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the *Prohibition of Estate Recovery of Medicare Cost Sharing* in compliance with Section 115 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

**Statutory Authority**

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

**Background**

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

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

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

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

### Summary of Proposal

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

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

### Fiscal Impact Statement

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

### DMMA PROPOSED REGULATION #11-17a

#### REVISION:

53a-1

Revision: HCFA-PM-95-3 (MB)  
May 1995

### STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: DELAWARE

4.17 (b) Adjustments or Recoveries

(3) (Continued)  
Limitations on Estate Recovery – Medicare Cost Sharing

(i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits: (Part A and B premiums, deductibles, coinsurance, co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid Agency. The date of service for premiums is the date the State Medicaid Agency paid the premium.

- (ii) In addition to being a qualified dual eligible the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drugs and hospital services) as well as optional Medicaid services identified in the State plan, which are applicable to the categories of duals referenced above.

**DMMA PROPOSED REGULATION #11-17b  
REVISION:**

**14540 Estate Recovery Protections**

Effective with dates of service on or after January 1, 2010, medical assistance for Medicare cost-sharing is protected from estate recovery for certain categories of individuals who, collectively, are known as dual eligibles.

The following categories of individuals are protected from estate recovery of Medicare cost-sharing:

- a) Qualified Medicare Beneficiaries
- b) Specified Low Income Medicare Beneficiaries
- c) Qualifying Individuals
- d) Qualified and Disabled Working Individuals
- e) Qualified Medicare Beneficiaries with full Medicaid
- f) Specified Low Income Medicare Beneficiaries with full Medicaid

Medicare cost-sharing includes payments of Part A and Part B premiums, deductibles, coinsurance, and copayments. The date of service for premiums is the date DMMA paid the premium. The date of service for deductibles, coinsurance, and copayments is the date the request for payment is received by DMMA. The protection from estate recovery for Medicare cost sharing applies to mandatory and optional services under the State plan including nursing facility, home and community-based services, and related prescription drugs and hospital services.

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 25 (16 Del.C. Ch. 25)  
16 DE Admin. Code 4304

**PUBLIC NOTICE**

**4304 Pre-Hospital Advanced Care Directive**

The Division of Public Health, under the Department of Health & Social Services, is proposing regulations which amend Title 16 of the Delaware Code relating to Pre-Hospital Advanced Care Directives. There is a need to address the recognition of Pre-Hospital Advanced Care Directives in conjunction with Advanced Care Directives as provided for in 16 Del.C. Ch. 25, in the pre-hospital emergency environment. These regulations require the use of a specific form of individual identification that can be readily recognized and verified during a pre-hospital

emergency. The regulations also detail the legislated immunity for certified providers honoring this order. On May 1, 2011, the Division plans to publish the proposed 4304 Pre-Hospital Advanced Care Directives and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the May 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Emergency Medical Services at (302) 223-1350.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Deborah Harvey by Tuesday, May 31, 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

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

## 4304 Pre-Hospital Advanced Care Directive

### Purpose:

There is a need to update the existing 2003 Pre-Hospital Advance Care Directive ("PACD") regulations (7 Del. Reg. 85, July 1, 2003) to address the recognition of Pre-Hospital Advance Care Directives in conjunction with Advanced Care Directives as provided for advance care directives across all health care settings, including, but not limited to, hospitals, long-term care facilities, hospices, emergency medical transport, and home care. As provided in Chapter 25 of Title 16 of the Delaware Code, advance care directives permit individuals to give instructions about their own health care in Delaware Code Title 16, Chapter 25, in the pre-hospital emergency environment case they later lack the capacity to do so.

These regulations require the use of a specific designated form of individual identification that which can be readily recognized and verified during a pre-hospital emergency. The regulations also detail the legislated immunity for certified providers honoring this order an emergency situation. Since the creation of the PACD form, the practice and use of similar forms has evolved in states across the country. The Medical Orders for Life-Sustaining Treatment ("MOLST") form reflects the dominant national trend and is being adopted as an updated version of the PACD form.

While such legal instruments serve individuals well in clinical settings such as hospitals and Delaware's current PACD loses its authority when a patient changes locations. Patients at the end of life often move from home to hospital to nursing homes, they pose practical problems in life threatening situations when emergency medical home and with each move, forms and orders must be redone.

Emergency medical services (EMS) individuals are called personnel work under the license of the State EMS Medical Director. In order for assistance EMS personnel to honor an individual's request related to end of life decisions, the EMS must have a medical order. The MOLST form serves both as the summary of the individual's advance care planning decisions and as the medical order.

Living wills, power of attorney and other advance directives have material limitations. They are often long and complex, can vary greatly in form and content, are subject to various interpretations, and do not apply to the pre-hospital environment constitute a medical order. Many are hand-written and are impossible to verify on the scene of an emergency. Furthermore, in most states, if an EMS provider is called to the scene, they are legally required to perform life saving techniques (CPR) even if the individual's heart has stopped and they are clinically expired. And, they cannot stop these efforts based on a living will or appointed proxy's request, because advance directives may not apply in EMS related medical emergencies. A Delaware Pre-Hospital Advanced Care Directive. In contrast, a

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Delaware MOLST is a specific order set initiated by the individual and signed by a physician or other authorized health care professional stipulating a specific order set initiated for individual non-resuscitations scope of medical treatment.

~~A Pre-Hospital Advanced Care Directive regulation authorizes~~ These MOLST/PACD regulations authorize the Division of Public Health/Office of Emergency Medical Services in conjunction with the Board of Medical Practice Licensure and Discipline, the Delaware Fire Prevention Commission, and other key groups within the State to develop and implement an ~~EMS Pre-Hospital Advanced Care Directive (PACD)~~ a MOLST/PACD protocol for EMS providers. This law and ~~These regulations, protocol, and form~~ standardize the legal advanced advance care directive documentation so EMS that EMS and all health care providers have a readily recognizable format upon which they may make a decision. This would also ~~form which sets forth the patients' preferences regarding provision of life-sustaining treatments.~~ The MOLST/PACD forms allow EMS and other health care providers both to identify and to honor the an individual's wishes to the greatest extent possible and to grant the individual individuals the dignity, humanity, and compassion they deserve. Consistent with this intent, other health care providers may choose to honor this form.

## 1.0 Definitions

**“Advanced Health Care Directive”** shall mean an individual instruction or power of attorney for health care, or both.

**“Agent”** shall mean an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power.

**“Artificial Nutrition And Hydration”** means supplying food and water through a conduit, such as a tube or intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastrostomies, jejunostomies and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle-feeding.

**“Capacity”** shall mean an individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health care decision.

**“Declarant”** shall mean an individual who executes an advance health care directive.

**“Division”** shall mean the Division of Public Health.

**“DNR”** shall mean Do Not Resuscitate.

**“Emergency Medical Services (EMS) Provider”** shall mean individual providers certified by the Delaware State Fire Commission or the Office of Emergency Medical Services, within the Division of Public Health, Department of Health and Social Services or emergency certified medical dispatchers by the National Academy of Emergency Medical Dispatch.

**“Emergency Medical Services (EMS) Provider Agency”** shall mean a provider agency certified by the Delaware State Fire Prevention Commission or the Office of Emergency Medical Services, or an emergency medical dispatch center under contract with the Department of Public Safety.

**“EMS Prehospital Advanced Care Directive Order (PACD)”** shall mean an advanced health care directive signed by the individual's physician on forms approved by the Director of the Division of Public Health.

**“EMS PACD Program”** shall mean the regulations and administrative guidelines promulgated by the Division of Public Health for the administration of this Act.

**“Guardian”** shall mean a judicially appointed guardian or conservator having authority to make health care decisions for an individual.

**“Health Care”** shall mean any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

**“Health Care Decision”** shall mean a decision made by an individual or the individual's agent, surrogate or guardian regarding the individual's health care, including:

1. Selection and discharge of health care providers and institutions;
2. Acceptance or refusal of diagnostic tests, surgical procedures, programs of medication and ~~orders not to resuscitate~~ resuscitation; and

3. Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

**“Health Care Institution”** means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of profession.

**“Emergency Medical Services (EMS) Provider”** shall mean individual providers certified by the Delaware State Fire Prevention Commission or the Office of EMS, or emergency medical dispatchers certified by the National Academy of Emergency Medical Dispatch.

**“Emergency Medical Services (EMS) Provider Agency”** shall mean a provider agency certified by the Delaware State Fire Prevention Commission or the Office of EMS, or an emergency medical dispatch center under contract with the Department of Public Safety.

**“Individual”** means ~~an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity~~ an individual person, legally adult.

**“Individual Instruction”** means an individual’s direction concerning a health-care decision for the individual.

**“Life-sustaining Procedure”** means:

1. Any medical procedure, treatment or intervention that:
  - 4a. Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and
  - 2b. Is of such a nature as to afford an individual no reasonable expectation of recovery from a ~~terminal illness condition or permanent unconsciousness.~~
2. Procedures that can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions and the administration of drugs, antibiotics and artificial nutrition and hydration.

**“Medical Orders for Life-Sustaining Treatment” (“MOLST”)** means a specific order set for scope of medical treatment and provided on the MOLST form approved by the Division of Public Health.

**“Medically Ineffective Treatment”** means that, to a reasonable degree of medical certainty, a medical procedure will not:

1. Prevent or reduce the deterioration of the health of an individual: or
2. Prevent the impending death of an individual.

**“Office”** shall mean the Office of Emergency Medical Services (EMS) within the Division of Public Health.

**“PACD”** means an EMS prehospital advanced care directive signed by the individual and the individual’s physician, on forms approved by the Director of Public Health.

**“Permanent Unconsciousness”** means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as to total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

**“Physician”** means an individual licensed to practice medicine under Chapter 17 of Title 24 of the Delaware Code.

**“Power Of Attorney For Health Care”** means the designation of an agent to make health care decisions for the individual granting the power.

**“Primary Physician” or “Attending Physician”** shall mean a physician designated by an individual or the individual’s agent, surrogate or guardian to have primary responsibility for the individual’s health care or, in the absence of a designation, or if the designated physician is not reasonably available, a physician who undertakes the responsibility for the individual’s health care.

**“Reasonably Available”** shall mean readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the individual’s health care needs.

“**Supervising Health Care Provider**” shall mean the primary physician, or if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual’s health care.

“**Surrogate**” means an adult individual or individuals who (1) have capacity; (2) are reasonably available; (3) are willing to make health care decisions, including decisions to initiate, refuse to initiate, continue or discontinue the use of a life sustaining procedure on behalf of a ~~individual patient~~ who lacks capacity; and (4) are identified by the ~~individual’s identification~~ attending physician in accordance with ~~this chapter~~ 16 Del.C. §2507 as the ~~individual person or individuals persons~~ who are to make those decisions ~~in accordance with this chapter~~.

“**Terminal Illness Condition**” means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

## **2.0 Right to Self-Determination**

An individual, legally adult, who is mentally competent, has the right to refuse medical or surgical treatment if such refusal is not contrary to existing public health laws.

## **3.0 Medical Prerequisites**

- 3.1 Any individual with legal capacity may execute a Medical Order for Life-Sustaining Treatment (MOLST) or a Pre-Hospital Advanced Care Directive (PACD); however, this Directive will not become effective unless, after diagnosis of a terminal condition, or a determination of permanent unconsciousness, it is signed by a physician after diagnosis of a terminal illness or other health care provider permitted by state law.
- 3.2 An individual with legal capacity, who is able to communicate by some reliable, proven means (i.e. verbally, verbalization, eye blink, finger tap) but is physically unable to sign, may execute a MOLST or PACD through an agent or, surrogate, or guardian. To be effective upon the diagnosis of a terminal illness from a physician in Delaware Conditions that may prevent physical signing of the a MOLST or the PACD include, but are not limited to:
- 3.2.1 Blindness or illiteracy
  - 3.2.2 Severe arthritis
  - 3.2.3 Amyotrophic lateral sclerosis (ALS or Lou Gehrig’s disease)
  - 3.2.4 Quadriplegia
  - 3.2.5 Paralysis of the writing hand
  - 3.2.6 Amputation
- 3.3 An individual who no longer has capacity may be issued a MOLST or PACD through an agent, guardian or surrogate and the individual’s physician or authorized health care provider.
- 3.3.1 Conditions for which a MOLST or PACD may be issued are:
- 3.3.1.1 Terminal Illness Condition

## **4.0 Medical Orders for Life-Sustaining Treatment**

- 4.1 Medical Orders for Life-Sustaining Treatment may contain the following options
- 4.1.1 Cardiopulmonary Resuscitation or No Cardiopulmonary Resuscitation (If person has no pulse and is not breathing)
  - 4.1.2 Medical Interventions (If person has a pulse and/or is breathing.)
    - 4.1.2.1 Comfort Measures Only ( The use of medications by any route, positioning, wound care, and other measures to relieve pain and suffering. Use of oxygen, or suctioning and manual treatment of airway obstruction as needed for comfort. Do not transfer to the hospital for life-sustaining treatment. Transfer if comfort needs cannot be met in current location).

- 4.1.2.2 Limited Additional Interventions. (Includes care described above, IV fluids, and cardiac monitoring as indicated. Do not use intubation or mechanical ventilations. May use non-invasive airway support, [e.g. CPAP, BIPAP]. Transfer to hospital, if indicated.)
- 4.1.2.3 Full treatment. (Includes care described above, use of intubation, advanced airway interventions, mechanical ventilation, and cardioversion, as indicated. Transfer to hospital, if indicated. Includes intensive care, Additional orders [e.g. dialysis, etc.]
- 4.1.2.4 Antibiotics
- 4.1.2.4.1 No antibiotics. Use other measures to relieve symptoms.
- 4.1.2.4.2 Limited use of antibiotics to provide comfort.
- 4.1.2.4.3 Use antibiotics to prolong life. (Additional Orders: \_\_\_\_\_)
- 4.1.2.5 Artificially administered nutrition: (Always offer food and liquids by mouth, if feasible.)
- 4.1.2.5.1 No artificial nutrition by tube.
- 4.1.2.5.2 Defined trial period of artificial nutrition by tube. (Goal: \_\_\_\_\_)
- 4.1.2.5.3 Long-term artificial nutrition by tube. (Additional orders: \_\_\_\_\_)

## **45.0 Prehospital Advanced Care Directives**

### 45.1 Prehospital Advanced Care Directive Options

#### 45.1.1 Option A (Advanced Life Support) - "Maximal (Restorative) Care Before Arrest, Then DNR"

- 45.1.1.1 When this option is selected on an EMS PACD, the individual shall receive the full scope of restorative interventions permissible under the Delaware Statewide ALS treatment protocol (including intubation for respiratory distress, cardiac monitoring, synchronized cardioversion for pulse-present ventricular or supra ventricular tachycardia, cardiac pacing for pulse-present symptomatic bradycardia, insertion of IV's, and drug therapy), in an attempt to forestall cardiac or respiratory arrest (see Delaware Statewide ALS treatment protocol for full description of permissible interventions).

#### 45.1.2 Option B (Basic Life Support) – "Limited (Palliative) Care Only Before Arrest, Then DNR"

- 45.1.2.1 Palliative care is defined as supportive care for control of signs and symptoms.

- 45.1.2.1.1 This includes opening the airway using non-invasive means (e.g. chin lift, jaw thrust, finger sweep, nasopharyngeal airway, oropharyngeal airway and abdominal thrust, O2 administration, suctioning, positioning for comfort, control of external bleeding using standard treatments (dressing, elevation, direct pressure, pressure points, cold packs, tourniquets, etc.), immobilize immobilizing fractures, and family or other health care provider administered medications for pain control.

- 45.1.2.1.2 Existing IV lines may be in place and, if so, shall be monitored to the extent possible according to the provider's level of certification and licensure.

- 45.1.2.2 Inappropriate Care for a Palliative Care Individual includes:

- 45.1.2.2.1 Pacing, cardioversion, and defibrillation
- 45.1.2.2.2 Initiation of IV therapy
- 45.1.2.2.3 EMS Initiated Medications - Except passive oxygen
- 45.1.2.2.4 CPR
- 45.1.2.2.5 Intubation (EOA, endotracheal, nasotracheal, or gastric tube)
- 45.1.2.2.6 Pneumatic anti-shock garment (PASG)
- 45.1.2.2.7 Active ventilatory assistance, unless on an out individual ventilator.

#### 45.1.3 Option C (Do Not Resuscitate) – "No Care Administered Of Any Kind"

- 45.1.3.1 This option permits an individual to reject care of any kind provided there is a signed order clearly stating this course of action. Where this option is in place, no form of life saving efforts, including but not limited to, the opening of the airway, the administration of oxygen, or any other form of life-saving efforts will be administered by EMS personnel under any circumstances, unless the individual provides some form of communication as indicated in Section 3.2.

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45.1.4 Nothing in this regulation will require an EMS provider to comply with a Pre-Hospital Advanced Care Directive for reasons of conscience.

## **56.0 Methods of Identification**

- 56.1 Provided there is a signed MOLST, PACD, or other approved Division of Public Health signed form, the following are acceptable for implementing methods to identify the EMS existence of a MOLST or PACD form and to implement the MOLST/PACD protocol:
- 56.1.1 Delaware MOLST or EMS PACD Form
  - 56.1.2 Delaware MOLST or EMS PACD Wallet Card
  - 56.1.3 Delaware MOLST Wrist Bracelet to include Medic-Alert Bracelet or other bracelet approved by the Director of the Division of Public Health.
  - 56.1.4 Other State EMS PACD or MOLST Form
- 56.2 Even if a signed PACD, MOLST, or other approved Division of Public Health signed form is present, the following are not acceptable for implementing the EMS PACD or MOLST protocol:
- 56.2.1 Advance directives without an EMS PACD or MOLST form
  - 56.2.2 Facility specific PACDs DNR forms
  - 56.2.3 Notes in medical records
  - 56.2.4 Prescription pad orders
  - 56.2.5 PACD stickers
  - 56.2.6 Any oral request.
  - 56.2.7 Any other device or instrument not listed above as acceptable.
- 56.3 The Delaware MOLST or EMS PACD must be completed for all individuals on a standard form approved by the Division of Public Health, and the form must be present.
- 56.4 If any question exists as to the identity of the individual identified on the Delaware MOLST or EMS PACD form, the EMS provider shall seek to identify the individual through an other form of positive identification.
- 56.4.1 If in doubt as to the identification of the individual, the EMS provider shall initiate resuscitative efforts.

## **67.0 Revocation of MOLST/PACD**

- 67.1 An Revocation by a Patient
- 7.1.1 A MOLST or EMS PACD may be revoked at any time by: an individual with capacity by:
    - 67.1.1.1 A written cancellation signed by the individual.
    - 67.1.1.2 An oral statement or gesture of any manner by the individual in the presence of two (2) witnesses, one of whom is a health care provider, requesting only palliative care or resuscitation.
    - 7.1.1.3 A new MOLST/PACD constitutes a revocation of a previously dated MOLST/PACD.
  - 7.1.2 If the individual revokes a MOLST form or an EMS PACD orally, the EMS PACD notification devices do not need to be destroyed. EMS providers should thoroughly document the circumstances of the revocation. An oral revocation by an individual is only good for the single response or transport for which it was issued.
- 7.2 Revocation by an agent, guardian, or surrogate.
- 67.2.1 During an emergency, when the authorized decision maker is not the individual, this ~~individual~~ decision maker cannot revoke a MOLST order or an EMS PACD. Under no circumstances, can a person or entity, other than the individual, revoke a MOLST order or an EMS PACD during an emergency.
  - 7.2.2 Because of the difficulty in identifying authorized decision makers in emergent situations, it is incumbent upon an authorized decision maker who has authority to revoke a MOLST order or an EMS PACD to do so prior to the emergency if they wish resuscitation for the individual.

**78.0 Section Prohibited Conduct**

16 Del.C. §2513(b) makes willful concealment, destruction, falsification or forging of an advance directive, without the individual's or authorized decision maker's consent, a class C felony.

**89.0 Field Termination**

- 89.1 Nothing in these regulations shall affect the power of EMS providers to do the paramedic field termination of resuscitation protocol as approved by the Delaware Board of Medical Practice Licensure and Discipline.
- 89.2 A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure. (~~70 Del. Laws, c.392, § 3.~~ 16 Del.C. §2503(i))

**910.0 MOLST Protocol**

- 910.1 The Division of Public Health, in consultation with the Board of Medical Practice Licensure and Discipline and the Delaware Fire Prevention Commission, shall develop and publish a protocol for EMS providers to comply with the requirements of this regulation.
- 10.2 The MOLST form will be available online, in order to maintain continuity throughout Delaware, please copy or print the MOLST form on purple or violet paper.
- 10.2.3 Faxed copies and photocopies are also valid MOLST forms.
- 10.2.4 Once this regulation has taken effect and the new MOLST forms are available online, health care providers and patients should no longer use the PACD form, but should use the MOLST form instead.
- 10.2.4.1 Although new PACD forms should not be created after the MOLST form becomes available, any PACD forms already completed will be honored.

**11.0 Periodic Review of the MOLST Form**

- 11.1 The MOLST form does not expire, but it should be reviewed periodically whenever:
- 11.1.1 The person is transferred from one care setting or care level to another, or
- 11.1.2 There is a substantial change in the person's health status, or
- 11.1.3 The person's treatment preferences change.
- 11.2 To void the MOLST form, draw a line through "Medical Orders" and write "VOID" in large letters. Any changes require a new MOLST.

**102.0 Limitations of Liability**

- 102.1 In addition to other immunity that may be provided for in law, 16 Del.C. §2510 provides the specific immunity in cases involving the provision, withdrawal, or withholding of care which may be life sustaining in nature.
- 102.1.1 EMS providers are not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing, registering, or certifying authority as a result of withholding or withdrawing any healthcare under authorization obtained in accordance with 16 Del.C. Ch. 25.

**143.0 Data Collection/Program Evaluation**

- 143.1 The Division of Public Health shall provide appropriate information, education and training on the EMS PACD Program to health care providers.
- 143.2 ~~The Division of Public Health shall provide forms for Delaware licensed physicians and hospices, or other authorized health care providers.~~
- 14.3 ~~The Division shall monitor the use of MOLST or EMS PACDs as presented to EMS providers.~~
- 143.43 The Division shall take such measures as necessary to assure individual confidentiality.

## 124.0 Reciprocity

- 124.1 Standardized EMS--Do Not Resuscitate (DNR) or MOLST or POLST (Physician Order for Life-Sustaining Treatment) orders from another State approved by the Director of the Division of Public Health shall be honored.
- 12.2 EMS providers shall treat out-of-state EMS-DNR orders as Limited (Palliative) Care Only Before Arrest PACD individuals, unless otherwise specified by the out-of- validly executed and in compliance with the laws of that state Do Not Resuscitate (DNR) order shall be honored subject to the limitations in these regulations.

7 DE Reg. 85 (7/1/03)

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Child Care Subsidy Program

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2011.

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

### SUMMARY OF PROPOSED CHANGE

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

#### Statutory Authority

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

#### Summary of Proposed Change

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

#### DSS PROPOSED REGULATION #11-11

#### REVISIONS:

#### 11003.4 Cooperating with Child Support

45 CFR 98.20

As part of the Child Care eligibility process, all applicants cooperate with the Division of Child Support Enforcement to receive spousal support for themselves and child support for the dependent children in their care. As part of this process, applicants and recipients must cooperate, unless a good faith effort is established, in:

1. Identifying and locating absent parents;
2. Establishing paternity for dependent children born out of wedlock; and
3. Establishing support payments and/or other properties for the dependent child.

The Division of Child Support Enforcement (DCSE) is the single State agency that is empowered to:

1. Establish paternity of and secure support for children born out of wedlock;
2. Secure support from parents who have abandoned or deserted their children; and
3. Enter cooperative arrangements with appropriate courts and law enforcement officials in order to establish support.

Before approving a Child Care case, DSS will refer applicants to the DCSE to begin the process of securing support payments. While assistance is received, any spousal Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in a Child Care case closure until compliance. Purchase of Care applicants who do not cooperate with or provide requested information to DCSE, will have their Child Care case closed until they cooperate.

The requirement to cooperate with DCSE covers all Child Care applicants.

The child support payments are considered income for the purpose of determining financial eligibility and parent fees for Child Care cases.

All applicants and recipients must be referred to the Division of Child Support Enforcement (DCSE) as a condition of eligibility for child care services.

Do not delay approval of child care services (if otherwise eligible) while waiting for a response from DCSE. The Division of Social Services will presume cooperation until notified otherwise by DCSE.

Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in the case being sanctioned. This means the child care case will close until the applicant or recipient has complied with all DCSE requirements.

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

**10 DE Reg. 1007 (12/01/06)**

#### **11003.4.1 Cooperation Responsibilities RESERVED**

Clients must cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility. All families are required to provide sufficient information to permit Delaware to obtain child support on behalf of the family. Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren). It is the responsibility of the client to provide documentation to verify this.

In order to identify and locate absent parents, establish paternity, and obtain support payments and/or other property, applicants or recipients of Child Care services are required to participate in the following activities, if relevant:

To appear at an office of DSS or the Division of Child Support Enforcement to provide verbal or written information or documentary evidence known to or possessed by the applicant or recipient;

To appear as a witness at judicial or other hearings or proceedings;

To provide information or to attest to the lack of information under penalty of perjury.

**10 DE Reg. 1007 (12/01/06)**

#### **11003.4.2 Penalties Sanctions for Child Support Non Cooperation**

45 CFR 98.20

Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in a Child Care case closure until compliance. Purchase of Care applicants who do not cooperate with or provide requested information to DCSE, will have their Child Care case closed until they cooperate. Applicants and recipients who do

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not cooperate with or provide requested information to the Division of Child Support Enforcement (DCSE) will have their child care case closed until DCSE determines they have cooperated.

**10 DE Reg. 1007 (12/01/06)**

### **11003.4.3 Curing Child Support ~~Penalties~~ Sanctions**

45 CFR 98.20

~~To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of needy children. Once DCSE notifies DSS of cooperation or good faith effort, DSS will remove the sanction.~~

**10 DE Reg. 1007 (12/01/06)**

### **11003.4.4 Good Faith Determination**

45 CFR 98.20

~~It is the responsibility of the Division of Child Support Enforcement (DCSE) to determine if there is an acceptable reason for refusing to cooperate. When this is determined to exist, the applicant may participate in the Child Care program and will not be required to cooperate in support collection activities. All determinations of good faith effort are the responsibility of the Division of Child Support Enforcement (DCSE). Applicants and recipients for whom DCSE has made a good faith determination may receive child care services without cooperating fully with DCSE.~~

**10 DE Reg. 1007 (12/01/06)**

### **11003.4.5 ~~Enforcement Without the Caretaker's Cooperation~~ RESERVED**

~~When an acceptable reason for non-cooperation exists, DCSE must decide whether or not child support enforcement activities can proceed without risk to the child or caretaker if the enforcement activities do not include cooperation. DSS will ask the applicant if he/she believes that enforcement activities can proceed and will relay that information to DCSE.~~

~~If a DCSE recommendation is to proceed with enforcement activities, DSS will notify the applicant and give the applicant the opportunity to withdraw the application or close the case before enforcement activities begin.~~

**10 DE Reg. 1007 (12/01/06)**

### **11003.4.6 Fair Hearings**

45 CFR 205.10

Applicants and recipients have the right to request a fair hearing if they disagree with any DSS decision. See DSSM section 5000. DCSE will schedule and conduct fair hearings on issues of non-cooperation and parents good faith efforts to establish paternity and secure child support.

**10 DE Reg. 1007 (12/01/06)**

**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

**REGISTER NOTICE****SAN #2011-06****1124 Control of Volatile Organic Compound Emissions****1. Title of the Regulation:**

Amendments to Regulation 1124 "Control of Volatile Organic Compounds", Section 12.0, "Surface Coating of Plastic Parts"; Section 19.0, "Coating of Metal Furniture"; Section 20.0, "Coating of Large Appliances"; Section 22.0, "Coating of Miscellaneous Metal Parts".

**2. Brief Synopsis of the Subject, Substance and Issues:**

The Department proposes to revise Sections 12.0, 19.0, 20.0 and 22.0 of 7 DE Admin. Code 1124 to specifically state that an alternative coating method that is demonstrated to be capable of achieving a transfer efficiency equal to or better than HVLP spray requires approval by EPA as well as by the Department. This requirement was requested by EPA. In addition some minor typos will be corrected.

**3. Possible Terms of the Agency Action:**

None.

**4. Statutory Basis or Legal Authority to Act:**

7 Delaware Code, Chapter 60.

**5. Other Regulations that may be Affected by the Proposal:**

None.

**6. Notice of Public Comment:**

There will be a hearing on these proposed amendments on Monday, May 23, 2011 beginning at 6pm in the Richardson & Robbins Building Auditorium. Interested parties may submit comments in writing to Gene M. Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

**7. Prepared By:**

Gene M. Pettingill 302-323-4542 [gene.pettingill@state.de.us](mailto:gene.pettingill@state.de.us)

April 6, 2011

**\*Please Note: Due to the size of the proposed 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 AIR AND WASTE MANAGEMENT

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

### REGISTER NOTICE

SAN #2011 - 01

### 1125 Requirements for Preconstruction Review

**1. Title of the Regulation:**

7 DE Admin. Code 1125, Requirements for Preconstruction Review

**2. Brief Synopsis of the Subject, Substance and Issues:**

The Department proposes to revise Section 1.9 "Definitions"; Section 2.0 "Emission Offset Provisions (EOP)"; and Section 3.0 "Prevention of Significant Deterioration of Air Quality" of 7 DE Admin. Code 1125 Requirements for Preconstruction Review, to conform to the requirements of the EPA PM<sub>2.5</sub> new source review permitting program, as shown in 73 FR 28321 and 75 FR 64864.

**3. Possible Terms of the Agency Action:**

None.

**4. Statutory Basis or Legal Authority to Act:**

7 Delaware Code, Chapter 60.

**5. Other Regulations That May Be Affected By The Proposal:**

None.

**6. Notice of Public Comment:**

There will be a hearing on these proposed amendments on Monday May 23, 2011 beginning at 6pm in the auditorium of the Richardson and Robbins Building located at 89 King's Highway, Dover, Delaware 19901. Interested parties may submit comments in writing to Gene M. Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

**7. Prepared By:**

Gene M. Pettingill (302-323-4542) [gene.pettingill@state.de.us](mailto:gene.pettingill@state.de.us)

April 6, 2011

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

**1125 Requirements for Preconstruction Review**

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))  
24 **DE Admin. Code** 1400

**PUBLIC NOTICE****1400 Board of Electrical Examiners**

The Delaware Board of Electrical Examiners pursuant to 24 **Del.C.** §1406 (a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to enforce the prohibition against practicing electrical services without a license. The proposed revisions would make it a crime substantially related to the practice of Electrical Services to practice electrical work without a license.

The Board will hold a public hearing on the proposed rule change on June 1, 2011 at 9:00 am., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written Comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Electrical Examiners, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

**1400 Board of Electrical Examiners****1.0 License Required**

- 1.1 To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.
- 1.2 A licensee under this chapter shall perform all electrical services or electrical work in accordance with the standards established in the National Electric Code (NEC) as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the NEC applicable to a particular project is determined by the Delaware Fire Commission.
- 1.3 Every individual who receives a license shall prominently display the words "Licensed Electrician" and the license number on the exterior of all vehicles used for work in not less than three inch letters and numbers. This section is satisfied by any abbreviation readily understood to mean "Licensed Electrician" such as "Lic. Elec." along with the license number.
- 1.4 Licensees shall notify the Board of a change of address. Change of address notifications shall be sent by certified mail within 60 days of date the address change.

**7 DE Reg. 1167 (3/1/04)**

**9 DE Reg. 260 (8/1/05)**

**12 DE Reg. 73 (7/1/08)**

**2.0 Applications**

- 2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation ("Division"). Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.
- 2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a new application with the appropriate fee.

- 2.3 Applications approved for testing will be valid for two years. If the test is not taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

**12 DE Reg. 73 (7/1/08)**

### **3.0 Qualifications**

- 3.1 An applicant shall submit proof of qualifications verified by affidavit on a form approved by the Board. Proof of experience requires an affidavit from the supervising licensed electrician describing the nature of the experience. If an applicant cannot obtain the required affidavit from the supervising licensed electrician, W-2 tax forms showing full-time employment may be substituted at the discretion of the Board. The required experience and training must be completed prior to taking the licensure exam.
- 3.2 Applicants relying on military training and experience must submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.
- 3.3 The requirement of two years of technical training under 24 **Del.C.** §1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.
- 3.4 The experience necessary under 24 **Del.C.** §1408 to qualify for a particular license must relate to the activity authorized by such a license as defined in 24 **Del.C.** §1402(10) - (13).

**4 DE Reg. 1788 (5/1/01)**

**6 DE Reg. 1495 (5/1/01)**

**12 DE Reg. 73 (7/1/08)**

### **4.0 Examinations**

- 4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.
- 4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

**4 DE Reg. 1788 (5/1/01)**

### **5.0 [Reserved]**

### **6.0 License and Insurance**

- 6.1 Licensees shall maintain general liability insurance of at least \$300,000.00. Proof of insurance must be submitted with licensure applications and maintenance of the required insurance shall be attested to in the course of each licensure renewal.
- 6.2 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his employer must maintain separate insurance for that risk as provided under these regulations.

**4 DE Reg. 1788 (05/01/01)**

**10 DE Reg. 1329 (02/01/07)**

**12 DE Reg. 73 (7/1/08)****7.0 Expiration and Renewal**

- 7.1 The licenses granted by the Board must be renewed by June 30th of each even numbered year, otherwise, they expire as of July 1<sup>st</sup>.
- 7.2 Renewal. It is the responsibility of the licensee to file a renewal application with the Board. The Board is not required to notify licensee s of e xpiration d ates. Rene wal ma y be accomp lished on line at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).
- 7.2.1 Renewal applications will be r andomly audited by the Board to ensure their accuracy. Licensees selected for random audit will be notified of that s election wit hin 60 day s after the renew al deadline. Licensees must then submit verification of their receipt of the notification of audit within 10 days.
- 7.2.2 As a condition of renewal, applicants must attest to completion of continuing education (CE) as required by Regulation 8.0 and list all CE course names and approval numbers. Applicants must also attest to maintenance of the liability insurance required by Regulation 6.0 and indicate the name of th eir insurer an d th eir policy nu mber. Attestation may be comp leted e lectronically if renewal is accomplished online. Alternatively, paper renewal documents containing the CE an d insurance attestations may be submitted. Licensees selected for random audit will be required to supplement their attestations with documentation of CE attendance and maintenance of insurance coverage.
- 7.3 A licensee may renew an expired license within one year after the renewal deadline by mee ting all requirements and paying a late fee set by the Division. All late renewals will be audited for compliance with the CE and insurance renewal requirements.
- 7.4 A licensee with a valid licens e may request in writing to be placed on inactive status. Inactive status can be r enewed biennially by a p plication to the Division upon proof of 10 ho urs of CE. Inactive licenses may be reactivated by the Board upon written request with proof of insurance and payment of a prorated fee set by the Division.
- 7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.
- 7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior tra ining an d e xperience can be used to satisfy the requirements un der 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) and achieve a passing score unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

**4 DE Reg. 1788 (05/01/01)****9 DE Reg. 260 (08/01/05)****10 DE Reg. 1329 (02/01/07)****11 DE Reg. 812 (12/01/07)****12 DE Reg. 73 (7/1/08)****8.0 Continuing Education**

- 8.1 Continuing education (CE) is required of all licensees and shall be completed by June 30 of any year in which a lic ense is to be renewe d. Extra continuing edu cation hours do no t carry over to the ne xt licensing period. Licensees will only get CE credit for their first attendance of CE courses during each licensing period. Licensees may retake a CE course in the same licensing period but will not rec eive additional CE credit.
- 8.2 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of th e Divisio n o f Pr ofessional Regu lation at [www.dpr.delaware.gov](http://www.dpr.delaware.gov). L icensees m ay also contact the Admin istrative Assistant of th e Bo ard at the Division of Pro fessional Re gulation to determine whether particular courses have been approved.

- 8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.
- 8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor.
- 8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.
- 8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.2.
- 8.3 Licensees shall complete 10 hours of a approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.
- 8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

**4 DE Reg. 1788 (05/01/01)**

**9 DE Reg. 1252 (02/01/06)**

**10 DE Reg. 1329 (02/01/07)**

## **9.0 Loss Of License Holder**

- 9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 Del.C. §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.
- 9.2 The notification must include documentation of the business relationship with the former licensee holder.

## **10.0 Exceptions.**

- 10.1 No license is required for performing electrical work by the following persons or entities:
  - 10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;
  - 10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;
  - 10.1.3 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board as the person responsible for the plant repairs, maintenance, and electrical additions;
  - 10.1.4 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices
  - 10.1.5 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;
  - 10.1.6 persons performing the work of any light or power company, electric or steam railway company, telegraph or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of service, termination box, or demarcation point;
  - 10.1.7 a homeowner who has obtained a homeowner's permit provided by law.

## **11.0 Reciprocity**

- 11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure

under this provision must submit to the Board a copy of reciprocal state's current licensure requirements.

- 11.2 If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice requires a n employer's affidavit describing the nature of the applicant's experience. If an applicant cannot obtain an affidavit from the employer, tax W-2 forms showing full-time employment may be substituted at the discretion of the Board. A self-employed applicant may submit tax form Schedule C as proof of practice.

**6 DE Reg. 1495 (5/1/03)**

**12.0 Required Inspection.**

- 12.1 Every licensee shall file an application for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall perform an inspection no later than five working days after the inspection has been requested.
- 12.2 An application for an inspection shall be filed with the inspection agency on a form, signed by the licensee, or person authorized under Rules 12.7, 12.8, or 12.9, containing at least the following information:
- 12.2.1 Full names of the licensee and any job foreman
  - 12.2.2 License number, type (T-1, T-2, or Specialty) and expiration date
  - 12.2.3 Date inspection requested
  - 12.2.3 Location of work to be inspected
  - 12.2.4 Permit numbers, if applicable
  - 12.2.5 Applicant's name and contact information, if other than the licensee
  - 12.2.6 A detailed description of the work to be inspected including any devices or equipment
  - 12.2.7 Signature of the licensee
- 12.3 A licensee who signs an application for inspection form is deemed to have authorized and shall be responsible for the work described in the form.
- 12.4 An inspection agency shall not conduct an inspection of work performed until it has received a request made in compliance with Rule 12.2.
- 12.5 An inspection agency is responsible to ensure that the standards for its inspection are those established in the National Electric Code as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the Code applicable to a particular project is determined by the Delaware Fire Commission.
- 12.6 An inspection report shall be recorded legibly on a form containing at least the following information:
- 12.6.1 Full name of the licensee
  - 12.6.2 License number, type (T-1, T-2, or Specialty) and expiration date
  - 12.6.3 Location of work to be inspected
  - 12.6.4 Permit numbers
  - 12.6.5 Inspector's full name
  - 12.6.6 A detailed description of the work inspected
  - 12.6.7 Deficiencies noted, any applicable NEC section, and inspection dates
  - 12.6.8 Signature of inspector
  - 12.6.9 Date inspection completed.
- 12.7 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.

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- 12.8 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations.
- 12.9 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection as provided in Rule 12.0 by an inspection agency licensed by the Board.

**7 DE Reg. 1167 (3/1/04)**

**13.0 Organization of the Board**

- 13.1 Election of Officers  
Annually during the July meeting, the Board shall elect officers to serve for a one year term from September 1- August 31.
- 13.2 Duties of the Officers
- 13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.
- 13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.
- 13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.
- 13.2.4 Complaint officer - The complaint officer shall be a member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 **Del.C.** §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.
- 13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.
- 13.3 Meeting Minutes  
The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

**4 DE Reg. 1788 (5/1/01)**

**14.0 Homeowners Permits**

- 14.1 The Division of Professional Regulation is authorized to issue homeowners' permits pursuant to an application process approved by the Board. Only owner-occupants who perform the work themselves qualify for homeowners' permits.
- 14.2 Homeowners' permits are required for new construction, renovation, and any work that requires a building permit. Generally, homeowners' permits are not required for replacement in kind.
- 14.3 A homeowner shall not be permitted to install his or her own internal wiring, electrical work or equipment associated with a hot tub or a swimming pool.
- 14.4 A homeowner's permit issued for a mobile home on a leased lot authorizes feeder installation for the mobile home itself and it does not include the installation or repair of service equipment.
- 14.5 A homeowner's permit is not authorized until a dwelling is on the site or under construction.
- 14.6 For the purposes of this section, evidence of homeownership can be a:
- 14.6.1 deed to the property;
- 14.6.2 a long term lease, e.g. 99 years, if the site of the dwelling is part of a community where title to the land is not conveyed by deed to the homeowner.
- 14.6.3 the title to a mobile home;
- 14.6.4 a written contract of sale, signed by the parties, for a mobile home that includes the names of the buyer, seller, contract price, date of sale, and identification number of the mobile home.

- 14.7 If a homeowner's permit is approved for a dwelling on a lot, other structures on the same lot, such as a non-commercial garage, are also covered unless otherwise prohibited under this section.

**4 DE Reg. 1788 (5/1/01)**

**9 DE Reg. 260 (8/1/05)**

#### **15.0 Inspection agencies**

- 15.1 Inspection agencies shall be licensed in accord with the provisions of 24 **Del.C.** §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.
- 15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.
- 15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form W-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.
- 15.4 An employee of an inspection agency shall confirm that the person who has filed for an inspection is a licensee under this chapter, a homeowner having a permit, or a person who has performed work allowed under an exception to licensure. Licensure verification is available online, free of charge at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).
- 15.5 If a violation found in an inspection is not corrected within 15 days as provided in 24 **Del.C.** §1421(g), the inspection agency shall notify the Board in writing and include a copy of the notice of violation. The Division of Professional Regulation will send, on behalf of the Board, the notice of violation to the other inspection agencies and to any local building inspector having jurisdiction over the structure.
- 15.6 An inspection agency shall notify the Board in writing within 10 days when an employee leaves the agency or when a new employee is hired by the agency. This notification shall include the full name and address of the inspector. The date a new employee is hired by an inspection agency marks the beginning of the period in which the inspection examinations in Rule 15.3 must be successfully completed.
- 15.7 As used in 24 **Del.C.** §1421(j), "**salary**" means compensation of employees at a set figure with installments paid weekly, monthly, or other fixed period or compensation based on time worked, i.e. paid by the hour. "**Salary**" does not include compensation based on the number of inspections performed. Inspectors may not be compensated based on the number of inspections performed or given any other incentive to increase the speed at which they perform inspections.

**4 DE Reg. 1788 (05/01/01)**

**6 DE Reg. 1495 (05/01/03)**

**7 DE Reg. 1167 (03/01/04)**

**10 DE Reg. 1329 (02/01/07)**

**12 DE Reg. 73 (07/01/08)**

**16.0 Voluntary Treatment Option For Chemically Dependent Or Impaired Professionals.**

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 **Del.C.** §8807(n) who are reported to the Board or Division using the following procedures:

- 16.1 If the report is received by the president of the Board, that president 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 president of the Board, or that president's designate or designates.
- 16.2 The president of the Board or that president's designate or designates shall, within seven (7) days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 16.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within thirty (30) days following notification to the professional by the participating Board president or that president's designate(s).
- 16.4 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 president or that president'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 president of the Board or that president'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 President of the Board.
- 16.5 Failure to cooperate fully with the Board president or that president'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 Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 **Del.C.** §8807(h).
- 16.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to the following provisions:
  - 16.6.1 Entry of the regulated professional into a treatment program approved by the 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.
  - 16.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president'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 president of the Board or that president'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.
  - 16.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
  - 16.6.4 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 paragraph shall approximate and reasonably reflect the costs necessary to

defray the expenses of the 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.

- 16.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the Board's president, 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.
- 16.7 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.
- 16.8 The Board's president, 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.
- 16.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 16.10 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 Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 16.11 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 non-disciplinary matter.
- 16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

## 17.0 Crimes substantially related to work of an Electrician.

- 17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the work of an electrician in the State of Delaware without regard to the place of conviction:
- 17.1.1 Reckless endangering in the first degree. 11 Del.C. §604
- 17.1.2 Assault in the second degree. 11 Del.C. §612
- 17.1.3 Assault in the first degree. 11 Del.C. §613
- 17.1.4 Manslaughter. 11 Del.C. §632
- 17.1.5 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 17.1.6 Murder by abuse or neglect in the first degree. 11 Del.C. §634
- 17.1.7 Murder in the second degree. 11 Del.C. §635
- 17.1.8 Murder in the first degree. 11 Del.C. §636
- 17.1.9 Unlawful sexual contact in the second degree. 11 Del.C. §768
- 17.1.10 Unlawful sexual contact in the first degree. 11 Del.C. §769
- 17.1.11 Rape in the fourth degree. 11 Del.C. §770
- 17.1.12 Rape in the third degree. 11 Del.C. §771
- 17.1.13 Rape in the second degree. 11 Del.C. §772
- 17.1.14 Rape in the first degree. 11 Del.C. §773
- 17.1.15 Sexual extortion. 11 Del.C. §776
- 17.1.16 Continuous sexual abuse of a child. 11 Del.C. §778
- 17.1.17 Dangerous crimes against a child. 11 Del.C. §779
- 17.1.18 Kidnapping in the second degree. 11 Del.C. §783

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- 17.1.19 Kidnapping in the first degree. 11 **Del.C.** §783A
  - 17.1.20 Arson in the second degree. 11 **Del.C.** §802
  - 17.1.21 Arson in the first degree. 11 **Del.C.** §803
  - 17.1.22 Criminal mischief. 11 **Del.C.** §811
  - 17.1.23 Burglary in the third degree. 11 **Del.C.** §824
  - 17.1.24 Burglary in the second degree. 11 **Del.C.** §825
  - 17.1.25 Burglary in the first degree. 11 **Del.C.** §826
  - 17.1.26 Robbery in the second degree. 11 **Del.C.** §831
  - 17.1.27 Robbery in the first degree. 11 **Del.C.** §832
  - 17.1.28 Theft of services. 11 **Del.C.** §845
  - 17.1.29 Extortion. 11 **Del.C.** §846
  - 17.1.30 Identity theft. 11 **Del.C.** §854
  - 17.1.31 Forgery. 11 **Del.C.** §861
  - 17.1.32 Unlawful use of credit card. 11 **Del.C.** §903
  - 17.1.33 Criminal impersonation of a police officer. 11 **Del.C.** §907B
  - 17.1.34 Insurance fraud. 11 **Del.C.** §913
  - 17.1.34 Home improvement fraud. 11 **Del.C.** §916
  - 17.1.36 New home construction fraud. 11 **Del.C.** §917
  - 17.1.37 Dealing in children. 11 **Del.C.** §1100
  - 17.1.38 Sexual exploitation of a child. 11 **Del.C.** §1108
  - 17.1.39 Unlawful dealing in child pornography. 11 **Del.C.** §1109
  - 17.1.40 Sexual solicitation of a child. 11 **Del.C.** §1112A
  - 17.1.41 Perjury in the second degree. 11 **Del.C.** §1222
  - 17.1.42 Perjury in the first degree. 11 **Del.C.** §1223
  - 17.1.43 Aggravated harassment. 11 **Del.C.** §1312
  - 17.1.44 Adulteration. 11 **Del.C.** §1339
  - 17.1.45 Possession of a firearm during a felony. 11 **Del.C.** §1447
  - 17.1.46 Theft of a firearm. 11 **Del.C.** §1451
  - 17.1.47 Organized crime and racketeering. 11 **Del.C.** §1503
  - 17.1.48 Breaking and entering, etc. to place or remove equipment. 11 **Del.C.** §2410
  - 17.1.49 Unlicensed practice as an Electrician 24 **Del.C.** §§1407, 1422
- 17.2 Crimes substantially related to the work of an electrician 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. 998 (1/1/05)**  
**12 DE Reg. 73 (7/1/08)**
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# PROPOSED REGULATIONS

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))  
26 **DE Admin. Code** 3001

IN THE MATTER OF THE ADOPTION OF RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF 26 DEL.C. CH. 10 RELATING TO THE CREATION OF A COMPETITIVE MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE (OPENED APRIL 27, 1999; RE-OPENED JANUARY 7, 2003; RE-OPENED SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER 7, 2010)

PSC REGULATION DOCKET NO. 49

### ORDER NO. 7946

This 19th day of April, 2011, the Commission determines and Orders the following:

1. Since 1999, the Commission has included within its Rules for Certification and Regulation of Electric Suppliers (26 **DE Admin. Code** §3001) ("the Regulations") specific provisions governing "net energy metering" by retail electric consumers. 26 **DE Admin. Code** §3001-8.0 ("net metering rules").<sup>1</sup> These net metering rules have implemented statutory enactments that, over the years, have afforded retail electric customers expanding opportunities to utilize limited capacity generation to "net meter" the customer's electric supply consumption. See 26 **Del.C.** §1014(d)-(k) (current statutory "net metering" regime).

2. The statutory net metering regime was revised in July, 2010. See 77 **Del. Laws** c. 453, §§2-11 (July 28, 2010), amending 26 **Del.C.** §1014(d) & (e), and adding §1014(i)-(k). In October, 2010, the Commission gave notice of proposed changes to the net metering rules in its Regulations to implement these 2010 legislative amendments. 14 DE Reg. 282 (Oct. 1, 2010); PSC Order No. 7832 (Sept. 7, 2010). The thrust of the 2010 statutory amendments, and the Commission's concurrent proposed changes to its net metering rules, was: (1) to allow a retail electric customer to aggregate multiple individually metered accounts beyond the account/meter serving the generation facility for purposes of allocating net metering credits and (2) to allow several retail customers, through aggregation of accounts or by investment, to obtain net metering benefits via community-owned generating facilities.

3. Staff now reports that it would be appropriate to further revise the earlier proposed rule changes, based upon the responses engendered by the earlier October, 2010 notice. Staff has submitted further revised proposed net metering provisions which, according to Staff, differ, in some aspects, from the earlier proposed changes. For example, these further revisions:

(a) more carefully delineate the value of carried-over monthly excess generation credits in the context of both aggregated meters and community-owned generation facilities dependent upon the customer accounts being served by the same or a differing distribution feeder (proposed further §§ 8.3 & 8.4(i)(1), (ii)(1));

(b) set forth an alternative value to be used in the purchase of net excess generation of a community-owned generation facility (further revised § 8.4.2); and

(c) allow Delmarva Power & Light Company to recover from stand-alone community-owned generation facilities a retail equivalent customer charge and other applicable non-volumetric supply, transmission, and delivery costs (proposed further revision § 8.2.4 & .5).

4. In light of Staff's report, and in accord with 29 **Del.C.** §10118(c), the Commission now adopts a Further Notice of Proposed Rulemaking and proposes further revisions to the net metering rules in its Regulations. These further revisions are proposed, in part, due to the responses garnered from the earlier October, 2010 notice of

1. The Commission has over the years titled these Regulations as the "Rules for Certification and Regulation of Electric Suppliers." In contrast, in the Administrative Code, the Register of Regulations uses the title "Regulations Governing Service Supplied by Electrical Corporations."

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rulemaking and are, in some part, substantively different from the earlier proposed changes to the net metering rules.

5. This Further Notice, and the further revised proposed net metering provisions, will supersede the Notice and proposed revisions set forth at 14 DE Reg. 282 (Oct. 1, 2010) and in Order No. 7832. However, because in many instances the further revisions now being noticed mirror changes proposed under the earlier notice, the comments submitted, and the record developed in earlier proceedings, in response to the earlier notice will be incorporated into the record of this Further Notice.

**NOW THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That to further implement the provisions of 26 **Del.C.** 1014(d)-(k), as amended by 77 **Del Laws** c. 453 (2010), and to make additional "administrative" changes, the Commission issues a Further Notice of Proposed Rulemaking and further revised proposed revisions to its Rules For Certification And Regulation Of Electric Suppliers, 26 Admin. C. §3001 ("the Regulations"). The further proposed revisions now noticed are set forth, via interlineations, in Exhibit "A" as appended to this Order. The Commission has authority to propose such rules pursuant to 26 **Del.C.** §§209 & 1014(d), (e), (k).

2. That this Further Notice of Proposed Rulemaking, and further proposed revisions as set forth in Exhibit "A" of this Order, supersede the Notice and proposed revisions previously published at 14 DE Reg. 282 (Oct. 1, 2010) and in PSC Order No. 7832 (Sept. 7, 2010). Those earlier proposed revisions (unless incorporated into Exhibit "A") are hereby withdrawn in favor of the further proposed revisions now being noticed. However, the comments received in response to the earlier proposed revisions, and the record developed in response to the notice directed by PSC Order No. 7832), shall be incorporated into the record of this Further Notice.

3. That, pursuant to 29 **Del.C.** §§10113 and 10115, the Secretary shall transmit to the Registrar of Regulations for publication in the May, 2011 issue of the Delaware Register of Regulations a copy of this Order; a copy of the Regulations, delineating the proposed further revisions to the net metering provisions and several other provisions; and a copy of the Further Notice attached hereto as Exhibit "B". In addition, the Secretary shall cause the Further Notice attached as Exhibit "B" to be published in The News Journal and the Delaware State News newspapers on or before May 10, 2011. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Further Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; (d) all persons and entities, who in response to the Notice of Rulemaking adopted by PSC Order No. 7832 (Sept. 7, 2010) either filed comments or participated in any public hearing or workshop; and (e) each person or entity who has made a timely request for advance notice of the Commission's regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, in response to this Further notice on or before June 1, 2011. Pursuant to 29 **Del.C.** §10117, the Commission will conduct, at its offices in Dover, a public hearing on the proposed revisions to the Regulations on June 7, 2011, beginning at 1 pm.

5. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provisions of 26 **Del.C.** §114(b)(1).

6. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner  
Joann T. Conaway, Commissioner  
Jaymes B. Lester, Commissioner  
Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

**TO: ALL RETAIL ELECTRIC SUPPLIERS IN DELAWARE, ALL DELAWARE RETAIL ELECTRIC CUSTOMERS WHO GENERATE ELECTRICITY, DELMARVA POWER & LIGHT CO., & OTHER INTERESTED PERSONS**

Since 1999, electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators to "net meter" their electric supply consumption. 26 **Del.C.** §1014(d)-(k). The Public Service Commission ("PSC") has previously adopted rules to implement this "net electric metering" regime as part of its Rules for Certification and Regulation of Electric Suppliers, 26 **DE Admin. Code** §3001-8.0 ("the Regulations").

In October, 2010, the PSC gave notice that it proposed to change the net metering provisions in its Regulations in light of July, 2010 legislative amendments to the underlying statutory net metering regime. 14 DE Reg. 282 (Oct. 1, 2010). After receiving responses to those earlier proposed rule changes, the PSC has now decided to issue a Further Notice of proposed rulemaking and to propose further revised changes to the net metering provisions in its Regulations. This further Notice and the further refined proposed rule changes supersede the rule revisions proposed under the earlier October, 2010 Notice.

As with the earlier proposed rule changes, the further proposed rule revisions implement the 2010 legislative amendments (77 Del. Laws ch. 453 (July 28, 2010)). They: (1) allow retail electric customers to aggregate multiple individual metered accounts beyond the account/meter serving the generation facility for purposes of allocating net metering credits and (2) allow retail customers, through aggregation of accounts or by investment, to obtain net metering benefits via community-owned generating facilities. In addition, the further revised proposed provisions allow Delmarva Power & Light Company the opportunity to utilize an alternative value to calculate the level of payment for excess "net metering" credits in the context of community-owned generation facilities. Finally, the further proposed revisions allow Delmarva Power & Light Company to recover from stand-alone community-owned generation facilities a customer charge and other applicable charges related to supply, transmission, and delivery costs.

You can review the further revised proposed rule revisions in the May, 2011 issue of the Delaware Register of Regulations (available online at <http://regulations.delaware.gov/services/register.shtml>) or on the PSC's website at <http://dep.sc.delaware.gov>, under PSC Order No. 7946 (April 19, 2011). You can also review and copy PSC Order No. 7946 and the further proposed revisions at the PSC's office at the address set forth below (\$.50 per page copy fee).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the further proposed revisions to the Regulations. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before June 1, 2011. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Reg. Dckt. No. 49

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If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to [john.farber@state.de.us](mailto:john.farber@state.de.us). If you filed comments or other materials in response to the October 1, 2010 notice, those comments will be included in the record in this matter.

The PSC will hold a hearing to consider these further revisions to the Regulations at its regularly scheduled meeting on Tuesday, June 7, 2011 at 1:00 p.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed further revisions to the Regulations on the basis the information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 **Del.C.** §§209 & 1014(d), (e), (k).

If you have questions about this proceeding, you can contact the PSC at 1-800-282-8574 (in Delaware only) or (302) 73 6-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to [john.farber@state.de.us](mailto:john.farber@state.de.us). If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

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

**3001 Regulations Governing Service Supplied by Electrical Corporations**

## Symbol Key

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

## Final Regulations

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

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

## DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

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

## REGULATORY IMPLEMENTING ORDER

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

## I. Summary of the Evidence and Information Submitted

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.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 23, 2011 in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities as well as a member of the general public. The Department considered the comments and has incorporated several, but not all of the suggested changes. Specifically, in 1.0 the Department broadened the authority reference to assuage the concerns of the Councils. The Department did not incorporate changes related to including language that would broaden the scope of the regulation. The regulation is related to the credentialing of Interpreter/Tutors for the Deaf/Hard of Hearing and not the development of the Individual Education Program (IEP). An area of concern for the Councils was the definition of "Unfit". The definition within the regulation is consistent with the requirements of other public school personnel that are governed by state licensure, certification, and permit regulations and laws. The Department has incorporated the comments related to grammatical recommendations.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing. 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.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 764 Credentials for Interpreter Tutor for the Deaf and Hard of Hearing in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 21, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 21<sup>st</sup> day of April 2011.

**Department of Education**

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

Approved this 21<sup>st</sup> day of April 2011

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

**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 Permit]**, pursuant to **[~~14 Del.C. §1331(b)~~ the authority provided in Title 14 of the Delaware Code]**, 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 Hearing]** without obtaining a **[permit 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. A permit shall be valid for five (5) years.]~~

“**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, 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 [either]:
- 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 [and Renewal] 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.~~
- [4.2 The permit holder shall be required to renew the Permit every five (5) years by submitting documentation that the minimum standards in 3.0 of the regulation have been met.]**

## 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~~ meets the definition of "Unfit" in 2.0 of this regulation], 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.~~

## **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, neglect of duty, disloyalty, willful and persistent insubordination or falsification of credentials~~ meets the definition of "Unfit" in 2.0 of this regulation] 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 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)**

## OFFICE OF THE SECRETARY

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

## REGULATORY IMPLEMENTING ORDER

**765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 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.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 23, 2011 in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department considered the comments and has incorporated several, but not all of the suggested changes. An area of concern for the Councils was the definition of "Unfit". The definition within the regulation is consistent with the requirements of other public school personnel that are governed by state licensure, certification, and permit regulations and laws. The Department has incorporated the comments related to grammatical recommendations.

**II. Findings of Facts**

The Secretary finds that it is appropriate 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 in order to provide consistency across other regulations relating to permits and other educator credentials and State law.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate 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. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 DE Admin. Code 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf and Hard of Hearing in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on April 21, 2011. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**Department of Education**

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

Approved this 21<sup>st</sup> day of April 2011

## State Board of Education

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

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

## 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, 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~~ **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~~ meets the definition of "Unfit" in 2.0 of this regulation], until the applicant provides evidence of the investigation's resolution.

6.42 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, neglect of duty, disloyalty, willful and persistent insubordination or falsification of credentials~~ meets the definition of "Unfit" in 2.0 of this regulation] and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her [~~permit 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)**

## PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1582

## REGULATORY IMPLEMENTING ORDER

### 1582 School Nurse

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1582 School Nurse as the regulation requires some formatting changes to conform to other Standard Certificates and the updating of the certification requirements. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a) and sets forth the requirements for a School Nurse.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 6, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens and the State

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Council for Persons with Disabilities. The Councils expressed concerns regarding the language in 6.1.4, 4.1.2, and 5.1.1 concerning a nursing license and suggested that the Professional Standards Board consult with the Board of Nursing regarding whether more specific language was warranted. The Professional Standards Board confirmed that the language is appropriate. The Councils also suggested inserting R.N. before the word license 6.1.4 to conform to section 4.1.2. The Professional Standards Board took the comments under consideration and determined that the change was not necessary. The Councils also suggested a grammatical change in 6.1 and the Standards Board has incorporated the suggested change.

## **II. FINDINGS OF FACTS**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend the regulation to update the format and certification requirements.

## **III. DECISION TO AMEND THE REGULATION**

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

## **IV. TEXT AND CITATION**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1582 of the Administrative Code of Regulations of the Department of Education.

## **V. EFFECTIVE DATE OF ORDER**

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

## **APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF MARCH, 2011**

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

**IT IS SO ORDERED** the 7<sup>th</sup> day of April, 2011.

### **Department of Education**

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

Approved this 21<sup>st</sup> day of April, 2011

**State Board of Education**

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

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

**1582 School Nurse****1.0 Content**

~~This regulation shall apply to the requirements for a Standard Certificate for School Nurses, pursuant to 14 **Del.C.** §1220(a).~~

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for School Nurse. This certification is required for all School Nurses providing services to children within the Delaware public school system.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

**2.0 Definitions**

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

~~**"Department"** means the Delaware Department of Education.~~

~~**"Educator"** means a public school employee who holds a license issued under the provisions of 14 **Del.C.** c.12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers. For the purposes of this regulation, school nurses are considered educators.~~

~~**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

~~**"Standards Board"** means the Professional Standards Board established pursuant to 14 **Del.C.** §1204.~~

~~**"State Board"** means the State Board of Education of the State pursuant to 14 **Del.C.** §104.~~

The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

**3.0 Standard Certificate**

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

- ~~3.1 Bachelor's degree in Nursing or School Nursing from an accredited college or university; and,~~  
~~3.2 Current RN license, recognized by the DE Board of Nursing; and,~~  
~~3.3 A minimum of three years clinical nursing experience; and~~  
~~3.4 Valid and current certification in CPR.~~

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a School Nurse to an educator who has met the following:

- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

- 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505, Standard Certificate including any subsequent amendment or revision thereto; and
- 3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Induction Requirements**

- 4.1 Pursuant to 14 Del.C. §1510, 4.2 and 14 Del.C. §1511, 3.0, during the term of the Initial License as an educator, a school nurse must complete 90 clock hours of training consisting of school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children. Failure to meet this requirement will result in the denial of a Continuing License. (See 14 Del.C. §1511, 3.0).

## **4.0 Additional Requirements**

- 4.1 An educator must also have met the following additional education and licensure requirements:
  - 4.1.1 Holds a Bachelor's degree in Nursing (BSN) from a regionally accredited college or university; and,
  - 4.1.2 Holds and maintains a current Registered Nurse license, recognized by the Delaware Board of Nursing; and,
  - 4.1.3 Holds and maintains a valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED); and,
  - 4.1.4 Completes within eighteen (18) months of hire, ninety (90) clock hours of training approved by the Department consisting of school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children.
- 4.2 An educator must also have met the following experience requirement:
  - 4.2.1 Has completed a minimum of three (3) years of supervised clinical nursing experience.

## **5.0 Revocation**

- 5.1 A Standard Certificate, or a Limited Standard, Standard or Professional Status Certificate as a School Nurse issued prior to August 31, 2003 may be revoked in accordance with 14 Del.C. §1514 for:
  - 5.1.1 Making a materially false or misleading statement in a certificate application; or
  - 5.1.2 Revocation of a license issued under 14 Del.C. c.12; or
  - 5.1.3 Failure to maintain a current license as a registered nurse in the State of Delaware; or
  - 5.1.4 Failure to maintain valid and current certification in CPR.

## **5.0 Expiration**

- 5.1 A Standard Certificate shall expire if the educator:
  - 5.1.1 Fails to maintain a current Registered Nurse license, recognized by the Delaware Board of Nursing; or
  - 5.1.2 Fails to maintain valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED), or
  - 5.1.3 Fails to complete within eighteen (18) months of hire, ninety (90) clock hours of training consisting of school nursing, health education, testing and screening, counseling and guidance, and introduction to exceptional children.

## **6.0 Verification of Eligibility and Reporting**

- 6.1 An educator holding a School Nurse certificate shall do the following:
  - 6.1.1 Notify the Department immediately if they fail to meet the qualifications as a School Nurse.
  - 6.1.2 Annually notify the Department and affirm their continued eligibility for certification and if requested, provide documentation verifying their continued eligibility.

- 6.1.3 If employed in the public school system, provide documentation to their employer of their current credentials including a valid nursing license, and CPR and AED certification.
- 6.1.4 If not employed in the public school system, provide documentation to the Department of their current credentials including a valid nursing license, and CPR and AED certification.
- 6.2 Upon employment of a School Nurse, a district or charter school is responsible for verifying that the School Nurse continues to meet the requirements in Sections 4.1.1 through 4.1.3.
- 6.2.1 The district or charter school must maintain documentation of the verification of initial credentials and maintain documentation of current credentials including a valid nursing license, and CPR and AED certification.
- 6.3 Districts and charter schools shall report information to the Department when they receive information that would result in the expiration of a School Nurse Standard Certificate.

**7 DE Reg. 633 (11/1/03)**

**Renumbered effective 6/1/07 - see Conversion Table**

## 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

#### 4461 State of Delaware Milk Code Regulations

#### Nature of the Proceedings:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the 2011 State of Delaware Milk Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §§ 122(3)u.

On March 1, 2011 (Volume 14, Issue 9), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 30, 2011, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. The foregoing evaluation or summarization of comments is presented in the accompanying “Summary of Evidence.”

#### Summary of Evidence

In accordance with Delaware Law, public notice regarding proposed Department of Health and Social Services (DHSS) 2011 State of Delaware Milk Code was published in the *Delaware Register of Regulations* on March 1, 2011 (Volume 14, Issue 9).

The public comment period was open from March 1, 2011 through March 30, 2011. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

The regulation has been approved by the Delaware Attorney General’s office and the Cabinet Secretary of DHSS.

## Findings of Fact:

There were no public comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the proposed 2011 State of Delaware Milk Code is adopted and shall become effective May 10, 2011, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

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

#### **1.0 General Provisions**

##### 1.1 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.~~

##### 1.2 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.~~

##### 1.3 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.~~

- 4.5 **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.
- 4.6 **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, Sub part 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".

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- 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 3511

**Secretary's Order No.: 2011-F-0027**

**Date of Issuance: April 18, 2011**

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

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

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

#### **Background and Procedural History**

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 regarding Summer Flounder. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2011-04. The Department published the proposed amendments in the March 1, 2011 *Delaware Register of Regulations* and held a public hearing on March 24, 2011. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 14, 2011 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

#### **Findings and Discussion**

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 as final, Delaware will be able to remain in compliance with the federal guidelines for the management of summer flounder, as set forth jointly by both the ASMFC and NOAA, to wit: (1) establish the size limit at 18 inches; (2) establish the creel limit at four (i.e., four fish per day); and (3) establish a sixty-nine day closure of the 2011 season from October 24<sup>th</sup> through December 31<sup>st</sup>. In further support of the selection of this option, the size limit reduction should lead to more chances for anglers to catch a keeper-sized summer flounder, and should also provide some relief for shore-based anglers who do not have access to larger flounder that are found in deeper water habitats. While the year-

end closure remains in effect, it is being shortened by 11 days from the 2010 closure period. Moreover, the closure takes place during months when less than 1% of the harvest traditionally occurs. If the summer flounder stock continues to improve, Delaware anglers can expect to see increased summer flounder harvests and continued relaxation in regulations.

In conclusion, the following findings and conclusions are entered:

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

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

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

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

5.) The recommended amendments to this regulation (as revised to reflect the 18" minimum size limit, 4 fish per day, and 69-day closure from October 24<sup>th</sup> through December 31<sup>st</sup>) satisfy the aforementioned federal mandates with regard to Delaware's management of summer flounder, and do not result in any substantive change from the proposed amendments as originally published in the March 1, 2011, *Delaware Register of Regulations*;

6.) The recommended amendments should be adopted as final because Delaware will be enabled to remain in compliance with the federal guidelines for the management of summer flounder, as set forth jointly by both the ASMFC and NOAA. It will not deprive fishermen of the enjoyment of summer flounder during the typical peak of the season, nor will it cause Delaware to suffer a marked decrease in tourism, as a result of the 69-day closure occurring from October 24<sup>th</sup> through December 31<sup>st</sup>. This management option will also help to fortify and rebuild the summer flounder stock while simultaneously helping to encourage and teach sound fishing ethics to the next generation of anglers in Delaware. Moreover, if the summer flounder stock continues to improve, Delaware anglers can expect to see increased summer flounder harvests and continued relaxation in regulations.

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

Collin P. O'Mara, Secretary

### 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 eighteen (18) inches]** 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.~~ during the closed season beginning 12:01 a.m. October 24 and ending 12:00 p.m. December 31 next ensuing.]

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.

- 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 (11/1/09)

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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)

**FINAL ORDER**

**2500 In-Building Communications Systems Regulation**

**I. NATURE OF PROCEEDINGS**

Pursuant to its authority under 9 **Delaware Code** Sections 2616, 4927, 6927 & 22 **Delaware Code** Section 311, the Delaware Department of Safety and Homeland Security's designee, the Division of Communications ("the Division") proposed to adopt regulations 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.

Notice of a public comment period of thirty (30) days related to the Division's proposed regulations was published in the *Delaware Register of Regulations* of March 1, 2011.

**II. PUBLIC COMMENTS**

The Division received no public comments despite its solicitation for such comments in its notice of intention to adopt proposed regulations.

**III. FINDINGS AND CONCLUSIONS**

The public was given the required notice of the Division's intent to adopt the proposed regulations and 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 no comments, is now free to adopt the proposed regulations.

**IV. ORDER**

AND NOW, this \_\_\_ day of April, 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 (c): and

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The Division 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 D. Schiliro, Secretary, Department of Safety and Homeland Security

Mark A. Grubb, Director, Division of Communications, Department of Safety and Homeland Security

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2011 issue of the *Register* at page 870 (14 DE Reg. 870). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2500 In-Building Communications Systems Regulation**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 1100 Board of Dental Examiners

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))  
24 DE. Admin. Code 1100

### ORDER

#### 1100 Board of Dental Examiners

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 24, 2011 at a scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene (the "Board") to receive comments regarding the Board's proposed amendments to the Board's rules and regulations.

The proposed amendments delete existing Rule 4.0 as it is an outdated provision related to acupuncture and replace it with a new Rule 4.0 that sets the criteria necessary for a specialty rotation to satisfy the requirements of the general practice residency required by 24 Del.C. §1122(a)(3). The amendments also modify the exam provision in Rule 8.0 to reflect the change from a specific score to a pass/fail standard. Finally, the amendments replace the former name of the Board (Board of Dental Examiners) with its new name (Board of Dentistry and Dental Hygiene) throughout the regulations consistent with the recent statutory change amending the name of the Board.

The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 14, Issue 8, on February 1, 2011.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written comments were received. No members of the public attended the hearing.

### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations. The Board received no written or verbal comments on the proposed amendments.

2. The Board's experience in reviewing applications is that there has been confusion on the part of applicants as to the general practice residency requirement for licensure particularly in regard to whether a specialty

residency would satisfy that requirement. As a result, the Board's statute was recently amended to provide that the Board will accept completion of Commission on Dental Accreditation (CODA) approved specialty residency programs that include specific rotations identified in the Board's rules and regulations. New Rule 4.0 identifies the acceptable criteria and required rotations and will assist applicants in determining whether a particular specialty residency may be used in lieu of a 1 year general practice residency.

3. The Board found during a recent review of its regulations that its former Rule 4.0 contained an outdated reference to acupuncture; describing it as experimental in nature and specifying the limits of its use in the practice of dentistry and dental hygiene. Acupuncture is now a licensed profession governed by the Board of Medical Licensure and Discipline and its Acupuncture Advisory Council. As such, the Board finds that the provision should be deleted and dental practitioners desiring to use acupuncture should refer to the law and regulations on acupuncture for the requirements to determine the necessary qualifications and licensure requirements.

4. Pursuant to 24 **Del.C.** §1106 the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute. The amendments to Rule 4.0 *Qualifications of Applicant; Residency Requirements* clarify the provisions of 24 **Del.C.** §1122(a)(3) in regard to residency programs required for licensure. The amendments to Rule 8.0 *Certificate Requirement* clarify the provisions of 24 **Del.C.** §1122(a)(4) by providing that the Board will accept a passing score as determined by the National Board of Dentistry and Dental Hygiene on the National Board Examination rather than designating a specific score. The deletion of language related to acupuncture removes a provision that is governed by another regulatory board and council. Finally, the name change is required as a result of the statutory change to the name of the Board.

### DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations to be effective 10 days following publication of this order in the *Register of Regulations*.

### TEXT AND CITATION

The text of the revised rules remains as published in *Register of Regulations*, Vol. 14, Issue 8, on February 1, 2011 without any modification as a result of the public hearing.

**SO ORDERED** this 24<sup>th</sup> day of March 2011.

#### BOARD OF DENTISTRY AND DENTAL HYGIENE

Neil McAneny, DDS, President, Professional Member  
Blair Jones, DMD, Secretary, Professional Member  
John Lenz, DDS, Professional Member, opposed  
Robert Director, DDS, Professional Member

Thomas Cox, DDS, Professional Member  
Joan Madden, RDH, Professional Member  
Nathaniel Gibbs, Public Member - abstaining

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2011 issue of the *Register* at page 776 (14 DE Reg. 776). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1100 Board of Dental Examiners**

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))  
26 **DE Admin. Code** 3008

IN THE MATTER OF THE ADOPTION OF RULES AND  
PROCEDURES TO IMPLEMENT THE RENEWABLE  
ENERGY PORTFOLIO STANDARDS ACT, 26 DEL. C.  
§§ 351-363, AS APPLIED TO RETAIL ELECTRICITY  
SUPPLIERS (OPENED AUGUST 23, 2005; REOPENED  
SEPTEMBER 4, 2007; AUGUST 5, 2008; AND  
SEPTEMBER 22, 2009; SEPTEMBER 7, 2010)

PSC REGULATION DOCKET NO. 56

### ORDER NO. 7933

This 22nd day of March, 2011, the Commission determines and Orders the following:

#### Background

1. In 2005, General Assembly enacted the “Renewable Energy Portfolio Standards Act,” 26 **Del.C.** §351-364 (2006 Supp.) (“REPSA”). Pursuant to REPSA, a minimum percentage of the electricity that retail electric suppliers and municipal electric companies sell to Delaware end-users in each compliance year (defined as the year beginning with June 1 and ending on May 31 of the following year) must be from “eligible energy resources” or “EER” (renewable energy). REPSA included a “Schedule I” setting forth escalating minimum percentages of EER for several years, beginning with 1% in 2007 and ending with 10% in 2019. See 75 **Del. Laws** ch. 205. REPSA also allowed an electric supplier to meet its obligations by accumulating or purchasing “renewable energy credits (“RECs”) equivalent to a specified percentage of its retail electric supply sales in Delaware.

2. The General Assembly amended REPSA in 2007 to, among other things, require a specific amount of EER from solar photovoltaics (“solar PVs”) and to exempt from Schedule 1 suppliers who acquired any portion of their renewable energy supply portfolio for the 2007-09 compliance years under wholesale renewable energy supply contracts procured pursuant to the 2005-06 Standard Offer Services (“SOS”) auctions that were in effect on the date of those auctions. See 76 **Del. Laws**, ch. 165, §4. Thus, although after the amendment all electric suppliers were required to have 4% of their total retail sales from EER for compliance year 2009, that minimum percentage for the same period was capped at 2% (see Schedule 1 (Revised)) for suppliers who acquired their supply pursuant to the 2005-06 SOS auctions. That is, the suppliers who acquired their supply pursuant to the 2005-06 SOS auctions were “grandfathered” at the 2% level.

3. In 2006, the Commission promulgated “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (the “RPS Rules”). See Order No. 6931 (June 6, 2006). The Commission has revised its RPS Rules from time to time to reflect various amendments to the RPS Act. See, e.g., PSC Order Nos. 7377 (Apr. 17, 2008), 7494 (Dec. 16, 2008), and 7699 (Dec. 8, 2009).

4. The General Assembly again amended REPSA in 2010. See Senate Substitute No. 1 for Senate Bill No. 119 (77 **Del. Laws** ch. 451) (July 28, 2010) (“SS 1”). Among other things, SS 1:

- Modified the minimum percentages of sales that must be from EER and solar PVs and extended the period for the minimum standard from 2019 to 2025. Notably, SS 1 increased the minimum percentages from solar PVs starting in 2011, but, for three separate years, SS 1 *reduced* the minimum percentage for EER.
- Established a mechanism to freeze the minimum requirements under certain circumstances.
- Provided credits toward the minimum requirements for Delaware-sited solar and wind installations, as long as a certain percentage of the equipment used in the installation is manufactured in Delaware, and/or where facilities are constructed or installed with a certain percentage of Delaware workers.
- Increased the amount of solar alternative compliance payments.

- Provided the State Energy Coordinator with the authority to review the reasonableness of alternative compliance payments and solar alternative compliance payments.
- Established a Renewable Energy Task Force to review trading mechanisms and other structures to support growth of renewable trading markets in Delaware.
- Explicitly provided the Commission with the authority to promulgate rules and regulations with respect to certain of the REPSA amendments.

Significantly for purposes of our later discussion, this version of REPSA omitted any grandfathering provision.

5. By Order No. 7834 (Sep. 9, 2010), the Commission proposed to modify the RPS Rules to reflect SS 1's amendments to REPSA and caused the proposed amended RPS Rules to be published in the *Delaware Register of Regulations* as required by the Administrative Procedures Act. Order No. 7834 also required publication of a notice regarding the proposed changes to the RPS Rules, which notice included a deadline for comments to the proposed changes and set a hearing date for consideration of the changes.<sup>1</sup>

### Comments to the Proposed Rules

6. The Commission received written comments to the proposed RPS Rules from the Retail Energy Supply Association ("RESA"), Washington Gas Energy Services, Inc. ("WGES"), and the Vote Solar Initiative ("Vote Solar"). RESA, WGES, the Delaware Solar Energy Coalition ("DSEC") and Delmarva Power & Light Company ("Delmarva") provided oral comments at the February 22 and March 8, 2011 public meetings.

7. RESA and WGES<sup>2</sup> first ask us to include in the proposed amended RPS Rules a provision allowing suppliers that are parties to long-term fixed-price contracts extending beyond the date the amended REPSA goes into effect ("pre-existing contracts") to comply with the EER and solar PV percentages that were in effect when those suppliers entered into those contracts.<sup>3</sup> (RESA Comments at 4-5; WGES Comments at 1-2). In short, RESA and WGES ask us to include a "grandfathering" provision in the regulations even though the amended REPSA contains no such provision. Certain of RESA's members and WGES contend that they have locked into pre-existing contracts based upon REPSA's prior minimum requirements, and requiring them to comply with the increased percentages from 2011 onward would increase the costs to their existing customers. (RESA Comments at 4; WGES Comments at 1-2).

8. WGES states that the impact on its existing contractual commitments of complying with the new SREC requirements would be more than \$600,000 over the three-year period identified in SS 1. (WGES Comments at 2). One RESA member present at the hearing estimated that the impact on its existing customer contracts would be \$400,000. (2/22/11 Tr. at 723). DSEC questioned the accuracy of these amounts, stating that SRECs are trading on the spot market at substantially less than the solar alternative compliance payment price. (*Id.* at 736). Delmarva stated that exempting only choice contracts from the increased REPSA requirements would be unfair to Standard Offer Service ("SOS") customers because SOS customers would not be subject to the exemption; thus, "choice" customers would be receiving a significant discount that was not available to SOS customers. (3/8/11 Tr. at 784-85).

9. In support of their contention that we have the authority to exempt existing contracts from the requirements of the amended REPSA through our RPS Rules, RESA and WGES primarily rely upon 26 **Del.C.** §362(a), which requires the Commission's RPS Rules to be "as consistent as possible with those of other states in the region with similar requirements in order to minimize the compliance burdens imposed by [REPSA] and in order to avoid duplication of effort." 26 **Del.C.** §362(a). (RESA Comments, pp. 5-8). RESA argues that REPSA does not prohibit us from exempting existing contracts because Section 362 "affords the Commission the discretionary power and flexibility it needs to consider precisely these types of issues when promulgating its regulations ... ." (*Id.* at 6). Additionally, RESA claims that changes in RPS standards in other states, such as Maryland and Massachusetts, have included grandfathering clauses exempting pre-existing contracts from new RPS requirements. (*Id.* at 6-7).

1. Due to a clerical error, the proposed changes to the RPS Rules had to be republished. See PSC Order No. 7862 (requiring republication and re-noticing the comment deadline and a new hearing date).

2. In addition to its own comments, WGES agreed with and supported RESA's comments. (WGES Comments at 2).

3. For example, SS 1 increased the minimum percentage of solar PVs from .048% in 2011 to 2%.

RESA further claims that proposed RPS Rule 3.2.2 permits us to modify minimum cumulative percentage requirements for existing contracts through our regulations. (*Id.* at 7).

10. As to proposed Rule 3.2.16, which recognizes the ability of the newly-created State Energy Coordinator (in consultation with the Commission) to freeze the minimum cumulative EER requirements for “regulated utilities” under certain circumstances pursuant to 26 Del.C. §354(i)-(j), RESA believes the rule should allow a freeze for *all* electric suppliers, not just Commission-regulated electric companies. (*Id.*, p. 8). RESA also criticizes REPSA’s failure to appoint an electric supplier representative to the Renewable Energy Task Force created by SS 1. To ameliorate this perceived deficiency, RESA urges the Commission to “open a docket for market participants to comment on proposed issues for consideration before the Task Force.” RESA states that this will ensure that the Task Force will be informed and “will have before it the accumulated experience of all stakeholders, not just those ... granted an appointment to the Task Force, when making decisions regarding the establishment of trading mechanisms and other structures to promote the growth of a renewable energy market in Delaware.” (*Id.*, p. 11).

11. As drafted, proposed Rule 3.2.16 (following REPSA), states that for a freeze to occur, the Delaware Energy Office (“DEO”) must determine that the costs of compliance exceed a certain percentage “of the total retail cost of electricity.” Vote Solar comments that Rule 3.2.16 should define “total retail cost of electricity;” that the definition should be “quantified based on the retail cost of electricity for end-users;” and that the Commission should draw experience from other states. Vote Solar does not offer a proposed definition, nor does it identify the states that have addressed this issue. (See Vote Solar Comments, pp. 3-4).

12. Proposed Rule 3.2.15, like the statute, establishes a process whereby the Commission can, under certain circumstances, accelerate or slow the scheduled percentage increases toward meeting the goal of 25% by 2025. REPSA and proposed Rule 3.2.15 prohibit acceleration unless there is a finding that the average price for RECs and SRECs eligible for RPS compliance has been below a “predetermined market-based price threshold to be established by the Commission” for two consecutive years. See 26 Del.C. §354(j); proposed Rule 3.2.15. Section 354(j) requires the Commission to establish the “predetermined market-based price threshold” in consultation with the DEO. Although it acknowledges that the provisions of §354(j) do not take effect until compliance year 2014, Vote Solar urges the Commission “to take a proactive role and develop a plan for considering its future responsibilities” to establish this threshold with the DEO. (Vote Solar Comments, p. 5).

#### Discussion

13. At our regularly scheduled Commission meeting held on February 22, 2011, we heard argument from the commenters and Staff, and considered the proposed amendments to the RPS Rules and the comments received. After some discussion, we voted to table our consideration of the proposed amended rules until our next meeting. We now approve the proposed amendments to the RPS Rules as originally proposed and do not make any changes based upon the comments received.

14. We decline to include the grandfathering provision for which RESA and WGES advocate. First, it is well established in Delaware that agency regulations must be consistent with statutory policy. *Stoltz v. Delaware Real Estate Comm’n*, 473 A.2d 1258, 1263 (Del. Super. 1984). “Legislation ... may not be enacted under the guise of its exercise by adopting a rule or regulation which is out of harmony with, or which alters, extends or limits the Act, or which is inconsistent with the clear legislative intent as therein expressed.” *Wilmington Country Club v. Delaware Liquor Comm’n*, 91 A.2d 250, 255 (Del. Super. 1952). “An administrative agency may not adopt regulations which are inconsistent with the provisions of the enabling statute or out of harmony with, or extend the limits of, the Act which created it.” *Matter of Appeal of Dept. of Natural Resources and Environmental Control*, 401 A.2d 93, 96 (Del. Super. 1978).

15. If we include the requested grandfathering provision in the proposed RPS Rules, we believe we will be impermissibly “extend[ing] the limits of the Act which created it.” *Wilmington Country Club*, 91 A.2d at 255. We think it clear that the General Assembly knew how to include a grandfathering provision, as demonstrated by its express inclusion of such a provision in the previous iteration of §354. SS 1, which amended §354, *omitted* the provision that grandfathered pre-existing contracts. “When a legislative body amends a prior enactment by a material change in the language, it is presumed that a change in the meaning was intended.” *Simmons v. Delaware State Hosp.*, 660 A.2d 384, 389 (Del. 1995); *see also Giuricich v. Emtrol Corp.*, 449 A.2d 232, 237 (Del. 1982); *Daniel D. Rappa, Inc. v. Engelhardt*, 256 A.2d 744, 746 (Del. 1969). Thus, we must presume that the General Assembly intended to remove the grandfathering provision from §354.

16. Similarly, courts “may not engraft upon a statute language which has clearly been excluded therefrom by the Legislature.” *Alfieri v. Martinelli*, 647 A.2d 52, 54 (Del. 1994); *Giuricich, supra* at 238. If courts cannot engraft language that the Legislature has excluded, then it must be equally true that we cannot do so either. Including a grandfathering provision in the RPS Rules would be tantamount to adding a provision to § 354 that the General Assembly chose not to include.

17. We disagree with RESA’s position that 26 Del.C. §362 permits us to include a grandfathering provision in the RPS Rules. That section merely requires our rules to be as “consistent as possible [with those of other states] in order to minimize the compliance burdens imposed by [REPSA] and in order to avoid duplication of effort.” All this means is that if a rule is valid under REPSA, §362 requires it to be as consistent “as possible” with the rules of neighboring jurisdictions. Before we can make a rule consistent with that of another jurisdiction, we must be able to promulgate such a rule in the first instance. A substantive enlargement of the statute under the guise of rulemaking is not permitted. See *American Insurance Association v. Delaware Department of Insurance*, 2008 WL 44322 (Del. Super. Jan. 2, 2008). Even if we did interpret §362 as RESA urges, its reliance upon Maryland is misplaced, because Maryland’s statute expressly included a grandfathering provision. (See RESA Comments, p. 6). That is not the case here.

18. Last, we reject RESA’s contention that proposed RPS Rule 3.2.2 permits us to modify the increased SREC requirements for existing contracts. Rule 3.2.2 is essentially unchanged from its previous iteration; the only change being proposed is the addition of the words “and SRECs” behind the word “RECs” in the second sentence thereof. The first sentence, which is the source of the discretion that RESA contends we have, is not being amended. That sentence provides that:

A Retail Energy Supplier’s compliance with Schedule 1<sup>4</sup> shall be based on accumulating RECs and SRECs equivalent to the current Compliance Year’s Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where applicable, Commission regulations.

(RPS Rule 3.2.2). Section 3.2.3 addresses the exemption provided in REPSA for EERs that were operational before December 31, 1997 and REPSA’s mandate that beginning in 2026, all EERs used to meet the cumulative minimum percentage requirements be New Generation Resources. We do not read this rule as giving us discretion to exempt existing contracts from the amended REPSA obligations. It simply describes how a retail electric supplier shall comply with its REPSA obligations, whatever the General Assembly may determine those obligations to be.

19. We also reject RESA’s argument that proposed Rule 3.2.16 should freeze RPS requirements for all electric suppliers, not just regulated electric companies. Section 354(j) of REPSA, which authorizes the freeze, specifically limits it to “regulated utilities.” 26 Del.C. §354(j). Again, were we to include such a provision in the regulations, we would be effecting an impermissible substantive enlargement of the statute under the guise of rulemaking.

20. Finally, RESA’s complaint that the General Assembly should have appointed an electric supplier to the Renewable Energy Task Force is more appropriately directed to the General Assembly, as it represents a disagreement with the statute rather than with any of the proposed RPS Rules. REPSA expressly identifies the entities that the General Assembly determined should be members of the Task Force, and we cannot second-guess that determination. Moreover, if RESA believes that electric suppliers are not adequately represented, it, and any of its members, is free to attend Task Force meetings and provide input. Given that, there is no need for us to “open a docket for market participants to comment on proposed issues for consideration before the Task Force.”

21. We decline Vote Solar’s invitation to define the term “total retail cost of electricity,” which appears in proposed Rule 3.2.16 and which is the term used (but undefined) in REPSA § 354(i). Vote Solar did not offer a definition and, moreover, §354(i) of REPSA provides that the “State Energy Coordinator in consultation with the Commission may freeze” the solar requirement when the cost of compliance exceeds 1 percent of the “total retail cost of electricity for retail electricity suppliers.” Consequently, the Commission thinks it best to refrain from

4. Schedule 1 in RPS Rule 3.2.1 of course, did change to track the amended Schedule 1 set forth in the amended REPSA.

defining "total retail cost of electricity" until it confers with the State Energy Coordinator in the context of considering a freeze on the solar requirement.

22. Last, Vote Solar's comment that the Commission should "take a proactive role and develop a plan for considering its future responsibilities" to establish the market threshold with the DEO does not require a modification to the proposed rules. We are well aware of our responsibilities, and they do not need to be included in the RPS Rules. Moreover, as Vote Solar acknowledges, the provisions of this section of REPSA do not take effect until compliance year 2014.

23. It should be apparent that the comments raise public policy considerations that are potentially inconsistent. Obviously, the General Assembly, by increasing the minimum cumulative percentages that must come from solar PVs and EERs in each compliance year, has established a public policy in favor of encouraging renewable energy. It is also obvious that by deregulating the electric supply function, the General Assembly believes that competition for the provision of such electric supply should be encouraged. Approving RESA's and WGES' proposed grandfathering provision would encourage competition at the expense of encouraging renewable energy in the short term. Also, allowing grandfathering for retail energy suppliers and not for Delmarva's SOS customers would be unfair to Delmarva's SOS customers whom must pay the added cost of compliance with the new RPS requirement immediately upon its effective date. With these competing interests in mind, the Commission recognizes the policy considerations favorable to grandfathering existing contracts and would expect that it will be a topic for the General Assembly to address should there be further amendment to Delaware's REPSA. In the instant case, however, it is not for the Commission to grant exceptions to the statutory effective date without clear authorization from the General Assembly.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 **Del.C.** §§209(a) and 821 and 29 **Del.C.** §§10111 et seq., the Commission hereby promulgates the revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"), a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 **Del.C.** §1132. The revised RPS Rules replace the regulations existing at 26 **DE Admin. Code** §3008.

2. That, pursuant to 26 **Del.C.** §§10113 and 10118, the Commission Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order and the approved RPS Rules. An exact copy of the RPS Rules attached hereto shall be published as final, official regulations in the *Delaware Register*.

3. Pursuant to 29 **Del.C.** §10118(g), the effective date of this Order shall be 10 days from the date this Order is published in its final form, in full or as a summary, in the *Delaware Register*.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2010 issue of the *Register* at page 535 (14 DE Reg. 535). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard**

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council to the Division of Substance Abuse and Mental Health	Steven P. Hagen	1/21/14
Architectural Accessibility Board	Mr. Sumner W. Spence Ms. Ada M. Stokes	6/11/14 3/7/14
Board of Accountancy	Mr. Jeffrey L. Premo	10/2/11
Board of Chiropractic	Christopher W. Baldt, D.C.	1/21/14
Board of Clinical Social Work Examiners	Ms. Rochelle L. Mason Ms. Kyla M. Teed	3/3/14 3/3/14
Board of Cosmetology and Barbering	Ms. Carol A. Guilbert Ms. Cecilia A. Jones Ms. Jordana I. Naftzinger Mr. Albert J. Niezgoda	1/21/14 1/21/14 2/20/14 2/3/14
Board of Dentistry and Dental Hygiene	Ms. Cheryl Calicott-Trawick Mr. Nathaniel Gibbs	3/21/14 9/1/13
Board of Education	Mr. Jorge L. Melendez	3/23/17
Board of Electrical Examiners	John D. King Mr. Nathan E. Schreppler	2/27/12 2/8/14
Board of Examiners of Nursing Home Administrators	Ms. Sandra H. Dole Mr. Michael F. Salitsky Ms. Teruko A. White	1/21/14 1/21/14 3/7/14
Board of Landscape Architecture	Mr. Eric W. Wahl	9/3/12
Board of Massage and Bodywork	Mr. Wayne L. Dawson	3/3/14
Board of Medical Licensure and Discipline	Ms. Evelyn Mendez Mr. Raymond L. Moore, Sr. Ms. Mary K. Ryan	1/21/14 1/21/14 1/12/14
Board of Nursing	Mr. Lyron A. Deputy  Ms. Madelyn M. Nellius Mr. Delphos E. Price, Jr. Pamela J. Tyranski	Pleasure of the Governor 1/21/14 1/21/14 1/21/14
Board of Pharmacy	Mr. Jay R. Galloway	1/21/14

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Board of Pharmacy	Mr. Philip Mandel	3/3/14
Board of Physical Therapists and Athletic Trainers	Ms. Sharon S. Jones Mr. Tyler W. Luff	3/3/14 3/3/14
Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration	Frank H. Beebe Mr. John F. Brady Ms. Carol A. Guilbert Mr. Dean W. Sherman	1/21/14 1/21/14 1/21/14 1/21/14
Board of Podiatry	Mr. James D. Bray, D.P.M.	1/21/14
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Christopher W. Baldt, D.C. Ms. Ruth Banta Mr. Daniel E. Cooper Julius G. Mullen, Sr., Ed.D.	1/21/14 1/21/14 1/21/14 3/3/14
Board of Professional Land Surveyors	Mr. Thomas M. Plummer Mr. Mark J. Rosenthal Ms. Elizabeth C. Rowe	3/3/14 9/3/12 1/21/14
Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers	Ms. Roberta L. Burtch Ms. Anne L. Pilolas	1/21/14 1/21/14
Child Placement Review Board - Executive Committee	Ms. Barbara H. Blair Mr. William Moyer	1/21/14 3/30/14
Child Placement Review Board - Kent	Ms. Jessie S. Cathey Ms. Cindy E. Montejo	1/21/14 1/21/14
Child Placement Review Board - New Castle	Ms. Edwarda C. Ashby Ms. Susan T. Edgar Ms. Helen M. Rubin	1/21/14 3/3/14 3/3/14
Council on Correction	Ms. Melissa L. Dill Mr. Robert Webster	1/24/14 9/9/12
Council on Manufactured Housing	John C. Badger	10/13/11
Council on Real Estate Appraisers	Mr. Richard B. Wheeler	10/27/11
Council on Services for Aging and Adults with Physical Disabilities	Ms. Edna V. Ellett Ms. Mary Ann Miller Mr. William B. Payne	1/21/14 8/27/12 1/21/14

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Services for Aging and Adults with Physical Disabilities	Ms. Cynthia A. Tunney	1/21/14
	Ms. Debra A. Veenema	Pleasure of the Governor
	Mr. James P. Young	3/3/14
Council on Transportation	Mr. Weston E. Nellius	1/27/14
	Ms. Barbara Y. Washam	1/27/14
Deferred Compensation Council	Mr. Charles Campbell-King	2/21/14
Delaware Commission on Interstate Cooperation	The Honorable Robert Venables	Pleasure of the Governor
Delaware Economic and Financial Advisory Council	The Hon. Chipman L. Flowers, Jr.	Pleasure of the Governor
	Mr. Andrew Staton	Pleasure of the Governor
Delaware Greenways and Trails Council	The Honorable Lincoln D. Willis	1/6/14
Delaware Health Information Network	Mr. Andre G. Bouchard	1/1/14
	Ms. Meaghan C. Brennan	Pleasure of the Governor
	Randall P. Gaboriault	1/1/14
	Donna M. Goodman	1/1/13
	Mr. A. Richard Heffron	1/1/14
	William E. Kirk, III	1/1/12
	Ms. Rosanne Mahaney	1/1/13
	Mr. Brian L. Posey	1/1/14
	Leonidas W. Rasis, M.D.	1/1/12
	Edward C. Ratledge	1/1/12
	Ms. Bettina L. Riveros	Pleasure of the Governor
	Adrian W. Scipione	1/1/13
	Oluseyi N. Senu-oke, M.D.	1/1/13
	Terri H. Steinbert, M.D., M.B.A.	1/1/12
Thomas Trezise	1/1/12	
Barbara P. Vugrinec	1/1/13	
David E. Walczak	1/1/14	
Delaware Mentoring Council	Ms. Julia E. Blevins	Pleasure of the Governor
	Ms. Phyllis K. Collins	Pleasure of the Governor\

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Delaware Mentoring Council	The Honorable Matthew P. Denn	Pleasure of the Governor
	Mr. Brett K. Foester	Pleasure of the Governor
	The Hon. Debra J. Heffernan	Pleasure of the Governor
	Ms. Cornelia Johnson	Pleasure of the Governor
	Dr. Tony J. Marchio, Ed.D.	Pleasure of the Governor
	Ms. Maria M. Matos	Pleasure of the Governor
	Ms. Mary K McLaughlin	Pleasure of the Governor
	Ms. Virginia Lee Porter	Pleasure of the Governor
	The Honorable Michael J. Ramone	Pleasure of the Governor
	Patricia A. Ramone, Ed.D.	Pleasure of the Governor
	Ms. Janine G. Sorbello	Pleasure of the Governor
	Mr. Thomas E. Stevenson	Pleasure of the Governor
	Ms. Mary J. Stewart	Pleasure of the Governor
	Carol Vukelich, Ph.D.	Pleasure of the Governor
	Mr. James A. Wolfe	Pleasure of the Governor
Delaware State Arts Council	Ms. Lori B. Crawford	1/26/14
	Ms. Gail H. Lear	1/26/14
	Carol L. Rothschild	12/16/12
	Mr. John F. Sarro	1/26/14
Delaware State University, Board of	Ms. Lois M. Hobbs	1/11/17
Delaware STEM Education Council	Frank M. Armbrrecht, Jr., Ph.D.	Pleasure of the Governor
	Ms. Ronetia I. Bacon	Pleasure of the Governor
	Susan S. Bunting, Ed.D.	Pleasure of the Governor

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware STEM Education Council	Mr. David P. Cadogan	Pleasure of the Governor
	Ms. Andrea R. Connally	Pleasure of the Governor
	Angela L. Darling	Pleasure of the Governor
	Sharon M. Densler	Pleasure of the Governor
	Ms. Kristin M. Griffin	Pleasure of the Governor
	Mr. Randolph J. Guschl	Pleasure of the Governor
	Donna R. Johnson	Pleasure of the Governor
	Ms. Theresa V. Kough	Pleasure of the Governor
	Michelle L. Kutch	Pleasure of the Governor
	Noureddine Melikechi, Ph.D.	Pleasure of the Governor
	Ms. Renee Parsley	Pleasure of the Governor
	Cheryl M. Polocki	Pleasure of the Governor
	Ms. Tamara A. Price	Pleasure of the Governor
	Mr. George M. Reissig	Pleasure of the Governor
	Ms. Diana L. Roscoe	Pleasure of the Governor
	Kathryn Scantlebury, Ph.D.	Pleasure of the Governor
	John R. Singer, Jr.	Pleasure of the Governor
R. Dianne Sole, Ed.D.	Pleasure of the Governor	
Ms. Marian L. Wolak	Pleasure of the Governor	
Delaware Technical and Community College Board of Trustees	Mr. Mark S. Stellini	Pleasure of the Governor
Developmental Disabilities Council	Ms. Mary T. Anderson	2/21/17
	Ms. Diann Jones	1/21/17

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Diamond State Port Corporation, Board of Directors	Ms. Karen C. Bifferato	3/23/14
	Mr. Douglas B. Catts	3/23/14
	Mr. Gerard L. Esposito	3/23/14
Governor's Advisory Council for Exceptional Citizens	Marshall F. Stevenson, Jr., Ph.D.	Pleasure of the Governor
	Mr. Raymond J. Verlinghieri	Pleasure of the Governor
Governor's Commission on Community and Volunteer Service	Mr. John R. Danzeisen	Pleasure of the Governor
Industrial Accident Board	Mr. Lowell L. Groundland	3/23/17
Judicial Nominating Committee	Mr. Andre G. Bouchard	3/28/14
Justice of the Peace	Tracy L. Warga	2/3/15
Kent County Vocational-Technical Board of Education	Mr. Jeffrey L. Ford	10/31/15
Manufactured Home Installation Board	Mr. Dean S. Pierson	4/29/12
New Castle County Board of Elections	The Honorable John N. Pasquale, Jr.	6/30/13
Newark Housing Authority	Ms. Barbara C. Teter	10/24/14
Parks and Recreation Council	Ms. Deloris Donnelly	3/3/14
Recycling Public Advisory Council	Ms. Kelly L. Davis	8/11/14
Southern Regional Education Board	Dorothy A. Linn, Ed.D.	6/30/12
State Banking Commissioner	The Honorable Robert A. Glen	3/29/15
State Council for Interstate Juvenile Supervision	Mr. Delmas K. Failing, Jr.	Pleasure of the Governor
	Ms. Janet A. LeBan	Pleasure of the Governor
	The Honorable Lincoln D. Willis	Pleasure of the Governor
State Emergency Response Commission	Mr. James Lee	1/21/13
	Mr. Steve J. Owens	1/21/13

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**GOVERNOR'S APPOINTMENTS**

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
State Public Integrity Commission	Wilma Mishoe, Ed.D.	3/23/18
Statewide Labor Management Committee	Ms. Monica Gonzalez-Gillespie	Pleasure of the Governor
Supreme Court	The Hon. Randy James Holland	3/27/23
Sussex County Vocational-Technical School Board of Education	Mr. George H. Torbert, III	10/13/11
Vocational Rehabilitation Advisory Council for DVI	Mr. Alfred E. Perkins	3/3/14
Wilmington Area Planning Council (WILMAPCO)	Ms. Constance C. Holland	1/27/12

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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, May 11, 2011 beginning at 11:00 a.m. The meeting location could not be confirmed as of the deadline for this notice. For more information, including the meeting location, 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, May 19, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****3201 Skilled and Intermediate Care Nursing Facilities****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29 of the **Delaware Code**, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend policies for tuberculin testing and the filing of the results thereof for residents and employees of skilled and intermediate care nursing facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Susan DePescio, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291 by Monday, May 2, 2011.

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

The proposal amends policies regarding Long Term Care Residents Protection to require tuberculin testing and maintenance of the results thereof for residents and employees of skilled and intermediate care nursing facilities. In addition to updating the regulation it permits the regulation to adapt with changes to the Centers for Disease Control requirements.

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**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****3225 Assisted Living Facilities (Formerly Regulation No. 63)****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3225, Assisted Living Facilities, Section 9.0, Infection Control, governing the tuberculin testing for employees and newly admitted residents to mirror and adapt with changes to the Centers for Disease Control requirements, as well as to make some minor technical changes to other regulations.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Susan DePescio, Director, Division of

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Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291 by Monday, May 2, 2011.

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

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**Title XIX Medicaid State Plan Program Integrity**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 5 12, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Program Integrity, specifically, *prohibition on payments to institutions or entities located outside of the United States*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2011.

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

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**Estate Recovery**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 5 12, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding *Estate Recovery*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2011.

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

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**DIVISION OF PUBLIC HEALTH**  
**4304 Pre-Hospital Advanced Care Directive**  
**PUBLIC NOTICE**

The Division of Public Health, under the Department of Health & Social Services, is proposing regulations which amend Title 16 of the Delaware Code relating to Pre-Hospital Advanced Care Directives. There is a need to address the recognition of Pre-Hospital Advanced Care Directives in conjunction with Advanced Care Directives as provided for in 16 **Del.C.** Ch. 25, in the pre-hospital emergency environment. These regulations require the use of a specific form of individual identification that can be readily recognized and verified during a pre-hospital emergency. The regulations also detail the legislated immunity for certified providers honoring this order. On May

1, 2011, the Division plans to publish the proposed 4304 Pre-Hospital Advanced Care Directives and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the May 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Emergency Medical Services at (302) 223-1350.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Deborah Harvey by Tuesday, May 31, 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.

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

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**DIVISION OF SOCIAL SERVICES**  
**Child Care Subsidy Program**  
**PUBLIC NOTICE**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2011.

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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT**  
**1124 Control of Volatile Organic Compound Emissions**  
**PUBLIC NOTICE**

Amendments to Regulation 1124 "Control of Volatile Organic Compounds", Section 12.0, "Surface Coating of Plastic Parts"; Section 19.0, "Coating of Metal Furniture"; Section 20.0, "Coating of Large Appliances"; Section 22.0, "Coating of Miscellaneous Metal Parts".

The Department proposes to revise Sections 12.0, 19.0, 20.0 and 22.0 of 7 **DE Admin. Code** 1124 to specifically state that an alternative coating method that is demonstrated to be capable of achieving a transfer efficiency equal to or better than HVLP spray requires approval by EPA as well as by the Department. This requirement was requested by EPA. In addition some minor typos will be corrected.

There will be a hearing on these proposed amendments on Monday, May 23, 2011 beginning at 6pm in the Richardson & Robbins Building Auditorium. Interested parties may submit comments in writing to Gene M. Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

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**DIVISION OF AIR AND WASTE MANAGEMENT**  
**1125 Requirements for Preconstruction Review**  
**PUBLIC NOTICE**

The Department proposes to revise Section 1.9 "Definitions"; Section 2.0 "Emission Offset Provisions (EOP)"; and Section 3.0 "Prevention of Significant Deterioration of Air Quality" of 7 DE Admin. Code 1125 Requirements for Preconstruction Review, to conform to the requirements of the EPA PM<sub>2.5</sub> new source review permitting program as shown in 73 FR 28321 and 75 FR 64864.

There will be a hearing on these proposed amendments on Monday May 23, 2011 beginning at 6pm in the auditorium of the Richardson and Robbins Building located at 89 King's Highway, Dover, Delaware 19901. Interested parties may submit comments in writing to Gene M. Pettingill, Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1400 Board of Electrical Examiners**  
**PUBLIC NOTICE**

The Delaware Board of Electrical Examiners pursuant to 24 Del.C. §1406 (a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to enforce the prohibition against practicing electrical services without a license. The proposed revisions would make it a crime substantially related to the practice of Electrical Services to practice electrical work without a license.

The Board will hold a public hearing on the proposed rule change on June 1, 2011 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written Comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Electrical Examiners, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

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**DEPARTMENT OF STATE**  
**PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE ADOPTION OF RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF 26 DEL.C. CH. 10 RELATING TO THE CREATION OF A COMPETITIVE MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE (OPENED APRIL 27, 1999; RE-OPENED JANUARY 7, 2003; RE-OPENED SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER 7, 2010)

PSC REGULATION DOCKET NO. 49

**ORDER NO. 7946**

Since 1999, electric utilities and electric suppliers have been obligated to permit residential and smaller

commercial customers to use limited capacity generators to "net meter" their electric supply consumption. 26 **Del.C.** §1014(d)-(k). The Public Service Commission ("PSC") has previously adopted rules to implement this "net electric metering" regime as part of its Rules for Certification and Regulation of Electric Suppliers, 26 **DE Admin. Code** §3001-8.0 ("the Regulations").

In October, 2010, the PSC gave notice that it proposed to change the net metering provisions in its Regulations in light of July, 2010 legislative amendments to the underlying statutory net metering regime. 14 DE Reg. 282 (Oct. 1, 2010). After receiving responses to those earlier proposed rule changes, the PSC has now decided to issue a Further Notice of proposed rulemaking and to propose further revised changes to the net metering provisions in its Regulations. This further Notice and the further refined proposed rule changes supersede the rule revisions proposed under the earlier October, 2010 Notice.

As with the earlier proposed rule changes, the further proposed rule revisions implement the 2010 legislative amendments (77 Del. Laws ch. 453 (July 28, 2010)). They: (1) allow retail electric customers to aggregate multiple individual metered accounts beyond the account/meter serving the generation facility for purposes of allocating net metering credits and (2) allow retail customers, through aggregation of accounts or by investment, to obtain net metering benefits via community-owned generating facilities. In addition, the further revised proposed provisions allow Delmarva Power & Light Company the opportunity to utilize an alternative value to calculate the level of payment for excess "net metering" credits in the context of community-owned generation facilities. Finally, the further proposed revisions allow Delmarva Power & Light Company to recover from stand-alone community-owned generation facilities a customer charge and other applicable charges related to supply, transmission, and delivery costs.

You can review the further revised proposed rule revisions in the May, 2011 issue of the Delaware Register of Regulations (available online at <http://regulations.delaware.gov/services/register.shtml>) or on the PSC's website at <http://dep.sc.delaware.gov>, under PSC Order No. 7946 (April 19, 2011). You can also review and copy PSC Order No. 7946 and the further proposed revisions at the PSC's office at the address set forth below (\$.50 per page copy fee).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the further proposed revisions to the Regulations. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before June 1, 2011. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Reg. Dckt. No. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to [john.farber@state.de.us](mailto:john.farber@state.de.us). If you filed comments or other materials in response to the October 1, 2010 notice, those comments will be included in the record in this matter.

The PSC will hold a hearing to consider these further revisions to the Regulations at its regularly scheduled meeting on Tuesday, June 7, 2011 at 1:00 p.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed further revisions to the Regulations on the basis the information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 **Del.C.** §§209 & 1014(d), (e), (k).

If you have questions about this proceeding, you can contact the PSC at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to [john.farber@state.de.us](mailto:john.farber@state.de.us). If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.