
Delaware Register of Regulations

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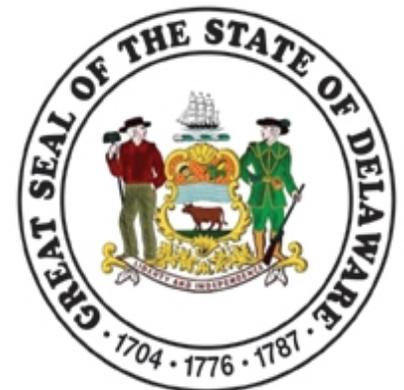


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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 15, 2011.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

15 **DE Reg.** 24-47 (07/01/11)

Refers to Volume 15, pages 24-47 of the *Delaware Register* issued on July 1, 2011.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	October 17	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 16	4:30 p.m.
March 1	February 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 106A

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****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** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) adding new appraisal criteria to the Planning and Preparation and Instruction Appraisal Components; 4) changing language to reflect the current Student Record System; 5) revision to the number of Appraisal Criteria needed in order for an Appraisal Component to be Satisfactory because of the additional criteria; 6) revising the definition of "Highly Effective"; 7) providing interim provisions for the determination of pattern of ineffective teaching; 8) revising the parameters around when an Improvement Plan is needed; 9) specifying in the Challenge Process that the process includes meeting with the teacher; and 10) that the Department will monitor the evaluation implementation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 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 teacher evaluation and should support improved student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to teacher evaluation and does not specifically address all students' receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to teacher evaluation and does not specifically address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to teacher evaluation and does not specifically address all students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments do not change the authority or 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 amendments do 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 does not change because of the amendments.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not significantly change the method for teacher evaluation which is 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 to the local boards or charter schools because of compliance to the regulation with the amendments.

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2011 with the 2011-12 school year and shall, at such time, replace the current 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

2.0 Definitions

The following definitions shall be apply for purposes of this regulation:

"Announced Observation" shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Board" shall mean a local board of education or charter school board of directors.

"Credentialed Evaluator" shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

"DASA" shall mean the Delaware Association of School Administrators.

"DPAS II Revised Guide for Teachers" shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"Experienced Teacher" shall mean a teacher who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**; or Standard or Professional Status Certificate issued prior to August 1, 2003.

"Improvement Plan" shall be the plan that a teacher and evaluator mutually develop in accordance with 8.0.

"Interim assessment" shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers and administrators at the student, classroom, school, and district levels.

"Novice Teacher" shall mean a teacher who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**.

"Satisfactory Component Rating" shall mean the teacher's performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the **Delaware Code**.

"Satisfactory Evaluation" shall be equivalent to the overall "Highly Effective", "Effective" or "Needs Improvement" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

"State Assessment" shall mean the ~~Delaware Student Testing Program (DSTP) or its successor~~ Delaware Comprehensive Assessment System (DCAS).

"Student Achievement" shall mean

(a) For tested grades and subjects:

(1) A student's score on the ~~DSTP or successor statewide assessment~~ DCAS; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures must be approved by the Department and developed in partnership with the local collective bargaining representatives.

"Student Growth" shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"Summative Evaluation" shall be the final evaluation at the conclusion of the appraisal cycle.

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Unsatisfactory Component Rating" shall mean the teacher's performance does not demonstrate an understanding of the concepts of the component.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

"Working Day" shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

- 3.1 Experienced teachers who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced teachers who have earned a rating of "Effective" and have earned "Satisfactory" ratings on at least four (4) of the components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.3 Experienced teachers who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.4 Novice teachers shall receive a minimum of two (2) Announced Observations and one (1) Unannounced Observation with a Summative Evaluation every year. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.

4.0 DPAS II Guide for Teachers

- 4.1 All school districts and charter schools shall use the manual entitled DPAS II Guide Revised for Teachers as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) components listed in 5.1.
 - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
 - 4.2.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
 - 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.
 - 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.

- 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.
- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
- 5.1.1.5 Designing Student Assessments: Teacher creates and or selects assessments that are congruent with instructional goals, criteria and standards. The teacher plans for the use of formative and summative assessments of the teacher's students.
- 5.1.2 Classroom Environment
 - 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
 - 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
 - 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.
 - 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.
- 5.1.3 Instruction
 - 5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.
 - 5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.
 - 5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.
 - 5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.
 - 5.1.3.5 Using Assessment in Instruction: Teacher makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
 - 5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns.
 - 5.1.4.2 Developing a Recording student data in a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.

PROPOSED REGULATIONS

- 5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students.
- 5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.
- 5.1.5 Student Improvement
 - 5.1.5.1 Measuring Student Improvement: ~~Teacher's~~ Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
 - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher ~~demonstrates acceptable performance by meeting at least three (3) of the four (4)~~ has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components.
 - 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".
 - 6.2.1 "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning and that the teacher's students collectively demonstrate on-average achieve high rates of student growth as defined in the DPAS II Revised Guide for Teachers, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation, that is, more than one grade level improvement in an academic year.
 - 6.2.2 "**Effective**" shall mean that:
 - 6.2.2.1 The teacher has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
 - 6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.
 - 6.2.3 "**Needs Improvement**" shall mean that:
 - 6.2.3.1 The teacher has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
 - 6.2.3.2 The teacher has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.
 - 6.2.4 "**Ineffective**" shall mean that:
 - 6.2.4.1 The teacher has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
 - 6.2.4.2 The teacher ~~has received~~ earned an Unsatisfactory Component Rating in the Student Improvement Component.
 - 6.2.5 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."

7.0 Pattern of Ineffective Teaching Defined

7.1 A pattern of ineffective teaching shall be based on the most recent Summative Evaluation ratings of a teacher using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective teaching. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective teaching:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

7.2 Notwithstanding the chart above, for the 2011-2012 school year a teacher with an overall Summative Rating of "Needs Improvement" or "Ineffective" that is based on the following component rating results shall not have that year's summative rating used for any purpose in the determination of a pattern of ineffective teaching:

- 7.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.
- 7.2.2 Satisfactory Component ratings in three (3) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.
- 7.2.3 Satisfactory Component ratings in two (2) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a teacher's overall performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 Notwithstanding 8.1, for the 2011-2012 school year, an Improvement Plan shall not be developed related to Appraisal Component 5.1.5, nor shall an Improvement Plan be developed for a teacher with an overall Summative Rating of "Needs Improvement" that is based on the following component rating results:

8.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.

8.23 The Improvement Plan shall contain the following:

- 8.23.1 Identification of the specific deficiencies and recommended area(s) for growth;
- 8.23.2 Measurable goals for improving the deficiencies to satisfactory levels;
- 8.23.3 Specific professional development or activities to accomplish the goals;
- 8.23.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
- 8.23.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
- 8.23.6 Timeline for the plan, including intermediate check points to determine progress;
- 8.23.7 Procedures for determining satisfactory improvement;

- 8.23.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, a lead teacher, or an instructional coach.
- 8.34 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect must be certified by the Department and must directly relate to areas identified as needing improvement.
- 8.45 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.56 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.67 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

- 9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the teacher, and issue a written decision.
- 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school's level credentialed evaluator shall be final.

10.0 Evaluator Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Revised Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.

13 DE Reg. 1067 (02/01/10)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 107A

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

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) adding new appraisal criteria to the Planning and Preparation and Instruction Appraisal Components; 4) changing language to reflect the current Student Record System; 5) revision to the number of Appraisal Criteria needed in order for an Appraisal Component to be Satisfactory because of the additional criteria; 6) revising the definition of "Highly Effective"; 7) providing interim provisions for the determination of pattern of ineffective practice; 8) revising the parameters around when an Improvement Plan is needed; 9) specifying in the Challenge Process that the process includes meeting with the specialist; and 10) that the Department will monitor the evaluation implementation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 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 specialist evaluation and should support improved student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to specialist evaluation and does not specifically address all students' receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to specialist evaluation and does not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to specialist evaluation and does not specifically address all students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments do not change the authority or 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 amendments do 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 does not change because of the amendments.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not significantly change the method for specialist evaluation which is 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 to the local boards or charter schools because of compliance to the regulation with the amendments.

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2011, with the 2011-12 school year and shall, at such time, replace the current 14 **DE Admin. Code** 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II).

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

“Announced Observation” shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Board” shall mean a local board of education or a charter school board of directors.

“Credentialed Evaluator” shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as Evaluator.

“DASA” shall mean the Delaware Association of School Administrators.

“DPAS II Revised Guide for Specialists” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

“DSEA” shall mean the Delaware State Education Association.

“Experienced Specialist” shall mean a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

“Improvement Plan” shall be the plan that a specialist and evaluator mutually develop in accordance with 8.0.

“Interim assessment” shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students’ knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.

“Novice Specialist” shall mean a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code* or holds a valid and current license from his or her respective licensure body.

“Satisfactory Component Rating” shall mean the specialist’s performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the *Delaware Code*.

“Satisfactory Evaluation” shall be equivalent to the overall Highly Effective, Effective or Needs Improvement rating on the Summative Evaluation and shall be used to qualify for a continuing license.

“Specialist” shall mean an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses.

“State Assessment” shall mean the ~~Delaware Student Testing Program (DSTP) or its successor~~ Delaware Comprehensive Assessment System (DCAS).

“Student Achievement” shall mean

- (a) For tested grades and subjects:
 - (1) A student’s score on the ~~DSTP or successor statewide assessment~~ DCAS; and, as appropriate,
 - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.
- (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).

“Student Growth” shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

“Summative Evaluation” shall be the final evaluation at the conclusion of the appraisal cycle.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Unsatisfactory Component Rating” shall mean the specialist’s performance does not demonstrate an understanding of the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall Ineffective rating on the Summative Evaluation.

“Working Day” shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

- 3.1 Experienced specialists who have earned a rating of Highly Effective on their most recent Summative Evaluation shall receive a minimum of (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced specialists who have earned a rating of Effective and have earned Satisfactory ratings on at least four (4) of the Appraisal Components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.

- 3.3 Experienced specialists who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative evaluation at the end of the one (1) year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Specialists.
- 3.4 Novice specialists shall receive a minimum of two (2) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of Needs Improvement or Ineffective on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the *DPAS II Revised Guide for Specialists*.

4.0 DPAS II Guide for Specialists

- 4.1 All districts and charter schools shall use the manual entitled *DPAS II Revised Guide for Specialists* as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) Appraisal Components listed in 5.1.
 - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
 - 4.2.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including the four (4) any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
 - 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.
 - 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.
 - 5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.
 - 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
 - 5.1.1.5 Demonstrating Knowledge of How to Design or Use Student Assessments: Specialist creates and or selects assessments that are congruent with instructional goals, criteria and standards. The specialist plans for the use of formative and summative assessments of the specialist's students.
 - 5.1.2 Professional Practice and Delivery of Services
 - 5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
 - 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.
 - 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.
 - 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and

materials are suitable and match the needs of the students or clients. The delivery of service is coherent.

5.1.3 Professional Collaboration and Consultation

5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.

5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.

5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.

~~5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.~~

5.1.3.4 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.

5.1.3.5 Use of Assessment in Planning and Delivery of Services: Specialist makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.

5.1.4 Professional Responsibilities

~~5.1.4.1 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns. Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.~~

5.1.4.2 Developing a Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students.

5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.

5.1.5 Student Improvement

5.1.5.1 Measuring Student Improvement: ~~Specialist's~~ sStudents collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.

6.0 Summative Evaluation Ratings

6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist ~~demonstrates acceptable performance by meeting at least three (3) of the four (4)~~ has no more than one unacceptable rating on the Appraisal Criteria specified in each of the five (5) components set forth in 5.1.

PROPOSED REGULATIONS

- 6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: Highly Effective, Effective, Needs Improvement or Ineffective.
- 6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning and that the specialist's students collectively demonstrate on average achieve high rates of student growth, as defined in the DPAS II Revised Guide for Specialists, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation., that is, more than one grade level improvement in an academic year.
- 6.2.2 Effective shall mean that:
- 6.2.2.1 The specialist has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
- 6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.
- 6.2.3 Needs Improvement shall mean that:
- 6.2.3.1 The specialist has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The specialist has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 Ineffective shall mean that:
- 6.2.4.1 The specialist has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The specialist has ~~received~~ earned an Unsatisfactory Component Rating in the School Improvement Component.
- 6.2.4.35 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Practice Defined

- 7.1 A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

- 7.2 Notwithstanding the chart above, for the 2011-2012 school year a specialist with an overall Summative Rating of "Needs Improvement" or "Ineffective" that is based on the following component rating results

shall not have that year's summative rating used for any purpose in the determination of a pattern of ineffective practice:

- 7.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.
- 7.2.2 Satisfactory Component ratings in three (3) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.
- 7.2.3 Satisfactory Component ratings in two (2) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.
 - 8.1.1 An Improvement Plan shall also be developed if a specialist's overall performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 Notwithstanding 8.1, for the 2011-2012 school year, an Improvement Plan shall not be developed related to Appraisal Component 5.1.5, nor shall an Improvement Plan be developed for a specialist with an overall Summative Rating of "Needs Improvement" that is based on the following component rating results:
 - 8.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.
- 8.23 The Improvement Plan shall contain the following:
 - 8.23.1 Identification of the specific deficiencies and recommended area(s) for growth;
 - 8.23.2 Measurable goals for improving the deficiencies to satisfactory levels;
 - 8.23.3 Specific professional development or activities to accomplish the goals;
 - 8.23.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
 - 8.23.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
 - 8.23.6 Timeline for the plan, including intermediate check points to determine progress;
 - 8.23.7 Procedures for determining satisfactory improvement.
 - 8.23.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, or lead specialist, or an instructional coach.
- 8.34 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.45 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.56 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

- 9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement PERFORMANCE IS UNSATISFACTORY has been included on the Formative Feedback form. To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to

the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.

- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the specialist, and issue a written decision.
- 9.1.2 If the challenge is denied, the decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall be final.

10.0 Evaluator Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
 - 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.

13 DE Reg. 1445 (05/01/10)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 108A

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

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

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 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) revising the definition of "Highly

Effective"; 4) providing interim provisions for the determination of pattern of ineffective administrative performance; 5) revising the parameters around when an Improvement Plan is needed; 6) specifying in the Challenge Process that the process includes meeting with the administrator; and 7) that the Department will monitor the evaluation implementation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 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 administrator evaluation and should support improved student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to administrator evaluation and does not specifically address all students' receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to administrator evaluation and does not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to administrator evaluation and does not specifically address all students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments do not change the authority or 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 amendments do 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 does not change because of the amendments.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not significantly change the method for administrator evaluation which is 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 to the local boards or charter schools because of compliance to the regulation with the amendments.

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

- 1.1 The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning ~~July 1, 2011~~ with the 2011-12 school year, and shall, at such time, replace the current 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).
- 1.2 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

"Board" shall mean the local board of education or charter school board of directors.

"Credentialed Evaluator" shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

"DASA" shall mean the Delaware Association of School Administrators.

"DPAS II Revised Guide for Administrators" shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"Experienced Administrator" shall mean an administrator who has three (3) or more years of service as an administrator.

"Formative Process" shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the DPAS II Guide for Administrators.

"Improvement Plan" shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

"Inexperienced Administrator" shall mean an administrator who has less than three (3) years of service as an administrator.

"Satisfactory Component Rating" shall mean the administrator's performance demonstrates an understanding of the concepts of the component.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation.

"State Assessment" shall mean the ~~Delaware Student Testing Program (DSTP) or its successor~~ Delaware Comprehensive Assessment System (DCAS).

"Student Achievement" shall mean

(a) For tested grades and subjects:

(1) Students scores on the ~~DSTP or successor statewide assessment~~ DCAS; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measure of student achievement that are rigorous and comparable across classrooms.

Such alternative measures shall be approved by the Department and developed in partnership with the Delaware Association of School Administrators (DASA) and the Delaware School Boards Association (DSBA).

"Student Growth" shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"Summative Evaluation" shall be the final evaluation at the conclusion of the appraisal cycle.

"Unsatisfactory Component Rating" shall mean the administrator's performance does not demonstrate an understanding of the concepts of the component.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

"Working Day" shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

- 3.1 Experienced administrators who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced administrators who have earned a rating of "Effective" and have earned Satisfactory ratings in four (4) of the Appraisal Components found in 5.0, including Student Improvement on his or her most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.3 Experienced administrators who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.
- 3.4 Inexperienced administrators shall have a minimum of one (1) Formative Process with a Summative Evaluation every year. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.

4.0 DPAS II Revised Guide for Administrators

- 4.1 All districts and charter schools shall use the manual entitled DPAS II Revised Guide for Administrators as developed and as may be amended by the Department of Education in collaboration with DSEA and DASA to implement the appraisal system.
 - 4.1.1 The manual shall contain at a minimum the following:
 - 4.1.1.1 Specific details about each of the five (5) Appraisal Components pursuant to 5.1.
 - 4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process.
 - 4.1.1.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):
 - 5.1.1 Vision and Goals
 - 5.1.1.1 Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.

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- 5.1.1.2 Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.
- 5.1.1.3 Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.
- 5.1.1.4 Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement plan goals. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.
- 5.1.2 Culture of Learning
 - 5.1.2.1 Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.
 - 5.1.2.2 Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on-going coaching for improvement. Administrator uses a variety of sources of information to make decisions.
 - 5.1.2.3 Sustaining the Culture of Learning: Administrator helps to ensure that staff have professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.
 - 5.1.2.4 Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.
- 5.1.3 Management
 - 5.1.3.1 Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.
 - 5.1.3.2 Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.
 - 5.1.3.3 Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.
 - 5.1.3.4 Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.
- 5.1.4 Professional Responsibilities
 - 5.1.4.1 Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.

- 5.1.4.2 Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.
- 5.1.4.3 Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.
- 5.1.4.4 Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school or district.
- 5.1.5 Student Improvement
 - 5.1.5.1 Measuring Student Improvement: ~~Administrator's~~ Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
 - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the components.
 - 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the administrator has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".
 - 6.2.1 "Highly Effective" shall mean that the administrator has a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning and that the administrator's students collectively demonstrate on average achieve high rates of student growth, as defined in the DPAS II Revised Guide for Administrators, as the same may be amended from time to time, developed pursuant to 4.0., that is, more than one grade level improvement in an academic year.
 - 6.2.2 "**Effective**" shall mean that:
 - 6.2.2.1 The administrator has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
 - 6.2.2.2 The administrator does not meet the requirement for a "Highly Effective" rating found in 6.2.1.
 - 6.2.3 "**Needs Improvement**" shall mean that:
 - 6.2.3.1 The administrator has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
 - 6.2.3.2 The administrator has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0 and the administrator has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.
 - 6.2.4 "**Ineffective**" shall mean that:
 - 6.2.4.1 The administrator has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
 - 6.2.4.2 The administrator has ~~received~~ earned an Unsatisfactory Component Rating in the Student Improvement Component.

6.2.5 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the administrator's rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Administrative Performance

7.1 A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective administration. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

7.2 Notwithstanding the chart above, for the 2011-2012 school year an administrator with an overall Summative Rating of "Needs Improvement" or "Ineffective" that is based on the following component rating results shall not have that year's summative rating used for any purpose in the determination of a pattern of ineffective administrative performance:

7.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.

7.2.2 Satisfactory Component ratings in three (3) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.

7.2.3 Satisfactory Component ratings in two (2) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if an administrator's overall performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 Notwithstanding 8.1, for the 2011-2012 school year, an Improvement Plan shall not be developed related to Appraisal Component 5.1.5, nor shall an Improvement Plan be developed for an administrator with an overall Summative Rating of "Needs Improvement" that is based on the following component rating results:

8.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.

8.23 The Improvement Plan shall contain the following:

8.23.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.23.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.23.3 Specific professional development or activities to accomplish the goals;

- 8.23.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience;
 - 8.23.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
 - 8.23.6 Timeline for the plan, including intermediate check points to determine progress;
 - 8.23.7 Procedures for determining satisfactory improvement.
- 8.34 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect shall be certified by the Department and shall be directly related to areas identified as needing improvement.
- 8.45 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.56 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.67 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

- 9.1 An administrator may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or an administrator may challenge the conclusions of the Formative Process if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, an administrator shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator, if any.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of all documents used in the appraisal and the written challenge, meet with the administrator, and issue a written decision.
- 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator shall be final.

10.0 Evaluator(s) Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the DPAS II Revised Guide for Administrators. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Administrators shall be presented to the State Board of Education for review on an annual basis.

13 DE Reg. 1072 (02/01/10)

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

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

815 Physical Examinations and Screening

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to amend 14 DE Admin. Code 815 Physical Examinations and Screening to require a second physical examination or evaluation for high school students. The new requirement provides that students entering grade 9 shall have a physical examination or evaluation within 2 years of entry into grade 9. The requirement would begin with the 2012-2013 school year. The regulation also provides what is acceptable as the physical examination or evaluation form. The changes are being proposed based on input and conversations between the Department of Public Health and Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 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 physical examinations and not specifically related to state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to physical examinations and not specifically related to students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended is intended to ensure all students' health and safety are adequately protected. Currently students are only required to have a physical examination upon entry into a Delaware public school. This typically occurs at kindergarten, or age 5. The second physical examination will ensure the child, as an adolescent, is assess by a healthcare provider during this critical developmental stage.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to physical examinations and not specifically related to students' legal rights.

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

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

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

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

subjects of mathematics, science, language arts and social studies? The amended regulation is related to physical examinations and would not be considered an impediment to the implementation of other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional educational costs to the State or local school boards for compliance. There may be some additional costs to parents and guardians for the second physical. Additionally, there may be some costs to state Medicaid for students covered under that program.

815 Physical Examinations and Screening

1.0 Definitions

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

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

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

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

4.2.0 Physical Examinations

~~4.2.1~~ All public school students shall have a two physical examinations that ~~has~~ have been administered by a ~~licensed medical physician, nurse practitioner or physician's assistant~~ healthcare provider. The first physical examination shall have been done within the two years prior to entry into school. Beginning in school year 2012-2013, the second physical examination shall be required for entering grade 9 students and shall be done within the two years prior to entry into grade 9. Within ~~fourteen~~ thirty calendar days after ~~notification of the requirement for a physical examination entry,~~ new enterers and grade 9 students who have not complied with the second physical examination requirement shall have received a the physical examination or shall have a documented appointment with a licensed health care provider for a the physical examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2012 - 2013 school year shall not be required to have the second physical examination or evaluation.

~~4.2.1.1~~ The requirement for the physical examination may be waived for students whose parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of physical examinations.

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

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

~~4.1.2 2.1.4~~ The school nurse shall record all findings on the Delaware School Health Record Form within the student's electronic medical record (see 14 DE Admin. Code 811) and maintain the original copy in the child's medical file.

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

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

23.0 Screening**23.1 Vision and Hearing Screening**

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

23.1.1.1 In addition to the screening requirements in 2.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.

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

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

23.2 Postural and Gait Screening

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

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

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

23.3 Lead Screening

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

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

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

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

23.3.2 The school nurse shall document the lead screening ~~on the Delaware School Health Record Form~~ within the student's electronic medical record. See 14 **DE Admin. Code** 811.

7 DE Reg. 68 (07/01/03)**10 DE Reg. 1807 (06/01/07)**

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

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)

PUBLIC NOTICE

Asset Verification System

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) provides notice of intent to submit a State Plan Amendment (SPA) to implement section 1940 of the Social Security Act that requires all States to implement *Asset Verification System*, a system for verifying the assets of aged, blind or disabled applicants for and recipients of Medicaid.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 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 serves as notice of intent of the Division of Medicaid and Medical Assistance (DMMA) to submit a State Plan Amendment (SPA) to implement section 1940 of the Social Security Act that requires all States to implement *Asset Verification System*, a system for verifying the assets of aged, blind or disabled applicants for and recipients of Medicaid.

Statutory Authority

- Supplemental Appropriations Act of 2008, Public Law 111-148, Title VII, Section 7001(d)
- Social Security Act §1940, *Asset Verification through Access to Information Held By Financial Institutions*

Background

Title VII, section 7001(d) of P.L. 110-252 (Supplemental Appropriations Act of 2008) added a new section 1940 to the Social Security Act. Section 1940 of the SSA requires all States to add "asset verification programs" to their Medicaid State plans.

Individuals whose eligibility is being determined or redetermined (and others whose finances are relevant to eligibility) must authorize the State agency to obtain records from any financial institution in connection with the eligibility determination in order to verify the individual's assets. The verification program is to be "consistent with the approach of the Commissioner of Social Security" under Section 1631 of the SSA, i.e., an electronic verification system. Individuals who refuse or revoke their authorization may be determined ineligible for medical assistance.

States are required to submit a state plan amendment which describes how they will implement an asset verification system. Plan amendments will have to be submitted at least six months before the implementation deadline applicable to each State. Delaware has been scheduled by CMS to implement an electronic asset verification system in year 2013. (Public Law 110-252)

If a State fails to implement an asset verification system as required by section 1940, Federal Financial Participation (FFP) for services provided to aged, blind or disabled individuals for whom assets should have been verified will be withheld.

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) will be implementing the Asset Verification System to comply with Section 1940 of the Social Security Act (SSA) and with the Centers for Medicare and Medicaid

Services (CMS) directives.

The provisions of this State plan amendment are subject to approval by the CMS.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

The costs for system changes are already budgeted in the General Fund.

Savings/Cost Avoidance may be achieved to the extent that the asset verification data increases the accuracy of eligibility determinations.

DMMA PROPOSED REGULATION #11-38

REVISION:

Revision:

SUPPLEMENT 16 TO ATTACHMENT 2.6-A

PAGE 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory DELAWARE

Asset Verification System

1940(a)

1. The Agency will provide for the verification of assets for purposes of determining or redetermining Medicaid eligibility for aged, blind and disabled Medicaid applicants and recipients using an Asset Verification System (AVS) that meets the following minimum requirements.
 - A. The request and response system must be electronic:
 - (1) Verification inquiries must be sent electronically via the internet or similar means from the Agency to the financial institution (FI).
 - (2) The system cannot be based on mailing paper-based requests.
 - (3) The system must have the capability to accept responses electronically.
 - B. The system must be secure, based on a recognized industry standard of security (e.g., as defined by the U.S. Commerce Department's National Institute of Standards and Technology, or NIST).
 - C. The system must establish and maintain a database of FIs that participate in the Agency's AVS.
 - D. Verification requests also must be sent to FIs other than those identified by applicants and recipients, based on some logic such as geographic proximity to the applicant's home address, or other reasonable factors whenever the Agency determines that such requests are needed to determine or redetermine the individual's eligibility.
 - E. The verification requests must include a request for information on both open and closed accounts, going back up to 5 years.

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SUPPLEMENT 16 TO ATTACHMENT 2.6-A

PAGE 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory DELAWARE

ASSET VERIFICATION SYSTEM

2. System Development
 - A. The Agency itself will build and maintain an AVS.
In 3 below, describe how the system will meet the requirements in Section 1.
 - B. The Agency will hire the following contractor to build and maintain an AVS.

In 3 below, identify the contractor, if known, and describe how the system will meet the requirements in Section 1.

- C. ___ The Agency will be joining a consortium to develop an AVS. In 3 below, identify the States participating in the consortium. Also identify the contractor, if known, who will build and maintain the consortium's AVS, and how the system will meet the requirements in Section 1.
- D. ___ The Agency already has a system in place that meets the requirements for an acceptable AVS: In 3 below, describe how the system meets the requirements in Section 1.
- E. ___ Other alternative not included in A. - D. above.
In 3 below, describe this alternative approach how it will meet the requirements in Section 1.

Revision:

SUPPLEMENT 16 TO
ATTACHMENT 2.6-A
Page 3

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

- 3. Provide the AVS implementation description and other information requested for the implementation approach checked in Section 2.
The contractor is not known at this time.
The Agency will select a contractor through the Request for Proposal (RFP) process.
The system and entity chosen will be able to comply with the following requirements of Supplement 16 to Attachment 2.6-A, Page 1:
 - A. An electronic request and response process for asset verification;
 - B. A database of financial institutions (FIs) that provide data to the entity meeting the geographic requirements of the entity;
 - C. A 5-year look-back of the assets on individual applicants, recipients, spouses and partners;
 - D. A secure system based on a recognized industry standard as defined by the United States Commerce Department's National Institute of Standards and Technology, or NIST;
 - E. Verification request will include both open and closed asset account information as determined by the State;
 - F. The acceptable asset verification entity will provide adequate data for the generation of all required reports expected to meet federal reporting requirements such as the number of requests, number of responses and amounts of undisclosed assets found.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)

PUBLIC NOTICE

Program of All Inclusive Care for the Elderly (PACE)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan to add Medicaid coverage for *Program of All Inclusive Care for the Elderly (PACE)* as an optional service.

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 October 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 proposed amends the Delaware Title XIX Medicaid State Plan to add Medicaid coverage for *Program of All Inclusive Care for the Elderly (PACE)* as an optional service. PACE is a provider type under Medicare that allows states the option to pay for PACE services under Medicaid. The PACE program is capitated by both Medicare and Medicaid to provide all medical and long-term care services.

Statutory Authority

42 CFR Part 460, *Program of All Inclusive Care for the Elderly*

Background

Program of All-Inclusive Care for the Elderly (PACE) is a benefit authorized by the Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. The PACE model was developed to address the needs of long-term care clients, providers, and payers. For most participants, the comprehensive service package permits them to continue living at home while receiving services rather than be institutionalized. Through PACE, organizations are able to deliver all services covered by PACE which participants need rather than only those services reimbursable under the Medicare and Medicaid fee-for-service systems.

The BBA establish PACE within the Medicare program and enable States to provide PACE services to Medicaid beneficiaries as a State option. In order to provide this Medicaid benefit, States must elect to cover PACE services as a State plan option and also enter into a program agreement with the PACE provider and the Secretary of the Department of Health and Human Services (DHHS). PACE providers must operate under both the Medicare and Medicaid programs. The program agreement is the contract between the PACE provider, the State, and the Federal government, and is the mechanism for receiving Federal matching funds for PACE services.

Eligibility - Participants must be at least 55 years old, live in the PACE service area, and be certified as eligible for nursing home care by the appropriate State agency. The PACE program becomes the sole source of services for Medicare and Medicaid eligible enrollees.

Services - An interdisciplinary team, consisting of professional and paraprofessional staff, assesses participants' needs, develops care plans, and delivers all services (including acute care services and when necessary, nursing facility services) which are integrated for a seamless provision of total care. PACE programs provide social and medical services primarily in an adult day health center, supplemented by in-home and referral services in accordance with the participant's needs. The PACE service package must include all Medicare and Medicaid covered services, and other services determined necessary by the multidisciplinary team to improve and maintain the care of the PACE participant.

Payment - PACE providers receive monthly Medicare and Medicaid capitation payments for each eligible Medicare and Medicaid enrollee. Medicare eligible participants who are not eligible for Medicaid pay monthly premiums equal to the Medicaid capitation amount, but no deductibles, coinsurance, or other type of Medicare or Medicaid cost-sharing applies. PACE providers assume full financial risk for participants' care without limits on amount, duration, or scope of services.

Summary of Proposal

The intent of this rule is to implement the Program of All-Inclusive Care for the Elderly (or PACE) program as administered by the Division of Medicaid and Medical Assistance (DMMA) and to address the responsibilities of DMMA as the state administering agency under 42 CFR 460.

The proposed amendments add Medicaid coverage for PACE, as allowed under federal Medicaid regulations at 42 CFR Part 460. For a monthly capitated rate, a PACE organization provides all preventive, primary, acute, and long-term care services to persons who enroll in the program. To become a PACE organization, an entity must be approved both by the Division of Medicaid and Medical Assistance (DMMA) and by the Centers for Medicare and Medicaid Services (CMS). The organization must enter into a three-party agreement with DMMA and CMS committing to abide by state rules and federal regulations for PACE programs. The agreement must specify which areas the program will serve. The State plan amendment (SPA) must be approved before CMS can enter into a PACE program agreement.

The provisions of this SPA are subject to approval by the CMS.

Fiscal Impact Statement

Program of All-Inclusive Care for the Elderly (PACE) is a capitated benefit authorized by the Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. Capitated financing allows providers to deliver all services participants need rather than be limited to those reimbursable under the Medicare and Medicaid fee-for-service systems.

PACE providers receive monthly Medicare and Medicaid capitation payments for each eligible enrollee. Medicare eligible participants who are not eligible for Medicaid pay monthly premiums equal to the Medicaid capitation amount, but no deductibles, coinsurance, or other type of Medicare or Medicaid cost-sharing applies. PACE providers assume full financial risk for participants' care without limits on amount, duration, or scope of services.

DMMA will assure CMS that the PACE program will be budget-neutral.

DMMA PROPOSED REGULATION #11-40

REVISION:

Revision: HCFA-PM-91-10 (MB)

ATTACHMENT 2.2-A

Page 11

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

Agency*	Citation(s)	Groups Covered
		B. <u>Optional Groups Other Than the Medically Needy</u> (Continued)
	42 CFR 435.217	<input checked="" type="checkbox"/> 4. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based

PROPOSED REGULATIONS

services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the State's section 1915(c) waiver under which this group(s) is covered. In the event and existing 1915(c) is amended to cover this group(s), this option is effective on the effective date of the amendment.

PACE enrollees and will be effective on the effective date of the amendment electing PACE as an optional State plan service.

(Break in Continuity of Sections)

19c

Revision: HCFA-PM-91-4 (BPD) OMB No.:0938-
AUGUST 1991

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

Citation 3.1(a)(1) Amount, Duration, and Scope of Services: Categorically Needy
1905(a)(26) (Continued)
and 1934

Program of All Inclusive Care for the Elderly (PACE) services, as described and limited in Supplement 2 to Attachment 3.1-A.

ATTACHMENT 3.1-A identifies the medical and remedial services provided to the categorically needy. (Note: Other programs to be offered to Categorically Needy beneficiaries would specify all limitations on the amount, duration and scope of those services. As PACE provides services to the frail elderly population without such limitation, this is not applicable for this program. In addition, other programs to be offered to Categorically Needy beneficiaries would also list the additional coverage -that is in excess of established service limits- for pregnancy-related services for conditions that may complicate the pregnancy. As PACE is for the frail elderly population, this also is not applicable for this program.)

(Break in Continuity of Sections)

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OMB No. Page 11

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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Amount, Duration, and Scope of Services OF MEDICAL AND REMEDIAL CARE
SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

25. Program of All-Inclusive Care for the Elderly (PACE) services, as described in Supplement 2 to Attachment 3.1-A.

Election of PACE: By virtue of this submittal, the State elects PACE as an optional State Plan service.
 No election of PACE: By virtue of this submittal, the State elects to not add PACE as an optional State Plan service.

(Break in Continuity of Sections)

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

SUPPLEMENT 2 TO
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Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

I. Eligibility

The State determines eligibility for PACE enrollees under rules applying to community groups.

- A. The State determines eligibility for PACE enrollees under rules applying to institutional groups as provided for in section 1902(a)(10)(A)(ii)(VI) of the Act (42 CFR 435.217 in regulations). The State has elected to cover under its State plan the eligibility groups specified under these provisions in the statute and regulations.

Spousal impoverishment eligibility rules will apply. The applicable groups are:

Individuals receiving services under this program are eligible under the following eligibility groups:

- A Special Income Level equal to 250% of the SSI Federal Benefit (FBR) (42 CFR 435.236)

(If this option is selected, please identify, by statutory and/or regulatory reference, the institutional eligibility group or groups under which the State determines eligibility for PACE enrollees. Please note that these groups must be covered under the State's Medicaid plan.)

- B. The State determines eligibility for PACE enrollees under rules applying to institutional groups, but chooses not to apply post-eligibility treatment of income rules to those individuals. (If this option is selected, skip to II - Compliance and State Monitoring of the PACE Program.

- C. The State determines eligibility for PACE enrollees under rules applying to institutional groups, and applies post-eligibility treatment of income rules to those individuals as specified below. Note that the post-eligibility treatment of income rules specified below are the same as those that apply to the State's approved HCBS waiver(s).

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

Regular Post Eligibility Continued

(C.) Family (check one):

1. ___ AFDC need standard
2. ___ Medically needy income standard

The amount specified below cannot exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's approved AFDC plan or the medically needy income standard established under 435.811 for a family of the same size.

3. ___ The following dollar amount: \$ _____
Note: If this amount changes, this item will be revised.
4. ___ The following percentage of the following standard that is not greater than the standards above: _____% of _____ standard.
5. X The amount is determined using the following formula:
One-third of 150% of the FPL for two.
6. ___ Other
7. ___ Not applicable (N/A)

(2). Medical and remedial care expenses in 42 CFR 435.726.

Regular Post Eligibility

2. ___ 209(b) State, a State that is using more restrictive eligibility requirements than SSI. The State is using the post-eligibility rules at 42 CFR 435.735. Payment for PACE services is reduced by the amount remaining after deducting the following amounts from the PACE enrollee's income.

(a) ~~42 CFR 435.735~~--States using more restrictive requirements than SSI.

1. Allowances for the needs of the:

(A.) Individual (check one)

1. ___ The following standard included under the State plan (check one):
 - (a) ___ SSI
 - (b) ___ Medically Needy
 - (c) ___ The special income level for the institutionalized
 - (d) ___ Percent of the Federal Poverty Level: _____%
 - (e) ___ Other (specify): _____

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MARCH 1987

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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2. ___ The following dollar amount: \$ _____

PROPOSED REGULATIONS

Note: If this amount changes, this item will be revised.

3. ___ The following formula is used to determine the needs allowance:

Note: If the amount protected for PACE enrollees in item 1 is equal to, or greater than the maximum amount of income a PACE enrollee may have and be eligible under PACE, enter N/A in items 2 and 3.

(B.) Spouse only (check one):

1. ___ The following standard under 42 CFR 435.121:

2. ___ The Medically needy income standard

3. ___ The following dollar amount: \$_____

Note: If this amount changes, this item will be revised.

4. ___ The following percentage of the following standard that is not greater than the standards above: _____% of _____ standard.

5. ___ The amount is determined using the following formula:

6. ___ Not applicable (N/A)

(C.) Family (check one):

1. ___ AFDC need standard

2. ___ Medically needy income standard

The amount specified below cannot exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's approved AFDC plan or the medically needy income standard established under 435.811 for a family of the same size.

3. ___ The following dollar amount: \$_____

Note: If this amount changes, this item will be revised.

4. ___ The following percentage of the following standard that is not greater than the standards above: _____% of _____ standard.

5. ___ The amount is determined using the following formula:

6. ___ Other

7. ___ Not applicable (N/A)

(b) Medical and remedial care expenses specified in 42 CFR 435.735.

PROPOSED REGULATIONS

description of the negotiated rate setting methodology and how the State will ensure that rates are less than the cost in fee-for-service.

1. X* Rates are set at a percent of fee-for-service costs
2. ___ Experience-based (contractors/State's cost experience or encounter date) (please describe)
3. ___ Adjusted Community Rate (please describe)
4. ___ Other (please describe)

*See Pages 7 and 8 for description of rate setting methodology

B. The State Medicaid Agency assures that the rates were set in a reasonable and predictable manner. Please list the name, organizational affiliation of any actuary used, and attestation/description for the initial capitation rates.

Mercer Government Human Services Consulting
 2325 East Camelback Road, Suite 600
 Phoenix, Arizona 85016
 Attention: Frederick P. Gibison, Jr.
 1.602.522.6526

C. The State will submit all capitated rates to the CMS Regional Office for prior approval.

Revision: HCFA-PM-87-4 (BERC)
 MARCH 1987

SUPPLEMENT 2 TO
 ATTACHMENT 3.1-A
 Page 7

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

CAPITATED RATE METHODOLOGY

Base Data Source and Analysis

The PACE rates are based on the Upper Payment Limit (UPL) methodology. The historical fee for service target population data is extracted for claims and eligibility for more than one year. PACE eligible populations used to develop the PACE UPLs are individuals enrolled in home and community based waivers (HCBS) and individuals in nursing facilities. These two populations serve as the basis upon which the PACE UPLs are developed.

Claims and eligibility data are gathered for both Medicaid-only individuals receiving the aforementioned services and also those individuals fully dually eligible for Medicaid and Medicare Parts A/B/D. Historical FFS data is compiled by date of service for the applicable year from the State's MMIS and eligibility system. Data for clients in the aforementioned two groups who are not eligible to enroll in PACE (e.g. those under age 55) are excluded from the database. The PACE UPLs include payment for all covered Medicaid services as well as Medicare coinsurance and deductible payments for full dual eligible clients. The final UPLs are developed for two rating groups: Dual Eligible – Age 55+ and Medicaid-only Age 55+.

The FFS data used in the analysis is reviewed for reasonableness to be (or as necessary adjusted to be) appropriate for UPL development as described in the most current version of the CMS PACE checklist.

- Claims expenditures for the PACE-equivalent population include Medicaid paid amounts increased by applicable patient liability and co-payments paid by recipients.
- Data for partial dual eligible populations were specifically excluded from the analysis, as they are not entitled to Medicaid services. These populations are excluded from Delaware's PACE program: Qualified Medicare Beneficiaries (QMB), Qualified Disabled and Working Individuals (QDWI), Specified Low-Income Medicare Beneficiaries (SLMB) and Qualifying Individuals (QI1 and QI2).
- Claims for services that are not covered services under PACE are not included.

Adjustments to Develop the UPL

The prospective UPL is subject to the following adjustments;

- **Base Data Adjustments:** The historical FFS base data are adjusted to comply with the requirements in the PACE UPL checklist and to ensure that the UPLs reflect what otherwise would have been paid under the State plan if participants were not enrolled in PACE (e.g., FFS pharmacy rebates, completion factors, copayments and patient liability).

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MARCH 1987

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State/Territory: DELAWARE

CAPITATED RATE METHODOLOGY (cont'd)

- **Prospective Trend:** Trend is an estimate of the change in the overall cost of providing health care benefits over a finite period of time. A trend factor is necessary to estimate the cost of health care services in a defined contract period. As part of the UPL development for the PACE program, annual per-member-per-month (PMPM) trend rates by consolidated COS are developed. The base data is trended forward to the midpoint of the contract period.
- **Programmatic Changes:** Programmatic changes recognize the impact of changes to benefits, eligibility or State reimbursement that take place between the base period and the projection period.
- **State Administrative Costs:** An estimate of the State's FFS administrative costs is included in the UPL development process.

PACE Capitation Rates

The State will ensure compliance with 42 CFR 460.182(b) by assuring that the PACE capitation rates will be a fixed percentage, of less than 100 percent, of the respective PACE UPL amounts. This percentage will consider differences between the FFS population from which the PACE UPLs were built and the expected enrollment in the PACE plans including relative acuity and the impact of better care management/care coordination.

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

SUPPLEMENT 2 TO
ATTACHMENT 3.1-A
Page

PROPOSED REGULATIONS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

III. Enrollment and Disenrollment

The State assures that there is a process in place to provide for dissemination of enrollment and disenrollment data between the State and the State Administering Agency. The State assures that it has developed and will implement procedures for the enrollment and disenrollment of participants in the State's management information system, including procedures for any adjustment to account for the difference between the estimated number of participants on which the prospective monthly payment was based and the actual number of participants in that month.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)

PUBLIC NOTICE

Payment Error Rate Measurement (PERM)

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) provides notice of intent to submit a State Plan Amendment (SPA) to elect the option to substitute the Payment Error Rate Measurement (PERM) eligibility process for the traditional Medicaid Eligibility Quality Control reviews.

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 October 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 serves as notice of intent of the Division of Medicaid and Medical Assistance (DMMA) to submit a State Plan Amendment (SPA) to elect the option to substitute the Payment Error Rate Measurement (PERM) eligibility process for the traditional Medicaid Eligibility Quality Control reviews.

Statutory Authority

- Improper Payments Information Act of 2002 (IPIA), amended in July 2010 by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), Public Law 111-204;
- Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3;
- 42 CFR §431.806(b), *State plan requirements; Use of PERM data*

Background

To implement the requirements of the Improper Payments Information Act of 2002 (IPIA), amended in July 2010 by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), Public Law 111-204, the Centers for Medicare and Medicaid Services (CMS) developed the Payment Error Rate Measurement (PERM) program. Under PERM, reviews are conducted in three areas for both the Medicaid and CHIP programs: 1) Fee-for-Service, 2) Managed Care and 3) Program Eligibility. Under the eligibility component, States draw monthly samples of

cases and verify eligibility for each case based on State and Federal policies. These reviews result in an eligibility error rate that is included in the national payment error rates for Medicaid and CHIP.

The Medicaid Eligibility Quality Control (MEQC) program is set forth in Section 1903(u) of the Social Security Act. This is an annual eligibility measurement that is similar to the PERM eligibility review, but has its own requirements under a separate regulation. PERM and MEQC have been a longstanding issue between CMS and the States, essentially because every three years the States must administer two parallel eligibility reviews while participating in PERM. The States have requested for many years that CMS implement ways to reduce the duplication of effort between the two programs. Attempts to coordinate PERM and MEQC in previous years through a “substitution” strategy were unsuccessful. The programs are authorized under two different statutes and two separate regulations and could not be supplanted. With the enactment of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), CMS was able to again attempt to implement a substitution strategy for PERM and MEQC. CHIPRA at Section 603(e) requires that CMS review PERM and MEQC policies and coordinate the requirements of both programs in an effort to harmonize the programs.

On August 11, 2010, CMS issued a final rule outlining its planned implementation of provisions from CHIPRA with regard to harmonizing the MEQC and PERM programs. The final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2010-08-11/pdf/2010-18582.pdf>. The rule allows the States the option to use data resulting from the MEQC reviews to complete the requirements for the PERM eligibility reviews. States also have the option to use data resulting from the PERM eligibility reviews to complete the requirements for the MEQC reviews.

Because States administer Medicaid and CHIP according to each State’s unique program, the States necessarily need to be participants in the measurement process. CMS use PERM to measure Medicaid and CHIP improper payments in a subset of States each year. States are reviewed on a rotating basis, so States are measured in a 17-State, three year rotation. States selected for Medicaid and CHIP improper payments measurements in Federal Fiscal Year 2012 include Delaware. States sample and conduct eligibility reviews of Medicaid and CHIP cases. CMS’ Statistical Contractor calculates and combines the State eligibility error rates to develop national eligibility error rates for Medicaid and CHIP.

States that elect the option to substitute PERM data for MEQC data in a State’s PERM cycle need to submit a State plan amendment referencing the PERM rule.

Summary of Proposal

The Medicaid state plan will be amended at General Program Administration, 4.4 Medicaid Quality Control to identify the State’s election to substitute PERM reviews (active and negative) for the State’s MEQC traditional reviews during the State’s PERM cycle year. The regulation at 42 CFR §431.806(b) authorizes this substitution.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #11-39

REVISION:

35

Revision:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

Citation

42 CFR 431 Subpart P

4.4

Medicaid Eligibility Quality Control (MEQC)

50 FR 21839

75 FR 48847

1903(u) of

of the Act,

(a) A system of quality control is implemented in accordance with 42 CFR Part 431, Subpart P.

PROPOSED REGULATIONS

P.L. 99-509
(Section 9407)
P.L. 107-300
P.L. 111-3

(b) In accordance with 431.806(c), the State operates a Medicaid quality control claims processing assessment system that meets the requirements of ~~431.800(e), (g), (h), and (k)~~ 431.830 – 431.836



Yes.



Not applicable. The State has an approved Medicaid Management Information System (MMIS).

(c) In accordance with 431.806(b), Payment Error Rate Measurement (PERM) is implemented in accordance with 42 CFR Part 431, Subpart Q, in substitution to meet the statutory and regulatory (“traditional”) Medicaid Eligibility Quality Control (MEQC) review during the State’s PERM cycle.



Yes.



Not applicable. The State operates an approved MEQC Pilot.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)
16 DE Admin. Code 2000

PUBLIC NOTICE

Food Supplement Program; Issuing Benefit Restorations

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

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 October 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 described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Issuing Benefit Restorations*.

Statutory Authority

- 7 CFR §273.17, *Restoration of lost benefits*
- 45 CFR §233.20(a)(12), *Recoupment of overpayments and correction of underpayments for programs other than AFDC*

Summary of Proposed Changes

~~DSSM 2011, *Benefit Restorations for Cash Assistance and Food Stamps*~~ *Issuing Benefit Restorations*: The name of the section is being changed to more clearly indicate the content of the policy. Policy is being reformatted for clarity and ease of readability. Federal citations are also added to the policy section.

DSS PROPOSED REGULATION #11-43

REVISIONS:

~~2011 *Benefit Restorations for Cash Assistance and Food Stamps*~~ *Issuing Benefit Restorations*

~~Benefit restorations must be made to correct an underpayment resulting from the Division's failure to act or to take appropriate action on available information. Requests for benefit restorations for one to three months must be approved and countersigned by the Operations Administrator. Requests for benefit restorations for more than three months from the date of the incorrect action must be approved and countersigned by the Chief Operations Administrator. Requests for benefit restorations beyond a period of one year require a fair hearing decision or court hearing. Benefit restorations are always subject to available funds. Benefit restorations are also subject to offsetting overpayments and claims owed by the family or household per DSSM 7002.1 and DSSM 7004.3~~

7 CFR 273.17, 45 CFR 233.20(a)(12)

This policy applies to cash assistance and food benefit applicants and recipients that received less benefits than they were eligible to receive. The need for restoration may be identified by the client or DHSS. Eligibility for restoration may also be determined by a court or administrative hearing decision or a change in law.

1. DSS Must Correct All Under-issuances

An under-issuance occurs when the amount of benefit that the household received was less than the benefit the household was entitled to receive. In these instances DSS will issue a benefit equal to the difference between what was received and what should have been received. This is called a restoration.

Exception: Restorations are not issued when funding is not available.

2. Restorations Must Be Approved

Benefit restorations must be approved by a designated authority. The following are authorized to approve restorations as indicated.

A. Operations Administrator: approves 1 to 3 months of benefits.

B. Chief Administrator: approves 4 to 12 months of benefits.

C. Fair hearing or court decision: required for 13 or more months of benefits.

3. DHSS Applies Restorations to Unpaid Overpayments and Claims

If the client has an unpaid overpayment or claim, the agency will first use the restoration to reduce the overpayment or claim. Any remaining funds are sent to the client. See DSSM 7002.1 and DSSM 9011.1.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)
16 DE Admin. Code 9076

PUBLIC NOTICE

Food Supplement Program; Treatment of Income and Resources of Certain Non-Household Members

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware

Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Treatment of Income and Resources of Certain Non-Household Members*.

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 October 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 described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Treatment of Income and Resources of Certain Non-Household Members*.

Statutory Authority

7 CFR §273.11(c), *Treatment of Income and Resources of Certain Non-Household Members*

Summary of Proposed Changes

DSSM 9076, *Treatment of Income and Resources of Certain Non-Household Members* and **DSSM 9076.1**, *Intentional Program Violation, Felony Drug Conviction or Fleeing Felon Disqualifications or and Work Requirement Sanctions*: Senate Bill (SB) 12 of the 146th General Assembly eliminated the bar to receipt of food benefits for those convicted of a felony drug conviction. This policy change removes text from the policy manual that says individuals convicted of a felony drug conviction are ineligible for food benefits. SB 12 was effective upon the Governor's signature on June 22, 2011 and affects benefits beginning July 1, 2011.

DSS PROPOSED REGULATION #11-42

REVISIONS:

9076 Treatment of Income and Resources of Certain Non-Household Members

[273.11(c)]

During the period of time that a household member cannot participate because (s)he:

~~Is an ineligible alien;~~

~~Is ineligible because of disqualification for an intentional Program violation;~~

~~Is ineligible because of disqualification for or refusal to obtain or provide an SSN; or~~

~~Is ineligible for failing to sign the application attesting to his/her citizenship or alien status.~~

~~Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive multiple benefits at the same time per DSSM 2024;~~

~~Is ineligible for being a fleeing felon or probation/parole violator per DSSM 2025.~~

~~Is ineligible for being convicted of trafficking food stamps of \$500 or more per DSSM 2026.~~

~~Is ineligible due to work requirements per DSSM 9018.~~

~~Determine the eligibility and benefit level of any remaining household members in accordance with the procedures outlined in this section.~~

~~7 CFR 273.11(c)~~

During the period of time that a household member cannot participate for the reasons below, determine the eligibility and benefit level of any remaining household members in accordance with sections 9076.1 through 9076.4.

The household member cannot participate because he or she is:

1. An ineligible alien.

2. Disqualified for an intentional Program violation.

3. Disqualified for or refusal to obtain or provide an SSN.
4. Ineligible for failing to sign the application attesting to his/her citizenship or alien status.
5. Ineligible because of having made a fraudulent statement or misrepresentation of his or her identity in order to receive multiple benefits at the same time per DSSM 2024.
6. Ineligible because of having made a fraudulent statement or misrepresentation about his or her place of residence in order to receive multiple benefits at the same time per DSSM 2024.
7. Ineligible for being a fleeing felon or probation/parole violator per DSSM 2025.
8. Ineligible for being convicted of trafficking food benefits of \$500 or more per DSSM 2026.
9. Ineligible due to work requirements per DSSM 9018.
10. Ineligible due to the time limit for Able-bodied Adults without Dependents per DSSM 9018.2.

9076.1 Intentional Program Violation, Felony Drug Conviction or Fleeing Felon Disqualifications ~~or~~ and Work Requirement Sanctions

~~Determine as follows the eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of the disqualifications or sanctions listed below:~~

- ~~Is ineligible because of disqualifications for an intentional Program violation;~~
- ~~Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive multiple benefits at the same time;~~
- ~~Is ineligible for being a fleeing felon or probation/parole violator;~~
- ~~Individuals who are ineligible because of a drug related felony conviction per DSSM 2027;~~
- ~~Is ineligible for being convicted of trafficking food stamps of \$500 or more.~~

~~1) Income, resources and deductible expenses—the income and resources of the ineligible household member(s) continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support payment, and excess shelter deductions continue to apply to the remaining household members.~~

~~2) Eligibility and benefit level—the ineligible member is not included when determining the household's size for the purpose of:~~

- ~~a) Assigning a benefit level to the household;~~
- ~~b) Comparing the household's monthly income with the income eligibility standards; or~~
- ~~c) Comparing the household's resources with the resource eligibility limits. Ensure that no household's food stamp allotment is increased as a result of the exclusion of one or more household members.~~

7 CFR 273.11(c)

For households containing individuals determined ineligible because of the disqualifications or sanctions listed below, determine the eligibility and benefit level of any remaining household members as follows:

Disqualifications or Sanctions

1. Disqualified for an intentional Program violation.
2. Ineligible because of having made a fraudulent statement or misrepresentation of his or her identity in order to receive multiple benefits at the same time.
3. Ineligible because of having made a fraudulent statement or misrepresentation about his or her place of residence in order to receive multiple benefits at the same time.
4. Ineligible for being a fleeing felon or probation/parole violator.
5. Ineligible for being convicted of trafficking food benefits of \$500 or more.

Eligibility and Benefit Determination

1. Income, resources and deductible expenses
 - A. Count all the income and resources of the ineligible household member(s) in the eligibility and benefit determination.
 - B. Apply all allowable earned income and deductions to the entire household. Include all deductions the ineligible household member would receive if he or she was included in the household size. Count the following deductions:

1. Standard
2. Medical
3. Dependent care
4. Child support payment

PROPOSED REGULATIONS

5. Excess shelter

2. Eligibility and benefit level

Do not include the ineligible member when determining the household's size when:

A. Assigning a benefit level to the household.

B. Comparing the household's monthly income with the income eligibility standards.

C. Comparing the household's resources with the resource eligibility limits. Ensure that no household's food benefit is increased as a result of the exclusion of one or more household members.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)
16 DE Admin. Code 9093

PUBLIC NOTICE

Food Supplement Program; Electronic Benefit Transfer

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

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 October 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 described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Electronic Benefit Transfer*.

Statutory Authority

- 7 CFR §271.2, *Definitions*
- 7 CFR §273.18(g)(2), *Benefits from EBT accounts*
- 7 CFR §274.2, *Providing benefits to participants*
- 7 CFR §274.4, *Reconciliation and reporting*
- 7 CFR §274.8(d), *Re-presentation*

Summary of Proposed Changes

The below referenced policy sections are being changed to bring the policy manual up to date regarding the current Electronic Benefit Transfer (EBT) vendor. Other technical changes were made to update language, e.g., food stamps to food benefits. Additional changes made to improve readability; clarify and reformat text; add federal citations; remove the name of the previous EBT vendor and replace it with a generic indicator; replace all instances of food stamps with food benefits; and, remove the duplicative and incomplete definitions section at 9093.1.

The proposed changes affect the following policy sections:

DSSM 9093, *Electronic Benefit Transfer (EBT)*

DSSM 9093.1, *Definitions/Acronyms* **RESERVED**

DSSM 9093.2, *Using EBT for Food Stamp Benefits*

DSSM 9093.3, *Food Stamp Benefit EBT Adjustments*

DSSM 9093.4, *Account Balances*

DSSM 9093.5, *Manual Transactions*
DSSM 9093.6, *Manual Vouchers*
DSSM 9093.7, *EBT and Timely Application Processing*
DSSM 9093.8, *EBT Benefits and Claim Issues*
DSSM 9093.9, *Aging Periods and Expungement Process*
DSSM 9094, *Definitions*

DSS PROPOSED REGULATION #11-44 REVISIONS:

9093 Electronic Benefit Transfer (EBT)

Electronic Benefit Transfer (EBT) is the method by which Delaware Division of Social Services (DSS) issues food stamp benefits to participants. The EBT card is a plastic card called the Delaware Food First Card. The card is used with a Personal Identification Number (PIN) at grocery retailers to purchase food.

~~eFunds Government Systems (eFunds) is Delaware's contractor for EBT. Delaware uses an EBT contractor to manage the EBT cards.~~ Client/case file and benefit information are transmitted through an interface between eFunds ~~the EBT contractor~~ and the Division's data processing systems.

EBT did not change the way that eligibility determinations are made for food stamps benefits. EBT affected the way that food benefits are delivered to participants. EBT provides greater privacy and security for those receiving food stamp benefits.

9093.1 Definitions/Acronyms **RESERVED**

~~**Administrative Terminal:** This is the eFunds system through which DSS staff can obtain EBT card and account information.~~

~~**Authorized Representative:** This is an individual outside the household designated to have access to the household's benefit account. This can also be a household member, like a spouse, who is a secondary card holder.~~

~~**Benefit Status:** This is a code which indicates the current status of the benefit in the Administrative Terminal.~~

~~**Card Number:** The card number is printed on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This is known as the Primary Account Number (PAN).~~

~~**Card Status:** An EBT card may be active or inactive. The card status for a replacement card can indicate stolen, lost, payee changed, name changed, damaged, undelivered, deactivated/cancelled or bad address.~~

~~**Date Available:** Benefits are available at 6:00 a.m. on the date specified in the Administrative Terminal. Regular monthly food supplement benefits are available according to a seven day staggered schedule based on the last name. Benefits start staggering on the fifth calendar day of each month.~~

~~**eFunds Customer Support:** The Customer Support Unit receives phone calls from participants to check balances, report lost or stolen cards, report problems with a retailer, and request new PINs. The CSU number is 1-800-526-9099.~~

~~**Expunged Benefits:** Benefits in client accounts not used for 365 days are expunged (removed) from the account forever.~~

~~**FNS Number:** A unique number assigned to retailers by FNS indicating that the retailer is eligible to accept FSP benefits.~~

~~**Hold Amount:** When an EBT manual voucher transaction is used, the retailer obtains an authorization number from eFunds. eFunds puts a hold on the participant's food benefit account. Once an accept reason is assigned to the voucher, the hold amount is deducted from the participant's benefit balance and this field becomes blank.~~

~~**Manual Entries:** If an EBT card or POS machine is damaged, the card number can be keyed manually to complete the transaction.~~

~~**Manual Voucher:** Retailers use paper vouchers when the eFunds system is not available. Retailers who are not eligible to have POS terminals also use these vouchers. A voucher has a unique number which identifies the voucher. This field is completed only if the transaction displayed in the Administrative Terminal is an off-line voucher.~~

~~**PAN:** The Primary Account Number is the 16-digit number on the EBT card, also called the card number.~~

~~**PIN (Personal Identification Number):** A PIN is a four digit secret code that must be used when the EBT card is used. No one can use the card but the participant as long as the participant does not give the PIN to anyone.~~

~~PIN Info:~~ ~~The Card Maintenance screen in the Administrative Terminal displays whether or not a PIN has been selected and the method. Yes indicates that a PIN has been selected. Fails is the number of times the PIN entered has failed that day. Chg Count is the number of times the PIN has been changed. Method is how the PIN was selected.~~

~~Point of Sale (POS) Terminal:~~ ~~A POS is the device on which transactions are made by the food stamp participant. The POS machine reads the card and allows the participant to buy food with the food stamp benefits.~~

~~Stale Benefits:~~ ~~Benefits not used by a household within 60, 90 or 230 days.~~

9093.2 Using EBT for Food Stamp Benefits

7 CFR 274.4

The household may use its EBT card in any grocery store, convenience store, farmers market, etc., anywhere in the United States, authorized by FNS to accept ~~them~~ the card. The benefits may be used the same as cash to purchase any food or food product prepared for human consumption. Households cannot use benefits to purchase alcoholic beverages, tobacco, soap and paper products, and hot foods or hot foods prepared for immediate consumption. Households can use benefits to buy seeds and plants for use in gardens to produce food for personal consumption by the eligible household.

EBT benefits are available 24 hours a day, seven days per week including weekends and holidays. DSS issues benefits on a daily and monthly basis. DSS issues monthly benefits on the same day each month for each household based on a staggered issuance schedule. ~~eFunds~~ The EBT contractor posts benefits in the household's account by 6 a.m. the day after benefits are approved in DCIS II.

There is no minimum dollar amount per transaction. There is no maximum limit on the number of transactions a household can make. Stores cannot impose transaction fees on food ~~stamp~~ benefit households using their EBT card ~~at grocery stores~~.

Households can check their food ~~stamp~~ benefit account balances without making a purchase or standing in a checkout line.

Households receive printed receipts at the time of transactions.

When transacting food ~~stamp~~ benefits by EBT, the household cannot receive change. When a household returns food to a ~~grocery~~ store, the store will credit the household's EBT account with the amount of the refund. The household cannot receive a cash refund for returned food.

9093.3 Food Stamp Benefit EBT Adjustments

7 CFR 274.2

~~eFunds~~ The EBT contractor makes adjustments to EBT accounts to correct system errors. A system error is an error resulting from a malfunction at any point in the redemption process, for example, errors made at the grocery store. Adjustments are initiated by the client or store and may result in a debit or credit to the household.

Emphasize to clients that they should review their transaction slips before leaving the store. If there is a mistake, the client should discuss the problem with the store clerk or manager before leaving the store. Problems discovered later must be resolved through the ~~eFunds~~ EBT contractor Customer Service Unit.

Client-Initiated Adjustments

An EBT credit adjustment occurs when ~~eFunds~~ the EBT contractor returns benefits to a household's account after the store deducted the benefits in error.

For example, a household member uses an EBT card to purchase groceries. Due to a system error, the store debited the purchase amount from the household's EBT account twice.

The household has 90 days from the date of the problem transaction to contact ~~eFunds~~ the EBT contractor Customer Service at 1-800-526-9099 and inform the customer service representative that a problem has occurred. The household will need to tell the customer service representative the date, time and location of the transaction and the amount of food ~~stamp~~ benefits that were debited in error.

If the request is a legitimate request, ~~eFunds~~ the EBT contractor will return the funds to the household's EBT account within 10 business days from the date the household filed the report with the ~~eFunds~~ EBT contractor Customer Service Unit. A business day is any calendar day other than a Saturday, a Sunday or a federal holiday.

If the household's request is not legitimate, ~~eFunds~~ the EBT contractor will deny the credit adjustment. The household may request a fair hearing. ~~eFunds~~ The EBT contractor will take no action to credit the household's EBT account unless the hearing decision is in the household's favor.

Retailer-Initiated Adjustments

A retailer-initiated adjustment occurs when the retailer does not receive a credit for an EBT purchase amount when the household made the purchase. The store needs the adjustment to get credit for the purchase made by the household.

For example, a household uses the EBT card to purchase \$200 worth of groceries. The credit to the store's account does not go through and the \$200 remains in the household's account.

DSS must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjusted amount in the household's account. If there are insufficient benefits to cover the entire adjustment, DSS shall place a hold on any remaining balance that exists and the whole amount will be debited from the household's account when the next month's benefits become available.

DSS will send a notice to the household informing them ~~them~~ it of the account adjustment. The household has 90 days from the date of the notice to request a fair hearing.

If the household disputes the adjustment and requests a hearing within 10 days of the notice, DSS will make a provisional credit to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If the household does not request ~~for~~ a hearing within 10 days of the notice, DSS will release the hold on the adjustment balance, and credit this amount to the retailer's account.

9093.4 Account Balances

An EBT food ~~stamp~~ benefit account does not close when a food ~~stamp~~ benefit DCIS case closes. The former recipient remains entitled to the account balance. As long as benefits remain in the EBT food ~~stamp~~ benefit account, the former recipient may ~~still~~ have cards issued or reissued and be able to select or change PINs.

9093.5 Manual Transactions

7 CFR 274.8(d)

Sometimes circumstances cause the client or store clerk to enter the transaction manually instead of swiping the EBT card through the POS machine. This happens when the card's magnetic stripe becomes scratched, worn or demagnetized.

Until the client can get a new card issued, the client can still use the card at a retailer. The clerk keys the card number in manually to complete the transaction. Only the client should enter his/her PIN. The client should never reveal the PIN to a store clerk when entering a manual transaction.

9093.6 Manual Vouchers

7 CFR 274.8(d)

Retailers use a manual voucher process when the ~~eFunds~~ EBT contractor system or the terminals are not working and cannot accept the EBT card for a food ~~stamp~~ benefit purchase. Retailers do not have to use the manual process, but most will not turn away a sale.

Retailers that do not have POS terminals, for example, farmers' markets, and street or route vendors also use manual vouchers.

The manual voucher is a paper form on which the retailer writes the card number, the cardholder's name, the store FNS number, and the dollar amount of the sale. The client must sign the voucher. The retailer must call in manual vouchers to ~~eFunds~~ the EBT contractor to get an authorization for the amount of the transaction. The retailer calls in to make sure that the money is in the client's account. If the client has enough funds in the account to cover the transaction, the retailer subtracts the whole amount of the transaction from the client's account.

Retailers use manual vouchers when the ~~eFunds~~ EBT contractor system is down. Since the retailer cannot confirm whether the client has an available balance, the client is limited to a \$40.00 purchase.

9093.7 EBT & Timely Application Processing

7 CFR 274.2(b)

Regulations say we must provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the household

filed the application. With EBT, FNS has issued guidelines saying that the opportunity to participate is the date the money is posted to the account **plus** two days when mailing the EBT card. ~~DSS mails EBT cards for hardship cases. DSS mails most EBT cards. Clients may pick up a card at the local office after notifying the worker not to have the card mailed.~~ To avoid these timeliness errors, staff will need to take the action to approve a case on or before the 26th day at the latest.

When it is not possible to process the case on or before the 28th day because the client did not turn in the verifications or worker time constraints, document the case record. The error may still count but the explanation will be there.

9093.8 EBT Benefits and Claim Issues

7 CFR 273.18(g)(2)

When ~~eFunds~~ the EBT contractor posts the EBT benefits to the household's account, the household is considered in receipt of those benefits. If the household receives benefits they were not entitled to, DSS/ARMS will establish a claim. DSS/ARMS establishes a claim even if the household has not used the benefits in the EBT account. As long as the benefits are in the account, the household has access to those benefits and owes the State the amount of the claim.

ARMS must allow a household to pay its claim using benefits from its EBT benefit account according to DSSM 9095.13.

Benefits not used for 230 days are stale and ARMS can use the stale benefits to credit a household's claim with the consent of the household.

~~eFunds~~ The EBT contractor will expunge benefits not used for 365 days from the household's account and credit the amount to a household's outstanding claim.

9093.9 Aging Periods and Expungement Process

7 CFR 274.2(h)(2)

Benefits remain available to the household for 365 days from the date of availability.

~~eFunds~~ The EBT contractor sends reports to DSS that show accounts with no activity. ~~eFunds~~ The EBT contractor provides DSS with a report for the following periods of time:

- Period 1: 60 days
- Period 2: 90 days
- Period 3: 230 days
- Period 4: 365 days

A household will get a notice at Periods 1, 2 and 3 if the household has not used benefits for 60, 90 or 230 days. Stale benefits are benefits not used by these time periods. The notice will tell the household the following information:

The account has not been used in the past 60, 90 or 230 days;

- To call the
- ~~eFunds~~ EBT contractor customer service unit to get the balance on the account;
- Stale food benefits not used for 230 days can be applied to any existing claim with the client's permission;
- Food benefits that are not used by day 365 will be removed from the account forever; ~~and~~
- Food benefits removed from the account on day 365 will be applied to any remaining food benefit claim."

On day 230, DSS will generate notices to clients with outstanding claims. The notice tells the household that ARMS will apply benefits not used for 230 days to the outstanding claim unless the household contacts ARMS within ~~ten~~ 10 days.

On day 250, households ~~who~~ that do not contact ARMS to stop the repayment will have their stale benefits applied to the outstanding claim. On day 365, the ~~eFunds~~ EBT contractor system will expunge (remove from the account) any remaining stale benefits and send DSS a report of those benefits expunged.

DCIS II and ARMS accounting systems will credit any expunged benefits to household accounts with an outstanding claim. ARMS and the Payments Unit will receive a report of benefits posted to household's claims so ARMS can update the benefit recovery screens. ARMS will send the client a credit slip indicating the credit made on ~~their~~ his or her claim and the existing balance.

(Break in Continuity of Sections)

9094 Definitions

[7-CFR-271.2]

The following terms are used in the Food Supplement Program (FSP):

~~**Able-bodied Adults Without Dependent Children (ABAWD)** are individuals without children in their FSP household who must work and/or comply with certain work requirements for 20 hours a week in order to get food benefits.~~

~~**Adequate notice** means a written notice that includes:~~

- ~~A. a statement of the action the agency has taken or intends to take;~~
- ~~B. the reason for the intended action;~~
- ~~C. the household's right to request a fair hearing;~~
- ~~D. the name of the person to contact for additional information;~~
- ~~E. the availability of continued benefits; and~~
- ~~F. the liability of the household for any overissuances received while awaiting a fair hearing if the hearing~~

~~official's decision is adverse to the household.~~

~~**Administrative Terminal** is the eFunds system through which DSS staff can obtain EBT card and account information.~~

~~**Alien Status Verification Index (ASVI)** is the automated database used by States to verify immigration statuses from the Immigration and Naturalization Service (INS).~~

~~**Allotment** is the total dollar value of food benefits a household receives each month.~~

~~**Application** is the form completed by a household member or authorized representative to apply for food benefits, cash assistance, child care or medical assistance programs.~~

~~**ASSIST** is Delaware's electronic application. The acronym stands for Application for Social Services and Internet Screening Tool.~~

~~**Authorized Representative** is an individual the household authorizes to act on behalf of the household in the application process, in obtaining food benefits, and in using the EBT card. This individual has access to the household's EBT benefit account. This individual can be a nonhousehold member or a household member, like a spouse, who is a secondary cardholder.~~

~~**Benefit Status:** This is a code that indicates the status of the benefit in the Administrative Terminal.~~

~~**Boarders:** Individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals.~~

~~**Card Number:** The card number is on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This number is called the Primary Account Number (PAN).~~

~~**Card Status:** An EBT card may be active or inactive. The card status for a replacement card can indicate stolen, lost, payee changed, name changed, damaged, undelivered, deactivated/cancelled or bad address.~~

~~**Categorically Eligible Household** is any household where all members receive or are authorized to receive TANF/GA/RCA and/or SSI benefits, or the household income is at or under 200% of the FPL for their household size. The household is considered categorically eligible for food stamps. These households meet the resource test.~~

~~**Certification period** means the period of time in which a household is eligible to receive benefits.~~

~~**Claim** is the amount owed due to an over issuance of food benefits.~~

~~**Date Available:** Benefits are available at 6:00 a.m. on the date specified in the Administrative Terminal. Regular monthly food benefits are available according to a seven day staggered schedule based on the case head's last name. Benefits start staggering on the fifth calendar day of each month.~~

~~**Date of Entry (Date of admission)** means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.~~

~~**Deeming** means using a portion of an ineligible household member's income or resources for the remaining household members.~~

~~**Destitute Households**—Migrant or seasonal farm worker households that have little or no income at the time of application and are in need of immediate food assistance.~~

~~**Disaster (for Assistance)**—A major disaster is any natural catastrophe such as a hurricane or drought, fire, flood, or explosion, which the President declares the severity and magnitude warrants disaster assistance.~~

~~**Drug addiction or alcoholic treatment and rehabilitation program** means any drug addiction or alcoholic~~

treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, licenses by DHSS.

~~**eFunds Customer Support:** The Customer Support Unit receives phone calls from participants to check balances, report lost or stolen cards, report problems with a retailer, and request new PINs. The CSU number is 1-800-526-9099.~~

~~**Elderly or disabled member** means a member of a household who:~~

- ~~A. Is 60 years of age or older;~~
 - ~~B. Receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;~~
 - ~~C. Receives federally or State administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;~~
 - ~~D. Receives federally or State administered supplemental benefits under section 212(a) of Pub. L. 93-66;~~
 - ~~E. Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.~~
 - ~~F. Is a veteran with a service connected or non-service connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;~~
 - ~~G. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;~~
 - ~~H. Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self support under title 38 of the United States Code;~~
 - ~~I. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service connected death or pension benefits for a non service connected death under title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them; or~~
 - ~~J. Receives an annuity payment under section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act.~~
 - ~~K. Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).~~
- ~~**Electronic Benefit Transfer (EBT)** is the method used for issuing and accessing FSP benefits through the use of a card similar to a debit card.~~
- ~~**Eligible foods** mean:~~
- ~~A. Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;~~
 - ~~B. Seeds and plants to grow foods for the personal consumption of eligible households;~~
 - ~~C. Meals prepared and delivered by an authorized meal delivery service to households eligible to use EBT benefits to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;~~
 - ~~D. Meals prepared and served by a drug addiction or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them;~~
 - ~~E. Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined under Elderly or Disabled member;~~
 - ~~F. Meals prepared by and served by a shelter for battered women and children to its eligible residents;~~
- ~~and~~
- ~~G. Meals prepared for and served by an authorized public or private nonprofit establishment (e.g., soup~~

kitchen, temporary shelter) that feeds homeless persons.

Emergency (for Federal Assistance)—An emergency is any occasion when the President determines that Federal assistance is needed to supplant State and local efforts to save lives, protect property, assure public health and safety, or to lessen the threat of a catastrophe.

Expedited Service means food benefits must be available to the household no later than the seventh calendar day following the date an applicant files an application.

Expunged Benefits: Benefits in client accounts not used for 365 days that are removed from the account forever.

Filing Date means the date DSS receives the application form as long as the form contains the applicant's name and address, and the signature of a responsible household member or the household's representative, a signed Request for Assistance, or an application from ASSIST.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

FNS Number: A unique number assigned to retailers by FNS indicating that the retailer is eligible to accept FSP benefits.

Group Living Arrangement means a public or private nonprofit residential setting, certified by the State, which serves no more than sixteen residents. To be eligible for food benefits, a resident of such a group living arrangement must be blind or disabled as defined under Elderly or Disabled member.

Head of Household is the individual who is an adult parent of children of any age selected by the household or the principal wage earner if selected by DSS.

Hold Amount: When an EBT manual voucher transaction is used, the retailer obtains an authorization number from eFunds. eFunds puts a hold on the participant's food benefit account. Once an accept reason is assigned to the voucher, the hold amount is deducted from the participant's benefit balance and this field becomes blank.

Homeless means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

A. A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);

B. A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

C. A temporary accommodation for not more than 90 days in the residence of another individual; or

D. A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

Homeless Meal Provider is a public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons.

Ineligible Alien means an undocumented alien or a documented alien who does not meet a qualified and eligible status.

Intentional Program Violation (IPV) occurs when an individual breaks a FSP rule and is found guilty by a court or an administrative disqualification hearing, or signs a waiver to be disqualified to avoid prosecution.

Low income Household means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

Manual Entries: If an EBT card or POS machine is damaged, the card number can be keyed manually to complete the transaction.

Manual Voucher: Retailers use paper vouchers when the eFunds system is not available. Retailers who are not eligible to have POS terminals also use these vouchers. A voucher has a unique number, which identifies the voucher. This field is completed only if the transaction displayed in the Administrative Terminal is an off line voucher.

Mass Changes are certain changes initiated by the State or Federal government, which may affect the entire caseload or significant portions of the caseload such as annual cost of living adjustments, shelter/dependent care deduction and periodic cost of living adjustments to RSDI and SSI benefits.

Meal Delivery Service (like Meals on Wheels) is a service agencies contract with for the preparation and delivery of meals at low prices to elderly persons and the physically or mentally handicapped who are unable to adequately prepare all of their meals.

Minimum Benefit means the minimum monthly amount of food benefits that eligible one and two person households receive.

Notice of Expiration is a notice sent to a household at the end of its certification period notifying a household of what they need to do to continue to get benefits.

Over-issuance means the amount of benefits a household received that exceeded the amount the household was eligible to receive.

PAN: The Primary Account Number is the 16 digit number on the EBT card, also called the card number.

PIN (Personal Identification Number): A PIN is a four digit secret code that allows the user to access benefits when using the EBT card. No one can use the card but the participant as long as the participant does not give the PIN to anyone.

PIN Info: The Card Maintenance screen in the Administrative Terminal displays whether or not the household selected a PIN and the method of selection. Yes, means a household selected a PIN. Fails is the number of times the PIN entered has failed that day. Chg Count is the number of times the household changed the PIN. Method is how the household selected the PIN.

Point of Sale (POS) Terminal: A POS is the device a participant uses to make transactions at the stores. The POS machine reads the card and allows the participant to buy food with the food benefits.

Prospective Budgeting means the computation of a household's food benefit for an issuance month based on an estimate of income and circumstances which will exist in that month.

Quality Control Review means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food benefit allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

Recertification is a review conducted at the end of a person's certification period that requires an application, interview and verification of current circumstances.

Residents of Institution means an individual who resides in an institution where the institution provides him or her with the majority of his or her meals (over 50% of three meals daily) as part of the institution's normal services.

Riverside Rule is a rule that requires states to keep food benefits at the same level when a household's TANF/RCA benefits have been reduced or terminated due to the household's failure to perform an action required under the TANF/RCA program or fraud.

Shelter for Battered Women and Children means a public or private nonprofit residential facility that serves battered women and their children.

Simplified FSP (SFSP) is a program that permits a state to substitute certain FSP rules with TANF and RCA rules and procedures.

Simplified Reporting means the only reporting requirement for households is when their income exceeds the 130% FPL threshold for the household size established at the time of intake or recertification.

Sponsored alien means an alien for whom a person has executed an affidavit of support [INS Form I 864 or I 864A] on behalf of the alien according to section 213A of the INA.

Sponsor means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

Spouse refers to either of two individuals: (1) Those defined as married to each other under applicable State law; or (2) Those living together and representing themselves as married to relatives, friends, neighbors, or employers.

State Benefits: Benefits not used by a household within 60, 90 or 230 days.

State Income and Eligibility Verification System (IEVS) is a system of information acquisition and exchange for purposes of income and eligibility verification that meets the requirements of section 1137 of the Social Security Act, generally referred to as the IEVS.

Supplemental Nutrition Assistance Program (SNAP) is the Federal name for the former Food Stamp Program.

Supplemental Security Income (SSI) is a means tested monthly cash payment made under the authority of the Social Security Act for aged, blind and disabled individuals.

Systematic Alien Verification for Entitlements (SAVE) means the INS program whereby State agencies may verify the validity of documents provided by aliens applying for food benefits by obtaining information from a central data file.

Thrifty Food Plan means the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the USDA Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall

~~make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.~~

~~**Trafficking** means the buying or selling of food benefits for cash or consideration other than eligible food or the exchange of firearms, ammunition, explosives, or controlled substances.~~

~~**Under issuance** means an amount of benefit that the household was entitled to receive that was less than the benefit the household actually received.~~

~~**Verification** is the use of third party information or documentation to establish the accuracy of statements on the application.~~

~~**Work for Your Welfare** is a work experience program in which participants work to earn their benefits.~~

7 CFR 271.2

Able-bodied Adults Without
Dependent Children (ABAWD)

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

Adequate notice

A written notice that includes:

- A. A statement of the action the agency has taken or intends to take.
- B. The reason for the intended action.
- C. The household's right to request a fair hearing.
- D. The name of the person to contact for additional information.
- E. The availability of continued benefits.
- F. The liability of the household for any over issuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household.

Administrative Terminal

The EBT contractor system through which DSS staff can obtain EBT card and account information.

Alien Status Verification Index
(ASVI)

The automated database used by States to verify immigration statuses from the Immigration and Naturalization Service (INS).

Allotment

The total dollar value of food benefits a household receives each month.

Application

The form completed by a household member or authorized representative to apply for food benefits, cash assistance, child care or medical assistance programs.

ASSIST

Delaware's electronic application. The acronym stands for Application for Social Services and Internet Screening Tool.

Authorized Representative

An individual the household authorizes to act on behalf of the household in the application process, in obtaining food benefits, and in using the EBT card. This individual has access to the household's EBT benefit account. This individual can be a non-household member or a household member, like a spouse, who is a secondary cardholder.

Benefit Status

A code that indicates the status of the benefit in the Administrative Terminal.

Boarders

Individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals.

PROPOSED REGULATIONS

<u>Card Number</u>	<u>The card number is on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This number is called the Primary Account Number (PAN).</u>
<u>Card Status</u>	<u>An EBT card may be active or inactive. The card status for a replacement card can indicate stolen, lost, payee changed, name changed, damaged, undelivered, deactivated/cancelled or bad address.</u>
<u>Categorically Eligible Household</u>	<u>Any household where all members receive or are authorized to receive TANF/GA/RCA and/or SSI benefits, or the household income is at or under 200% of the FPL for their household size. The household is considered categorically eligible for food benefits. These households meet the resource test.</u>
<u>Certification period</u>	<u>The period of time in which a household is eligible to receive benefits.</u>
<u>Claim</u>	<u>The amount owed due to an over-issuance of food benefits.</u>
<u>Date Available</u>	<u>Benefits are available at 6:00 a.m. on the date specified in the Administrative Terminal. Regular monthly food benefits are available according to a seven day staggered schedule based on the case head's last name. Benefits start staggering on the fifth calendar day of each month.</u>
<u>Date of Admission</u>	<u>The date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.</u>
<u>Date of Entry</u>	<u>The date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.</u>
<u>Deeming</u>	<u>Using a portion of an ineligible household member's income or resources for the remaining household members.</u>
<u>Destitute Households</u>	<u>Migrant or seasonal farm worker households that have little or no income at the time of application and are in need of immediate food assistance.</u>
<u>Disaster (for Assistance)</u>	<u>A major disaster is any natural catastrophe such as a hurricane or drought, fire, flood, or explosion, which the President declares the severity and magnitude warrants disaster assistance.</u>
<u>Drug addiction or alcoholic treatment and rehabilitation program</u>	<u>Means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, licensed by DHSS.</u>
<u>EBT Contractor Customer Support</u>	<u>The Customer Support Unit receives phone calls from participants to check balances, report lost or stolen cards, report problems with a retailer, and request new PINs. The CSU number is 1-800-526-9099.</u>

Elderly or disabled member

A member of a household who:

A. Is 60 years of age or older

B. Receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act.

C. Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act.

D. Receives federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93-66.

E. Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.

F. Is a veteran with a service-connected or non-service-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under title 38 of the United States Code.

G. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code.

H. Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code.

I. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38 of the United States Code *and* has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them.

J. Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 *and* is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act.

K. Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits *provided* that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

Electronic Benefit Transfer (EBT)

The method used for issuing and accessing FSP benefits through the use of a card similar to a debit card.

PROPOSED REGULATIONS

Eligible foods

Mean:

A. Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption.

B. Seeds and plants to grow foods for the personal consumption of eligible households.

C. Meals prepared and delivered by an authorized meal delivery service to households eligible to use EBT benefits to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining.

D. Meals prepared and served by a drug addiction or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them.

E. Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined under Elderly or Disabled member.

F. Meals prepared by and served by a shelter for battered women and children to its eligible residents.

G. Meals prepared for and served by an authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons.

Emergency (for Federal Assistance)

An emergency is any occasion when the President determines that Federal assistance is needed to supplant State and local efforts to save lives, protect property, assure public health and safety, or to lessen the threat of a catastrophe.

Expedited Service

Food benefits must be available to the household no later than the seventh calendar day following the date an applicant files an application.

Expunged Benefits

Benefits in client accounts not used for 365 days that are removed from the account forever.

Filing Date

The date DSS receives the application form as long as the form contains the applicant's name and address, and the signature of a responsible household member or the household's representative, a signed Request for Assistance, or an application from ASSIST.

FNS

The Food and Nutrition Service of the U.S. Department of Agriculture.

FNS Number

A unique number assigned to retailers by FNS indicating that the retailer is eligible to accept FSP benefits.

Group Living Arrangement

A public or private nonprofit residential setting, certified by the State, which serves no more than sixteen residents. To be eligible for food benefits, a resident of such a group living arrangement must be blind or disabled as defined under Elderly or Disabled member.

Head of Household

The individual who is an adult parent of children of any age selected by the household or the principal wage earner if selected by DSS.

<u>Hold Amount</u>	<u>When an EBT manual voucher transaction is used, the retailer obtains an authorization number from the EBT contractor. The EBT contractor puts a hold on the participant's food benefit account. Once an accept reason is assigned to the voucher, the hold amount is deducted from the participant's benefit balance and this field becomes blank.</u>
<u>Homeless</u>	<u>An individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:</u> <u>A. A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter).</u> <u>B. A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized.</u> <u>C. A temporary accommodation for not more than 90 days in the residence of another individual.</u> <u>D. A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).</u>
<u>Homeless Meal Provider</u>	<u>A public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons.</u>
<u>Ineligible Alien</u>	<u>An undocumented alien or a documented alien who does not meet a qualified and eligible status.</u>
<u>Intentional Program Violation (IPV)</u>	<u>Occurs when an individual breaks a FSP rule and is found guilty by a court or an administrative disqualification hearing, or signs a waiver to be disqualified to avoid prosecution.</u>
<u>Low-income Household</u>	<u>A household whose annual income does not exceed 125% of the Office of Management and Budget poverty guidelines.</u>
<u>Manual Entries</u>	<u>If an EBT card or POS machine is damaged, the card number can be keyed manually to complete the transaction.</u>
<u>Manual Voucher</u>	<u>Retailers use paper vouchers when the EBT contractor system is not available. Retailers who are not eligible to have POS terminals also use these vouchers. A voucher has a unique number, which identifies the voucher. This field is completed only if the transaction displayed in the Administrative Terminal is an off-line voucher.</u>
<u>Mass Changes</u>	<u>Certain changes initiated by the State or Federal government, which may affect the entire caseload or significant portions of the caseload such as annual cost-of-living adjustments, shelter/dependent care deduction and periodic cost-of-living adjustments to RSDI and SSI benefits.</u>
<u>Meal Delivery Service</u>	<u>A service agencies contract with for the preparation and delivery of meals at low prices to elderly persons and the physically or mentally handicapped who are unable to adequately prepare all of their meals. An example is Meals on Wheels.</u>
<u>Minimum Benefit</u>	<u>The minimum monthly amount of food benefits that eligible one- and two-person households receive.</u>
<u>Notice of Expiration</u>	<u>A notice sent to a household at the end of its certification period notifying a household of what they need to do to continue to get benefits.</u>

PROPOSED REGULATIONS

<u>Over-issuance</u>	<u>The amount of benefits a household received that exceeded the amount the household was eligible to receive.</u>
<u>PAN</u>	<u>The Primary Account Number is the 16-digit number on the EBT card, also called the card number.</u>
<u>PIN (Personal Identification Number)</u>	<u>A four digit secret code that allows the user to access benefits when using the EBT card. No one can use the card but the participant as long as the participant does not give the PIN to anyone.</u>
<u>PIN Info</u>	<u>The Card Maintenance screen in the Administrative Terminal displays whether or not the household selected a PIN and the method of selection. Yes, means a household selected a PIN. Fails is the number of times the PIN entered has failed that day. Chg Count is the number of times the household changed the PIN. Method is how the household selected the PIN.</u>
<u>Point-of-Sale (POS) Terminal</u>	<u>The device a participant uses to make transactions at the stores. The POS machine reads the card and allows the participant to buy food with the food benefits.</u>
<u>Prospective Budgeting</u>	<u>The computation of a household's food benefit for an issuance month based on an estimate of income and circumstances which will exist in that month.</u>
<u>Quality Control Review</u>	<u>A review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food benefit allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.</u>
<u>Recertification</u>	<u>A review conducted at the end of a person's certification period that requires an application, interview and verification of current circumstances.</u>
<u>Residents of Institution</u>	<u>An individual who resides in an institution where the institution provides him or her with the majority of his or her meals (over 50% of three meals daily) as part of the institution's normal services.</u>
<u>Riverside Rule</u>	<u>A rule that requires states to keep food benefits at the same level when a household's TANF/RCA benefits have been reduced or terminated due to the household's failure to perform an action required under the TANF/RCA program or fraud.</u>
<u>Shelter for Battered Women and Children</u>	<u>A public or private nonprofit residential facility that serves battered women and their children.</u>
<u>Simplified FSP (SFSP)</u>	<u>A program that permits a state to substitute certain FSP rules with TANF and RCA rules and procedures.</u>
<u>Simplified Reporting</u>	<u>The only reporting requirement for households is when their income exceeds the 130% FPL threshold for the household size established at the time of intake or recertification.</u>
<u>Sponsored alien</u>	<u>An alien for whom a person has executed an affidavit of support [INS Form I-864 or I-864A] on behalf of the alien according to section 213A of the INA.</u>
<u>Sponsor</u>	<u>A person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.</u>

<u>Spouse</u>	<u>Refers to either of two individuals:</u> <u>1. Those defined as married to each other under applicable State law.</u> <u>2. Those living together and representing themselves as married to relatives, friends, neighbors, or employers.</u>
<u>State Benefits</u>	<u>Benefits not used by a household within 60, 90 or 230 days.</u>
<u>State Income and Eligibility Verification System (IEVS)</u>	<u>A system of information acquisition and exchange for purposes of income and eligibility verification that meets the requirements of section 1137 of the Social Security Act, generally referred to as the IEVS.</u>
<u>Supplemental Nutrition Assistance Program (SNAP)</u>	<u>The Federal name for the former Food Stamp Program.</u>
<u>Supplemental Security Income (SSI)</u>	<u>A means-tested monthly cash payment made under the authority of the Social Security Act for aged, blind and disabled individuals.</u>
<u>Systematic Alien Verification for Entitlements (SAVE)</u>	<u>The INS program whereby State agencies may verify the validity of documents provided by aliens applying for food benefits by obtaining information from a central data file.</u>
<u>Thrifty Food Plan</u>	<u>The diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the USDA Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.</u>
<u>Trafficking</u>	<u>The buying or selling of food benefits for cash or consideration other than eligible food or the exchange of firearms, ammunition, explosives, or controlled substances.</u>
<u>Under-issuance</u>	<u>An amount of benefit that the household was entitled to receive that was less than the benefit the household actually received.</u>
<u>Verification</u>	<u>The use of third party information or documentation to establish the accuracy of statements on the application.</u>
<u>Work for Your Welfare</u>	<u>A work experience program in which participants work to earn their benefits.</u>

DIVISION OF SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)
16 DE Admin. Code 15110

PUBLIC NOTICE

Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal

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 (DSS) is proposing to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

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 November 15, 2011. A draft copy of the Delaware TANF State Plan has been prepared which reflects amendments as well as basic improvements to the various descriptions of programs and services. This document may be viewed and downloaded from the Internet at the Division of Social Services' website at <http://www.dhss.delaware.gov/dhss/dss/>.

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.

NOTICE OF COMMENT PERIOD FOR DRAFT TANF STATE PLAN

This notice is given to provide information of public interest with respect to Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) Program.

Statutory Authority

Title IV-A of the Social Security Act, Section 402, *Eligible States; State Plan*

Title of Notice

Delaware's Temporary Assistance for Needy Families (TANF) State Plan

Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193) provides funding to states through the Temporary Assistance for Needy Families (TANF) block grant. Section 402 of the Social Security Act requires that States periodically submit to the Secretary of the Department Health and Human Services a TANF state plan to maintain or renew their status as an "eligible State". In general the State plan describes the eligibility rules, the populations served, the programs offered, and the State maintenance of effort spending. States also provide certifications that they will maintain other services such as child support enforcement and foster care services. Delaware's TANF State plan is due December 31, 2011.

The TANF Program is delivered through a collaborative partnership among Delaware's Department of Health and Social Services (DHSS), Department of Labor (DOL), and the Delaware Economic Development Office (DEDO). The Delaware Transit Corporation (DTC) is also a planning partner.

Summary of Notice of Comment Period for Draft TANF State Plan

In order to continue to receive Federal TANF funding, Delaware must file for renewal of the grant with the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) by December 31, 2011. The State Plan outlines the provisions under which the State will administer the TANF program.

Prior to submission of the plan, States must offer the public a 45 day period to review and comment on the plan. Publication of the State plan creates the opportunity for the public to comment on the proposed TANF State Plan.

Developed in accordance with the requirements of PRWORA, the updated State Plan incorporates changes identified through a collaborative process that included development of proposed regulation, distribution of the draft regulation to Delaware stakeholders and the public, review and incorporation of appropriate comments in the plan, and the ongoing review of the TANF program.

Future amendments to the State Plan will incorporate suggestions and recommendations received during the comment period. The 45-day comment period begins on the date this notice is published in the *Delaware Register of Regulations*. Comments received within 45 days will be reviewed and considered for any subsequent revision of the TANF State Plan.

The entire plan is available here:

Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)
7 DE Admin. Code 1302

REGISTER NOTICE
SAN # 2011-08

1. TITLE OF THE REGULATIONS:

1302 Regulations Governing Hazardous Waste (RGHW)

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to the *RGHW* that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations. Some of the changes DNREC is proposing to make are already in effect at the federal level. Additionally, DNREC is proposing to adopt required federal regulations and miscellaneous changes to correct errors and add consistency or clarification.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

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

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to RGHW will be held on Monday, October 24, 2011 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

**Amendments To
Delaware's *Regulations Governing Hazardous Waste***

2011 Proposed Amendments
For Public Comment
Start Action Notice # 2011-08

Delaware Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Solid and Hazardous Waste Management Section
89 Kings Highway
Dover, DE 19901
Phone: 302-739-9403
Contact: Bill Davis

PROPOSED REGULATIONS

ID #	Description
1	Federal Technical Corrections – Checklist 223
2	Federal Withdrawal of the Emission-Comparable Fuel Exclusion – Checklist 224
3	Federal change regarding saccharin de-listing – Checklist 225
4a	Delaware change regarding Academic transport
4b	Delaware clarification regarding 270 day accumulation
4c	Delaware clarification regarding SQG recordkeeping and reporting
4d	Delaware clarification regarding retention of Contingency Plan submission record
4e	Delaware clarification regarding CESQG container requirements
4f	Delaware correction regarding regional contingency plan under 40 CFR 1510
4g	Delaware requirement for container closure at used oil facilities

Proposed Amendments to
Delaware's *Regulations Governing Hazardous Waste*
(DRGHW)

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the DRGHW are not affected and are unchanged. Proposed additions are indicated with underlines, and deletions are indicated with ~~strikethroughs~~.

**AMENDMENT 1:
Technical Corrections**

Adopt Federal Checklist 223 regarding EPA's "Hazardous Waste Technical Corrections and Clarifications Rule" published in the March 18, 2010 Federal Register (Volume 75, Number 52, pages 12989-13009), and amended June 4, 2010 in the Federal Register (Volume 75, Number 107, pages 31716-31717).

Background: The EPA rule made a number of technical changes that corrected existing errors in the federal hazardous waste regulations that occurred over time in numerous final rules published in the Federal Register, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections were necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarified existing parts of the hazardous waste regulatory program and updated references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA final rules.

Delaware was required to adopt the revisions to the manifest regulations (the addition of paragraph 262.23(f)). This was completed during the "2010" amendments (under Start Action Notice # 2010-09), effective 1/21/11.

EPA received adverse comment on four of the specific amendments and withdrew them on June 4, 2010 (75 FR 31716). The four amendments were for: §262.34(a), §262.34(a)(2), §262.34(a)(5), and §266.20(b). As a result of withdrawing the amendment for §262.34(a)(5), the related amendment for §262.34(a)(1)(iv)(B) was also withdrawn by the EPA. Finally, because of a typographical error, the amendment to the entry "K107" in the table at §261.32(a) was withdrawn.

The SHWMB determined that out of 99 amendments within the EPA rule, 35 were selected for adoption into the DRGHW. The remaining Federal amendments from checklist 223 were either already correct within the DRGHW, were not applicable to Delaware, or were less stringent than the existing DRGHW.

- ID# 1
260 Appendix I: Amend part 260 by removing Appendix I in its entirety.
- ID# 2
261.1(c)(10):
"Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§261.4(a)(~~13~~14)).
- ID# 3
261.2(c), table 1:
~~Scrap metal other than excluded scrap metal (see §261.1(c)(9)).~~
Scrap metal that is not excluded under §261.4(a)(13).
- ID # 4
261.5(e):
If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Parts 262 through 266, 268 and Parts 122 and 124 of these regulations, and the notification requirements of 7 **Del.C.**, Chapter 63:
(1) A total of one kilogram of acute hazardous wastes listed in §§261.31, ~~261.32~~, or 261.33(e).
(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§261.31, ~~261.32~~, or 261.33(e).
[**Comment: Full regulation** means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]
- ID# 5
261.5(g):
In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of ~~less than 100 kilograms~~ 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:
- ID# 6
261.5(g)(2):
The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time ~~more than a total of 1000 kilograms~~ 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 262 applicable to generators of ~~between 100 kg and 1000 kg~~ greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 263 through 266, 268 and Parts 122 and 124 of these regulations, and the applicable notification requirements of 7 **Del.C.**, Chapter 63. The time period of §262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;
- ID# 7

261.6(a)(2):

The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through H N of Part 266 of these regulations, Subpart E of Part 263, and all applicable provisions in Parts 268, 122 and 124 of these regulations:

ID# 8

261.6(a)(2)(ii):

Hazardous wastes burned ~~for energy recovery~~ (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of these regulations (Subpart H);

ID# 9

261.7(a):

- (1) Any hazardous waste remaining in either: (i) an empty container; or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of ~~these regulations~~ this section is not subject to regulation under Parts 261 through ~~265~~ 266, or Parts 268, 122 or 124 of these regulations or to the notification requirements of 7 **Del.C.**, §§6304, 6306 & 6307.
- (2) Any hazardous waste in either: (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under Parts 261 through ~~265~~ 266, and Parts 268, 122 and 124 of these regulations and to the notification requirements of 7 **Del.C.**, §§6304, 6306 & 6307.

ID# 10

261.7(b)(1):

A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§261.31-, ~~261.32~~, or 261.33(e) of these regulations is empty if:

ID# 11

261.7(b)(3):

A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§261.31-, ~~261.32~~ or 261.33(e) is empty if:

ID# 12

261.23(a)(8)

It is a forbidden explosive as defined in ~~49 CFR Part 173 or a Class A explosive as defined in 49 CFR Part 173 or a Class B explosive as defined in 49 CFR Part 173~~. 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

ID# 13

261.30(d):

The following hazardous wastes listed in §261.31 ~~or §261.32~~ are subject to the exclusion limits for acutely hazardous wastes established in §261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027

ID# 14

261.31(a) table:

Petroleum refinery primary oil/water/solids separation sludge. -- Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and ~~oil~~ oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other

conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under §261.4(a)(12)(i), if those residuals are to be disposed of.

ID# 15

261.33(f), U239

U239	1330-20-7	Benzene, dimethyl- (I, F)
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ID# 16

261 Appendix VII,

Appendix VII is amended by removing in its entirety the entries for EPA Hazardous Waste Nos. "K064," "K065," "K066," "K090," and "K091"

ID# 17

262.34(a)(4):

The generator complies with the requirements for owners or operators in Subparts C and D in Part 265, with §265.16, and with ~~§268.7(a)(5)~~ all applicable requirements of Part 268 of these regulations.

ID# 18

262.34(c)(1):

A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) as applicable of this section provided he:

ID# 19

262.34(c)(2): Note that the 2nd change to add "(d)" is a DNREC clarification rather than EPA

A generator who accumulates either hazardous waste or acutely hazardous waste listed in §261.31 or §261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply immediately with paragraph (a) or (d) as applicable of this section or other applicable provisions of these regulations. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

ID# 20

262.34(d)(4):

The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of Subpart C of Part 265, ~~the requirements of §268.7(a)(5)~~ with all applicable requirements of Part 268 of these regulations; and

ID# 21

262.42(c):

For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the

procedures of §§264.72(e)(1) through (6) or §§265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) ~~and~~ or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. * * * * *

ID# 22

262.60(b):

When importing hazardous waste, a person must meet all the requirements of §262.20(a) for the manifest except:*****

ID# 23

264.56(d)(2): Delaware has made an additional change to align this paragraph with its Part 265 equivalent (see ID#36).

He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, ~~in the contingency plan~~ or the National Response Center (using their 24-hour toll free number (800) 424-8802) and the Department of Natural Resources and Environmental Control (using the nos. (800) 662-8802 or (302) 739-9401). The report must include:

ID# 24

264.552(e)(4)(iv)(F):

Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Secretary may specify a leaching test other than the TCLP (SW846 Method 1311, 40 CFR 260.11(a)(11)(c)(3)(v)) to measure treatment effectiveness, provided the Secretary determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

ID# 25

265.56(d)(2): Delaware has made an additional change to align this paragraph with its Part 264 equivalent.

He must immediately notify either the government official designated as the on-scene coordinator for that geographical area ~~(in the applicable regional contingency plan under Part 1510 of 40 CFR, or the National Response Center (using their 24 hour toll free number (800) 424-8802) and the Department of Natural Resources and Environmental Control of Delaware (using the nos. (302) 739-9401 or (800) 662-8802 or (302) 739-9401)~~. The report must include:

ID# 26

265.72(f)(7):

For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6) and (8) of this section.

ID# 27

265.316(b):

The inside containers must be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with ~~§264.315(f)~~ 265.314(f) to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after it has been packed with inside containers and sorbent material.

ID# 28
268.40(j), table entry K156: see table below

ID# 29
268.40(j), table entry K157: see table below

ID# 30
268.40(j), table entry K158: see table below

K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>

ID# 31
122.4(a)(1): see below

ID# 32
122.4(a)(2): see below

ID# 33
122.4(a)(3): see below

ID# 34
122.4(a)(4): see below

ID# 35
122.4(a): see below

ID# 36
122.4(a)(2)[new]: see below

Section 122.4 Effect of a permit.

(a) (1) Compliance with a State hazardous waste permit during its term constitutes compliance, for purposes of enforcement, with 7 **Del.C.**, Chapter 63 except for those requirements not included in the permit which:

- ~~(1)~~(i) Become effective by statute;
- ~~(2)~~(ii) Are promulgated under Part 268 of these regulations restricting the placement of hazardous wastes in or on the land;
- ~~(3)~~(iii) Are promulgated under Part 264 of these regulations regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of Section 122.42 Class 1* permit modifications; or

PROPOSED REGULATIONS

(4) (iv) Are promulgated under Subparts AA, BB, or CC of Part 265 of these regulations limiting air emissions.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§122.41 and 122.43, or the permit may be modified upon the request of the permittee as set forth in § 122.42.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

AMENDMENT 2:

Withdrawal of Emission Comparable Fuel Exclusion

Adopt Federal Checklist 224 regarding EPA's withdrawal of the emission comparable fuel exclusion—published in the June 15, 2010 Federal Register (Volume 75, pages 33712-33724).

Background: Delaware is adopting the Federal rule that withdraws the conditional exclusion from regulations promulgated on December 19, 2008 under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called Emission Comparable Fuel (ECF). These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in those boilers. EPA withdrew this conditional exclusion because the Agency concluded that ECF is more appropriately classified as a discarded material and regulated as a hazardous waste. The exclusions for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this rule. Therefore, this rule is equivalent to and also supersedes the June 19, 1998 (63 FR 33782) known as checklist 168, which Delaware adopted in 1999.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Section 261.4 is amended by revising paragraph (a)(16) to read as follows:

§261.4 Exclusions.

(a) * * *

(16) Comparable fuels or comparable syngas fuels (~~i.e., comparable, syngas fuels~~) that meet the requirements of §261.38.

* * * * *

The entire §261.38 is replaced with the text below to read as follows:

§261.38 Exclusion of comparable fuel and syngas fuel.

(a) Specifications for excluded fuels. Wastes that meet the specifications for comparable fuel or syngas fuel under paragraphs (a)(1) or (a)(2) of this section, respectively, and the other requirements of this section, are not solid wastes.

(1) Comparable fuel specifications.—

(i) Physical specifications.—

(A) Heating value. The heating value must exceed 5,000 Btu/lbs. (11,500 J/g).

(B) Viscosity. The viscosity must not exceed: 50 cS, as-fired.

(ii) Constituent specifications. For compounds listed in Table 1 to this section, the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 of this section).

(2) Synthesis gas fuel specifications.— Synthesis gas fuel (*i.e.*, syngas fuel) that is generated from hazardous waste must:

(i) Have a minimum Btu value of 100 Btu/Scf;

(ii) Contain less than 1 ppmv of total halogen;

(iii) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N₂);

(iv) Contain less than 200 ppmv of hydrogen sulfide; and

(v) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this part.

(3) *Blending to meet the specifications.*

(i) Hazardous waste shall not be blended to meet the comparable fuel specification under paragraph (a)(1) of this section, except as provided by paragraph (a)(3)(ii) of this section:

(ii) *Blending to meet the viscosity specification.* A hazardous waste blended to meet the viscosity specification for comparable fuel shall:

(A) As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of paragraphs (a)(1)(i)(A) and (a)(1)(ii) of this section;

(B) Be blended at a facility that is subject to the applicable requirements of parts 264, 265, or § 262.34 of these regulations; and

(C) Not violate the dilution prohibition of paragraph (a)(6) of this section.

(4) *Treatment to meet the comparable fuel specifications.*

(i) A hazardous waste may be treated to meet the specifications for comparable fuel set forth in paragraph (a)(1) of this section provided the treatment:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or § 262.34 of these regulations; and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.*

(i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (a)(2) of this section provided the processing:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or § 262.34 of these regulations or is an exempt recycling unit pursuant to §261.6(c); and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition.* No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of paragraphs (a)(1)(i)(A) or (a)(1)(ii) of this section for comparable fuel, or paragraph (a)(2) of this section for syngas.

(b) Implementation.—

(1) General.—

(i) Wastes that meet the specifications provided by paragraph (a) of this section for comparable fuel or syngas fuel are excluded from the definition of solid waste provided that the conditions under this section are met. For purposes of this section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.

(ii) The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this section and keeping records necessary to document compliance with those conditions.

(2) Notices.

(i) *Notices to State RCRA and CAA Directors in authorized States or regional RCRA and CAA Directors in unauthorized States.*

(A) The generator must submit a one-time notice, except as provided by paragraph (b)(2)(i)(C) of this section, to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(1) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(2) The applicable EPA Hazardous Waste Code(s) that would otherwise apply to the excluded

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fuel:

(3) The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this section, that will burn the excluded fuel;

(4) An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by paragraph (b)(2)(i)(C) of this section; and

(5) The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative: Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of DRGHW §261.38 have been met for all comparable fuels identified in this notification. Copies of the records and information required at DRGHW §261.38(b)(8) are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(B) If there is a substantive change in the information provided in the notice required under this paragraph, the generator must submit a revised notification.

(C) Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008 for newly excluded fuel or for revised notices as required by paragraph (b)(2)(i)(B) of this section.

(ii) Public notice. Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:

(A) Name, address, and RCRA ID number of the generating facility(ies);

(B) Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the

excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the excluded fuel to

be burned; and

(E) Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for the exclusion.

(3) Burning. The exclusion applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable requirements implementing section 112 of the Clean Air Act and 7 DE Admin. Code 1100, Air Quality Management Section:

(i) Industrial furnaces as defined in §260.10 of these regulations;

(ii) Boilers, as defined in §260.10 of these regulations, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of these regulations and applicable CAA MACT and 7 DE Admin. Code 1100, Air Quality Management Section standards.

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(4) Fuel analysis plan for generators.

The generator of an excluded fuel shall develop and follow a written fuel analysis plan which describes the procedures for sampling and analysis of the material to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.

(i) At a minimum, the plan must specify:

(A) The parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;

(D) The frequency with which the initial analysis of the excluded fuel will be reviewed or repeated

to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the determination, any information prepared by the generator in making such determination.

(ii) For each analysis, the generator shall document the following:

(A) The dates and times that samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

methods:
(E) A description of the analytical methods used, including any clean-up and sample preparation

methods:
(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating whether the exclusion specifications have been met; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(9) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of paragraph (b)(4)(i) of this section to the appropriate regulatory authority. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(5) Excluded fuel sampling and analysis.

(i) General. For wastes for which an exclusion is claimed under the specifications provided by paragraphs (a)(1) or (a)(2) of this section, the generator of the waste must test for all the constituents in appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 1 to this section should not be present:

(A) A constituent that triggered the toxicity characteristic for the constituents that were the basis for listing the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in DRGHW §268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (b)(5): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.

(ii) Use of process knowledge. For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge pursuant to paragraph (b)(5)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(1) and (a)(2) of this section, as applicable, have been met.

(iii) The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:

(A) The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

(B) The analyses could have detected the presence of the constituent at or below the specification level.

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(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in §262.11 of these regulations, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under paragraph (b)(4) of this section.

(vii) *Viscosity condition for comparable fuel.*

(A) Excluded comparable fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as generated.

(B) If hazardous waste is blended to meet the kinematic viscosity specification for comparable fuel, the generator shall:

(1) Analyze the hazardous waste as generated to ensure that it meets the constituent and heating value specifications of paragraph (a)(1) of this section; and

(2) After blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications.

(viii) Excluded fuel must be retested, at a minimum, annually and must be retested after a process change that could change its chemical or physical properties in a manner that may affect conformance with the specifications.

(6) (Reserved)

(7) *Speculative accumulation.* Excluded fuel must not be accumulated speculatively, as defined in §261.1(c)(8).

(8) *Operating record.* The generator must maintain an operating record on site containing the following information:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA ID number of the person claiming the exclusion;

(B) For each excluded fuel, the EPA Hazardous Waste Codes that would be applicable if the material were discarded; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste:

(iii) The monthly and annual quantities of each fuel claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the excluded fuel as required under paragraph (b)(5)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;

(vi) If the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of paragraphs (a)(3) and (a)(4) of this section;

(vii) If the excluded fuel is to be shipped off-site, a certification from the burner as required under paragraph (b)(10) of this section;

(viii) The fuel analysis plan and documentation of all sampling and analysis results as required by paragraph (b)(4) of this section; and

(ix) If the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the excluded fuel for burning;

(B) The quantity of excluded fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and

(E) A one-time certification by the burner as required under paragraph (b)(10) of this section.

(9) Records retention. Records must be maintained for a period of three years.

(10) Burner certification to the generator. Prior to submitting a notification to the State and Regional Directors, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a onetime written, signed statement from the burner:

(i) Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (b)(3) of this section;

(ii) Identifying the name and address of the facility that will burn the excluded fuel; and

(iii) Certifying that the State in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(11) Ineligible waste codes. Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in appendix VII of this part, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to the full RCRA hazardous waste management requirements.

(12) Regulatory status of boiler residues. Burning excluded fuel that was otherwise a hazardous waste listed under §§261.31 through 261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.

(13) Residues in containers and tank systems upon cessation of operations.

(i) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under parts 262 through 265, 268, 122, and 124 of these regulations.

(ii) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed under §§261.31 through 261.33 when the exclusion was claimed.

(iii) Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under paragraphs (a)(1) or (a)(2) of this section are solid wastes subject to regulation as hazardous waste if:

(A) The waste exhibits a characteristic of hazardous waste under §§261.21 through 261.24; or

(B) The fuel were otherwise a hazardous waste listed under §§261.31 through 261.33. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.

(14) Waiver of RCRA Closure Requirements. Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under §262.34 of these regulations, are not subject to the closure requirements of DRGHW § Parts 264, and 265 provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this section, and that afterward will be used only to manage fuel excluded under this section.

(15) Spills and leaks.

(i) Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under §§261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed in §§261.31 through 261.33.

(ii) For excluded fuel that would have otherwise been a hazardous waste listed in §§261.31 through 261.33 and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.

(16) Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103 and 7 Del.C. §6028 (see 7 DE Admin. Code 1203, *Reporting of a Discharge of a Pollutant or Air Contaminant*), which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.

(c) Failure to comply with the conditions of the exclusion. An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this section, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or the Department may take enforcement action under RCRA section 3008(a) or 7 Del.C. Chapters 60 and/or 63.

The image of the replacement Table 1, below, is shown in black. (Please refer to the online version of the proposed regulation for the table)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)
24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 2.0 - Use of Rifle and Shotgun and Adopted Rule 4.0 - Training Requirements. The amendment to Rule 2.0 changes the Department of Homeland Security threat level to comply with the Federal levels. The amendment to Rule 4.0 requires a new training certification for each new application or re-application. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304.

Any persons wishing to present views may submit them in writing, by October 31, 2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 27, 2011, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

1300 Board of Examiners of Private Investigators & Private Security Agencies

1.0 Firearm's Policy

- 1.1 No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course of instruction and an initial qualification administered by a Board approved certified firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement).
- 1.2 Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per calendar year, scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year.
 - 1.2.1 An individual not meeting the minimum qualifications set forth in 1.2. may have their firearms license suspended until such time that they meet the minimum three (3) qualifying shoots within the calendar year.
- 1.3 Firearms - approved type of weapons
 - 1.3.1 9mm
 - 1.3.2 .357
 - 1.3.3 .38
 - 1.3.4 .40
 - 1.3.5 .45
- 1.4 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 1.5 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

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- 1.6 All individuals must qualify with the same type of weapon that he/she will carry.
 - 1.7 All ammunition will be factory fresh (no re-loads).
 - 1.8 The minimum passing score is 80%.
 - 1.9 All licenses are valid for a period of five (5) years, subject to proof of compliance of Rule 1.0 by submission of shoot certification or re-certification forms by January 31st of each year for the previous calendar year.
 - 1.10 Firearms Instructors
 - 1.10.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), and/or another professional firearms training institution as a "certified firearms instructor".
 - 1.10.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified shotgun instructor may only instruct and qualify individual with the shotgun.)
 - 1.10.3 All firearms instructors must be approved by the Board before they are authorized to instruct or qualify individuals licensed under Title 24 Chapter 13.

Adopted 11/04/1994**3 DE Reg. 960 (1/1/00)****7 DE Reg. (3/1/04)****13 DE Reg. 502 (10/01/09)****14 DE Reg. 1395 (06/01/11)****2.0 Use of Rifle and Shotgun**

- 2.1 Whereas there exists a need for private security officers in the State of Delaware to be equipped to handle situations where the risk of terrorist activity is high, or at special events where there is a high risk of violent activity or attack, the following rules are established to regulate the use of rifles and shotguns by security services contractors in the State.
- 2.2 The Governor of the State of Delaware, or designee, or the Superintendent of State Police, or designee, may authorize specified security services contractors to deploy guards with rifles and/or shotguns, as appropriate to the defense of critical infrastructure facilities, or private business facilities and operations reasonably believed to be at risk of violent activity or attack likely to result in injury or significant damage to or loss of property. The situations where such protection would be required would include, but not be limited to:
 - 2.2.1 An increase in the threat level from the Department of Homeland Security to "~~Orange~~" "Imminent Threat Alert", or higher;
 - 2.2.2 Special circumstances where additional protection would be deemed appropriate, including but not limited to:
 - 2.2.2.1 Credible threats to local facilities or operations;
 - 2.2.2.2 Response to natural disasters;
 - 2.2.2.3 Response to biological or chemical threats;
 - 2.2.2.4 Civil unrest.
 - 2.2.3 Any situation where additional trained responders are required to assist in the protection of life and property in the State of Delaware;
 - 2.2.4 An armored car company or agency, as defined by 24 **Del.C.** §1302(1), dealing with a credible threat or genuine risk to life or to property.
- 2.3 Guards who would be deployed and authorized to use such additional weaponry would be required to:
 - 2.3.1 Be trained by certified firearms instructors pursuant to State of Delaware standards;
 - 2.3.2 Be required to re-qualify with the weapons on a three times per year basis;
 - 2.3.3 Maintain a handgun firearms license through the State;
 - 2.3.4 Be listed by name on a roster of authorized individuals; and

2.3.5 Maintain employment in good standing with their security services contractor employer at all times for inclusion on the list.

2.4 Guards using such firearms would be required to maintain strict compliance with the provisions of 24 Del.C. §1321.

2.5 Rifles deemed appropriate for use in the State would be .30 caliber weapons, .223 caliber weapons, 9mm rifle type weapons, and other weapons approved by the Superintendent, or designee, as need and technology dictate. Shotguns would be of the 12 gauge law enforcement/military style weapons. All firearms would be subject to the approval of the Superintendent or designee.

10 DE Reg. 1445 (03/01/07)

3.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

Adopted 11/04/1994

13 DE Reg. 502 (10/01/09)

4.0 Training Requirements

4.1 Each person licensed as a security guard under Title 24 Chapter 13 shall undertake a total of sixteen (16) hours of training through a program approved by the Board, and any such additional training as the Board deems appropriate.

4.2 The required training shall include instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.

4.3 The Professional Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this regulation.

4.4 Training certifications shall be submitted with each new application or re-application and the training shall be completed no more than one year prior to submission of the application.

11 DE Reg. 810 (12/01/07)

5.0 Use Of Animals

The use of animals is prohibited in the performance of private security activities.

Adopted 04/23/1998

3 DE Reg. 960 (1/1/00)

6.0 Criminal Offenses

6.1 In addition to those qualifications set forth in Title 24, Chapter 13, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III within the last three (3) years.

6.2 For the purposes of Chapter 13 of Title 24 of the Delaware Code, the Board may deny an application for a license or suspend or revoke a license if the applicant or licensee has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):

6.2.1 Title 11:

6.2.1.1 §763 Sexual harassment;

6.2.1.2 §764 Indecent exposure in the second degree;

6.2.1.3 §765 Indecent exposure in the first degree;

- 6.2.1.4 §766 Incest;
- 6.2.1.5 §767 Unlawful sexual contact in the third degree;
- 6.2.1.6 §781 Unlawful imprisonment in the second degree;
- 6.2.1.7 §840 Shoplifting;
- 6.2.1.8 §861 Forgery;
- 6.2.1.9 §871 Falsifying Business Records
- 6.2.1.10 §881 Bribery
- 6.2.1.11 §907 Criminal Impersonation
- 6.2.1.12 §1101 Abandonment of a Child;
- 6.2.1.13 §1102 Endangering the Welfare of a Child;
- 6.2.1.14 §1105 Endangering the Welfare of an Incompetent Person;
- 6.2.1.15 §1106 Unlawfully Dealing with a Child;
- 6.2.1.16 §1107 Endangering Children;
- 6.2.1.17 §1245 Falsely Reporting an Incident;
- 6.2.1.18 §1341 Lewdness;
- 6.2.1.19 §1342 Prostitution;
- 6.2.1.20 §1343 Patronizing a Prostitute; and
- 6.2.1.21 §1355 Permitting Prostitution

6.2.2 Title 16

- 6.2.2.1 §1166 Patient Neglect or Abuse

6.2.3 Title 31

- 6.2.3.1 §3913 Abuse/Neglect/Exploitation/Mistreatment of an Infirm Adult.

- 6.3 Anyone applying for licensure under **Title 24, Chapter 13** shall not be issued a license if they have any pending criminal charge(s) for any crimes listed in this Chapter.
- 6.4 The Professional Licensing Section may suspend anyone licensed under **Title 24, Chapter 13** who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

Adopted 11/04/1994

13 DE Reg. 502 (10/01/09)

14 DE Reg. 1395 (06/01/11)

7.0 Employment Notification

- 7.1 Under no circumstances will a security guard be permitted to be employed by more than **two** agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact.)
- 7.2 Anyone applying for licensure under this chapter may be rejected without refund, or have their license revoked, for knowingly omitting any criminal history, other material information or to make a false statement on their application.
- 7.3 Employers Responsibility
 - 7.3.1 A licensed private security agency, after investigation, shall notify the Professional Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.
 - 7.3.2 A licensed private security agency shall report to the Professional Licensing Office, in writing, the following:
 - 7.3.2.1 The name of any employee arrested;
 - 7.3.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

- 7.3.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

Adopted 11/04/1994

4 DE Reg. 361 (8/1/00)

13 DE Reg. 502 (10/01/09)

14 DE Reg. 1395 (06/01/11)

8.0 Private Investigators

- 8.1 A Private Investigator shall not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other state of federal jurisdiction.
- 8.2 The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.
- 8.3 A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

Adopted 11/04/1994

13 DE Reg. 502 (10/01/09)

9.0 Qualified Manager/License Holder

- 9.1 A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.
- 9.2 A qualified license holder must be an owner/partner/corporate officer of the agency requesting licensure.

Adopted 11/04/1994

8 DE Reg. 325 (8/1/04)

10.0 Uniforms, Patches, Badges, Seals, Vehicular Markings Amended 04/17/97

- 10.1 No person licensed under 24 **Del.C.** Ch. 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be preceded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.
- 10.2 Advertisement and other forms of publications:
- 10.2.1 No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.
- 10.2.2 All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.
- 10.3 Vehicle Identification
- 10.3.1 No person or entity licensed under Title 24, Chapter 13 of the **Delaware Code** shall utilize any vehicle in the course of activities covered by said Chapter 13, unless the appearance of the

vehicle, including any identifying marking, shall have been first approved by the Board of Examiners using the standards and criteria set forth in this Rule.

- 10.3.2 The content of any vehicle marking shall be governed by the standards and criteria set forth in Rule 10.1 above.
- 10.3.3 No vehicle utilized for purposes covered by Title 24, Chapter 13 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Rule.
- 10.3.4 In the event that a vehicle is not approved by the Board of Examiners pursuant to this Rule, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standard and criteria set forth above.
- 10.3.5 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

Adopted 11/04/1994

3 DE Reg. 960 (1/1/00)

Adopted 11/04/1994

3 DE Reg. 960 (1/1/00)

8 DE Reg. 325 (8/1/04)

11.0 Personnel Rosters and Job Assignments

- 11.1 Anyone licensed under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the Director of the Professional Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith	01/25/60	W	M	01/25/99	FA
Helen E. White	03/17/71	B	F	03/17/00	FA
John F. Henry	05/23/43	B	M	05/23/00	PI
James D. Williams	12/03/40	W	M	06/30/99	MG
Frank G. Montgomery	07/24/55	B	M	06/30/99	LH
Anne L. Murray	10/20/40	W	F	06/30/99	CO

SG	Security Guard
FA	Firearm's
PI	Private Investigator
MG	Delaware Manager
LH	License Holder
CO	Corporate Officer

- 11.2 Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry
Barley Mill Road
2200 - 0600 Hours, Monday, Wednesday, and Friday

Adopted 11/04/1994

3 DE Reg. 960 (1/1/00)

12.0 Record Book; Right of Inspection

All persons licensed under 24 **Del.C.** Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

Adopted 11/04/1994

3 DE Reg. 960 (1/1/00)

13.0 Licensing Fees

13.1 Class A License - Private Investigative Agency

13.1.1 In-State License Holder

13.1.1.1 Individual - No Employees - Not Corporation

13.1.1.1.1 \$230

13.1.1.1.2 \$5,000 Bond

13.1.1.1.3 \$1,000,000 Liability Insurance per occurrence

13.1.1.2 Corporation - Has Employees

13.1.1.2.1 \$345

13.1.1.2.2 \$10,000 Bond

13.1.1.2.3 \$1,000,000 Liability Insurance per occurrence

13.1.2 Out-of-State

13.1.2.1 License Holder - Individual and Corporation

13.1.2.1.1 \$345

13.1.2.1.2 \$10,000 Bond

13.1.2.1.3 \$1,000,000 Liability Insurance per occurrence

13.1.2.2 Delaware Manager

13.1.2.2.1 \$230

13.1.2.2.2 \$5,000 Bond

13.2 Class B License - Private Security Agency

13.2.1 In-State License Holder

13.2.1.1 Individual - No Employees - Not Corporation

13.2.1.1.1 \$230

13.2.1.1.2 \$5,000 Bond

13.2.1.1.3 \$1,000,000 Liability Insurance per occurrence

13.2.1.2 Corporation - Has Employees

13.2.1.2.1 \$345

13.2.1.2.2 \$10,000 Bond

13.2.1.2.3 \$1,000,000 Liability Insurance per occurrence

13.2.2 Out-of-State

13.2.2.1 License Holder - Individual and Corporation

13.2.2.1.1 \$345

13.2.2.1.2 \$10,000 Bond

13.2.2.1.3 \$1,000,000 Liability Insurance per occurrence

13.2.2.2 Delaware Manager

13.2.2.2.1 \$230

13.2.2.2.2 \$5000 Bond

13.3 Class C License - Private Investigative & Private Security Agency

- 13.3.1 In-State License Holder
 - 13.3.1.1 Individual - No Employees - Not Corporation
 - 13.3.1.1.1 \$345
 - 13.3.1.1.2 \$10,000 Bond
 - 13.3.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 13.3.1.2 Corporation - Has Employees
 - 13.3.1.2.1 \$520
 - 13.3.1.2.2 \$15,000 Bond
 - 13.3.1.2.3 \$1,000,000 Liability Insurance per occurrence
- 13.3.2 Out-of-State
 - 13.3.2.1 Individual and Corporation
 - 13.3.2.1.1 License Holder
 - 13.3.2.1.1.1 \$520
 - 13.3.2.1.1.2 \$15,000 Bond
 - 13.3.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 13.3.2.1.2 Delaware Manager
 - 13.3.2.1.2.1 \$345
 - 13.3.2.1.2.2 \$10,000 Bond
- 13.4 Class D License - Armored Car Agency License
 - 13.4.1 License Holder
 - 13.4.1.1 \$345
 - 13.4.1.2 Banking Commissioner License as required by 5 Del.C. §3203
 - 13.4.1.3 \$10,000 Bond
 - 13.4.1.4 \$1,000,000 Liability Insurance per occurrence.
 - 13.4.2 Delaware Manager
 - 13.4.2.1 \$230
 - 13.4.2.2 \$5000 Bond
- 13.5 All licenses will expire 2 years from the last day of the month they are approved for licensure.
6 DE Reg. 637 (11/01/02)
7 DE Reg. (03/01/04)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)
10 DE Admin. Code 103

PUBLIC NOTICE

103 Regulations Governing Charitable Gambling Other Than Raffles

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

One proposed amendment is to add two new definitions to Rule 1.0 in 10 **DE Admin. Code** 103. One amendment would add a definition of the term “charitable gaming vendor” which would be the term used to describe third party vendors who assist charitable organizations in conducting Texas Hold ‘Em and charitable gaming events. The other would add a definition of the term “officer” to indicate that the term includes investors, managers and others involved in the operation of the charitable gaming vendor.

A second proposed amendment would add a new Rule 14.0 and renumber current Rule 14.0 to become Rule 16.0 in 10 **DE Admin. Code** 103. The new rule would explain the requirements for the licensing of charitable gaming vendors and the required background checks required of officers of such vendors.

A third proposed amendment would add a new Rule 15.0 in 10 **DE Admin. Code** 103, which would explain the Board’s view on the number of events organizations may have when they are affiliated with other organizations.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, November 3, 2011 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before October 31, 2011 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

The amendments would add a definition of the term “charitable gaming vendor” and “officer” and also explain in detail the licensure requirements for such vendors so that the Board may adhere to new legislation calling for it to license third party vendors who assist charitable organizations in conducting gaming events, and the new legislation’s requirement that the Board mandate criminal background checks of vendors and their officers. A similar rule would appear showing licensure requirements for Texas Hold ‘Em dealers, which requirements already appear in the statute. A new rule will explain that organizations are limited in the number of events that can be held. If an organization has affiliated entities, they must share in the number of permitted events. But if the organization is operating under another charitable organization’s status and with that organization’s permission, such as local branches of national charities where the local branches are independent of each other, then each of those local entities is entitled to have the maximum number of events without the need to share them with the other local branches.

103 Regulations Governing Charitable Gambling Other Than Raffles

1.0 Definitions

“Board” The Delaware Gaming Control Board.

“Charitable Gambling” Any game or scheme operated by an organization which has been in existence for two (2) years or longer in which chance is the dominant factor in determining the allocation of a prize, excluding slot machines, roulette, craps, baccarat games, or raffles as defined in the Board’s Regulations for Raffles.

“Charitable gaming vendor” is a term which the Board may use to describe a “third party vendor” as that term appears in Title 28 of the Delaware Code. It is an entity licensed to do business in Delaware which is in the business of assisting charitable organizations in conducting gaming events through leasing of premises for the events, providing personnel or equipment to help conduct events or providing other assistance which helps the organization to provide the event.

“Function” is a licensed event of Charitable Gambling maintained and conducted by a Sponsoring Organization for the disposal of awards of merchandise, cash, or its equivalent by means of **“Game”** as defined in this section. This includes without limitation thereto, so-called Las Vegas, Casino, or Monte Carlo Nights.

“Game” shall include without limitation card games such as draw poker, stud poker, or blackjack, devices such as big six wheels or similar devices, dice games other than craps, horse racing games, Nevada cards or pull tabs or any other activity similar to these mentioned games approved by the Board.

“Gross Receipts” means the total amount of money or other consideration received as admission fees, income from gambling and except for a bazaar, carnival, festival, or similar affair, from the sale of food and beverages from any one event.

“Instant Bingo” shall mean any game of chance played with sealed or covered cards which must be opened in some fashion by the holder, such that the cards reveal instantly whether the holder has won a prize. This game includes, but is not limited to games commonly known as “rip-offs” and “Nevada pull-tabs.”

“Net Proceeds” is Gross Receipts less license fee, prizes and reasonable and necessary expenses ordinarily incidental to the conduct of a function.

“Officer” as used in these regulations includes owners, directors, partners, members, investors, managers, shareholders or any other person involved in the operation of the business of a charitable gaming vendor. All such persons must undergo the criminal background checks and all other requirements.

“Sponsoring Organization” Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

2 DE Reg. 1224 (01/01/99)

(Break in Continuity of Sections)

14.0 Licensure

- 14.1 A charitable gaming vendor must hold a valid business license issued by the State of Delaware, which must remain current. The vendor must inform the Board within ten days if the license lapses. The Board may suspend or revoke a vendor’s license for failure to maintain a current Delaware business license or for failing to inform the Board of the loss of a business license.
- 14.2 The vendor also must be licensed by the Board as a charitable gaming vendor. To become licensed, the vendor shall file an application prepared by the Board or by the Division of Professional Regulation (“Division”). The application must be signed by all officers of the vendor.
- 14.3 Investigators assigned to the Division will conduct an investigation to determine the suitability of the applicant for licensure. The investigator will provide his or her recommendation of suitability of each applicant to the Delaware Board of Charitable Gaming. The Division’s investigators may access the state and federal criminal history databases for the purpose of reviewing the criminal history of any individual applicant or officer of an applicant.
- 14.4 All officers of such vendors shall be required to undergo criminal background checks as a requirement for licensure. The applicant’s officers must contact the State Bureau of Identification (“Bureau”) to make arrangements for fingerprint processing. The officers must complete a fingerprint card and form with the necessary personal information and sign an Authorization for Release of Information form to release criminal history records to the Division of Professional Regulation (“Division”) and the Delaware Board of Charitable Gaming. At the time of processing the officers must show proof of official identification to complete the criminal history request. A fee is required to be paid for state and federal processing of fingerprint cards and criminal history records. The fee is set by the Bureau, and the officers shall make that payment directly to that agency. Certified copies of the criminal history record shall be forwarded to the Division. The Bureau shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Investigation. The Bureau shall forward the results of these federal record checks to the attention of the Division, along with the results of a report of the individual’s entire criminal history record from the Bureau or a statement from the Bureau that its Central Repository contains no such information relating to that person, in a confidential manner. The Division may provide the individual officer with a copy of the criminal history records upon written request. The officer shall have the opportunity to respond to the Division regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) days of the person’s receipt of the criminal background information from the Division.
- 14.5 In making the determination of suitability for licensure, the Board of Charitable Gaming shall consider the background of each individual applicant or officer of the applicant. The licensure requirement shall include the satisfaction of such security, fitness and background standards as the Board may deem necessary relating to competence, honesty and integrity, such that a person’s reputation, habits and

PROPOSED REGULATIONS

associations do not pose a threat to the public interest of the State or to the reputation of or effective regulation and control of charitable gaming. It is specifically provided that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or any time thereafter shall be deemed unfit, and if such person is an officer of an applicant, the applicant shall be deemed unfit. The Board shall also consider the applicant's or the officer's truthfulness in disclosing requested information, particularly in regard to the criminal history.

- 14.6 The Board shall communicate the results of the determination of suitability in writing to the applicant within sixty (60) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Board determines that an applicant has satisfied the licensing requirements, the applicant will be issued a license. If an applicant is denied a license, the applicant may appeal for reconsideration as set forth below.
- 14.6.1 Appeal may be initiated by an applicant notified that the license was denied by submitting a request for a hearing to the Board of Charitable Gaming within ten (10) days of receipt of the notice of denial.
- 14.6.2 The appeal shall be reviewed by the Board and the person shall be given the opportunity to be heard by the Board within sixty (60) days of receipt of the letter of appeal, unless extenuating circumstances require a longer period. The hearing will be held in accordance with the Administrative Procedures Act, 29 **Del.C.**, Chapter 101.
- 14.6.3 A written decision shall be rendered by the Board within sixty (60) days of the hearing, unless extenuating circumstances require a longer period. All decisions are final and may then be appealed to Superior Court under 29 **Del.C.** §10142.
- 14.7 An determined to be unsuitable for licensure pursuant to this procedure shall be prohibited from reapplying for licensure for a period of twelve (12) months.
- 14.8 All records pertaining to criminal background checks and suitability determinations shall be maintained in a confidential manner including, but not limited to, the following:
- 14.8.1 Access to criminal background check records, letters of reference accompanying out-of-state criminal background checks and determination of suitability of applicants shall be limited to the Board and designated personnel within the Division;
- 14.8.2 All such records shall be kept in locked cabinets or as digital files; and
- 14.8.3 No information from such records shall be released without the signed release of the individual applicant or officer.
- 14.9 All records pertaining to criminal background checks and suitability determinations of applicants for licensure and Board of Charitable Gaming meetings to make suitability determinations shall not be subject to the Delaware Freedom of Information Act, Title 29, Chapter 100.
- 14.10 The license shall expire and be renewable every three (3) years. Ninety (90) days prior to expiration, each licensee shall contact the Division of Professional Regulation and submit a new and updated license application form and undergo an investigation as in the original licensing.
- 14.11 Officers of licensees shall notify the Division of Professional Regulation no later than three (3) days after an arrest for any crime, excluding minor traffic violations. The Division will forward this information to the Board and the Board may proceed to determine the person's continuing suitability as a licensee, and may suspend the license until the criminal charges have been resolved.

15.0 Maximum Number of Permissible Events

- 15.1 Under the terms of 28 **Del.C.** §1139(c), §1827 and 10 **DE Admin. Code** 103 Rule 8.1, organizations are limited in the number of bingo, Texas Hold 'Em and charitable gaming events which they may conduct. The Board has held that a Delaware charitable organization that establishes a subsidiary group or groups, such as an auxiliary which does not have its own separate Employee Identification Number or Federal Identification Number from the Internal Revenue Service, will be required to share its limited number of permissible events with the subsidiary group. For example, since five (5) Texas Hold 'Em tournaments are permitted in one year under 28 **Del.C.** §1827, the main group and the

subsidiary group or groups may have a total of five (5) tournaments between or among them, rather than each entity being permitted to have up to five tournaments.

15.2 If the subsidiary group obtains its own separate Employer Identification Number or federal identification number from the Internal Revenue Service, then the subsidiary group may itself have the maximum number of events.

15.3 However, the Board views national charitable organizations with Delaware affiliates differently. If there are several affiliates of a national charitable organization in Delaware, and each is independent of the others, each affiliate may seek up to the maximum number of permissible events through use of the notice of charitable standing granted to the national organization, provided the national organization confirms that the affiliate has its permission to do so. Each Delaware affiliate of a national charitable organization may request permission to conduct up to the maximum number of permissible events.

146.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

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

[103 Regulations Governing Charitable Gambling Other Than Raffles](#)

DIVISION OF PROFESSIONAL REGULATION

Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)

10 DE Admin. Code 104

PUBLIC NOTICE

104 Regulations Governing Texas Hold 'Em Poker

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

One proposed amendment would create a new rule in 10 DE Admin. Code 104 explaining the requirements for licensing dealers in Texas Hold 'Em tournaments. These requirements are currently found in the statute at 28 Del.C. §1832, and would be essentially the same requirements as for licensing charitable gaming vendors.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, November 3, 2011 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before October 31, 2011 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

The amendments would add a definition of the term "charitable gaming vendor" and "officer" and also explain in detail the licensure requirements for such vendors so that the Board may adhere to new legislation calling for it to license third party vendors who assist charitable organizations in conducting gaming events, and the new legislation's requirement that the Board mandate criminal background checks of vendors and their officers. A

similar rule would appear showing licensure requirements for Texas Hold 'Em dealers, which requirements already appear in the statute. A new rule will explain that organizations are limited in the number of events that can be held. If an organization has affiliated entities, they must share in the number of permitted events. But if the organization is operating under another charitable organization's status and with that organization's permission, such as local branches of national charities where the local branches are independent of each other, then each of those local entities is entitled to have the maximum number of events without the need to share them with the other local branches.

104 Regulations Governing Texas Hold 'Em Poker

1.0 Reports After the Function

- 1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

2.0 Limitation of Texas Hold 'Em Tournaments

- 2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least 70 days apart" in 28 **Del.C.** §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than 70 days from the date of their immediately prior tournament.
- 2.2 A sponsoring organization and any auxiliary seeking to hold a tournament with the sponsoring organization's approval may hold up to a total of five tournaments per year. It is not permissible for a sponsoring organization to hold up to five tournaments and for an auxiliary to also hold up to five tournaments per year.
- 2.3 Only a member of the sponsoring organization may receive the funds during the tournament.

12 DE Reg. 357 (9/01/08)

13 DE Reg. 107 (07/01/09)

13 DE Reg. (01/01/10)

13 DE Reg. 1580 (06/01/10)

3.0 Re-buys

The statutory provisions of 28 **Del.C.** §1825 and 28 **Del.C.** §1826(2) do not harmonize. Consequently, the Board has determined that re-buys are optional.

11 DE Reg. 516 (10/01/07)

4.0 Application

An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.

12 DE Reg. 357 (9/01/08)

5.0 Prize Amount

No prize greater in amount or value than \$5,000 shall be offered or given in any single tournament and the aggregate amount or value of all prizes offered or given in any single tournament shall not exceed \$13,000.

13 DE Reg. 412 (09/01/09)

6.0 Licensure

- 6.1 All employees, principals, owners and contractors of third party vendors or charitable gaming vendors involved in conducting a Texas Hold 'Em tournament shall be licensed. Only members of the sponsoring organization who are serving as dealers, bookkeepers or treasurers, or as the tournament director for the tournament shall be licensed.
- 6.2 Investigators assigned to the Division will conduct an investigation to determine the suitability of the applicant for licensure. The investigator will provide his or her recommendation of suitability of each applicant to the Delaware Board of Charitable Gaming. The Division's investigators may access the state and federal criminal history databases for the purpose of reviewing the criminal history of any individual applicant.
- 6.3 The applicant must contact the State Bureau of Identification ("Bureau") to make arrangements for fingerprint processing. The applicant must complete a fingerprint card and form with the necessary personal information and sign an Authorization for Release of Information form to release criminal history records to the Division of Professional Regulation ("Division") and the Delaware Board of Charitable Gaming. At the time of processing the applicant must show proof of official identification to complete the criminal history request. A fee is required to be paid for state and federal processing of fingerprint cards and criminal history records. The fee is set by the Bureau, and the applicant shall make that payment directly to that agency. Certified copies of the criminal history record shall be forwarded to the Division. The Bureau shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Investigation. The Bureau shall forward the results of these federal record checks to the attention of the Division, along with the results of a report of the individual's entire criminal history record from the Bureau or a statement from the Bureau that its Central Repository contains no such information relating to that person, in a confidential manner. The Division will provide the applicant with a copy of the criminal history records. The applicant shall have the opportunity to respond to the Division regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) days of the person's receipt of the criminal background information from the Division.
- 6.4 In making the determination of suitability for licensure, the Board of Charitable Gaming shall consider the background of each individual applicant. The licensure requirement shall include the satisfaction of such security, fitness and background standards as the Board may deem necessary relating to competence, honesty and integrity, such that a person's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of or effective regulation and control of charitable gaming. It is specifically provided that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or any time thereafter shall be deemed unfit. The Board shall also consider the applicant's truthfulness in disclosing requested information, particularly in regard to the criminal history.
- 6.5 The Board shall communicate the results of the determination of suitability in writing to the applicant within sixty (60) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Board determines that an applicant has satisfied the licensing requirements, the applicant will be issued a license. If an applicant is denied a license, the applicant may appeal for reconsideration as set forth below.
- 6.5.1 Appeal may be initiated by an applicant notified that the license was denied by submitting a request for a hearing to the Board of Charitable Gaming within ten (10) days of receipt of the notice of denial.
- 6.5.2 The appeal shall be reviewed by the Board and the person shall be given the opportunity to be heard by the Board within sixty (60) days of receipt of the letter of appeal, unless extenuating circumstances require a longer period. The hearing will be held in accordance with the Administrative Procedures Act, 29 Del.C., Chapter 101.
- 6.5.3 A written decision shall be rendered by the Board within sixty (60) days of the hearing, unless extenuating circumstances require a longer period. All decisions are final and may then be appealed to Superior Court under 29 Del.C. §10142.

PROPOSED REGULATIONS

- 6.6 An applicant determined to be unsuitable for licensure pursuant to this procedure shall be prohibited from reapplying for licensure for a period of twelve (12) months.
- 6.7 All records pertaining to criminal background checks and suitability determinations shall be maintained in a confidential manner including, but not limited to, the following:
- 6.7.1 Access to criminal background check records, letters of reference accompanying out-of-state criminal background checks and determination of suitability of applicants shall be limited to the Board and designated personnel within the Division;
- 6.7.2 All such records shall be kept in locked cabinets or as digital files; and
- 6.7.3 No information from such records shall be released without the signed release of the individual applicant or officer.
- 6.7.3.1 All records pertaining to criminal background checks and suitability determinations of applicants for licensure and Board of Charitable Gaming meetings to make suitability determinations shall not be subject to the Delaware Freedom of Information Act, Title 29, Chapter 100.

DIVISION OF PROFESSIONAL REGULATION

1700 Board of Medical Licensure and Discipline

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

PUBLIC NOTICE

1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations. The proposal creates new Regulation 32 - Use of Controlled Substances for the Treatment of Pain.

The Board will hold a public hearing on November 1, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments on the regulations as republished. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

1700 Board of Medical Licensure and Discipline

(Break in Continuity of Sections)

32.0 Use of Controlled Substances for the Treatment of Pain: Purpose

The Board has adopted the Federation of State Medical Board's "Model Policy for the Use of Controlled Substances for the Treatment of Pain" ("Model Policy). These regulations have been developed to define specific requirements applicable to pain control, particularly related to the use of controlled substances, to alleviate licensed practitioners' uncertainty, to encourage better pain management, and to minimize practices that deviate from the appropriate standard of care and lead to abuse and diversion. Licensed practitioners should familiarize themselves with the Model Policy available online at www.dpr.delaware.gov. To the extent there are any inconsistencies between these regulations and the Model Policy, these regulations shall control.

The principles of quality medical practice dictate that citizens of Delaware have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs

associated with untreated or inappropriately treated pain. The inappropriate treatment of pain includes a wide spectrum of issues that do not provide treatment appropriate to the patients' specific needs.

The diagnosis and treatment of pain is integral to the practice of medicine. Licensed practitioners view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. Licensed practitioners should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. These regulations are primarily directed to the treatment of chronic pain but are applicable to prescribing controlled substances for other conditions as well.

Inappropriate pain treatment may result from the practitioner's lack of knowledge about pain management. Fears of investigation or sanction by federal, state and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating practitioner's responsibility. As such, the Board will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The Board recognizes that controlled substances including opioid analgesics may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and non-pharmacologic modalities according to the judgment of the licensed practitioner. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain, and treatment outcomes. Licensed practitioners should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and alone are not the same as addiction.

The Board recognizes that the use of opioid analgesics for other than legitimate medical purposes can pose a threat to the individual and society and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, these regulations mandate that licensed practitioners incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

Licensed practitioners should not fear disciplinary action from the Board for ordering, prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the course of professional practice. The Board will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a licensed practitioner-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state or federal law is required.

The Board will judge the validity of the licensed practitioner's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.

Allegations of inappropriate pain management will be evaluated on an individual basis. The Board will take disciplinary action against a licensed practitioner for deviating from these regulations unless contemporaneous medical records document reasonable cause for deviation. The practitioner's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

32.1 The following criteria must be used when evaluating the treatment of pain, including the use of controlled substances:

32.1.1 Evaluation of the Patient- A medical history and physical examination must be obtained, evaluated, and documented in the medical record. The evaluation must document:

32.1.1.1 etiology, the nature and intensity of the pain, current and past treatments for pain,

32.1.1.2 underlying or coexisting diseases or conditions,

32.1.1.3 the effect of the pain on physical and psychological function, and history of substance abuse,

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- 32.1.1.4 the presence of one or more recognized medical indications for the use of a controlled substance.
- 32.2 Treatment Plan- A written treatment plan is required and must state goals and objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. The treatment plan must address whether treatment modalities or a rehabilitation program are necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. After treatment begins, the practitioner must adjust drug therapy to the individual medical needs of each patient.
- 32.3 Informed Consent - The practitioner must discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is without medical decision-making capacity.
- 32.4 Agreement for Treatment- If the patient is at high risk for medication abuse or has a history of substance abuse, the practitioner must use a written agreement between the practitioner and patient outlining patient responsibilities, including:
- 32.4.1 urine/serum medication levels screening when requested;
 - 32.4.2 number and frequency of all prescription refills; and
 - 32.4.3 reasons for which drug therapy may be discontinued (e.g., violation of agreement).
 - 32.4.4 a requirement that the patient receive prescriptions from one licensed practitioner and one pharmacy where possible.
- 32.5 Periodic Review- The licensed practitioner shall periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Periodic review shall include, at a minimum, evaluation of the following:
- 32.5.1 continuation or modification of controlled substances for pain management therapy depending on the practitioner's evaluation of the patient's progress toward treatment goals and objectives.
 - 32.5.2 satisfactory response to treatment as indicated by the patient's decreased pain, increased level of function, or improved quality of life. Objective evidence of improved or diminished function must be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment.
 - 32.5.3 if the patient's progress is unsatisfactory, the practitioner shall assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.
- 32.6 Consultation- The practitioner shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention must be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a co-morbid psychiatric disorder requires extra care, monitoring, documentation and may require consultation with or referral to an expert in the management of such patients. At a minimum, practitioners who regularly treat patients for chronic pain must educate themselves about the current standards of care applicable to those patients.
- 32.7 Medical Records- The practitioner shall keep accurate and complete records. The entire record must include the:
- 32.7.1 medical history and physical examination.
 - 32.7.2 diagnostic, therapeutic and laboratory results.
 - 32.7.3 evaluations and consultations.
 - 32.7.4 documentation of etiology;
 - 32.7.5 treatment objectives.
 - 32.7.6 discussion of risks and benefits.
 - 32.7.7 informed consent.
 - 32.7.8 treatments.
 - 32.7.9 medications (including date, type, dosage and quantity prescribed).
 - 32.7.10 instructions and agreements, and

32.7.11 periodic review.

32.8 Records should remain current and be maintained in an accessible manner and readily available for review. Each practitioner should include documentation appropriate for each visit's level of care and will include the:

32.8.1 interim history.

32.8.2 vital signs.

32.8.3 assessment of progress, and

32.8.4 medication plan.

32.9 Compliance with Controlled Substances Laws and Regulations- To prescribe, dispense or administer controlled substances, the practitioner must be licensed in the state and comply with all applicable federal and state regulations. Licensed practitioners are referred to the Practitioner's Manual of the U.S. Drug Enforcement Administration and specific rules governing controlled substances as well as applicable state regulations.

32.10 The following terms are defined as follows:

32.10.1 Acute Pain- Acute pain is the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is generally time-limited.

32.10.2 Addiction- Addiction is a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

32.10.3 Chronic Pain- Chronic pain is a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

32.10.4 Licensed Practitioner - Licensed practitioner means those licensed individuals with prescriptive authority regulated under the Medical Practice Act including, but not limited to, physicians, physician assistants and nurse practitioners.

32.10.5 Pain- An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

32.10.6 Physical Dependence- Physical dependence is a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

32.10.7 Pseudo addiction- The iatrogenic syndrome resulting from the misinterpretation of relief seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief seeking behaviors resolve upon institution of effective analgesic therapy.

32.10.8 Substance Abuse- Substance abuse is the use of any substance(s) for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

32.10.9 Tolerance- Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

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

[1700 Board of Medical Licensure and Discipline](#)

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

3600 Board of Registration of Geologists

Statutory Authority: 24 Delaware Code, Section 3603 (24 Del.C. §3603)
24 DE Admin. Code 3600

PUBLIC NOTICE

The Delaware Board of Geologist pursuant to 24 Del.C. §3606(a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to update the rules by adding provisions concerning a lapsed license, creating an inactive status, adding online courses and web seminars to CEU list and adding to the list of automatically approved course work for CEU requirements.

The Board will hold a public hearing on the proposed rule change on November 4, 2011 at 10 00 am., Second floor conference room B, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Sandra Wagner, Administrator of the Delaware Board of Geologist, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

3600 Board of Registration of Geologists

(Break in Continuity of Sections)

5.0 Issuance and Renewal of License

- 5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 Del.C. Ch. 36.
- 5.2 Renewal may be effected by:
 - 5.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov;
 - 5.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
 - 5.2.3 attesting on the renewal application to the completing of continuing education as required by Rule 6.0;
 - 5.2.4 payment of fees as determined by the Division of Professional Regulation.
- 5.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A geologist whose license has expired may renew his/her license within ~~one year~~ three months after the expiration date upon fulfilling items 5.2.1 - 5.2.4 above, certifying that he/she has not practiced geology in Delaware while his/her license has expired, and paying the renewal fee and a late fee which shall be 50% of the renewal fee.
 - 5.3.1 A licensee whose license lapses for non-renewal may renew within one year by paying the late fee required by Board Rule 5.3 and having completed all continuing education required for renewal. Late renewals shall be audited for satisfactory completion of the continuing education requirement.
- 5.4 No geologist will be permitted to renew his/her license once the one-year period has expired.
- 5.5 The former licensee may re-apply under the same conditions that govern applicants for licensure under 24 Del.C. Ch. 36.
- 5.6 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has expired.
- 5.7 Inactive Status
 - 5.7.1 A licensee may be placed on inactive status by the Board for a period of no more than two (2) years. After application to the Board and payment of a renewal fee, an inactive licensee may

obtain a new license and re-enter active practice after completion of the continuing education requirements below. A license not re-entered as active will lapse.

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

5.7.1.2 Inactive status for more than one (1) year: 24 CE hours and will automatically be audited

10 DE Reg. 567 (09/01/06)

6.0 Continuing Education

- 6.1 The Board will require continuing education as a condition of license renewal.
 - 6.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.
 - 6.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
 - 6.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3.
- 6.2 Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.
- 6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.
- 6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.
- 6.5 Continuing education shall be prorated for new licensees in the following manner:
 - 6.5.1 If at the time of renewal, a licensee has been licensed for less than one year, no continuing education is required; if he/she has been licensed for more than one year, but less than two years, twelve of the twenty-four hours will be required; if he/she has been licensed for two years or more the full twenty-four hours is required.
- 6.6 In his/her personal records, each licensee must keep proof of attendance for each activity for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.
- 6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.
- 6.8 Categories of Continuing Education & Maximum Credit Allowed:
 - 6.8.1 Courses/Workshops – 24 CEUs Total
 - Academic – 24 CEUs
 - Professional Development – 24 CEUs
 - Documentation – Proof of Completion
 - 6.8.2 Professional Activities – 12 CEUs Total
 - Meetings – 12 CEUs

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- Field Trips – 12 CEUs
 - Documentation – Proof of Attendance and Duration
- 6.8.3 Peer Reviewed Publications– 12 CEUs Total
 - Composition – 12 CEUs
 - Review – 12 CEUs
 - Documentation – Proof of Participation
- 6.8.4 Presentations/Seminars – 12 CEUs Total
 - Presentation – 12 CEUs (1 hour prep time per hour presented)
 - Attendance – 12 CEUs
 - Documentation – Proof of Attendance and Duration
- 6.8.5 Research/Grants – 12 CEUs Total
 - Documentation – Proof of Submission
- 6.8.6 Specialty Certifications – 12 CEUs Total
 - Documentation – Proof of Completion
- 6.8.7 ~~Home Study Courses~~ Online courses and Web seminars – 12 CEUs Total
 - Documentation – Proof of Completion
- 6.8.8 Teaching – 12 CEUs Total
 - Documentation – Verification from Sponsoring Institution
- 6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs Total
 - Documentation – Proof of Appointment
- 6.8.10 Regulatory Based Activities – 12 CEUs Total
 - Certifications/Training – 12 CEUs Total
 - Documentation – Proof of Completion
- 6.8.11 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.
- 6.9 Automatic Approval for course work sponsored by the following Professional Societies:
 - 6.9.1 American Association of Petroleum Geologists (AAPG)
 - 6.9.2 American Association of Stratigraphic Palynologists (AASP)
 - 6.9.3 American Geological Institute (AGI)
 - 6.9.4 American Geophysical Union (AGU)
 - 6.9.5 American Institute of Hydrology (AIH)
 - 6.9.6 American Institute of Professional Geologists (AIPG)
 - 6.9.7 Association of American State Geologists (AASG)
 - 6.9.8 Association of Earth Science Editors (AESE)
 - 6.9.9 Association of Engineering Geologists (AEG)
 - 6.9.10 Association of Ground Water Scientists & Engineers (AGWSE)
 - 6.9.11 Association of Women Geoscientists (AWG)
 - 6.9.12 Clay Mineral Society (CMS)
 - 6.9.13 Council for Undergraduate Research-Geology Div. (CUR)
 - 6.9.14 Geologic Society of America (GSA)
 - 6.9.15 Geoscience Information Society (GIS)
 - 6.9.16 International Association of Hydrogeologists/US National Committee (IAH)
 - 6.9.17 Mineralogical Society of America (MSA)
 - 6.9.18 National Association of Black Geologists and Geophysicists (NABGG)
 - 6.9.19 National Association of Geoscience Teachers (NAGT)

- 6.9.20 National Association of State Boards of Geology (ASBOG)
 - 6.9.21 National Earth Science Teachers Association (NESTA)
 - 6.9.22 National Speleological Society (NSS)
 - 6.9.23 Paleontological Research Institution (PRI)
 - 6.9.24 Paleontological Society (PS)
 - 6.9.25 Seismological Society of America (SSA)
 - 6.9.26 Society of Economic Geologists (SEG)
 - 6.9.27 Society of Exploration Geophysicists (SEG)
 - 6.9.28 Society of Independent Professional Earth Scientists (SIPES)
 - 6.9.29 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
 - 6.9.30 Society for Organic Petrology (TSOP)
 - 6.9.31 Society for Sedimentary Geology (SEPM)
 - 6.9.32 Society of Vertebrate Paleontology (SVP)
 - 6.9.33 Soil Science Society of America (SSSA)
 - 6.9.34 National Ground Water Association (NGWA)
 - 6.9.34~~5~~ Other professional or educational organizations as approved periodically by the Board.
- 6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.
- Note: Since regulation 6.9 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.10, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.9. Furthermore, one CEU = one Contact Hour.
- 6.11 Audit. Each biennium, the Division of Professional Regulation shall select from the list of potential renewal licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.12 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 6.13 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of geology, pursuant to 24 **Del.C.** §3612(a)(7). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Board may impose any of the additional penalties specified in 24 **Del.C.** §3612.
- 6.14 Noncompliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider

requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.

- 6.15 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

7 DE Reg. 1342 (4/1/04)

10 DE Reg. 567 (09/01/06)

11 DE Reg. 349 (09/01/07)

13 DE Reg. 682 (11/01/09)

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

3600 Board of Registration of Geologists

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 8510A (24 Del.C. §8510A)

PUBLIC NOTICE

8500 Rules and Regulations Regarding Mandatory Information to be Supplied to the State Bureau of Identification

The Delaware Division of Professional Regulation (Division) in cooperation with the Executive Director of the Delaware Criminal Justice Information System is proposing to adopt regulations governing what information the Division must supply to the State Bureau of Identification regarding the Division's investigations, civil enforcement actions or complaints, and changes in license status when such information is related to alleged criminal conduct.

The Director of the Division and the Executive Director of the Delaware Criminal Justice Information System Board solicit, and will consider, timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such written comments will be thirty days (30) after the proposed amended regulations are published in the Delaware *Register of Regulations*.

Written comments should be submitted to the Director in care of Shauna Slaughter, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

The Director will review written submission and consider promulgating the proposed regulations after comment period closes.

8500 Rules and Regulations Regarding Mandatory Information to be Supplied to the State Bureau of Identification

1.0 Source of Authority: 11 Del.C. §8510A

The Rules and Regulations herein contained constitute, comprise, and shall be known as the Rules and Regulations Regarding Mandatory Information to be supplied to the State Bureau of identification and are hereby promulgated, pursuant to 24 Del.C. §8510A.

2.0 Definitions

Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.

- 2.1 "Bureau" shall mean the Delaware State Bureau of Identification
- 2.2 "DELJIS" shall mean the Delaware Criminal Justice Information System.
- 2.3 "Director" shall mean the Director of the Division of Professional Regulation.
- 2.4 "Division" shall mean the Delaware Department of State, Division of Professional Regulation.
- 2.5 "Executive Director" shall mean the Executive Director of the Delaware Criminal Justice Information System.
- 2.6 "LEISS" shall mean the Law Enforcement Investigative Support System.
- 2.7 "Licensee" shall mean persons licensed, certified or registered under Titles 16, 23, 24, 28 and 29.

3.0 Purpose

The purpose of the rules and regulations is to establish appropriate guidelines for the Division to comply with the mandates of Title 11, §8510A. These rules serve to publish the agreed upon guidelines for the submission of information by the Director or designee to the Executive Director of DELJIS.

4.0 Reports of Criminal Conduct

- 4.1 Any investigation of a complaint or mandatory report conducted by the Division when there is reasonable cause to believe that criminal conduct has occurred shall be reported to the Executive Director of DELJIS within 30 days of making that determination. The manner of reporting shall be through the LEISS or in any other manner prescribed by the Executive Director.
- 4.2 All civil enforcement actions taken by the Division when it has been determined that criminal conduct has occurred or when testimony presented in the accompanying hearing has established evidence of criminal conduct, shall be reported to the Executive Director of DELJIS within 30 days of determining the existence of criminal conduct on the part of any licensee or other person.
- 4.3 Any change in license status (suspension, probation or revocation) of a licensee as a result of a finding, either by investigation, Board Hearing, hearing before a Hearing Officer, consent agreement or testimony offered at a hearing, which establishes that the licensee has been involved in criminal conduct, shall be reported to the Executive Director of DELJIS within 30 days of determining that such criminal conduct has occurred.

5.0 Required Information

- 5.1 The information that is provided to the Executive Director of DELJIS by the Director shall include the full name, sex, DOB (if available), address and any other identifying information necessary to fully and properly identify the person being reported. The information reported will include sufficient details of the alleged criminal conduct that will allow other Criminal Justice Agencies to understand the alleged criminal conduct perpetrated by the person being reported. Types of criminal conduct that shall be reported include, but are not limited to, the following:
 - 5.1.1 Medicaid Fraud
 - 5.1.2 Insurance Fraud of any type
 - 5.1.3 Sexual Misconduct including boundary violations
 - 5.1.4 Tax Fraud
 - 5.1.5 Drug offenses including over prescribing and diversion
 - 5.1.6 Fraudulent activity in the trades (plumbing, HVAC and electrical)

6.0 Authorized DELJIS Access

Access to the DELJIS system shall be in compliance with policies and regulations promulgated by the Executive Director of DELJIS.

PROPOSED REGULATIONS

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 REGULATIONS 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; SEPTEMBER 22, 2009; AUGUST 17, 2010; SEPTEMBER 20, 2011

PSC REGULATION DOCKET NO. 56

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

ORDER NO. 8026

AND NOW, this 6th day of September, 2011:

WHEREAS, in 2005 the General Assembly enacted, and the Governor signed into law, the “Renewable Energy Portfolio Standards Act,” 26 Del.C. §§351-364 (the “RPS Act”), which, beginning in 2007, required every retail electric supplier to annually accumulate a portfolio of “renewable energy credits” equivalent to a specified percentage of its retail electric supply sales in Delaware; and

WHEREAS, in 2006 the Delaware Public Service Commission (the “Commission”) promulgated “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (the “RPS Rules”) (Order No. 6931 dated June 6, 2006); and

WHEREAS the Commission has revised the RPS Rules from time to time to reflect amendments to the RPS Act (PSC Order No. 7377, dated Apr. 17, 2008; PSC Order No. 7494, dated Dec. 16, 2008; PSC Order No. 7653, dated Sep. 22, 2009; and PSC Order No. 7933 dated March 22, 2011); and

WHEREAS, on July 7, 2011, the Governor signed into law Senate Bill No. 124 as amended by Senate Amendment No. 1 (78 Del. Laws ch. 99) (July 7, 2011), which, among other things, amended various sections of the RPS Act; and

WHEREAS, the Commission now proposes to modify the RPS Rules to reflect these RPS Act amendments (attached as Exhibits “A” and “B” hereto are black-lined and clean copies); and

WHEREAS the Commission believes that the proposed revised regulations should be published in the *Delaware Register of Regulations* to provide public notice of the rulemaking to develop final regulations;

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

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 Del.C. §362 and 29 Del.C. §10115, the Commission proposes to revise the RPS Rules as set forth herein in Exhibits “A” and “B.” A copy of the RPS Rules in their current form as approved by the Commission in PSC Order No. 7933 (March 22, 2011) is attached as Exhibit “C” to this Order.

2. That, pursuant to 29 Del.C. §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order, along with copies of the proposed and current RPS Rules (Exhibits “A” and “B”, respectively).

3. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit “D” to be published in the *Delaware Register of Regulations*. In addition, the Secretary shall cause such Notice of Proposed Rulemaking to be published in *The News Journal* and the *Delaware State News* newspapers on or before October 3, 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 Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated retail electric suppliers; and (e) each person or entity who has made a timely request for advance notice

of 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, on or before November 3, 2011. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the RPS Rules on Thursday, December 1, 2011 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on what, if any, comments regarding the proposed revisions to the RPS Rules are received, the Commission may then determine that it is necessary to appoint a Hearing Examiner.

6. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all retail 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).

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

William O'Brien, Executive Director

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, ELECTRIC GENERATORS USING RENEWABLE RESOURCES, AND OTHER INTERESTED PERSONS

Under the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-364 (the "RPS Act"), each electric supplier making retail electric sales in Delaware must accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Delaware Public Service Commission ("PSC") adopted "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"), 10 DE Reg. 151-157 (July 1, 2006). The PSC has amended the RPS Rules several times since then to conform to subsequent RPS Act amendments.

On July 7, 2011, Senate Bill No. 124, as amended by Senate Amendment No. 1 (78 Del. Laws ch. 99) (July 7, 2011), which amends several sections of the RPS Act was signed into law. The recently enacted law, among other things:

- Amends the definitions section of 26 **Del.C.** §352 to include definitions for "Qualified Fuel Cell Provider" and "Qualified Fuel Cell Provider Project;"
- Transfers the responsibility for procuring renewable energy credits ("RECs") and solar renewable energy credits ("SRECs") and any other required attributes necessary to comply with the RPS Act to Commission-regulated electric companies;
- Creates special provisions for Qualified Fuel Cell Providers with respect to recovery of certain costs; and
- Creates special provisions for Commission-regulated electric companies to recover certain costs with respect to their purchase of the output from Qualified Fuel Cell Providers.

The PSC now proposes to revise the RPS Rules to incorporate, and assure consistency with, the statutory changes made by the recently enacted law.

You can review PSC Order No. 8026 (September 6, 2011) (the "Order") and the proposed revised RPS Rules

in the October 2011 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised RPS Rules at the PSC's Internet website located at <http://depssc.delaware.gov>. If you wish to obtain written copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.50 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before November 3, 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. 56

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 pamela.knotts@state.de.us.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on December 1, 2011 at 1:00 P.M. at the PSC's office at the address set forth above.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. Please e-mail Staff Analyst Pamela Knotts at pamela.knotts@state.de.us. The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

1.0 Definitions

- 1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.5 of this Regulation.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar Photovoltaic Energy Resources means solar photovoltaic or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-A-0035);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-A-0035);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"PJM" or **"PJM Interconnection"** means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Qualified Fuel Cell Provider" means an entity that:

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a. By no later than the commencement date of commercial operation of the full nameplate capacity of a fuel cell project, manufactures fuel cells in Delaware that are capable of being powered by renewable fuels, and

b. prior to approval of required tariff provisions, is designated by the Director of the Delaware Economic Development Office and the Secretary of DNREC as an economic development opportunity."

"Qualified Fuel Cell Provider Project" (or "QFCPP") means a fuel cell power generation project located in Delaware owned and/or operated by a Qualified Fuel Cell Provider under a tariff approved by the Commission pursuant to 26 Del.C. §364(d).

"Renewable Energy Credit" or ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" or **"Renewable Energy Portfolio Standard"** means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Solar Alternative Compliance Payment" or "SACP" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under Section 3.3.4 of this Regulation.

"Sustainable Energy Utility" or ("SEU") is the nonprofit entity according to the provisions of 29 Del.C. §8059 that develops and coordinates programs for energy end-users in Delaware for the purpose of promoting the sustainable use of energy in Delaware.

"Solar Renewable Energy Credit" or "SREC" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"Total Retail Sales" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

11 DE Reg. 1670 (06/01/08)

13 DE Reg. 952 (01/01/10)

14 DE Reg. 1241 (05/01/11)

2.0 Purpose and Scope

- 2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the

electric supply portfolio of the State. The purpose of this Regulation, in support of 26 **Del.C.**, Subchapter III-A, is to set forth the rules for governing the RPS.

- 2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.
- 2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have ~~their~~ its load exempt from this Regulation provided that ~~they~~ it meets the definitions found in Section 1.1 and:
- 2.2.1.1 submits a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code, and load for each account;
- 2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer; and;
- 2.2.1.2 submits the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to ~~their~~ its Retail Electricity Supplier.
- 2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have ~~their~~ its load exempt, the aggregate of ~~their~~ its accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and ~~they~~ it must follow the procedure found in Section 2.2.1.
- 2.3 Any Rural Electric Cooperative that has opted-out of Commission regulation by its membership pursuant to 26 **Del.C.** §223 of the **Delaware Code** shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.
- 2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation if it develops and implements a program for its ratepayers that is comparable to the RPS beginning in 2013. A Rural Electric Cooperative electing to be exempt from this Regulation must notify the Commission of such election and shall be subject to the requirements set forth in 26 **Del.C.** §363. A Rural Electric Cooperative not electing to be exempt from this Regulation shall be subject to this Regulation and the applicable provisions of 26 **Del.C.** §363.

11 DE Reg. 1670 (06/01/08)

14 DE Reg. 1241 (05/01/11)

3.0 Administration of RPS

- 3.1 Certifying Eligible Energy Resources:
- 3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.
- 3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.
- 3.1.3 Customer-sited generation is eligible to be considered an Eligible Energy Resource provided the facility is physically located in Delaware.
- 3.1.34 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in ~~their~~ its Application within 30 days of receipt. The applicant will have the opportunity to revise ~~their~~ its submission, if appropriate.
- 3.1.5 If an Eligible Energy Resource, once notified by Commission Staff, fails to provide the required documentation or missing information within 60 days, the Application will be dismissed and must be resubmitted.
- 3.1.46 If Commission Staff finds the Generation Unit to be in compliance with this Regulation and other applicable law, Staff will issue a State of Delaware Certification Number.

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- 3.1.57 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.
- 3.1.68 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) REC for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) SREC for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.
 - 3.1.68.1 The Commission may establish or participate in another renewable energy tracking system, if the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS.
- 3.1.79 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource.
- 3.1.810 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to review and re-certification pursuant to Section 3.1 of this Regulation.
- 3.1.11 An Eligible Energy Resource must provide updates to any changes to information submitted in the Application within 30 days of those changes becoming effective. These changes include but are not limited to changes in ownership of the generating unit, changes in ownership of the RECs or SRECs, changes in system size, or the deactivation of the unit.
- 3.1.912 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.37, Section 3.3.3 and Section 3.3.4 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.
- 3.2 Decertifying Eligible Energy Resources
 - 3.2.1 An Eligible Energy Resource may be decertified for any of the following:
 - 3.2.1.1 Failure to comply with Section 3.1;
 - 3.2.1.2 A material change in circumstances that causes it to become ineligible for certification under Section 3.1;
 - 3.2.1.3 Fraud or misrepresentation in the Application or to PJM-EIS GATS;
 - 3.2.1.4 Failure to properly update the Commission on changes to information submitted in the Application; or
 - 3.2.1.5 Good cause as determined by the Commission.
 - 3.23 Compliance with RPS
 - 3.23.1 The Total Retail Sales of each Retail Electricity Product sold delivered to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1.

SCHEDULE 1		
Compliance Year (beginning June 1st)	Cumulative Minimum Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources

2007		2.0%
2008	0.011%	3.0%
2009	0.014%	4.0%
2010	0.018%	5.0%
2011	0.20%	7.0%
2012	0.40%	8.5%
2013	0.60%	10.0%
2014	0.80%	11.5%
2015	1.0%	13.0%
2016	1.25%	14.5%
2017	1.50%	16.0%
2018	1.75%	17.5%
2019	2.00%	19.0%
2020	2.25%	20.00%
2021	2.50%	21.00%
2022	2.75%	22.00%
2023	3.00%	23.00%
2024	3.25%	24.00%
2025	3.50%	25.00%

Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 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 3.2.37 and, where appropriate, Commission regulations.¹ Such RECs and SRECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.

3.2.3 Beginning June 1, 2012, Commission-regulated electric companies shall be responsible for procuring RECs, SRECs, and any other attributes needed to comply with Section 3.2.1 with respect to all energy delivered to End-Use Customers.

3.2.3.1 To transition the REC and SREC procurement responsibility to the Commission-regulated electric companies, contracts for RECs and SRECs that were entered into by a Retail Electricity Supplier prior to the transition will be used by the Commission-regulated electric company to fulfill its total RPS requirements for the Compliance Year beginning June 2012. Beginning June 1, 2012, each Retail Electricity Supplier shall report to the Commission-regulated electric supplier and the PSC the number of RECs/SRECs to be supplied through existing contracts, if any, and provide supporting documentation if requested. All RECs/SRECs contracted by Retail Electricity Suppliers will be transferred from their GATS sub-accounts for the respective compliance year to the respective Commission-regulated electric company's GATS accounts for retirement until all RECs or SRECs under all existing contracts have been used to satisfy the Commission-regulated electric companies' RPS obligations. The Commission-regulated electric company is

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of SRECs and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1. ~~or Schedule 2. The Commission shall, in another proceeding, further define how SRECs and RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.~~

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responsible for procuring any additional RECs/SRECs to fulfill its respective RPS obligation. The Commission-regulated electric company shall maintain the cost of any additional procurement of RECs/SREs for each Retail Electricity Supplier to be passed on to its respective retail customers as per the appropriate customer contract until all existing contracts are fulfilled.

- 3.2.3.2 To protect a Commission-regulated electric company from having to incur alternative compliance payments due to the failure of a Retail Electricity Supplier to continue retiring RECs or SRECs associated with retail supply contracts existing at the time of the transition of procurement responsibility, the Commission is authorized to grant the Commission-regulated electric company a temporary reduction of the RPS obligation or a reduction to the price of an alternative compliance payment for that compliance year.
- 3.2.4 Commission-regulated electric companies may use energy output produced by a Qualified Fuel Cell Provider Project to fulfill their REC and SREC requirements as determined by the Secretary of DNREC in consultation with the Commission.
- 3.2.5 Energy output must be tracked using PJM-EIS GATS or its successor at law or pursuant to Section 3.1.8.1 of this Regulation.
- 3.2.6 The right of Commission-regulated electric companies to use energy output produced by a Qualified Fuel Cell Provider Project to fulfill their REC and SREC requirements shall not expire until actually applied to fulfill such requirements.
- 3.2.37 Each Commission-regulated electric company, or Retail Electricity Supplier with existing contractual electric supply obligations can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2026 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.
- 3.2.48 A Retail Electricity Supplier shall not use RECs or SRECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs or SRECs not required to meet this Regulation.
- 3.2.59 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs or SRECs for the purposes of calculating compliance with the RPS.
- 3.2.10 All Eligible Energy Resources that do not settle through the PJM Market settlement system must document their actual output of generation, as recorded by appropriate metering, as frequently as PJM-EIS-GATS shall prescribe.
- 3.2.611 Aggregate generation from small Eligible Energy Resources totaling 100 kilowatts or less of capacity, may be used to meet the requirements of Schedule 1 provided that the generators or their agents, ~~on an annual basis~~ shall document the level of generation, as recorded by appropriate metering, as frequently as PJM-EIS-GATS shall prescribe.
- 3.2.712 A Retail Electricity Supplier or Rural Electric Cooperative shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Schedule 1 of the RPS for energy derived from the following sources installed on or before December 31, 2014:
- 3.2.712.1 Customer-Sited solar photovoltaic physically located in Delaware; or
- 3.2.712.2 A fuel cell powered by Renewable Fuels, for Retail Electricity Suppliers, and such a fuel cell sited in Delaware for Rural Electric Cooperatives.
- 3.2.813 A Retail Electricity Supplier or Rural Electric Cooperative shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.
- 3.2.914 A Commission regulated electric company shall receive 350% credit toward meeting the Renewable Energy Portfolio Standards established for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017.

- 3.2.914.1 To be entitled to 350% credit, contracts for energy and renewable energy credits from such off-shore wind energy installations must be executed by Commission regulated electric companies prior to commencement of construction of such installations.
- 3.2.914.2 Commission regulated electric companies shall be entitled to such multiple credits for the life of contracts for renewable energy credits from off-shore wind installations executed pursuant to section 3.2.914.
- 3.2.4015A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware provided that a minimum of 50% of the cost of the renewable energy equipment, inclusive of mounting components, are manufactured in Delaware.
- 3.2.4416A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware provided that the facility is constructed and/or installed with a minimum of 75% in state workforce with a workforce that consists of at least 75% Delaware residents and/or the installing company employs in total a minimum of 75% workers who are Delaware residents.
- 3.2.4217A Retail Electricity Supplier or a Rural Electric Cooperative shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels (for a Rural Electric Cooperative the Eligible Energy Resource must be sited in Delaware).
- 3.2.4318 Cumulative minimum percentage requirements of Eligible Energy Resources and Solar Photovoltaic Resources shall be established by Commission rules for Compliance Year 2026 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2025 in Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.
- 3.2.4419 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 25%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.
- 3.2.4520 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 25%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP or SACP for three (3) consecutive years, despite adequate planning by the Commission-regulated electric companies and, where applicable, Retail Electricity Suppliers with existing contractual electric supply obligations. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs and SRECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.
- 3.2.4621 The minimum percentages from Eligible Energy Resources and Solar Photovoltaic Energy Resources as shown in Schedule 1 may be frozen for Commission-regulated electric companies as authorized by, and pursuant to, 26 **Del.C.** § 354(i)-(j). For a freeze to occur, the Delaware Energy Office must determine that the cost of complying with the requirements of this Regulation exceeds, for Solar Photovoltaic Energy Resources, 1%, and for Eligible Energy Resources, 3%, of the total retail cost of electricity for retail electricity suppliers during the same compliance year. The total cost of compliance shall include the costs associated with any ratepayer funded state

renewable energy rebate program, REC and SREC purchases, and ACPs and SACP alternative compliance payments.

3.2.4621.1 Once frozen, the minimum cumulative requirements shall remain at the percentage for the compliance year in which the freeze was instituted.

3.2.4621.2 The freeze may be lifted only upon a finding by the State Energy Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 1% or 3% threshold, as applicable.

3.2.4722 The Renewable Energy Taskforce shall be formed for the purpose of making recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware according to 26 **Del.C.** §360(d).

3.3 Verification of Compliance with the RPS

3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product.

3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.68.1 of this Regulation.

3.3.3 SRECs or RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 The three (3) year period referred to in Section 3.3.3 shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in 29 **Del.C.** §8059.

3.3.5 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund a SACP or ACP pursuant to, and in such amounts as stated in, 26 **Del.C.** §358, or in such other amounts as may be determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 **Del.C.** §354(d)-(e).

3.3.6 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP or SACP, according to Section 3.3.5 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

3.3.7 All compliance payments, made by ~~the~~ a Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

13 DE Reg. 952 (01/01/10)

14 DE Reg. 1241 (05/01/11)

4.0 Recovery of Costs

4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.5 ~~and its subsections~~ of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.

4.2 A Retail Electricity Supplier may recover any ACP or SACP if the payment of an ACP or SACP is the least cost measure to ratepayers as compared to the purchase of RECs and SRECs to comply with the RPS; or if there are insufficient RECs and SRECs available for the Retail Electricity Supplier to comply with the RPS.

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- 4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.
- 4.4 Special provisions for customers of Public Service Commission regulated electric companies. All costs arising out of contracts entered into by a Commission regulated electric company pursuant to 26 **Del.C.** §1007 (d) shall be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge which shall be established by the Commission. Such costs shall be recovered if incurred as a result of such contracts unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

14 DE Reg. 1241 (05/01/11)

5.0 ~~Other General Rules~~ Miscellaneous

- 5.1 Under Delaware's Freedom of Information Act, 29 **Del.C.** Ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 **Del.C.** §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.
- 5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource, Qualified Fuel Cell Provider Project or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.
- 5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 **Del.C.**, §205(a), §217, and §1019.

10 DE Reg. 151 (07/01/06)

11 DE Reg. 1670 (06/01/08)

14 DE Reg. 1241 (05/01/11)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

ORDER

1001 Thoroughbred Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed rules to the Commission's Rules. Following notice and a public hearing on September 20, 2011, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed rules September 1, 2011 in the *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to amend rules and regulations for equine testing of steroids in plasma instead of equine testing of steroids in urine.

2. The Commission received no written comments. The Commission held a public hearing on September 20, 2011 and received no public comments.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
4. The Commission concludes that the proposed changes to rules 15.17 should be adopted.
5. The effective date of this Order will be ten (10) days from the publication of this Order in the October 1, 2011 *Register of Regulations*.

IT IS SO ORDERED this 20th day of October 2011.

Bernard J. Daney, Chairman

W. Duncan Patterson, Secretary/Commissioner

Debbie Killeen, Commissioner

Edward Stegemeier, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the September 2011 issue of the *Register* at page 263 (15 DE Reg. 263). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3) a, b, c, e, g and j
(16 **Del.C.** §§122(3) a, b, c, e, g and j)
16 **DE Admin. Code** 4447

ORDER

4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor)

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation/Hand Labor Operations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §122(3) a, b, c, e, g and j.

On August 1, 2011 (Volume 15, Issue 2), 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 August 31, 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. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social

Services (DHSS) Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation/Hand Labor Operations were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from August 1, 2011 through August 31, 2011. No comments were received on the proposed regulations during the public comment period. A change has been made to the proposed regulations to reflect a non-substantive amendment. In addition, a minor technical correction was made to further clarify 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. A change has been made to the proposed regulations to reflect a non-substantive amendment. In addition, a minor technical correction was made to further clarify the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation/Hand Labor Operations are adopted and shall become effective October 11, 2011, after publication of the final regulation in the Delaware Register of Regulations.

Rita M. Landgraf, Secretary

4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor) Operations

(Break in Continuity of Sections)

3.0 Preoperational Requirements

3.1 Permits

3.1.1 No person shall operate a migratory agricultural labor housing camp or field sanitation/hand labor operation who does not have a valid permit issued by the Division. Only a person who complies with the requirements of these Regulations shall be entitled to receive or retain a permit.

3.1.2 A valid permit shall be posted in a location easily observed by workers and families.

3.1.3 A permit shall not be transferable from person to person or from location to location.

3.1.4 When a camp or field sanitation/hand labor operation changes ownership, management firm, or lessee, a new permit is required. Both the facility and its operation shall be brought into full compliance with these regulations and the Delaware Building Code prior to the issuance of a permit. A variance may be issued as provided by these Regulations.

3.1.5 When there is new construction or renovations after the adoption of these Regulations, both the facility and its operation shall be brought into full compliance with these Regulations and the Delaware Building Code prior to the issuance of a permit.

[3.1.6 Camps that are lawfully in existence and operating at the time of adoption of these regulations shall be permitted to have their use and maintenance continued if the use, maintenance or repair of the physical facility and structure is in accordance with the original design and no hazard to life or health is created by the existing camp.]

3.2 Classification of Operational Permits

3.2.1 Annual Permit – a permit issued to a camp or field sanitation/hand labor operation that is in compliance with these Regulations. An annual permit is valid for one calendar year.

3.2.2 Provisional Permit – a permit issued to a camp or field sanitation/hand labor operation that is not in complete compliance with these Regulations. When no health hazards are present in an existing camp or field sanitation/hand labor operation, as determined by the Division, and the owner or operator demonstrates proof of intention to correct, within a specified time period, those items

which do not meet permit requirements, a provisional permit may be issued. Plans, as required, and a written statement delineating changes to be made and completion dates must be presented to the Division before a provisional permit shall be issued. A provisional permit is valid for a 30-day period, with possible extension to a maximum of 60 days, and shall be non-renewable. After satisfactory compliance with provisional permit requirements, an annual permit shall be issued.

3.3 Issuance of Permits

3.3.1 Any person desiring to operate a camp or field sanitation/hand labor operation shall make written application for a permit on forms provided by the Division. Such application shall include the name and address of the owner, the location and type of the proposed camp or field sanitation/hand labor operation and the signature of each applicant. The application shall be made at least 30 days prior to the proposed date of arrival of the migrant agricultural workers.

3.3.2 Prior to approval of an application for a permit, the Division shall inspect the proposed camp or field sanitation/hand labor operation to determine compliance with the requirements of these Regulations.

3.3.3 The Division shall issue a permit to the applicant if its inspection reveals that the proposed camp or field sanitation/hand labor operation complies with the requirements of these Regulations.

3.4 Submission of Plans

3.4.1 Whenever a camp or field sanitation/hand labor operation is constructed or undergoes physical alterations, or whenever an existing structure is converted to a camp or field sanitation/hand labor operation, properly prepared plans and specifications for such construction, alteration or conversion shall be submitted to the Division for review and approval before construction, alteration or conversion begins. The Division shall approve plans and specifications if they meet the requirements of these Regulations.

(Break in Continuity of Sections)

5.0 General Sanitation – Camps

5.1 Sites

5.1.1 Sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subjected to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.

5.1.2 Sites shall be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept.

5.1.3 The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

5.1.4 An adequate number of yard lights shall be provided in the main area including the laundry, shower and toilet areas.

5.2 Shelter

5.2.1 Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.

5.2.2 Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.

5.2.3 Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles, shall be provided in every room used for sleeping purposes.

5.2.3.1 Beds, cots, bunks and storage facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor.

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- 5.2.3.2 If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches.
- 5.2.3.3 Triple-deck bunks are prohibited.
- 5.2.4 The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.
- 5.2.4.1 All wooden floors shall be elevated not less than one (1) foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath.
- 5.2.5 All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.
- 5.2.6 All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.
- 5.2.7 In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.
- 5.2.8 In camps where cooking facilities are used in common, stoves shall be provided in an enclosed and screened shelter. Sanitary facilities shall be provided for storing and preparing food.
- 5.2.9 All heating, cooking, and water heating equipment shall be installed in accordance with State and local laws. If a camp is used during cold weather, adequate heating equipment shall be provided.
- 5.3 Water supply
- 5.3.1 An adequate and convenient water supply, approved by the State of Delaware, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.
- 5.3.2 A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2.5 times the average hourly demand.
- 5.3.3 The distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter is more than 100 feet from a yard hydrant if water is not piped to the shelters.
- 5.3.4 Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. Common drinking cups are prohibited.
- 5.4 Toilet facilities
- 5.4.1 Toilet facilities adequate for the capacity of the camp shall be provided.
- 5.4.2 Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.
- 5.4.3 A toilet room shall be located within 200 feet of the door of each sleeping room.
- 5.4.4 Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.
- 5.4.5 Where toilet facilities are shared, the number of water closets or chemical toilets provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.
- 5.4.6 Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor, from the wall and for a distance not less than 15 inches measured from the outward

edge of the urinals, shall be constructed of materials impervious to moisture. Urinals shall be provided with adequate water flush.

5.4.7 Every water closet installed on or after August 31, 1971, shall be located in a toilet room.

5.4.8 Each toilet room shall be lighted naturally or artificially by a safe type of lighting at all hours of the day and night.

5.4.9 An adequate supply of toilet paper shall be provided in each water closet or chemical toilet compartment.

5.4.10 Toilet rooms shall be kept in a sanitary condition and cleaned at least daily.

5.5 Sewage disposal facilities

5.5.1 All sewer lines and floor drains from buildings shall be connected to a sewage disposal system approved by the Delaware Department of Natural Resources and Environmental Control.

5.6 Laundry, handwashing, and bathing facilities

5.6.1 Laundry, handwashing, and bathing facilities shall be provided as per the applicable Delaware Building and Plumbing codes and in the following ratio:

5.6.1.1 One handwash basin per family shelter or per six persons in shared facilities.

5.6.1.2 One shower head for every 10 persons.

5.6.1.3 One laundry tray or tub for every 30 persons.

5.6.1.4 One slop sink in each building used for laundry, hand washing, and bathing.

5.6.2 Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be covered. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash – six (6) feet. Partitions are required between women's showers.

5.6.3 An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water shall be provided.

5.6.4 Every service building shall be provided with equipment capable of maintaining a temperature of at least 68° F during cold weather.

5.6.5 Facilities for drying clothes shall be provided.

5.6.6 All service buildings shall be kept clean.

5.7 Lighting

5.7.1 Each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor or wall-type convenience outlet.

5.7.2 Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling or wall-type fixture.

5.7.3 Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor.

5.7.4 Other rooms, including kitchens and living quarters, shall have light levels of at least 30 foot-candles 30 inches from the floor.

5.8 Refuse disposal

5.8.1 Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the Division, shall be provided for the storage of garbage. At least one such container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.

5.8.2 Garbage containers shall be kept clean.

5.8.3 Garbage containers shall be emptied when full, but not less than twice a week.

5.9 Construction and operation of kitchens, dining hall, and feeding facilities

5.9.1 In all camps where central dining or multiple family feeding operations are permitted or provided, the food handling facilities shall be provided with the following:

5.9.1.1 Stoves or hot plates, with a minimum equivalent of two burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families in a screened enclosure.

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- 5.9.1.2 Adequate food storage shelves and counter space for food preparation.
- 5.9.1.3 Mechanical refrigeration for food at a temperature of not more than 41° F.
- 5.9.1.4 Tables and chairs, or equivalent seating, adequate for the intended use of the facility provided at a rate to seat one-half of the camp's population.
- 5.9.1.5 Adequate facilities for washing, rinsing and sanitizing dishes and utensils. This will include, at a minimum, a three compartment sink with proper disposal of the liquid waste.
- 5.9.1.6 Adequate lighting and ventilation.
- 5.9.1.7 Floors made of non-absorbent, easily cleaned materials.
- 5.9.2 A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.
- 5.9.3 No person with any communicable disease shall be employed or permitted to prepare, cook, serve, or otherwise handle food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.
- 5.10 Control of Animals, Rodents, Insects and Other Vermin
- 5.10.1 Approved methods shall be used for the elimination and control of animals, rodents, insects or other vermin.
- 5.11 First aid
- 5.11.1 Adequate first aid facilities shall be maintained and made available in every camp for the emergency treatment of injured persons.
- 5.11.2 A first aid kit shall be supplied by the camp operator, and shall be located in an easily accessible place and available for immediate use.
- 5.12 Reporting communicable disease
- 5.12.1 It shall be the duty of the camp operator to report immediately to the Division the name and address of any individual in the camp known to have or suspected of having a communicable disease.
- 5.12.2 Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp operator to report immediately the existence of the outbreak to the Division by ~~telegram,~~ telephone, electronic mail or any method that is equally fast.

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2011 issue of the *Register* at page 154 (15 DE Reg. 154). Therefore, the final regulation is not being republished in its entirety. A copy of the final regulation is available at:

4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor) Operations

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)v (16 Del.C. §122(3)v)
16 DE Admin. Code 4453

ORDER

NATURE OF THE PROCEEDINGS

4453 Cosmetology and Barbering

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Cosmetology and Barbering. The DHSS proceedings to adopt regulations were initiated

pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §§122(3)v.

On August 1, 2011 (Volume 15, Issue 2), 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 August 31, 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. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

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

The public comment period was open from August 1, 2011 through August 31, 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 State of Delaware Regulations Governing Cosmetology and Barbering are adopted and shall become effective October 11, 2011, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2011 issue of the Register at page 155 (15 DE Reg. 155). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4453 Cosmetology and Barbering

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(1), (3)(a,b,c,f and j)
(16 **Del.C.** §122(1), (3)(a,b,c,f and j))
16 **DE Admin. Code** 4457

ORDER

4457 Regulations Governing the Manufacture and Sale of Ice

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing the Manufacture and Sale of Ice. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §122(1), (3) a, b, c, f and j.

On August 1, 2011 (Volume 15, Issue 2), 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 August 31, 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. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing the Manufacture and Sale of Ice were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from August 1, 2011 through August 31, 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 State of Delaware Regulations Governing the Manufacture and Sale of Ice are adopted and shall become effective October 11, 2011, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2011 issue of the Register at page 156 (15 DE Reg. 156). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4457 Regulations Governing the Manufacture and Sale Of Ice

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3) and 2101, et seq.
(16 **Del.C.** §§122(3) and 2101 et seq.)
16 **DE Admin. Code** 4460

ORDER

4460 Mattresses, Pillows and Bedding

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Mattresses, Pillows and Bedding. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 **Delaware Code**, §122(3) and 16 **Delaware Code**, 2101, et seq.

On August 1, 2011 (Volume 15, Issue 2), 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 August 31, 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. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Mattresses, Pillows and Bedding were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from August 1, 2011 through August 31, 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 State of Delaware Regulations Governing Mattresses, Pillows and Bedding are adopted and shall become effective October 11, 2011, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2011 issue of the Register at page 156 (15 DE Reg. 156). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4460 Mattresses, Pillows and Bedding

DEPARTMENT OF JUSTICE

DIVISION OF SECURITIES

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

ORDER

Rules and Regulations Pursuant to the Delaware Securities Act

WHEREAS, on June 1, 2011, the Delaware Registrar of Regulations, pursuant to the request of the Securities Commissioner, caused proposed rules and regulations pursuant to the Delaware Securities Act to be published in the *Delaware Register of Regulations*. 14 **DE Reg.** 1310 (6/1/11); and

WHEREAS, the proposed rules and regulations were held open for public comment until July 1, 2011; and

WHEREAS, comments were received by the Commissioner during the comment period;

NOW THEREFORE, IT IS HEREBY ORDERED this 6th day of September, 2011, that the following shall constitute the required summary of evidence and information submitted; the summary of findings of fact with respect to the evidence and information submitted; and decision to adopt the rules and regulations in the form

attached hereto as Exhibit A.

IT IS FURTHER ORDERED that the effective date of these rules and regulations shall be November 14, 2011.

A. SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

By a letter dated June 22, 2011, the Securities Industry and Financial Markets Association ("SIFMA") commented on the proposed rules and regulations. SIFMA objected to a proposed change to the suitability rule in the Rules and Regulations Pursuant to the Delaware Securities Act ("Rules and Regulations") that would align the rule with a suitability rule recently adopted by the Financial Industry Regulatory Authority ("FINRA"). SIFMA observed that the newly adopted FINRA rule will not be taking effect until July 2012, and the adoption of the rule now by the State of Delaware would, until at least July 2012, subject firms doing business in Delaware to a non-uniform set of suitability rules. FINRA also objected to the proposed removal from the Rules and Regulations of provisions creating procedures for persons applying for registration under the Act to obtain a waiver from the Commissioner of the examination requirements applicable to their applications.

By a letter dated July 1, 2011, the Financial Planning Association ("FPA") commented on the proposed rules and regulations. The FPA, like SIFMA, objected to the proposed change to the suitability rule in the Rules and Regulations.

B. SUMMARY OF FINDINGS OF FACT

1. The designations for certain subsections, paragraphs, and subparagraphs in the Rules and Regulations are revised to maintain uniformity in the letter and number designations used throughout the Rules and Regulations.

2. An exemption from registration is created (subject to a notice filing requirement) for any limited or private offer of securities that qualifies for exemption under the U.S. Securities Act of 1933 or the U.S. Securities and Exchange Act of 1934.

3. References to the "National Association of Securities Dealers" have been changed to refer to the "Financial Industry Regulatory Authority," which is new name for that organization.

4. The registration procedures for broker-dealers is revised to require that all broker-dealers register through the Central Registration Depository system ("CRD") administered by the Financial Industry Regulatory Authority ("FINRA").

5. The registration procedures for broker-dealers is revised to eliminate the requirement that the applicant file an audited financial statement.

6. The registration procedures for broker-dealers is revised to eliminate the procedure for obtaining a waiver from the examination requirements.

7. The registration procedures for investment advisers is revised to require that all investment advisers register through the Investment Adviser Registration Depository system ("IARD") administered by the Financial Industry Regulatory Authority ("FINRA").

8. The registration procedures for investment advisers is revised to eliminate the requirement that the applicant file a balance sheet prepared in accordance with Schedule G of Form ADV.

9. The registration procedures for investment advisers is revised to eliminate the procedure for obtaining a waiver from the examination requirement.

10. The notice filing procedures for federal covered advisers is revised to require that all federal covered advisers notice file through the IARD administered by the Financial Industry Regulatory Authority ("FINRA").

11. The suitability standard for broker-dealers and investment advisers is not being revised.

12. A new section 101 is added to the rules to clarify that a reference in the rules to a provision in the Act shall be deemed to be a reference to the same provision as re-designated by any amendments to the Act. Also, references to the Act are updated to correspond to changes in the Act's section designations as recently adopted by the General Assembly.

13. The Boston Stock Exchange is stricken from the provision of the rules that creates an exemption from registration for securities listed on a designated exchange.

C. DECISION ADOPTING RULES AND REGULATIONS

Pursuant to 29 Del.C. §10118(b)(3), upon consideration of the information submitted to the Securities Commissioner, and based upon the findings of fact with respect to the information submitted, the Rules and Regulations Pursuant to the Delaware Securities Act, in the form attached hereto as Exhibit A, are adopted

effective September 19, 2011. The rules and regulations are adopted pursuant to the authority granted in 6 **Del.C.** §§7303, 7309(b)(9), 7309A(b), 7319(b), and 7325(b).

Peter O. Jamison, III, Securities Commissioner

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

Rules and Regulations Pursuant to the Delaware Securities Act

FRAUD AND CONSUMER PROTECTION DIVISION

CONSUMER PROTECTION UNIT

Statutory Authority: 29 Delaware Code, Section 2521 (29 **Del.C.** §2521)

ORDER

103 Consumer Protection Unit Administrative Enforcement Proceedings

A public hearing was held to receive comments related to the proposed amendment of rules relating to the enforcement of consumer protection laws. Notice was provided as required under the Administrative Proceedings Act 29 **Del.C.** §10115 in the *Register of Regulations* at 15 **DE Reg.** 166 (8/1/11) as well as in the *News Journal* and *Delaware State News* on July 27 and 28, 2011.

The Director of Consumer Protection conducted the public hearing which was held at 10 a.m. on September 21, 2011 in the Attorney General's Conference Room at the Carvel State Office Building, 6th floor, 820 N. French St., Wilmington, DE 19801.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written or verbal comment was received.

FINDINGS OF FACT BASED ON THE EVIDENCE AND INFORMATION SUBMITTED

As no comments have been submitted, there is no need for findings with respect to any issue raised by a comment.

DECISION AND ORDER

After considering the relevant statutes and pursuant to the authority in 29 **Del.C.** §2520, I hereby adopt the proposed amended regulations as published in 15 **DE Reg.** 166 (8/1/11).

EFFECTIVE DATE

The effective date shall be ten days following publication in the *Register of Regulations*.

SO ORDERED THIS 22nd day of September, 2011.

DEPARTMENT OF JUSTICE

Kevin M. Carroll, Director of Consumer Protection

***Please note that no changes were made to the regulation as originally proposed and published in the August 2011 issue of the *Register* at page 166 (15 DE Reg. 166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

103 Consumer Protection Unit Administrative Enforcement Proceedings

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT**

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

Secretary's Order No.: 2011-A-0034

1124 Control of Volatile Organic Compound Emissions

Date of Issuance: August 18, 2011

Effective Date of the Amendment: October 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 regulations to amend 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, Sections 12.0 ("Surface Coating of Plastic Parts"), 19.0 ("Coating of Metal Furniture"), 20.0 ("Coating of Large Appliances"), and 22.0 ("Coating of Miscellaneous Metal Parts"). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2011-06. The Department published its initial proposed regulation Amendments in the May 1, 2011 *Delaware Register of Regulations*, and held a public hearing on May 23, 2011. It should be noted that no public comment was received by the Department at any time during the course of this proposed promulgation.

The affected sections of existing Delaware Regulation 1124 (i.e., Sections 12.0, 19.0, 20.0, and 22.0) are based upon Control Technique Guidelines (CTG) issued periodically by the U.S. Environmental Protection Agency (EPA) as Reasonably Available Control Technology (RACT) for ground-level ozone. Volatile organic compounds (VOC) are precursors for ozone, and thus are regulated, in part, by EPA's suggested control techniques incorporated in the CTG. Since Regulation 1124 is part of the Delaware State Implementation Plan (SIP), there is a requirement that it be as stringent as federal rules, and federally enforceable. To ensure these goals, revisions to EPA-mandated control techniques, in this case "transfer efficiency", using alternative control techniques not specified in the federal rules, require the approval of EPA as well as of the state. Thus, these amendments are required by EPA to specifically state that provisions to allow use of an alternative coating method, other than those listed, must require a transfer efficiency at least equal to high volume low-pressure spray, and require the approval of EPA as well as of the Department.

The Department is proposing to amend 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, Sections 12.0 ("Surface Coating of Plastic Parts"), 19.0 ("Coating of Metal Furniture"), 20.0 ("Coating of Large Appliances"), and 22.0 ("Coating of Miscellaneous Metal Parts"), in order to provide, in coating application method provisions common to all four sections, that EPA as well as Department approval is required for any alternative coating application method that is not one of the six application methods explicitly specified in the regulation sections noted above. The current versions of these sections only require the approval of the Department. Again, this is an EPA requirement to ensure the regulation is federally enforceable. In addition, some minor typographical errors (non-substantive in nature) which were discovered subsequent to initial publication of this existing regulation will also be corrected by the Department at this time.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 8, 2011 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I

adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will (1) provide, in coating application method provisions common to all four sections, that EPA as well as Department approval is required for any alternative coating application method that is not one of the six application methods explicitly specified in the regulation sections noted above; and (2) would correct several known typographical errors contained within the current version of this regulation.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on May 23, 2011;
- 3.) The Department held a public hearing on May 23, 2011 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) provide, in coating application method provisions common to all four sections, that EPA as well as Department approval is required for any alternative coating application method that is not one of the six application methods explicitly specified in the regulation sections noted above; (2) would correct several known typographical errors contained within the current version of this regulation; and, lastly, because (3) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2011 issue of the *Register* at page 166 (15 DE Reg. 166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1124 Control of Volatile Organic Compound Emissions

DIVISION OF FISH AND WILDLIFE

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

Secretary's Order #2011-F-0038

3536 Fish Pot Requirements

Date of Issuance: September 15, 2011

Effective Date of the Amendment: October 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 regulations to amend 7 DE Admin. Code 3536, *Fish Pot Requirements*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2011-02. The Department published its initial proposed regulation Amendments in the March 1, 2011 *Delaware Register of Regulations*, and held a public hearing on March 25, 2011. Public comment was received by the Department at the time of the public hearing, and the Department responded fully and thoroughly to all questions and concerns from the public regarding this proposed promulgation.

Over the past decade, complaints and conflicts have surfaced between recreational hook and line fishermen and commercial fish pot fishermen on some of the artificial reef sites developed in the Delaware Bay. The abundance of fish pots and their marking lines and floats have, in some instances, prevented or interfered with normal recreational fishing opportunities. This has become a subject of discussion and consideration with both the Department and the Tidal Finfish Council for almost three years. And, while a compromise resolution was sought, no legal or enforceable solution was found that could pass muster with the Department's enforcement staff and the Attorney General's office. Also during this time, the State of Delaware's funding resource (the U.S. Fish and Wildlife Service) became aware of the above situation, and has been pushing both DNREC and other Mid-Atlantic states to resolve this issue.

The Department has recently received legislative authority to regulate the type of fishing gear that can be used on reef sites within Delaware waters. The current proposal to amend Tidal Finfish Regulation 3536 concerning Fish Pot Requirements is intended to eliminate existing conflicts between hook and line gear and other types of fishing gear currently fished on artificial reef sites. It is also intended to address some concerns of the funding agency (USFWS) that some fishing gear presently being fished on Delaware reef sites is incompatible with the intent of the funding agency in providing support to the Delaware Reef Program.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 12, 2011 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

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

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will (1) eliminate existing conflicts between hook and line gear and other types of fishing gear currently fished on artificial reef sites; and (2) address some concerns of the funding agency (USFWS) that some fishing gear presently being fished on Delaware reef sites is incompatible with the intent of the funding agency in providing support to the Delaware Reef Program.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on March 25, 2011;
- 3.) The Department held a public hearing on March 25, 2011 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) eliminate existing conflicts between hook and line gear and other types of fishing gear currently fished on artificial reef sites; (2) address some concerns of the funding agency (USFWS) that some fishing gear presently being fished on Delaware reef sites is incompatible with the intent of the funding agency in providing support to the Delaware Reef Program; and, lastly, because (3) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of*

Regulations for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

3536 Fish Pot Requirements

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

- 1.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has two escape vents placed in the parlor portion of said pot which complies with one of the following minimum sizes: 1.375 inches by 5.75 inches; or a circular vent 2.5 inches in diameter; or a square vent with sides of 2 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.375 inches between one set of lathes.
- 2.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:
 - 2.1 Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or
 - 2.2 Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or
 - 2.3 Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.
- 3.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her crab pot provided said food fish is not otherwise illegal to possess at that time.
- 4.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her blue crab dredge provided said food fish is not otherwise illegal to possess at that time.
- 5.0 It shall be unlawful to take or attempt to take any finfish within the geographic boundaries of any permitted artificial reef site under Delaware jurisdiction by any method other than hook and line or spear. The coordinates of Delaware permitted reef sites are defined in U.S. Army Corps of Engineers permit CENAP-OP-R-200500059-1 and any updated permits subsequently issued and are depicted on NOAA charts 12304 and 12214. An Artificial Reef Guide is also available to the public upon request and on-line.

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

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

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

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE SECRETARY

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

ORDER

Regulations Governing Statewide Authorized Tamper Resistant Prescription Forms

Pursuant to 29 **Del.C.** §10118 and 16 **Del.C.** §4797(c), the Delaware Department of Safety and Homeland Security and a committee of officials established pursuant to 16 **Del.C.** §4797(c), by and through their designee the Director of Professional Regulation, does hereby issue this Order adopting Regulations Governing the Statewide Use of Authorized Tamper Resistant Prescription Forms:

Nature and Stage of the Proceedings

The Delaware Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47, was amended in July 2008 so as to provide the Secretary of the Delaware Department of Homeland Security (hereinafter the "Department") with the authority to promulgate regulations which establish a statewide prescription form designed to eliminate or significantly reduce drug prescription fraud.

The Department posted public notice of its draft regulations pursuant to 16 **Del.C.** §4797(c) in the *News Journal* and the *Delaware State News* on June 22, 2011. Notice of such regulations was also posted in the *Register of Regulations* on July 1, 2011.

A public hearing pursuant to 29 **Del.C.** §10117 was convened before James Collins, Director, Division of Professional Regulation, in the offices of the Division of Professional Regulation, Delaware Department of State, Cannon Building, 861 Silver Lake Blvd., Dover DE at 9:00 a.m., July 13, 2011.

Summary of the Evidence and Information Submitted

Prior to the July 13, 2011 hearing, the Division of Professional Regulation (hereinafter the "Division") received certain public input in the form of correspondence and emails. Four witnesses appeared at the hearing.

Mark Thompson, a representative of the Medical Society of Delaware, testified that he believes the cost of tamper-proof prescription forms is an unfunded mandate to be imposed on the medical community. He further stated that the definition of "practitioner" in Sec. 3.0 of the proposed regulations and the exemption set forth in that definition require further explication.

Jake MacKinnon, Vice President, Rx Security, Inc., testified that it is unnecessary to require the use of thermochromic ink on the front and back of the tamper-proof prescription forms because such ink will not enhance security and will significantly add to the cost of the forms. He also stated that requiring heavier stock paper such as 24# will add to the expense of the forms without enhancing security. He also testified that it is unnecessary to require a different color of ink such as the color orange on the forms because that will add to the cost of the forms without enhancing security. He stated that barcoding the forms is unnecessary unless such a requirement facilitates scanning efficiency at the pharmacy level. If barcodes can not be scanned, security is not enhanced and cost is increased. Finally, Mr. MacKinnon stated that in his opinion limiting the number of vendors of the forms may impact prices, reduce support and service, and increase the possibility that statewide demand can not be met.

Steven Artz, a Delaware dental office manager, testified that increased inspections of medical offices by multiple state agencies will be disruptive.

Paul Keeley, King Medical Systems, stated that in his opinion it is unfair to impose the entire cost of the new security measures on the medical community alone. He agreed with Mr. MacKinnon that the requirement of thermochromic ink adds to cost but does not enhance security.

Findings of Fact and Conclusions of Law

The public was given due notice as required by law and an opportunity to provide the Department with comments in writing and by testimony at the public hearing on the proposed regulations.

The General Assembly has determined that prescription fraud is a phenomenon which should be addressed in order to protect the health, safety and welfare of the citizens of the State of Delaware. The regulations promulgated hereby advance a valid public purpose rationally related to the legitimate state goal of eliminating or significantly reducing such prescription fraud.

These regulations implement a comprehensive and effective means by which prescription fraud may be eliminated or substantially reduced in Delaware.

After carefully considering the public input in conjunction with the public hearing in this matter, certain suggestions and recommendations have been accepted and implemented. The requirement of a heavier stock of paper for the forms has been eliminated. Thermochromic ink will now be required only on the back of the prescription forms. The requirement of the use of a contrasting color of thermochromic ink has been eliminated. The requirement of barcoding has been eliminated.

The changes to the regulations listed in the preceding paragraphs will likely increase the pool of qualified vendors who will be capable of producing the new tamper- proof prescription forms.

None of the changes made in the regulations subsequent to the receipt of public input is substantive as that term is employed at 29 **Del.C.** §10118(c).

Decision and Effective Date

The Regulations Governing the Statewide Authorized Tamper Resistant Prescription Forms, as amended and attached hereto as Exhibit A, are hereby adopted. The effective date of such regulations shall be March 1, 2012.

SO ORDERED this 16th day of September 2011.

James L. Collins, Director

Division of Professional Regulation, designee of the Secretary of the Department of Safety and Homeland Security and a committee of officials established pursuant to 16 **Del.C.** §4797(c)

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

Regulations Governing Statewide Authorized Tamper Resistant Prescription Forms

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1700 Board of Medical Licensure and Discipline

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

ORDER

1700 Board of Medical Licensure and Discipline

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on July 19, 2011 at a scheduled meeting of the Delaware Board of Medical Licensure and Discipline (the "Board") to receive comments regarding proposed amendments to the Board's Rules and Regulations; specifically, the addition of a new Regulation 31 establishing disciplinary guidelines as mandated by Senate Bill 233 in the 145th General Assembly and codified at 24 **Del.C.** §1713(f).

Pursuant to the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed amendments to the rules and regulations was initially published in the *Register of Regulations* on April 1, 2011 and the Board held a public hearing on May 3, 2011 where members of the public offered comments. As a result of those comments, the Board made substantive changes to proposed regulations 31.7.1, 31.7.2, 31.7.3.1 and deleted 31.7.8 as previously published in the *Register of Regulations*. The Board also added a clarifying provision at 31.16 that the regulations apply to all practitioners regulated under the Medical Practice Act. Finally, the Board made several technical corrections to the numbering within the document.

The revised proposal was republished on June 1, 2011 in Volume 14, Issue 12 of the Delaware *Register of Regulations* noticing a hearing on the new proposal for July 19, 2011.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

1. The following exhibits were made a part of the record:
Board Exhibit 1: *News Journal* Affidavit of Publication.
Board Exhibit 2: *Delaware State News* Affidavit of Publication.
Board Exhibit 3: Correspondence dated July 16, 2011 from Paula F. Paul, PA-C,

Chair of the Legislative Outreach Committee of the Delaware Academy of Physician Assistants, commenting that the term "sexual relations" is not adequately defined and further commenting that the range of penalties for "Sexual Relations with a Patient" under 31.7.5 should be broadened to enable the Board to consider the circumstances and aggravating and mitigating factors to determine the appropriate penalties.

2. The Board also received public comment from Paula F. Paul, PA-C, Chair of the Legislative Outreach Committee of the Delaware Academy of Physician Assistants, in regard to the comments in her correspondence to the Board dated July 16, 2011. Ms. Paul commented that the regulations were much improved from the earlier versions; however, she still suggested that the 2 areas highlighted in the July correspondence needed to be addressed. Specifically, she commented that the term "sexual relations" should be defined. She also commented that the range of penalty in Regulation 31.7.5 should be amended from "a range of 6 months suspension to revocation" to "a range from education on boundary issues to a fine not to exceed \$10,000 to 6 months suspension or revocation of the license." In support of the suggested change Ms. Paul offered statistics that show that some 25 percent of physicians practicing in internal medicine have had a relationship with a patient. Finally, Ms. Paul commented that the regulations are still very physician centered and should be put out to all of the other professions regulated under the Medical Practice Act for comment.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED

The Board considered the written and verbal comments provided at the public hearing from Ms. Paul on behalf of the Delaware Academy of Physician Assistants but determined not to make the suggested change at this time. The Board believes that the term sexual relations can be adequately interpreted by the Board and regulated professionals when viewed in the entire context of Regulation 31.7 and its subparts and the ordinary meaning of the term. In addition, the Board is satisfied that it already has the requisite discretion under Regulation 31.7.5 to deviate from the presumed range depending on the mitigation and aggravating factors identified under Regulations 31.14 and 31.15. The Board also believes it serves an inappropriate message to start with a lower presumed sanction than suspension for engaging in sexual relations with a patient.

The Board held multiple publicly noticed committee meetings and properly noticed and held two public hearings to give practitioners a chance to comment on the proposed regulations. The Board commends Ms. Paul and the Academy of Physician Assistants for taking an active role in the development of the regulations. However, the Board is not inclined to delay the regulations for additional comment from other practitioners regulated under the Medical Practice Act and notes that the regulations are capable of being amended, if necessary, in the future to address concerns of other regulated practitioners.

The Board finds that the proposed regulation satisfies the mandate of Senate 233 (codified at 24 **Del.C.** §17113(f)).

Finally it was noted that the word "to" was missing between the words "suspension" and "revocation" in Regulation 31.7.5 as published on June 1, 2011. The Board finds that inserting the word "to" into the regulation is a non-substantive typographical change.

THE LAW

The Board's rulemaking authority is provided by 24 **Del.C.** §1713(a)(12) and §1713(f).

DECISION AND EFFECTIVE DATE

The Board hereby adopts Regulation 31 as effective 10 days following publication of this Order in the *Register of Regulations*.

TEXT AND CITATION

The text of Regulation 31 remains as published in the *Register of Regulations*, Vol. 14, Issue 12, on June 1, 2011 with the exception of the typographical correction discussed above to Regulation 31.7.5 and noted on Exhibit A attached hereto.

IT IS SO ORDERED this 13th day of September, 2011.

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

John Banks, Public Member, Secretary	Evelyn Mendez, Public Member
George Brown, Public Member	Raymond L. Moore, Sr., Public Member, President
Vonda Calhoun, Public Member	Anthony M. Policastro, M.D.
Stephen Cooper, M.D.	Joseph Parise, D.O.
Thomas Desperito, M.D.	Mary Ryan, Public Member
Vincent Lobo, D.O.	Oluseyi Senu-Oke, M.D.
	Daryl Sharman, M.D.

1700 Board of Medical Licensure and Discipline*(Break in Continuity of Sections)***31.0 Disciplinary Guidelines [Authority: 24 Del.C. §1713 (f)]**

- 31.1** Purpose: The Legislature has created the Board of Medical Licensure and Discipline to assure the protection of the public from persons who do not meet the minimum requirements for safe practice or who pose a danger to the public. Pursuant to 24 Del.C. §1713(f), the Board provides the disciplinary guidelines it will apply to licensees regulated under 24 Delaware Code, Chapter 17, after a full investigation and at the conclusion of a hearing after finding violations of the Board's statute and/or regulations. The purpose of this rule is to notify applicants of the ranges of penalties which may be imposed unless the Board finds grounds to deviate from the guidelines due to aggravating or mitigating circumstances (Rules 31.12 and 31.13). The practice of medicine is already subject to both civil and criminal penalties. Recognizing its role as protector of the public's health, safety, and welfare, the Board offers these guidelines as a means to improve the quality of medical care and not to enforce the penal code, a responsibility left to law enforcement and to the courts. The purpose of imposing discipline is to sanction licensees for violation; deter them from future violations; to offer opportunities for rehabilitation when appropriate; and to dissuade other applicants and licensees from committing disciplinable offenses.
- 31.2** Violations and Range of Penalties: When imposing discipline, the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations unless grounds to deviate are found. The following identification of categories of offenses and summary explanations are intended to be descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.
- 31.3** Negligence is an act or omission that deviates from accepted standards of practice in the medical community
- 31.3.1** Gross Negligence – a range from 1 year probation with education to 1 year suspension with reinstatement upon proof of improvement in practice proficiency - §1731(b)(11)
- 31.3.2** Pattern of Negligence – a range from 1 year probation to suspension with reinstatement after proof of satisfactory improvement - §1731(b)(11)
- 31.4** Incompetence is failing to exercise appropriate professional judgment or failing to utilize skill to a degree showing a lack of general competence.
- 31.4.1** Incompetence in Practice – practice reviewed by organization of the Board's choice and a range from 1 year probation to revocation - §1731(b)(11)
- 31.4.2** Failure to Use Skill or Judgment - practice reviewed by an organization of the Board's choice and a range from \$1,000 fine to 6 months probation
- 31.4.3** Incompetent Acts of Supervision – range from \$1,000 fine to \$1,000 fine and letter of reprimand - §1731(b)(10)
- 31.5** Misconduct is that conduct which is recognized to be unsafe or improper by the ethical and competent members of the profession. The term also includes, but is not limited to, general conduct that is

dishonorable or unprofessional and that is not addressed in other categories within these guidelines, and includes acts prohibited by policies expressed in legislation.

- 31.5.1 General Misconduct - a range from \$1,000 fine to 6 months suspension - §1731(b)(1); §1731(b)(3); §1731(b)(4); §1731(b)(5); §1731(b)(9); §1731(b)(19)
- 31.5.2 Willful Failure to Report – minimum \$5,000 fine and/or 6 months probation - §1731(b)(13); §1731(b)(14); §1731(b)(15); §1731(b)(22)
- 31.5.3 Unjustified Failure to Cooperate – a range from 6 months probation to 6 months suspension - §1731(b)(16); §1731(b)(17)
- 31.6 Criminal Conduct is conduct which violates rules and statutes that define conduct prohibited by the government. Such unprofessional conduct reflects upon the licensee’s fitness and qualifications to practice in the healthcare field and detracts from the trust of the public.
- 31.6.1 Crimes Substantially Related – a range from 90 days probation to suspension with reinstatement only after proof satisfactory to the board of practice improvement, not to be less than any court-ordered sanctions – §1731(b)(2)
- 31.6.2 Felony Sexual Offenses – revocation - §1731(a)
- 31.7 Sexual Misconduct – These guidelines cannot define or foresee all the possible scenarios of sexual misconduct. The professional boundary required between physician and patient is based upon the fiduciary relationship in which the patient entrusts his or her welfare to the physician, reflects the physician’s respect for the patient. That boundary, once crossed, severely impacts the patient’s well-being on an individual basis, and causes distrust to other professional relationships in general. Sexual misconduct is a harmful example of a boundary violation, occurring in multiple contexts and involving a wide range of behaviors. Sexual misconduct includes but is not limited to, sexual impropriety towards a patient, sexual conduct towards patients, sexual harassment in the workplace facilitating a hostile work environment, sexual conduct between supervisors and subordinates, the commission of sexual assault and other sexual crimes.
- 31.7.1 Sexual involvement can occur in circumstances involving two consenting adults. However, sexual involvement with a current patient is considered misconduct. It is the responsibility of the physician to transfer the patient’s care to another health care provider if they foresee a romantic or sexual relationship developing.
- 31.7.2 Sexual involvement with former patients is misconduct when the licensee exploits knowledge or information obtained from the previous physician-patient relationship. Sexual or romantic relationships between physicians and their patients may exploit the vulnerability of the patient and may obscure the physician’s objective judgment concerning the patient’s health care. Sexual misconduct between a physician and a patient is never diagnostic or therapeutic. Romantic or intimate relationships may impede the physician’s ability to confront the patient about noncompliance with treatment or to bring up unpleasant medical information. Physicians must set aside their own needs or interests in the service of addressing the patient’s needs. The physician-patient relationship depends upon the ability of the patient to have absolute confidence and trust in the physician, and a patient has the right to believe that a physician is dedicated solely to the patient’s best interests. When considering action related to sexual involvement with a former patient the Board should consider the extent, if any, to which the (medical provider) exploited the previous patient-provider relationship.
- 31.7.3 Sexual impropriety may include, but is not limited to, sexually suggestive behavior, gestures, expressions, statements, and it may include failing to respect a patient’s privacy such as in the following examples:
- 31.7.3.1 failing to employ disrobing or draping practices that respect the patient’s privacy (except in the case of examination in an emergency setting);
- 31.7.3.2 examination or touching of a patient’s genital region without donning gloves without clinical justification;
- 31.7.3.3 inappropriate comments to a patient about the patient’s body, sexual orientation, or potential sexual performance during the examination; and

maintain or store the records, and failure to allow the patient or the patient's authorized representative access to the records.

- 31.13.1 False documentation/alteration – a range from \$2,000 fine and letter of reprimand to 6 months probation
- 31.13.2 Poor documentation - letter of reprimand
- 31.13.3 Confidentiality Issues/HIPPA – education on confidentiality/HIPAA and letter of reprimand - §1731(b)(12)
- 31.13.4 Problems with access to patient records which impedes continuity of care - letter of reprimand - §1761
- 31.13.5 Notice requirement of Office Closure – letter of reprimand – §1761
- 31.13.6 Practice Abandonment – Suspension to revocation
- 31.13.7 Falsely Documenting a Death Certificate - a range from \$2,000 fine and letter of reprimand to 6 months probation - §1731(b)(20)
- 31.14 Aggravating (worsening) factors when determining the degree of discipline, the board may consider certain factors, including but not limited to the following:
 - 31.14.1 Prior Disciplinary Offenses
 - 31.14.2 Past Disciplinary Record
 - 31.14.3 Frequency of Acts
 - 31.14.4 Nature and (extreme) gravity of the allegation
 - 31.14.5 False evidence, false statements, other deceptive practices during disciplinary process or proceedings and during the investigative process
 - 31.14.6 Dishonest or selfish motive
 - 31.14.7 Motivation; criminal dishonest; or personal gain
 - 31.14.8 Different multiple offenses
 - 31.14.9 Failing to comply with rules or orders
 - 31.14.10 Refusal to acknowledge wrongful nature of conduct and vulnerability of the victim
 - 31.14.11 Intentional
 - 31.14.12 Abuse of trust
 - 31.14.13 Consensus about blameworthiness of conduct
 - 31.14.14 No consent of patient/Against patient's will
 - 31.14.15 Age capacity or vulnerability of patient or victim of licensee's misconduct
 - 31.14.16 Severe injury caused by misconduct
 - 31.14.17 Potential for injury ensuing from act
 - 31.14.18 Practitioner present competence in medical skills
 - 31.14.19 Pattern of misconduct
 - 31.14.20 Illegal conduct
 - 31.14.21 Heinousness of actions
 - 31.14.22 Ill repute upon profession
 - 31.14.23 Public's perception of protection
- 31.15 Mitigating (lessening) factors when determining the degree of discipline, the board may consider certain factors, including but not limited to the following:
 - 31.15.1 Absence of prior disciplinary record
 - 31.15.2 Single act
 - 31.15.3 Nature and (minimal) gravity of the allegation
 - 31.15.4 Voluntary restitution or other actions taken to remedy the misconduct
 - 31.15.5 Remorse and/or consciousness of wrongful conduct
 - 31.15.6 Absence of dishonest or selfish motive

- 31.15.7 Timely good faith effort to rectify consequences of misconduct
 - 31.15.8 Interim rehabilitation
 - 31.15.9 Remoteness of prior offenses
 - 31.15.10 Length of time that has elapsed since misconduct
 - 31.15.11 Inadvertent
 - 31.15.12 Consent of patient
 - 31.15.13 No apparent vulnerability of patient
 - 31.15.14 No significant injury caused by misconduct
 - 31.15.15 No significant potential for injury ensuing from act
 - 31.15.16 No evidence of motivation of criminal; dishonest or personal gain
 - 31.15.17 Mental or physical health; weak health; cancer
 - 31.15.18 Personal circumstances
 - 31.15.19 Present fitness of the practitioner
 - 31.15.20 Potential for successful rehabilitation
 - 31.15.21 Practitioner's present competence in medical skills
 - 31.15.22 Personal problems (if there is a connection to violation)
 - 31.15.23 Emotional problems (If there is a connection to violation)
 - 31.15.24 Isolated incident unlikely to reoccur
 - 31.15.25 Public's perception of protection
- 31.16 Applicability: These guidelines are applicable to all professions or occupations regulated under the Medical Practice Act. The guidelines will be construed to apply to any substantially similar violations or offenses under the specific statutory or regulatory provisions applicable to those professions or occupations regardless of whether the code section or regulation is specifically referenced herein.

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

1700 Board of Medical Licensure and Discipline

DIVISION OF PROFESSIONAL REGULATION

RESPIRATORY CARE ADVISORY COUNCIL OF THE DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Statutory Authority: 24 Delaware Code, Section 1775 (c)) (24 Del.C. §1775 (c))

24 DE Admin. Code 1770

REPORT

The Respiratory Care Advisory Council ("Council") established to assist the Board of Medical Licensure and Discipline ("Board") in the performance of its duty relating to the regulation of Respiratory Care Practitioners is authorized by 24 Del.C. §1775(c) to promulgate rules and regulations governing the practice of respiratory care.

Pursuant to 24 Del.C. §1775(c), the Council proposes to modify *Regulation 12.0 Unlicensed Home Equipment Personnel* by deleting the specific reference to home equipment personnel in order to clarify that the regulation applies to all unlicensed personnel.

Pursuant to 29 Del.C. §10115, notice of the proposed amendments to the rules and regulations was published on July, 1, 2011, in the *Delaware Register of Regulations*, Volume 15, Issue 1. Public notice of these proposed modifications to the Rules and Regulations was also published in two (2) newspapers of general circulation.

Pursuant to such notice a public hearing was conducted by the Council on August 10, 2011.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No members of the public commented at the hearing. No written comments were received in response to the proposed regulations.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED

There was no public comment received at the public hearing. No written comments were received in response to the proposed regulations.

The Council finds that the amendments to Regulation 12.0 dealing with unlicensed personnel clarify that the provisions related to unlicensed personnel are applicable to all unlicensed individuals and not just those engaged in home medical equipment set up. The changes describe what the unlicensed personnel cannot do as opposed to an inclusive list of what they can do. The changes also remove wording related to specific equipment to avoid the need to re-write the regulations when new equipment is introduced into clinical care. Finally, the amendments clarify that unlicensed personnel may not perform clinical assessments or provide patient care thereby continuing to ensure the protection of the public. As noted when the Council and Board originally enacted Regulation 12 this is an area about which the Council frequently receives questions.

These recent amendments are the result of extended presentations and discussions with respiratory care practitioners and provider of home equipment who did not participate during the initial drafting and implementation of the first version of Regulation 12 on February 2, 2010. The Council has considered their proposals and, as a result, is advancing the proposed revisions to Regulation 12.

The Medical Practice Act *Statement of Purpose* at 24 **Del.C.** §1701 provides:

“Recognizing that the practice of medicine and the practice of certain other healthcare professions are privileges and not natural rights, it is hereby considered a matter of policy in the interest of public health, safety and welfare to provide laws covering the granting of those privileges and their subsequent use and control to provide regulations to the end that the public health, safety and welfare are promoted and that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine and practice of certain other healthcare professions and from unprofessional conduct by persons unauthorized to practice medicine or to practice certain other healthcare professions.”

The Council finds that the proposed amendments meet the Council’s primary objectives of protecting the public by addressing unlicensed practice.

In summary, the Council finds that adopting the proposed amendments to Regulation 12 meets the objectives of protecting the public as set forth in 24 **Del.C.** §1701 and are in the best interest of the citizens of the State of Delaware.

THE LAW

The rulemaking authority of the Counsel and Board is provided by 24 **Del.C.** §1775(c).

RECOMMENDATION

Based on the findings, conclusions and the above discussion, it is the recommendation of the undersigned members of the Respiratory Care Practice Advisory Council to the Board of Medical Licensure and Discipline that the Board approve these changes to the Rules and Regulations of the Respiratory Care Practice Advisory Council to be effective ten (10) days after their final publication in the Delaware *Register of Regulations*.

Respectfully submitted this 10th day of August, 2011:

Karen Bartuski, RRT

Juanita Bernard, RRT

Thomas Blackson, RRT

Joel M. Brown, II, RRT Chairperson

Christine Cipolla, RRT

Joseph M. Parise, D.O., Physician Council Member

Theresa Q. Thompson, RRT, Vice Chairperson

ORDER**1770 Respiratory Care Practice Advisory Council**

AND NOW, to-wit, this 13th day of September, 2011;

WHEREAS, the Board has considered the attached Report of the Respiratory Care Practice Advisory Council concerning the hearing on the proposed modifications of the Rules and Regulations of the Respiratory Care Practice Advisory Council; and

WHEREAS, the Board has determined to accept such Report and approve the proposed Rule and Regulation modifications set forth in the attached report.

NOW THEREFORE:

The proposed modifications to the Rules and Regulations of the Respiratory Care Practice Advisory Council as set forth on the attached report are hereby approved without any changes as originally published in the Register of Regulations on July 1, 2011, Volume 15, Issue 1.

IT IS SO ORDERED:

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Gregory Adams, M.D.

John Banks, Public Member, Secretary

George Brown, Public Member

Vonda Calhoun, Public Member

Stephen Cooper, M.D.

Thomas Desperito, M.D.

Vincent Lobo, D.O.

Evelyn Mendez, Public Member

Raymond L. Moore, Sr., Public Member, President

Anthony M. Policastro, M.D.

Karyl Rattay, M.D.

Mary Ryan, Public Member

Oluseyi Senu-Oke, M.D.

Daryl Sharman, M.D.

1770 Respiratory Care Practice Advisory Council

***Please note that no changes were made to the regulation as originally proposed and published in the July 2011 issue of the *Register* at page 52 (15 DE Reg. 52). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1770 Respiratory Care Practice Advisory Council

DIVISION OF PROFESSIONAL REGULATION**Genetic Counselor Advisory Council**

Statutory Authority: 16 Delaware Code, Section 1799I(c) (16 **Del.C.** §1799I(c))

REPORT

The Genetic Counselor Advisory Council ("Council") established to assist the Board of Medical Licensure and Discipline ("Board") in the performance of its duty relating to the regulation of genetic counselors is authorized by 24 **Del.C.** §1799I(c) to promulgate rules and regulations governing the practice of genetic counseling.

Pursuant to 24 **Del.C.** §1799I(c) the Council proposes to establish regulations regarding renewal of licensure, continuing education requirements and audits, and crimes substantially related to the practice of genetic counseling.

Pursuant to 29 **Del.C.** §10115, notice of the proposed amendments to the rules and regulations was published on August 1, 2011, in the Delaware *Register of Regulations*, Volume 15, Issue 2. Public notice of these proposed modifications to the Rules and Regulations was also published in two (2) newspapers of general circulation.

Pursuant to such notice a public hearing was conducted by the Council on September 9, 2011.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No members of the public commented at the hearing. No written comments were received in response to the proposed regulations.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED

There was no public comment received at the public hearing. No written comments were received in response to the proposed regulations.

The Council is a relatively new regulatory body and proposed to establish some very basic rules governing the practice of genetic counseling in Delaware: Regulation 1.0 sets forth the authority of the Council to establish regulations; Regulation 2.0 provides definitions for the Council, Regulation 3.0 states the purpose of the rules and regulations; Regulation 4.0 establishes the requirements and provides guidance to individuals seeking to renew a license to practice genetic counseling in the state of Delaware; Regulation 5.0 sets forth the minimum continuing education requirements a licensee must complete during each renewal period; Regulation 6.0 establishes the process the Council and Board will use to audit continuing education compliance and the review and hearing process; and Regulation 7.0 identifies those crimes substantially related to the practice of genetic counseling for purposes of licensure and discipline as those crimes set forth in Board of Medical Licensure and Discipline Rule 29.

The Council has proposed one non-substantive change to further clarify the requirements of Regulation 5.3.2.2. As published Regulation 5.3.2.2 provided:

5.3.2.2 The percentage of CEUs obtained in each category designated by ABGC should be scaled to fit the biennial renewal period,

The Council believes that the regulation is clearer and more instructive with examples:

5.3.2.2 The percentage of CEUs obtained in each category should be scaled to fit the biennial renewal period. The breakdown of CEUs should follow ABGC guidelines for recertification and be scaled for the renewal period. For example current guidelines state: at least 60% Category 1 CEUs, up to but no more than 40% Category 2 CEUs, PAC's may substitute for Category 1 CEUs for up to 20%. Therefore, for a full 2 year renewal cycle the CEU breakdown should be comprised of at least 3.75 Category 1 CEU's, up to but no more than 2.5 Category 2 CEU's. If using PACs the breakdown would be as follows: at least 2.5 Category 1 CEUs, up to but no more than 2.5 Category 2 CEU's and up to but no more than 1.25 PACs CEU's.

The Council finds that the proposed change to Regulation 5.3.2.2 is non-substantive and does not require re-publication of the proposed regulation.

The Medical Practice Act *Statement of Purpose* at 24 **Del.C.** §1701 provides:

“Recognizing that the practice of medicine and the practice of certain other healthcare professions are privileges and not natural rights, it is hereby considered a matter of policy in the interest of public health, safety and welfare to provide laws covering the granting of those privileges and their subsequent use and control to provide regulations to the end that the public health, safety and welfare are promoted and that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine and practice of certain other healthcare professions and from unprofessional conduct by persons unauthorized to practice medicine or to practice certain other healthcare professions.”

The Council finds that the proposed regulations meet the Council and Board's primary objectives of protecting the public by establishing minimum standards renewal, continuing education and by identifying crimes substantially related to the practice of the genetic counseling.

In summary, the Council finds that adopting the proposed regulations meets the objectives of protecting the public as set forth in 24 **Del.C.** §1701 and are in the best interest of the citizens of the State of Delaware.

THE LAW

The rulemaking authority of the Counsel and Board is provided by 24 **Del.C.** §1799I(c).

RECOMMENDATION

Based on the findings, conclusions and the above discussion, it is the recommendation of the undersigned members of the Genetic Counselors Advisory Council to the Board of Medical Licensure and Discipline that the Board approve the proposed Rules and Regulations of the Genetic Counselors Advisory Council to be effective ten (10) days after their final publication in the Delaware *Register of Regulations*.

Respectfully submitted this 9th day of September, 2011:

Zohra J. Ali-Khan Catts, Council Member, Chair

Sara Ennis, Council Member, Vice Chair

Beth A. Keena, Council Member

ORDER

AND NOW, to-wit, this 13th day of September, 2011;

WHEREAS, the Board has considered the attached Report of the Genetic Counselor Advisory Council concerning the hearing on the proposed establishment of the Rules and Regulations of the Genetic Counselor Advisory Council; and

WHEREAS, the Board finds that the Board and council have authority to establish regulations that the Board has determined to accept Council's Report and approve the proposed Rule and Regulations set forth in the attached report.

NOW THEREFORE:

The proposed regulations of the Genetic Counselor Advisory Council as are hereby approved with the one non-substantive change to Regulation 5.3.2.1 noted in the Council's Report.

IT IS SO ORDERED:

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Gregory Adams, M.D.

John Banks, Public Member, Secretary

George Brown, Public Member

Vonda Calhoun, Public Member

Stephen Cooper, M.D.

Thomas Desperito, M.D.

Vincent Lobo, D.O.

Evelyn Mendez, Public Member

Raymond L. Moore, Sr., Public Member, President

Anthony M. Policastro, M.D.

Karyl Rattay, M.D.

Mary Ryan, Public Member

Oluseyi Senu-Oke, M.D.

Daryl Sharman, M.D.

1799 Genetic Counselor Advisory Council

1.0 Source of Authority

The Rules and Regulations herein contained constitute, comprise, and shall be known as the Rules and Regulations of the Genetic Counselor Advisory Council of the Board of Medical Licensure and Discipline, and are hereby promulgated, pursuant to 24 Del.C. §1799I(c).

2.0 Definitions

Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.

"Board" means Delaware Board of Medical Licensure and Discipline.

"Council" means the Genetic Counselor Advisory Council of the Board of Medical Licensure and Discipline.

"Crime Substantially Related to the Practice of Genetic Counseling" means those crimes identified in Rule 29 of the Rules and Regulations of the Board of Medical Licensure and Discipline.

3.0 Purpose

The purpose of the rules and regulations is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Council and Board to evaluate the safe and effective practice of genetic counseling.

4.0 Renewal of License

- 4.1 Each license shall be renewed biennially. The failure of the Council and/or Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the regulations of the Council and 24 Del.C. Ch. 17, Subchapter 11.
- 4.2 Renewal may be effected by:
- 4.2.1 filing a renewal application on the prescribed online application approved by the Council and provided by the Division of Professional Regulation. License renewal may be accomplished online at www.dpr.delaware.gov;
- 4.2.2 providing other information as may be required by the Council to ascertain the licensee's good standing;
- 4.2.3 attesting on the renewal application to having completed the continuing education required by Rule 5.0;
- 4.2.4 payment of fees as determined by the Division of Professional Regulation.
- 4.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A licensee whose license has expired may renew his/her license within one (1) year after the expiration date upon fulfilling items 4.2.1 - 4.2.4 above, certifying that he/she has not practiced genetic counseling in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation.
- 4.4 No licensee will be permitted to renew his/her license once the one (1) year period has expired.
- 4.5 The former licensee may re-apply under the same conditions that govern applicants for new licensure under 24 Del.C. Ch. 17, Subchapter 11.
- 4.6 No genetic counselor shall practice in the State of Delaware during the period of time that his/her Delaware license has expired.

5.0 Continuing Education

- 5.1 Continuing Education Credit Hours Required for Renewal
- 5.1.1 Licensees are required to complete five (5) Continuing Education Units (CEU) biennially. A continuing education unit is equivalent to ten contact hours (a contact hour is 60 minutes). Licensees shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (5) five years.
- 5.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 5.0.
- 5.1.3 Attestation must be completed electronically at the time of renewal.
- 5.1.4 Licensees selected for random audit pursuant to Rule 6.0 will be required to supplement the attestation with attendance verification.
- 5.1.5 CEU hours shall be prorated for new licensees. A licensee for renewal shall follow the following schedule of reporting CEUs: if, at the time of renewal, you have been licensed for less than one year, NO continuing education is required; licensed for more than one year, but less than two years, half of the continuing education (2.5 CEUs) is required; licensed for two or more years, the full amount (5 CEUs) is required.
- 5.2 Exemptions

5.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Licensure and Discipline for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

5.2.2 A request for a waiver may be submitted up to the time of renewal

5.3 Acceptable Activities /Continuing Education Program Offerings

5.3.1 The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to professional competence in the practice of Genetic Counseling

5.3.2 Licensees shall demonstrate that they have obtained CEUs in the categories and according to the criteria established by the American Board of Genetic Counselors (ABGC) for recertification, as may be amended from time to time.

5.3.2.1 CEUs must be completed during the biennial renewal cycle.

5.3.2.2 The percentage of CEUs obtained in each category [designated by ABGC] should be scaled to fit the biennial renewal period. [The breakdown of CEUs should follow ABGC guidelines for recertification and be scaled for the renewal period. For example current guidelines state: at least 60% Category 1 CEUs, up to but no more than 40% Category 2 CEUs, PAC's may substitute for Category 1 CEUs for up to 20%. Therefore, for a full 2 year renewal cycle the CEU breakdown should be comprised of at least 3.75 Category 1 CEU's, up to but no more than 2.5 Category 2 CEU's. If using PACs the breakdown would be as follows: at least 2.5 Category 1 CEUs, up to but no more than 2.5 Category 2 CEU's and up to but no more than 1.25 PACs CEU's.]

6.0 Audit of Continuing Education Unit Hours

6.1 Audits Each Biennium

6.1.1 The Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Council to be audited. The Council may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.

6.2 Documentation.

6.2.1 When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CEUs claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Council shall attempt to verify the CEUs shown on the documentation provided by the licensee. Upon completion of the review, the Council will decide whether the licensee's CEUs meet the requirements of these regulations.

6.2.2 Any continuing education not meeting all provisions of these regulations shall be rejected in part or in whole by the Council.

6.2.3 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council

6.2.4 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

6.3 Council Review and Hearing Process.

6.3.1 The Council shall review all documentation requested of any licensee shown on the audit list. If the Council determines the licensee has met the requirements, the licensee's license shall remain in

effect. If the Council determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these regulations. Unjustified noncompliance with these regulations shall be considered unprofessional conduct and grounds for discipline pursuant to 24 Del.C. §1799P(a)(5), subject to final approval of the Council's written recommendation by the Board.

7.0 Crimes Substantially Related to the Practice of Genetic Counseling

Pursuant to 24 Del.C. §1799P(a)(6) the crimes determined by the Board to be substantially related to the practice of medicine are also determined to be substantially related to the practice of genetic counseling and may result in the denial of a license and/or disciplinary action against a licensee.

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Statutory Authority: 2 Delaware Code, Sections 1802; 29 Delaware Code, Section 8404
(2 Del.C. §1802 and 29 Del.C. §8404)
2 DE Admin. Code 2287

ORDER

2287 Public Carrier Regulations

Summary of the Evidence and Information Submitted

The Division of Motor Vehicles of the Department of Transportation proposed several changes to the current Public Carrier Regulations, relating to several distinct matters. The existing and proposed changes were published in 15 DE Reg. 55 (July 2011).

The first proposed change related to the existing regulations requiring that the name of the lessee operating a taxi be displayed on every vehicle by painting or permanently affixing this information to the vehicle. When a split-lease is executed or a vehicle is substituted while it is being serviced, the respective name of the lessee is not affixed to the vehicle as required.

This proposed change responded to several members of the industry that have made a request that a temporary magnetic sign be allowed to post the name of the lessee each time a change is made.

The second proposed change related to the existing regulations requiring a unique DelDOT number to be assigned to all charter buses, medical transports, and taxis.

The third proposed change related to the definition of ambulances that the Division believes should be exempt from the Public Carrier regulation, as these vehicles are already regulated by another state agency.

The Department accepted written comments on the proposed Amendment to its Standards and Regulations for Public Carriers from July 1, 2011 through July 31, 2011.

No such comments were received, however. The Division has determined that no further changes to the proposed regulations are warranted at this time.

Findings of Fact

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

1. The proposed revisions to the existing Public Carrier Regulations are useful and proper, and reflect accepted business practices in the public carrier industry in Delaware.
2. The adoption of these proposed changes to the Public Carrier Regulations is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt these amendments to the Delaware Department of Transportation, Division of Motor Vehicles Public Carrier Regulations, as set forth in the version attached hereto, to be effective on October 10, 2011.

IT IS SO ORDERED this 15th day of September, 2011.
 Cleon L. Cauley, Sr., Deputy Secretary
 Delaware Department of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the July 2011 issue of the *Register* at page 55 (15 DE Reg. 55). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2287 Public Carrier Regulations

DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 131, 146 and 508;
 (17 Del.C. §§131, 146 & 508)

FINAL

ORDER

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Proposed changes to the Delaware Department of Transportation's Standards and Regulations for Subdivision Streets and State Highway Access were previously advertised in the *State Register of Regulations*, at Vol. 15, page 56 (July 2011), seeking public comments on the proposed changes. Comments were accepted from July 1, 2011 through July 31, 2011.

The following table shows the comments received and the Department's reaction to those comments.

No	By:	Associated with Section	Comment	Response/Action
1	Mark Luszczyk, DelDOT staff	3.10.1 and 3.10.4	It appears to me that Section 3.10.1 should be updated. Read in isolation, it conflicts with 3.10.4. Perhaps a simple reference to 3.10.4 should be added to 3.10.1. Another option would be to move the second paragraph of 3.10.4 to 3.10.1.	Agreed. We will update Section 3.10.1.
2	Mark Luszczyk, DelDOT staff	3.10.4.3, part 2	Section 3.10.4.3.2 references the Transportation System Improvement agreement. We should be careful when publishing this as final to make sure we're all on the same page. We are still waiting for [our Deputy Attorney General] to bless our updated signal agreements. Once that is done, we should make sure we're using the same terminology on the agreements and in the Revolving Fund rules.	Agreed. For the purpose of this revision we will use the term "signal agreement."
3	Mark Luszczyk, DelDOT staff	3.10.4.5, part 7	Section 3.10.4.5.7 only references the need for a future signal. It should also reference the need for the modification of an existing signal.	Agreed. We will make that change.

FINAL REGULATIONS

4	Alex Makitka Townsend DE19734	General	Can the proposed new "traffic signal" fund be used to install a traffic signal at the intersection of U.S.Rt. 13, and Fieldsboro Road? The "developers" can then pay back to the fund over time.	The intent of the fund is to accept and hold funds from developers who choose to pay at the start of the development process rather than enter signal agreements. At Route 13 and Fieldsboro Road, lack of money is not an issue. The developers along Fieldsboro Road have entered agreements to fund a signal when DeIDOT determines that one is warranted. Presently, one is not warranted.
5	D.J. Hughes, P.E. Davis, Bowen & Friedel, Inc.	General	I am not opposed to a voluntary contribution by developers to a Traffic Signal Revolving Fund and can see the benefits of having such an option. However, unless it is certain a signal will be installed I cannot see why a developer would pay upfront.	Some developers have said that they would prefer paying a known cost at the start of their development to having an obligation for an unknown cost at an unknown date.
6	D.J. Hughes, P.E. Davis, Bowen & Friedel, Inc.	General	It is debatable whether the maintenance costs of \$10,000 should all be assumed by DeIDOT giving consideration to developer costs for design and construction of entrance and off-site improvements and signal as well as typical dedication of ROW along frontage road(s) at no cost to the State.	We will revise Section 3.10.4.5 to better address signal maintenance costs.
7	D.J. Hughes, P.E. Davis, Bowen & Friedel, Inc.	3.10.4 and 3.10.4.5	Also, the beginning of Section 3.10.4 implies contribution to the fund by a developer is voluntary. Yet, both sections 3.10.4.5.6 & 3.10.4.5.7 imply the fund is not optional with the use of the words "shall" and "must".	Contribution to the fund, where permitted, is an alternative to entering a signal agreement. We will revise those sections to make that clear.
8	D.J. Hughes, P.E. Davis, Bowen & Friedel, Inc.	General	Overall, this could provide an option for a developer to contribute an upfront lump sum signal contribution at a reduced cost and be relieved of an indefinite costs and schedule for a potential signal. It could provide certainty for the state that funding will be available when a signal is warranted. It is a little unclear if there are situations that require contribution, and I am just not sure this will be used frequently unless the situation is such that signal installation or modification is a foregone conclusion.	Contribution to the fund, where permitted, is an alternative to entering a signal agreement. See our response to Comment 5.

9	Frank Szczuka, Townsend, DE 19734	General	I have been directly involved with DeIDOT's traffic signal agreements, and I must admit that the way DeIDOT creates these agreements are not meant to put any cost onto the developers who create this need, developers are allowed to escape the notes that are on the record plans and this must stop. First, you must collect money before DeIDOT releases a Letter of No Objection, or holds a deadline to payments in different phases before proceeding to the next phase, 2 nd , developers should not be allowed to weasel out of agreements, 3 rd , DeIDOT must stop using public's money for signal's that were not able to be collected from developers agreements because of shoddy agreements, developers should be held accountable for any agreements that were not honored before any new developments are created. DeIDOT must start working for the public, not the developer as it appears right now, too much money is paid for by the public because the developer found ways to avoid payments to DeIDOT for projects that were created because of need for infrastructure that is created by developers' project, (DeIDOT does not appear to be as smart as developers or there is funny business performed by those in charge). DeIDOT needs change now, give the public the same courtesy as they give the developer!	DeIDOT utilizes signal agreements for the express purpose of assigning the costs of signals to those who create the need for them. While there have been some exceptions, generally developers have honored the agreements. When they have not, DeIDOT has taken appropriate legal action and will continue to do so if warranted.
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Summary of the Evidence and Information Submitted

The comments received, the Department's reactions to those comments, and the Department's reconsiderations of the proposed revisions, are as summarized in the above table. These comments caused certain changes to be made in the proposed revisions to the Standards and Regulations. The Department considers none of these changes to be substantive in nature, and thus causing the need for a new comment period.

The following summarizes the changes to the Revisions since the November 1 publication, based on the public comments and the Department's own review.

Background

Traffic signal agreements and the funds derived from them to cover the cost for the installation of traffic signals associated with new developments are onerous for developers, as currently implemented. The Agreements' can present them with unknown costs that are outstanding for undetermined periods of time. Further, where applied to residential subdivision entrances, the agreements can remain outstanding after the developer has completed the project, in which case it can be difficult for the Department to collect on them. The Traffic Signal Revolving Fund addresses those concerns and provides a vehicle that is consistent, predictable and fair.

Findings of Fact

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

1. The proposed revisions to the Standards and Regulations for Subdivision Streets and State Highway Access are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.

2. The adoption of these proposed changes to the Standards and Regulations for Subdivision Streets and State Highway Access is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Delaware Standards and Regulations for Subdivision Streets and State Highway Access, as set forth in the version attached hereto, to be effective on October 10, 2011

IT IS SO ORDERED this 21st day of October, 2011.

Shailen Bhatt, Secretary

Delaware Department of Transportation

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

2309 Standards and Regulations for Subdivision Streets and State Highway Access

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER TWENTY-EIGHT**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: ESTABLISHING THE DELAWARE HISPANIC COMMISSION TO EXPAND AND IMPROVE REPRESENTATION OF AND ADVOCACY FOR DELAWARE'S HISPANIC COMMUNITY

WHEREAS, the State of Delaware has a significant and growing Hispanic population that faces many unique challenges and opportunities; and

WHEREAS, input from and communication with the Hispanic communities of Delaware is critical to ensuring that services, programs and policies are established in a way that reflect the needs of Hispanic Delawareans; and

WHEREAS, on July 11, 1978, Governor Pete DuPont created the Governor's Council on Hispanic Affairs to address the challenges and opportunities specific to Hispanic Delawareans, and successive governors have updated and expanded the responsibilities of the Governor's Council on Hispanic Affairs; and

WHEREAS, since its founding, the Council has ably represented the Hispanic community in Delaware and provided successive governors, administrations, legislators and policy-makers with advice and insight into how to meet the needs of Delaware's Hispanic community and promote its unique heritage; and

WHEREAS, to further this work, on August 17, 2006, Governor Ruth Ann Minner created the Governor's Consortium on Hispanic Affairs to work with the business, government, financial, educational and non-profit communities to review and study issues affecting the Hispanic community in Delaware, as well as to seek funding from foundations and other sources to meet the needs of the community; and

WHEREAS, the Governor's Council on Hispanic Affairs and the Governor's Consortium on Hispanic Affairs have similar duties and concerns, and joining the voices and working hands of these two groups into one organization can strengthen their service to and representation of Delaware's Hispanic community;

WHEREAS, there is an opportunity to better serve the Hispanic community of Delaware by combining the resources of these two organizations into one commission that is broadly representative of all Hispanic Delawareans and that can leverage support from the State of Delaware and from foundations and other non-profit or business supporters.

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

1. The Delaware Hispanic Commission (the "Commission") is hereby established for the purpose of enhancing and streamlining the efforts previously undertaken by the Governor's Council on Hispanic Affairs and the Governor's Consortium on Hispanic Affairs.
2. The Commission shall consist of no fewer than 15 but no more than 25 members. The members of the Commission shall be appointed by and serve at the pleasure of the Governor. The Chair or Co-Chairs shall be appointed by the Governor and serve at the pleasure of the Governor.
3. The membership of the Commission shall be broadly representative of the Hispanic community in Delaware, and the membership shall include but not be limited to representatives from business, government, financial, educational and non-profit organizations, and may include organizations that serve the Delaware Hispanic community
4. The Commission shall act by majority vote and shall adopt by-laws that provide for operating procedures such as election of officers, appointment of committees, designation of a quorum, conducting of meetings, and other matters that will promote the efficient operation of the Commission in the performance of its duties under this executive order.
5. The duties and functions of the Commission shall be:
 - a. To advise the Governor, the Cabinet, members of the General Assembly, and other state policy-makers on means to improve the delivery of services to the Hispanic community in Delaware;

- b. To review, study, and prioritize issues affecting the Hispanic community in Delaware, including, but not limited to, the concerns of the community involving education, social services, housing, health care, culture, history, the arts, civil and human rights, legal and legislative matters, employment, finance, and economic development;
 - c. To undertake and promote projects that benefit the Hispanic community in Delaware;
 - d. To coordinate its efforts with other advisory councils, community agencies, non-profit organizations and other groups whose efforts affect the Hispanic community;
 - e. To work with the education and business communities in Delaware to ensure that Delaware's Hispanic population has access to educational and employment opportunities;
 - f. To obtain funding to support the Hispanic community in Delaware from foundation and government sources;
 - g. To issue recommendations to the Governor and the General Assembly concerning legislation pending the General Assembly which is of particular interest to the Hispanic population; and
 - h. To perform such other functions and duties as assigned to it by the Governor.
6. The Commission shall report its progress and work to the Governor annually.
7. Executive Order Number Eighty Nine, issued by Governor Ruth Ann Minner on August 17, 2006, Executive Order Number Twenty-Six, issued by Governor Thomas R. Carper on February 17, 1995, and Executive Order Number Eighty-Five, issued by Governor Michael N. Castle on November 20, 1990, are hereby rescinded.

APPROVED this 2nd day of September, 2011

**EXECUTIVE ORDER
NUMBER TWENTY-NINE**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: ENSURING REPRESENTATION OF VETERAN-OWNED BUSINESSES IN DELAWARE'S SUPPLIER DIVERSITY INITIATIVES AND AMENDING EXECUTIVE ORDER NO. 14

WHEREAS, the armed services of the United States are the principal vanguard of our nation and the protector of the freedoms we enjoy as Americans, and they do so through the personal sacrifice of servicemen and servicewomen dedicated to protecting our country at home and abroad;

WHEREAS, as Americans and Delawareans, we recognize the debt we owe to our veterans and acknowledge that our former service members should enjoy the same security and opportunities made available to all Americans by their service;

WHEREAS, there are more than 78,000 veterans who call Delaware home, according to the U.S Department of Veterans Affairs, but state government has not historically tracked how it conducts business with the veteran-owned businesses throughout our State;

WHEREAS, Executive Order No. 14, signed on December 22, 2009, created a Supplier Diversity Council, the purpose of which is to advocate for supplier diversity initiatives, particularly as they relate to minority and/or women-owned business enterprises;

WHEREAS, the work of the Supplier Diversity Council can be built upon by expanding its focus to include the study and consideration of how the State of Delaware does business with veteran-owned business enterprises;

WHEREAS, the work of the Supplier Diversity Council on behalf of minority and women business enterprises and veteran-owned business enterprises can and will benefit many small businesses through the development of strategies that will increase small business participation in state contracting;

WHEREAS, in its report to the Governor, the Supplier Diversity Council proposed expanding the membership of the Council to include veteran-owned businesses;

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

1. The Executive Branch will provide leadership and support to ensure that all veteran-owned business enterprises are afforded full, equitable and fair opportunities to compete for State purchasing dollars.
2. Paragraph Nos. 10, 11 and 12 of Executive Order No. 14, issued December 22, 2009 and creating the Governor's Supplier Diversity Council (hereinafter "Council") are hereby rescinded, and in lieu thereof, the Supplier Diversity Council is hereby reconstituted.
3. The Council shall consist of twelve (12) members who shall be citizens of the State and shall be appointed by the Governor. The Governor shall appoint a Chairperson from among its members who shall serve at the Governor's pleasure. The members of the Council shall be appointed subject to the following qualifications:
 - a. Two members of the Council shall be representatives of local, private or federal minority and/or women business assistance programs or community development programs;
 - b. Five members of the Council shall be representatives of the minority and/or women private business sector, among whom at least two shall be women and at least two (2) shall be minority persons;
 - c. One representative shall be from a private sector company located in the State of Delaware that administers a supplier diversity program;
 - d. One member shall be a representative of the veteran-owned private business sector;
 - e. The Executive Director of the Office of Management and Budget ("OMB") or his/her designee;
 - f. The Executive Director of the Delaware Economic and Development Office ("DEDO") or his/her designee; and
 - g. One representative of the Governor.
4. Members of the Council currently serving shall continue to serve their terms without interruption. Each appointed Council member shall serve for a term of four (4) years from the date of appointment. Vacancies on the Council for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify. The Governor may appoint members for terms shorter than four (4) years where that is necessary to ensure that no more than four Council members' terms expire in one given year. The Council shall adopt internal procedures or bylaws necessary for efficient operations.
5. The purpose of the Council shall be to:
 - a. Advocate for the State of Delaware's supplier diversity initiatives;
 - b. Offer training and information on the tools necessary for successfully doing business with the State of Delaware as a minority and/or women business enterprise or a veteran-owned business enterprise;
 - c. Help maximize supplier diversity among the State agencies, and help increase contracting opportunities for qualified minority, women and/or veteran-owned business enterprises;
 - d. Develop criteria for evaluation of supplier diversity initiatives pursuant to this Executive Order;
 - e. Identify potential impediments, if any, concerning supplier diversity within State government, and develop strategies to eliminate these impediments, including the elimination of impediments that limit all small businesses from participating in contracting opportunities; and
 - f. As the Council has done and will continue to do for minority and/or women business enterprises, evaluate how to best serve veteran-owned businesses in the State of Delaware, including but not limited to evaluation of: (1) a definition of veteran-owned business and/or whether certification or other identification of veteran-owned businesses is achievable and advisable, (2) how the Office of Minority and Women Business Enterprise within the Office of Management and Budget might assist veteran-owned businesses, (3) how the State might report contracts awarded to veteran-owned businesses in a manner similar to its disclosure for minority and/or women owned businesses, and (4) how Executive Branch Agencies might assist veteran-owned businesses and the role of Minority and Women Business enterprise Liaisons to that purpose; and
 - g. Provide advice and recommendations to the Governor concerning supplier diversity strategies.
6. No provision of this Order shall be intended to create any individual right or legal cause of action, which does not currently exist under State or Federal law.

APPROVED this 6th day of September, 2011

**EXECUTIVE ORDER
NUMBER THIRTY**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: RECOGNIZING AND RECONSTITUTING THE SCHOOL LIBRARIES COUNCIL TO IMPROVE AND EXTEND THE SCHOOL LIBRARY SERVICES THAT ARE ESSENTIAL TO EDUCATIONAL SUCCESS

WHEREAS, in or about January 1993, the State Librarian issued a report entitled "An Action Agenda for Delaware Libraries"; and

WHEREAS, partially in response to the State Librarian's report, former Governor Thomas R. Carper convened a Task Force on School Libraries; and

WHEREAS, the Governor's Task Force on School Libraries was established by Executive Order Number Thirty-Five, issued by Governor Ruth Ann Minner on January 15, 2003; and

WHEREAS, it is in the best interests of the State that the Governor's Task Force on School Libraries be recognized and reconstituted as the School Libraries Council;

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

1. The School Libraries Council (the "Council") is hereby established for the purpose of assuming the responsibilities of and replacing the Governor's Task Force on School Libraries.
2. The Council shall be composed of thirteen members who shall serve at the pleasure of the appointing authority. The Chairperson of the Council shall be appointed by the Governor from among the Council members. The Council members shall include one member appointed by the President Pro Tempore of the Senate, one member appointed by the Speaker of the House and eleven members appointed by the Governor. The members appointed by the Governor shall include:
 - a. A representative of the Department of Education recommended by the Secretary of the Department of Education;
 - b. A representative of the Department of State recommended by the Secretary of State;
 - c. A representative of the Department of Technology and Information recommended by the Chief Information Officer of the Department of Technology and Information;
 - d. A school librarian representing Delaware school libraries;
 - e. A representative of the Delaware school library media certification/education program;
 - f. A representative of the online periodicals program for K-12 schools, UDLib/SEARCH;
 - g. A representative of the business community; and
 - h. Four public members, which shall include one resident of the City of Wilmington, one resident of New Castle County outside of the City of Wilmington, one resident of Kent County, and one resident of Sussex County.
3. The purposes of the Council shall be to improve and extend school library services to all Delaware public and charter school students from pre-kindergarten through twelfth grade, to support curriculum reform efforts related to school libraries, and to prepare students to succeed in college and career readiness through enhancement of library resources. In furtherance of these purposes, the Council shall:
 - a. Communicate and collaborate among state agencies and state organizations that advocate and support improvement in school libraries, such as the Department of Education, Department of State, Department of Technology and Information, Delaware School Library Association, Diamond State Reading Association, and others responsible for school libraries, public libraries and technology, to help support and improve school libraries.

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- b. Encourage the use of professional standards for school libraries via local education agencies by assessing and recommending improvements for their programs.
 - c. Participate in literacy efforts throughout the State, especially reading initiatives in schools.
 - d. Promote education of library personnel and students to improve competence in accessing the use of global information.
 - e. Support the exemplary school library programs and collaboration among librarians and teachers who showcase the special effects on academic achievement attained through quality school libraries.
 - f. Act by majority vote and adopt by-laws that provide for operating procedures such as the election of officers, appointment of committees, designation of a quorum, conduct of meetings, and other matters that will promote the efficient operation of the Council in the performance of its duties under this executive order.
 - g. Prepare and submit an annual report of its activities to the Secretary of Education and the Governor.
4. Executive Order No. 35, dated January 15, 2003, issued by Governor Ruth Ann Minner, is hereby rescinded.

APPROVED this 14th day of September, 2011

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, October 20, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Asset Verification System
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) provides notice of intent to submit a State Plan Amendment (SPA) to implement section 1940 of the Social Security Act that requires all States to implement *Asset Verification System*, a system for verifying the assets of aged, blind or disabled applicants for and recipients of Medicaid.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Program of All Inclusive Care for the Elderly (PACE)
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan to add Medicaid coverage for *Program of All Inclusive Care for the Elderly (PACE)* as an optional service.

The proposed amends the Delaware Title XIX Medicaid State Plan to add Medicaid coverage for *Program of All Inclusive Care for the Elderly (PACE)* as an optional service. PACE is a provider type under Medicare that allows states the option to pay for PACE services under Medicaid. The PACE program is capitated by both Medicare and Medicaid to provide all medical and long-term care services.

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 October 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.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Payment Error Rate Measurement (PERM)****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) provides notice of intent to submit a State Plan Amendment (SPA) to elect the option to substitute the Payment Error Rate Measurement (PERM) eligibility process for the traditional Medicaid Eligibility Quality Control reviews.

The proposal serves as notice of intent of the Division of Medicaid and Medical Assistance (DMMA) to submit a State Plan Amendment (SPA) to elect the option to substitute the Payment Error Rate Measurement (PERM) eligibility process for the traditional Medicaid Eligibility Quality Control reviews.

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 October 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.

DIVISION OF SOCIAL SERVICES**Benefit Restorations for Cash Assistance and Food SNTamps****PUBLIC NOTICE**

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

DSSM 2011, ~~*Benefit Restorations for Cash Assistance and Food Stamps*~~ *Issuing Benefit Restorations*: The name of the section is being changed to more clearly indicate the content of the policy. Policy is being reformatted for clarity and ease of readability. Federal citations are also added to the policy section.

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 October 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.

DIVISION OF SOCIAL SERVICES**Treatment of Income and Resources of Certain Non-Household Members****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Treatment of Income and Resources of Certain Non-Household Members*.

DSSM 9076, *Treatment of Income and Resources of Certain Non-Household Members and DSSM 9076.1, Intentional Program Violation, Felony Drug Conviction or Fleeing Felon Disqualifications or and Work Requirement*

Sanctions: Senate Bill (SB) 12 of the 146th General Assembly eliminated the bar to receipt of food benefits for those convicted of a felony drug conviction. This policy change removes text from the policy manual that says individuals convicted of a felony drug conviction are ineligible for food benefits. SB 12 was effective upon the Governor's signature on June 22, 2011 and affects benefits beginning July 1, 2011.

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 October 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.

DIVISION OF SOCIAL SERVICES
Electronic Benefit Transfer
PUBLIC NOTICE

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

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 October 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.

DIVISION OF SOCIAL SERVICES
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal
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 (DSS) is proposing to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

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 November 15, 2011. A draft copy of the Delaware TANF State Plan has been prepared which reflects amendments as well as basic improvements to the various descriptions of programs and services. This document may be viewed and downloaded from the Internet at the Division of Social Services' website at <http://www.dhss.delaware.gov/dhss/dss/>.

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.

Future amendments to the State Plan will incorporate suggestions and recommendations received during the comment period. The 45-day comment period begins on the date this notice is published in the *Delaware Register*

of Regulations. Comments received within 45 days will be reviewed and considered for any subsequent revision of the TANF State Plan.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT Delaware's Regulations Governing Hazardous Waste (RGHW) PUBLIC NOTICE

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to the *RGHW* that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations. Some of the changes DNREC is proposing to make are already in effect at the federal level. Additionally, DNREC is proposing to adopt required federal regulations and miscellaneous changes to correct errors and add consistency or clarification.

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

The public hearing on the proposed amendments to RGHW will be held on Monday, October 24, 2011 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

1300 Board of Examiners of Private Investigators & Private Security Agencies PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 2.0 - Use of Rifle and Shotgun and Adopted Rule 4.0 - Training Requirements. The amendment to Rule 2.0 changes the Department of Homeland Security threat level to comply with the Federal levels. The amendment to Rule 4.0 requires a new training certification for each new application or re-application. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304.

Any persons wishing to present views may submit them in writing, by October 31, 2011, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 27, 2011, 10:00am, at the Tatnall Building, 150 William Penn Street, Room 113 in Dover, Delaware.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION Gaming Control Board

103 Regulations Governing Charitable Gambling Other Than Raffles PUBLIC NOTICE

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

One proposed amendment is to add two new definitions to Rule 1.0 in 10 **DE Admin. Code** 103. One amendment would add a definition of the term "charitable gaming vendor" which would be the term used to describe third party vendors who assist charitable organizations in conducting Texas Hold 'Em and charitable

gaming events. The other would add a definition of the term "officer" to indicate that the term includes investors, managers and others involved in the operation of the charitable gaming vendor.

A second proposed amendment would add a new Rule 14.0 and renumber current Rule 14.0 to become Rule 16.0 in 10 **DE Admin. Code** 103. The new rule would explain the requirements for the licensing of charitable gaming vendors and the required background checks required of officers of such vendors.

A third proposed amendment would add a new Rule 15.0 in 10 **DE Admin. Code** 103, which would explain the Board's view on the number of events organizations may have when they are affiliated with other organizations.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, November 3, 2011 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before October 31, 2011 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board
104 Regulations Governing Texas Hold 'Em Poker
PUBLIC NOTICE

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

One proposed amendment would create a new rule in 10 **DE Admin. Code** 104 explaining the requirements for licensing dealers in Texas Hold 'Em tournaments. These requirements are currently found in the statute at 28 **Del.C.** §1832, and would be essentially the same requirements as for licensing charitable gaming vendors.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, November 3, 2011 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before October 31, 2011 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

The amendments would add a definition of the term "charitable gaming vendor" and "officer" and also explain in detail the licensure requirements for such vendors so that the Board may adhere to new legislation calling for it to license third party vendors who assist charitable organizations in conducting gaming events, and the new legislation's requirement that the Board mandate criminal background checks of vendors and their officers. A similar rule would appear showing licensure requirements for Texas Hold 'Em dealers, which requirements already appear in the statute. A new rule will explain that organizations are limited in the number of events that can be held. If an organization has affiliated entities, they must share in the number of permitted events. But if the organization is operating under another charitable organization's status and with that organization's permission, such as local branches of national charities where the local branches are independent of each other, then each of those local entities is entitled to have the maximum number of events without the need to share them with the other local branches.

DIVISION OF PROFESSIONAL REGULATION
1700 Board of Medical Licensure and Discipline
PUBLIC NOTICE

The Delaware Board of Medical Licensure and Discipline in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations. The proposal creates new Regulation 32 - Use of Controlled Substances for the Treatment of Pain.

The Board will hold a public hearing on November 1, 2011 at 3:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments on the regulations as republished. Anyone wishing to receive a copy of the proposed rules and

regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION
3600 Board of Registration of Geologists
PUBLIC NOTICE

The Delaware Board of Geologist pursuant to 24 **Del.C.** §3606(a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to update the rules by adding provisions concerning a lapsed license, creating an inactive status, adding online courses and web seminars to CEU list and adding to the list of automatically approved course work for CEU requirements.

The Board will hold a public hearing on the proposed rule change on November 4, 2011 at 10 00 am., Second floor conference room B, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Sandra Wagner, Administrator of the Delaware Board of Geologist, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

DIVISION OF PROFESSIONAL REGULATION
8500 Rules and Regulations Regarding Mandatory Information to be Supplied to the State Bureau of Identification
PUBLIC NOTICE

The Delaware Division of Professional Regulation (Division) in cooperation with the Executive Director of the Delaware Criminal Justice Information System is proposing to adopt regulations governing what information the Division must supply to the State Bureau of Identification regarding the Division's investigations, civil enforcement actions or complaints, and changes in license status when such information is related to alleged criminal conduct.

The Director of the Division and the Executive Director of the Delaware Criminal Justice Information System Board solicit, and will consider, timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such written comments will be thirty days (30) after the proposed amended regulations are published in the Delaware *Register of Regulations*.

Written comments should be submitted to the Director in care of Shauna Slaughter, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

The Director will review written submission and consider promulgating the proposed regulations after comment period closes.

PUBLIC SERVICE COMMISSION
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard
PUBLIC NOTICE

Under the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-364 (the "RPS Act"), each electric supplier making retail electric sales in Delaware must accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Delaware Public Service Commission ("PSC") adopted "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules"), 10 DE Reg. 151-157 (July 1, 2006). The PSC has amended the RPS Rules several times since then to conform to subsequent RPS Act amendments.

On July 7, 2011, Senate Bill No. 124, as amended by Senate Amendment No. 1 (78 Del. Laws ch. 99) (July 7, 2011), which amends several sections of the RPS Act was signed into law. The recently enacted law, among other things:

- Amends the definitions section of 26 **Del.C.** §352 to include definitions for “Qualified Fuel Cell Provider” and “Qualified Fuel Cell Provider Project;”
- Transfers the responsibility for procuring renewable energy credits (“RECs”) and solar renewable energy credits (“SRECs”) and any other required attributes necessary to comply with the RPS Act to Commission-regulated electric companies;
- Creates special provisions for Qualified Fuel Cell Providers with respect to recovery of certain costs; and
- Creates special provisions for Commission-regulated electric companies to recover certain costs with respect to their purchase of the output from Qualified Fuel Cell Providers.

The PSC now proposes to revise the RPS Rules to incorporate, and assure consistency with, the statutory changes made by the recently enacted law.

You can review PSC Order No. 8026 (September 6, 2011) (the “Order”) and the proposed revised RPS Rules in the October 2011 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised RPS Rules at the PSC’s Internet website located at <http://depsec.delaware.gov>. If you wish to obtain written copies of the Order and proposed revised RPS Rules, please contact the PSC at (302) 736-7500. Copies are \$0.50 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before November 3, 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. 56

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 pamela.knotts@state.de.us.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on December 1, 2011 at 1:00 P.M. at the PSC’s office at the address set forth above.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the PSC to discuss any auxiliary aids or services needed. The PSC Staff can also provide additional information about this docket. Please e-mail Staff Analyst Pamela Knotts at pamela.knotts@state.de.us. The PSC’s toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).