
Delaware Register of Regulations

Issue Date: April 1, 2013

Volume 16 - Issue 10, Pages 1010 - 1106



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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 March 15, 2013.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 1728 - 1759 (06/01/12)

Refers to Volume 15, pages 1728 - 1759 of the *Delaware Register* issued on June 1, 2012.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 17	4:30 p.m.
August 1	July 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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	16 DE Reg. 815 (Errata)
1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)	16 DE Reg. 656 (Final)
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2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	16 DE Reg. 192 (Prop.)
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2501 External Equal Employment Opportunity Complaint Procedure.....	16 DE Reg. 270 (Prop.)
Division of Transportation Solutions	
2402 Delaware Manual on Uniform Traffic Control Devices.....	16 DE Reg. 274 (Prop.)
	16 DE Reg. 660 (Final)
2404 Traffic Calming Manual.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 544 (Final)

EXECUTIVE DEPARTMENT

Delaware Economic Development Authority

401 Procedures Regarding Non-State Guaranteed Bonds.....	16 DE Reg. 831 (Prop.)
403 Administration and Operation of Council on Development Finance.....	16 DE Reg. 831 (Prop.)

Delaware Economic Development Office

402 Procedures Governing The Delaware Strategic Fund.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
451 Matching Grants Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
452 Direct Grants Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
453 Co-Op Advertising Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
454 Procedures Governing Delaware Tourism Grant Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
Office of Management and Budget	
Environmentally Preferred Purchasing Policy.....	16 DE Reg. 743 (Prop.)
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	16 DE Reg.1003 (Final)
2007 Disability Insurance Program Rules and Regulations.....	16 DE Reg.1004 (Final)

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.

DELAWARE DEPARTMENT OF AGRICULTURE
POULTRY AND ANIMAL HEALTH SECTION

Statutory Authority: 3 Delaware Code, Section 8004 (3 **Del.C.** §8004)

PUBLIC NOTICE**906 Euthanasia of Animals in Shelters**

Notice is hereby given that a public comment period for proposed **906 Euthanasia of Animals in Shelters Regulations** will open on April 1, 2013 and close on April 30, 2013. The purpose of the public comment period is to provide the public time to consider the proposed regulation; **906 Euthanasia of Animals in Shelters Regulations** and to make comment with regard to the adoption of said regulations. These proposed regulations have been developed pursuant to 3 **Del.C.** §8004. The proposed regulations govern the acceptable methods of euthanasia, as well as the standards for sanitation and ventilation of the euthanasia areas, for animals held animal shelters. These regulations were developed by the Poultry and Animal Health Section of the Delaware Department of Agriculture in consultation with the Delaware Board of Veterinary Medicine, Division of Professional Regulation.

The proposed regulations are posted on the Delaware Department of Agriculture website (www.dda.delaware.gov). Hard copies of the proposed regulations may be obtained from the Delaware Department of Agriculture. Comments may be submitted in writing and/or e-mail to Heather Hirst (Heather.Hirst@state.de.us) at the Delaware Department of Agriculture, on or before April 30, 2013. A public hearing on these regulations will NOT be held unless the Secretary of Agriculture receives a request within 30 days from this notice, or if the Secretary determines that a public hearing is in the public interest. A request for a hearing shall be in writing and shall state the nature of the issues to be raised at the hearing. It must show familiarity with the proposal and a reasoned statement of the proposed regulations impact. It is requested that written comments or requests for a hearing be addressed to:

Heather L. Hirst, Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901
Heather.Hirst@state.de.us

906 Euthanasia of Animals in Shelters**PREAMBLE**

These regulations have been developed pursuant to 3 Del.C. §8004, by the Poultry and Animal Health Section of the Delaware Department of Agriculture in consultation with the Board of Veterinary Medicine, Division of Professional Regulation (DPR). This statutory and regulatory authority establishes the requirement that animals held in shelters are euthanized humanely by trained and certified persons. The Delaware Department of Agriculture (DDA) will manage these regulations in conjunction with the Board of Veterinary Medicine, DPR. In general, the DPR will oversee training requirements for those persons performing euthanasia in animal shelters, as provided in these regulations. The certified lay person must be trained according to the guidance provided in these regulations. The "certified lay person" designation will be phased out over time. All individuals performing euthanasia in animal shelters shall be a licensed veterinarian or a licensed euthanasia technician, as of [18 months from the effective date of this Rule]. Euthanasia technicians will be trained and licensed in accordance with Title 24.

1.0 Authority, Purpose and Scope

- 1.1 Authority. These regulations are promulgated pursuant to the authority provided by 3 Del.C. §8004. The State Veterinarian or her or his designee shall have the authority to administer these regulations and shall be responsible for making the determinations required herein.
- 1.2 Purpose. The purpose of these regulations is to establish requirements for humane euthanasia of animals held in animal shelters. These regulations govern the acceptable methods of euthanasia, as well as the standards for sanitation and ventilation of the euthanasia areas, for animals held animal shelters in the State of Delaware.
- 1.3 Scope. The definitions and regulations herein apply only to animal shelters and to persons performing euthanasia in animal shelters.

2.0 Definitions

"Animal shelter" means a public or private facility which includes a physical structure that provides temporary or permanent shelter to stray, abandoned, abused, or owner-surrendered animals and that is operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. "Animal shelter" shall not include individuals providing temporary foster care to animals in their home or to animal rescue groups sheltering animals on an individual's private property.

"Certified Lay Person" is the designation to be used for the individual defined according to 3 Del.C. §8004(d)(3c). "Certified lay person" means a person certified by a licensed veterinarian, after passing both a written and practical examination, as proficient to perform euthanasia. The certified lay person designation will be phased out. All individuals performing euthanasia in animal shelters shall be a licensed veterinarian or a licensed euthanasia technician, as of [18 months from the effective date of this Rule].

"Licensed Euthanasia Technician" is the designation to be used for the individual defined according to 3 Del.C. §8004(d)(3b). "Licensed euthanasia technician" means an individual licensed as a euthanasia technician pursuant to Title 24. The licensed euthanasia technician is only permitted to perform euthanasia within an animal shelter of employment.

"Policy and Procedure Manual" means a manual, or part of an animal shelter's policy and procedure manual, developed in conjunction with a shelter's consulting or staff veterinarian, which explains each shelter's protocol for euthanasia.

3.0 Standards for the euthanasia area in animal shelters

- 3.1 Each shelter shall have a specific area designated for euthanasia. That area:
 - 3.1.1 shall be a separate room; or
 - 3.1.2 an area that is physically separated from the rest of the facility by a wall, barrier or other divider; or

- 3.1.3 an area that is not used for any other purpose while animals are being euthanized.
- 3.1.4 shall provide a safe, quiet environment in which to perform euthanasia.
- 3.1.5 shall provide adequate space for two persons to perform euthanasia.
- 3.2 The following information shall be posted in the euthanasia area:
 - 3.2.1 Response protocols for accidental exposure of humans to euthanasia or chemical restraint drugs maintained in the euthanasia area.
 - 3.2.2 Material Safety Data Sheets for euthanasia and chemical restraint drugs maintained in the euthanasia area.
- 3.3 The euthanasia area shall meet the following minimum standards:
 - 3.3.1 Lighting shall be bright and even and provide adequate illumination for inspection and identification of animals, performance of euthanasia procedures, and safe working conditions for personnel.
 - 3.3.2 The air temperature shall be within a reasonably comfortable range for both personnel and animals. A minimum of 65 degrees and a maximum of 85 degrees Fahrenheit is recommended.
 - 3.3.3 The area shall have adequate ventilation that prevents accumulation of odors.
 - 3.3.4 The floor of the area shall provide dry, non-slip footing to prevent accidents.
 - 3.3.5 The euthanasia area shall be an area that can be easily cleaned and disinfected.
- 3.4 The euthanasia area shall have the following equipment:
 - 3.4.1 A table or other work area where animals can be handled safely while euthanasia is performed.
 - 3.4.2 A separate work area where the drug, needle, syringe and clippers can be placed.
 - 3.4.3 Holding cages available to hold an animal while waiting for the euthanasia drug to take effect (if needed following intraperitoneal injection). These cages shall be maintained in a clean and sanitary condition.
 - 3.4.4 All equipment shall be in good working order.
- 3.5 The following equipment and supplies shall be kept in the euthanasia area or shall be brought to the area each time euthanasia is performed:
 - 3.5.1 A first aid kit.
 - 3.5.2 One or more tourniquets.
 - 3.5.3 Standard electric clippers with a number 40 blade or an equivalent blade.
 - 3.5.4 Humane restraint devices for dogs and cats.
 - 3.5.5 Stethoscope.
 - 3.5.6 Towels, sponges and disinfectant.
 - 3.5.7 Sharps disposal system.
- 3.6 All drugs and other chemical agents used in the euthanasia area shall be clearly labeled.
- 3.7 Section 3.0 does not apply to livestock and horses, which may be euthanized in an outdoor environment.

4.0 Euthanasia methods and procedures for animal shelters

- 4.1 Euthanasia of dogs, cats and other species in animal shelters
 - 4.1.1 Except as provided in subsection 4.1.3 of this section, the use of sodium pentobarbital or a derivative of it shall be the exclusive method for euthanasia of dogs, cats, and other species by animal shelters. A lethal solution shall be used in the following order of preference, according to the standards of the most recent AVMA Guidelines on Euthanasia:
 - 4.1.1.1 Intravenous injection by hypodermic needle;
 - 4.1.1.2 Intraperitoneal injection by hypodermic needle; or
 - 4.1.1.3 Intracardiac injection by hypodermic needle.
 - 4.1.2 Euthanasia shall be performed by a licensed veterinarian licensed euthanasia technician, or a certified lay person who is properly trained to perform euthanasia. Such certified lay person and

PROPOSED REGULATIONS

licensed euthanasia technician shall perform euthanasia under direct or indirect supervision of a licensed veterinarian.

4.1.3 Notwithstanding subsection 4.1.1 of this section:

4.1.3.1 In cases of extraordinary circumstance, or situation where the dog, cat, or other species poses a risk or danger to the veterinarian, licensed euthanasia technician, or certified lay person performing euthanasia, such person shall be allowed the use of any other substance or procedure that is humane to perform euthanasia on such dangerous dog, cat, or other species. The substances and procedures used shall be:

4.1.3.1.1 Specified in the shelter's policy and procedure manual;

4.1.3.1.2 Utilized under the supervision of a veterinarian in the cases where a non-veterinarian is involved; and

4.1.3.1.3 According to the approved methods of the most recent AVMA Guidelines on Euthanasia.

4.1.4 Any substance which acts as a neuromuscular blocking agent shall not be used with, or in lieu of sodium pentobarbital for euthanasia purposes.

4.1.5 To assure safe and humane euthanasia technique, a minimum of two persons shall be required for any euthanasia procedure. One person shall be a licensed veterinarian, licensed euthanasia technician, or a certified lay person, and one or more persons shall be handler(s). The handler does not have to be a licensed veterinarian, licensed euthanasia technician, or a certified lay person, but the handler should be trained in human safety and in animal handling techniques.

4.1.6 No animal will see another animal being euthanized.

4.1.7 No dog, cat, or other species may have its body disposed of until death is confirmed by a licensed veterinarian, licensed euthanasia technician, or a certified lay person. Each animal shall be checked to verify death and verification shall be made by physical examination of the individual animal. All of the following indicators of death shall be met:

4.1.7.1 Complete lack of palpebral, corneal and pupillary reflexes;

4.1.7.2 Complete lack of heartbeat determined by use of a stethoscope; and

4.1.7.3 Complete lack of respiration.

5.0 Mandated training of certified lay persons

5.1 A person, except for a veterinarian licensed to practice in Delaware, shall not euthanize an animal held by or in the custody of an animal shelter unless such person has successfully completed a training course, approved by the Delaware Board of Veterinary Medicine, in the proper methods and techniques for euthanizing animals.

5.2 Training shall be completed not more than two (2) years prior to the date the person euthanizes an animal.

5.3 The training requirement is effective as of [six months after effective date of this Rule].

5.4 A person who has completed training, which meets the requirements of Rule 6.0, within the two (2) years preceding the effective date of this Rule, may be exempt from the requirement of completing training approved by the Delaware Board of Veterinary Medicine. Upon request, such person shall produce documentation of having completed training which meets the requirements of Rule 6.0.

6.0 Requirements for euthanasia training course

6.1 The euthanasia training course shall be at least sixteen (16) hours and the course curriculum shall include:

6.1.1 The pharmacology, proper administration and storage of euthanasia solutions;

6.1.2 Federal and state law regulating the storage and accountability of euthanasia solutions;

6.1.3 Euthanasia technician stress management;

6.1.4 Proper restraint and handling of an animal during euthanasia;

6.1.5 Techniques for verifying an animal's death; and

6.1.6 The proper disposal of a euthanized animal.

6.2 There shall be at least one instructor per course who is a licensed veterinarian who can provide proof of being proficient and experienced in intravenous, intracardiac and intraperitoneal administration of pharmaceuticals.

6.3 The training course shall provide direct, hands-on training experience on injectable administration methods.

6.4 In order to successfully complete a course, the participant shall pass both a written and practical examination prepared by the course sponsor or instructor. The exams shall be designed to demonstrate that the participant has applicable knowledge of all the mandated course topics. The course sponsor shall retain examination results and shall provide a certificate of course completion to participants. The course participants shall retain proof of their training for a minimum of 3 years.

7.0 Approval of euthanasia training course

7.1 The euthanasia training course sponsor shall obtain approval of the course curriculum from the Delaware Board of Veterinary Medicine prior to the presentation of the course. The course sponsor shall apply for approval at least eight (8) weeks prior to the course date and shall submit the date, time, duration and location of the course; a course syllabus; and the name and credentials of the instructor(s). The course syllabus shall include a detailed list of the topics covered with a breakdown of the hours spent on each topic.

7.2 Once a course has been approved, subsequent sessions of the identical course, using the same instructor(s), may be given without obtaining prior approval, as long as the Board is notified of the date, time, duration and location of the additional course sessions at least two (2) weeks prior to the course date.

7.3 A euthanasia technician certification course approved by the American Humane Association, the American Veterinary Medical Association or the Humane Society of the United States shall be deemed to have the approval of the Delaware Board of Veterinary Medicine.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Repeal of an Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). The regulation is no longer applicable because 14 DE Admin. Code 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised took effect beginning in the 2011-2012 school year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **May 6, 2013** to Susan Haberstroh, 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? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
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? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.
10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

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

<http://regulations.delaware.gov/register/april2013/proposed/16 DE Reg 1027 04-01-13.htm>

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

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

PUBLIC NOTICE**Medicaid Coverage for Prescribed Drugs**

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) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) *regarding discontinuation of Medicaid coverage of barbiturates and benzodiazepines for dual eligible recipients*. An additional amendment is proposed to *update the quantity limits for opioid analgesics*.

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 April 30, 2013.

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 provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit a Title XIX Medicaid State Plan Amendment (SPA) to conform with the mandatory provisions of section 175 of Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) which amended section 1860D-2(e)(2)(A) of the Social Security Act regarding the discontinuation of Medicaid coverage of barbiturates and benzodiazepines for dual eligible recipients. An additional amendment is proposed to update the quantity limits for opioid analgesics.

Statutory Authority

- Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)
- 1860D-2(e)(2)(A) of the Social Security Act
- Social Security Act, Title 19, Section §1927

Background

With respect to prescriptions dispensed on or after January 1, 2013, section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) amended section 1860D-2(e)(2)(A) of the Social Security Act to include Medicare Part D coverage of **barbiturates** “used in the treatment of epilepsy, cancer, or a chronic mental health disorder” and **benzodiazepines** for all medically accepted indications. This coverage change will affect Medicaid beneficiaries that also have Medicare (dual eligible beneficiaries). Medicare will be responsible for payment for these drugs as previously indicated for dual eligible individuals as of January 1, 2013.

Since coverage of barbiturates under Medicare Part D is limited to the treatment of epilepsy, cancer or a chronic mental health disorders, DMMA proposes to continue to cover barbiturates for conditions other than the three covered by Medicare Part D. The coverage of benzodiazepines under Medicare Part D is inclusive of all medically accepted indications, so DMMA proposes to provide coverage for only non-dually eligible beneficiaries. This will assure coverage for all Medicaid-eligible beneficiaries, either through Medicare or Medicaid, with no duplication of coverage.

Summary of Proposal

Description of State Plan Amendment (SPA) and Effective Date

Currently, Delaware’s Medicaid State Plan provides drug coverage for certain drug classes not provided under Medicare Part D, including the drug classes of barbiturates and benzodiazepines.

This proposed regulatory change proposes to discontinue Medicaid coverage for two classes of drugs, benzodiazepines for all conditions and barbiturates, for patients with a diagnosis of epilepsy, cancer, or a chronic mental health disorder for full benefit dual eligibles (Medicaid recipients who are also eligible for Medicare benefits). Effective January 1, 2013, these drugs will be covered for dual eligibles under their Medicare Part D Drug Benefit. A state that covers these drugs under its drug benefit will continue to be required to cover barbiturates to the extent it covers that drug for a condition other than the three covered by Part D, and must amend its Medicaid state plan to be consistent with the requirements of Part D.

Therefore, to comply with section 175 of the MIPPA, the Division of Medicaid and Medical Assistance (DMMA) will be submitting a SPA no later than March 31, 2013. This SPA, effective January 1, 2013, will remove (1) barbiturates used in the treatment of epilepsy, cancer, or a chronic mental health disorder, and (2) benzodiazepines as drugs DMMA will cover for people who have both Medicare and Medicaid (dual eligible individuals). DMMA will

continue to cover barbiturates for full benefit dual eligibles for diagnoses other than epilepsy, cancer, and chronic mental health disorders. These recipients will need to obtain a prior authorization for barbiturates from their prescribing provider indicating a medical condition other than the three specified in the amended section of the MIPPA.

With this new coverage of barbiturates and benzodiazepines under Medicare Part D for dual eligibles, Medicaid no longer needs to offer this benefit and, as such, the State is simply clarifying coverage with this SPA.

Additionally, DMMA proposes to amend the state plan to update limitations on the quantity of drugs that can be prescribed, as clinically appropriate. To ensure that quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes, and to reflect current practice, *Opioid Analgesics* are limited to 720 immediate release doses per 365 days.

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

Fiscal Impact Statement

This plan amendment is expected to result in an aggregate savings for federal fiscal year 2013 in the amount of \$101,000.00.

DMMA PROPOSED REGULATION #13-13

REVISIONS:

Attachment 3.1.A.1

Page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY

Citation (s)

Provision (s)

- | | |
|---------------------------|---|
| 1927(d)(2) and 1935(d)(2) | <p>1. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit –Part D.</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The following excluded drugs are covered: <input checked="" type="checkbox"/> (a) agents when used for anorexia, weight loss, weight gain (see specific drug categories below) <li style="padding-left: 20px;">(b) agents when used to promote fertility (see specific drug categories below) <input type="checkbox"/> (c) agents when used for cosmetic purposes or hair growth (see specific drug categories below) <input checked="" type="checkbox"/> (d) agents when used for the symptomatic relief cough and colds see specific drug categories below) <input checked="" type="checkbox"/> (e) prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories below) <input checked="" type="checkbox"/> (f) nonprescription drugs (see specific drug categories below) |
|---------------------------|---|

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE****MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED OUTPATIENT DRUGS
FOR THE CATEGORICALLY NEEDY**

Citation (s)	Provision (s)
1927(d)(2) and 1935(d)(2)	<p><input type="checkbox"/> (g) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee (see specific drug categories below)</p> <p><input checked="" type="checkbox"/> (h) barbiturates <u>ALL [Except for dual eligible individuals, effective January 1, 2013, when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications per 1860D-2(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)] (see specific drug categories below)</u></p> <p><input checked="" type="checkbox"/> (i) benzodiazepines <u>ALL [Except for dual eligible individuals, effective January 1, 2013, as Part D will cover all indications per 1860D-2(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)] (see specific drug categories below)</u> (The Medicaid agency lists specific category of drugs below) (a) Agents when used for anorexia, weight loss, weight gain: Megestrol Acetate, Somatropin, Lipase Inhibitor. Products in these categories require prior authorization. (d) Agents when used for the symptomatic relief cough and colds: Antihistamines, Antitussive, Decongestants, and Expectorants. (e) Prescription vitamins and mineral products, except prenatal vitamins and fluoride: Single entity vitamins, Multiple vitamins w/ minerals, Nicotinic acid, Calcium salts, and Dialysis replacement products</p>

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE****MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED OUTPATIENT DRUGS
FOR THE CATEGORICALLY NEEDY**

Citation (s)	Provision (s)
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1927(d)(2) and 1935(d)(2)

CONTINUED

(f) Nonprescription drugs: Analgesic oral and rectal; Heartburn; Antiflatulents; Antidiarrheal; Antinauseants; Cough & Cold, oral; Cough & Cold, topical; Contraceptives; Diabetic supplies; Hemantinics; Laxatives & Stool Softeners; Lice Control Preparations; Magnesium Supplement, oral; Nasal Preparations; Nicotine Cessation Preparations; Ophthalmic Preparations; Topical Anesthetics; Topical Antibacterials; Topical/Vaginal Fungicidals; Vitamins & Minerals; Digestive Enzymes; and, Miscellaneous Colloidal Oatmeal Baths).

(h) Barbiturates: the Division of Medicaid & Medical Assistance covers all medications in these therapeutic categories [except for dual eligible individuals, effective January 1, 2013, when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications per 1860D-(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)].

(i) Benzodiazepines: the Division of Medicaid & Medical Assistance covers all medications in these therapeutic categories [except for dual eligible individuals, effective January 1, 2013, as Part D will cover all indications per 1860D-2(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)].

___ No excluded drugs are covered.

(Break in Continuity of Sections)

Attachment 3.1-A
Page 5 Addendum

LIMITATIONS

12.a. Prescribed Drugs:

Drug Coverage

- 1) Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.
- 2) Drugs excluded from coverage by Delaware Medicaid as provided by Section 1927(d)(2) of the Act, include:
 - a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
 - b. Drugs when used for cosmetic purposes or hair growth (products, such as Minoxidil Lotion and Retin A are not covered for adults, except for certain medical conditions);
 - c. Drugs when used to promote fertility;
 - d. Drugs that have an investigational or experimental or unproven efficacy or safety status;

- e. Drugs when used for anorexia, weight loss or weight gain. Drugs for the purpose of weight control may be reimbursed when prior authorized following established criteria as reviewed and approved by the DUR Board and deemed medically necessary.
 - f. Effective January 1, 2013, barbiturates for dual eligible individuals, when used in the treatment of epilepsy, cancer, or a chronic mental health disorder (as Medicare Part D will cover);
 - g. Effective January 1, 2013, benzodiazepines for dual eligible individuals (as Medicare Part D will cover).
- 3) Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).
- 4) Participating manufacturers' new drugs are covered (except excluded/restricted drugs specified in Section 1927[d][1]-[2] of the Social Security Act) for six months after FDA approval and upon notification by the manufacturer of a new drug.

Quantity and Duration

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.
2. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:
 - a. Sedative hypnotics-15 doses per 30 days
 - b. Triptans, acute treatment of migraines, 9 doses per 45 days
 - c. Opioid analgesics-~~200 doses per 30 days~~ 720 immediate release doses per 365 days
 - d. Skeletal muscle relaxants-120 tablets/capsules per 30 days
 - e. Benzodiazepines-120 tablets per 30 days
 - f. Tramadol-240 tablets per 30 days
 - g. Narcotic cough medications-480ml per 30 days
 - h. Adjunctive anticonvulsants-240 tablets/capsules per 30 days
 - i. Nebulizer solutions-3 acute exacerbations per 30 days
 - j. Clients utilizing greater than 15 unique medications per 30 days
 - k. Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)y (16 **Del.C.** §122(3)y)

4408 Regulations Governing Medical Facilities**PUBLIC NOTICE**

House Bill 47 and House Bill 144, signed into law in 2011, give the Department of Health and Social Services (DHSS) the authority to require accreditation for medical facilities that perform invasive medical procedures utilizing any level of anesthesia and allows for the Division to investigate complaints made by patients regarding unsafe or unsanitary conditions. It also gives DHSS the authority to promulgate regulations. The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of

Health and Social Services, is proposing regulations for medical facilities. On April 1, 2013, DHSS plans to publish as proposed regulations governing medical facilities and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the April 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Tuesday, April 30, 2013 at:

Deborah Harvey, Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4913

4408 Regulations Governing Medical Facilities

1.0 General Requirements

- 1.1 All records maintained by the medical facility shall be open to inspection by the authorized representatives of the Department.
- 1.2 Reports of adverse events, accidents and medical emergencies shall be kept on file at the facility for a minimum of five years.
- 1.3 The medical facility must permit photocopying of any records or other information by, or on behalf of authorized representatives of the Department, as necessary to determine or verify compliance with these regulations or accepted standards of practice. The Department shall keep patient information confidential in accordance with state and federal laws.
- 1.4 Report of adverse events
 - 1.4.1 The facility must report all adverse events involving a patient to the Department within forty-eight (48) business hours of the occurrence.
 - 1.4.2 An adverse event includes but is not limited to:
 - 1.4.2.1 Suspected abuse, neglect, or mistreatment;
 - 1.4.2.2 An accident that causes serious injury to a patient;
 - 1.4.2.3 A procedure on the wrong patient or wrong body part;
 - 1.4.2.4 Serious cardiorespiratory events;
 - 1.4.2.5 Admission to another facility for treatment of complications; or
 - 1.4.2.6 Unexpected death of a patient.
 - 1.4.3 Adverse events must be investigated by the facility.
 - 1.4.4 A complete investigative report will be forwarded to the Department within 30 calendar days of the event.
- 1.5 A licensed physician/dentist/podiatrist must be available at all times during patient treatment and recovery and until the patients are medically discharged. For those patients that require an extended recovery time, the physician/dentist/podiatrist must be in the facility or on call and immediately available by phone and able to be on-site within 30 minutes.
- 1.6 All personnel who provide clinical care in a medical facility must be qualified to perform services commensurate with appropriate levels of education, training and experience and in keeping with practice standards. Nothing in these regulations shall prohibit a licensed individual from performing procedures within their scope of practice.
- 1.7 It is the responsibility of the physician/surgeon/dentist/podiatrist to determine that the medical facility is an appropriate forum for the particular procedure(s) to be performed on the particular patient.

- 1.8 It is the responsibility of the physician/surgeon/dentist/podiatrist and, when involved, the certified registered nurse anesthetist to determine whether the patient is an appropriate candidate for the anesthesia to be provided in the facility.
- 1.8.1 The physician/dentist/podiatrist or certified registered nurse anesthetist must examine the patient immediately before the procedure to evaluate the risk of anesthesia and of the procedure to be performed.
- 1.9 Back-up power, for Level II and III medical facilities, sufficient to ensure patient protection in the event of an emergency shall be immediately available.
- 1.10 Medical facility procedures shall not:
- 1.10.1 Generally result in blood loss of more than ten percent of estimated blood volume in a patient with a normal hemoglobin;
- 1.10.2 Require major or prolonged intracranial, intrathoracic, abdominal or major joint replacement procedures;
- 1.10.3 Directly involve major blood vessels; or
- 1.10.4 Be generally emergent or life-threatening in nature.
- 1.11 There must be sufficient space in the room in which the procedure is being performed. The room shall accommodate all necessary equipment and personnel allowing for expeditious access to the patient and all resuscitation and monitoring equipment.
- 1.12 All equipment shall be maintained and functional to ensure patient safety.
- 1.13 All services shall be provided in a safe and effective manner in accordance with accepted standards of practice.
- 1.14 A Level II or III medical facility that chooses to stop performing invasive medical procedures and voluntarily surrender accreditation, must notify the Department in writing immediately or no later than 30 days following the voluntary surrender of accreditation or cessation of invasive medical procedures.

2.0 Definitions

- 2.1 The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise:
- “**Accredited Medical Facility**” means a medical facility which has received required accreditation from a nationally recognized accrediting organization approved by the Department.
- “**Adverse Event**” means the death or serious injury of any patient at a facility; or a reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at a facility; or the initiation of any criminal investigation arising out of or relating to any diagnosis, treatment or other medical care at a facility.
- “**Anxiolysis**” means minimal sedation.
- “**ASA Classification**” means the American Society of Anesthesiologists physical classification status of patients used in determining if a medical facility procedure is appropriate.
- “**Conscious Sedation**” means moderate sedation.
- “**Deep Sedation**” means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.
- “**Dentist**” means an individual currently licensed as such by 24 Del.C. Ch. 11.
- “**Department**” means the Delaware Department of Health and Social Services or its designee.
- “**General Anesthesia**” means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“Invasive Medical Procedure” means a procedure performed for the purpose of structurally altering the human body by the incision or destruction of tissues (including induced expulsion of a human fetus) and is part of the practice of medicine, dentistry or podiatry. It is also the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transposition of live human tissue which include lasers, ultrasound, ionizing radiation, scalpels, probes and needles. The tissue can be cut, burned, vaporized, frozen, sutured, probed, or manipulated by closed reductions for major dislocations or fractures, or otherwise altered by mechanical, thermal, light-based, electromagnetic or chemical means. Injection of diagnostic or therapeutic substances into body cavities, internal organs, joints, sensory organs, and the central nervous system, is also considered to be an invasive medical procedure (this does not include the administration by nursing personnel of some injections, subcutaneous, intramuscular, and intravenous, when ordered by a physician/dentist/podiatrist). All of these procedures are invasive, including those that are performed with lasers, and the risks of any procedure are not eliminated by using a light knife or laser in place of a metal knife, or scalpel.

“Local Anesthesia” means the injection or application of an anesthetic drug to a specific area of the body. Local anesthetics are used to prevent patients from feeling pain during medical, surgical, or dental procedures. Local anesthesia involves the injection into the skin or muscle or application to the skin of an anesthetic directly where pain will occur. Local anesthesia can be divided into four groups: injectable, topical, dental (non-injectable) and ophthalmic. It does include infiltration block anesthesia but would not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle (systemic sedation such as spinal, epidural, axillary, stellate ganglion block, regional blocks (i.e. interscalene), supraclavicular, infraclavicular and intravenous regional anesthesia) where significant cardiovascular or respiratory complications may result.

“Medical Facility” means the office of a physician or physician practice, dentist or podiatrist or a clinic where invasive medical procedures utilizing any level of anesthesia are performed. Medical facilities may be classified as Level I, Level II or Level III. Those facilities required to be licensed under Title 16 of the Delaware Code are excluded from this definition.

“Minimal Sedation” means a drug-induced state during which patients respond normally to verbal commands. Cognitive and physical coordination may be impaired but airway reflexes and ventilatory and cardiovascular functions are unaffected.

“Moderate Sedation” means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

“Nationally Recognized Accrediting Organization” means an organization through which a medical facility is able to measure the quality of its services and performance against nationally recognized and evidenced based standards that focus on: ensuring quality health care and provider competence; reducing risks; monitoring standards of practice; promoting continuous quality improvement; and, demonstrating accountability. The organization requires self-assessment by the medical facility, as well as a thorough review by the organization’s expert surveyors. Such organizations must be approved by the Department.

“Nitrous Oxide Inhalation” means a sedative agent that is mixed with oxygen and inhaled through a small mask that fits over a patient’s nose to help the patient relax for a procedure. Nitrous oxide is not intended to put a patient to sleep and the patient should be able to hear and respond to any requests or directions.

“Patient” means a person who receives a health care service from a medical facility.

“Physician” means an individual currently licensed as such by 24 **Del.C.** Ch. 17.

“Plan of Correction” means a medical facility’s written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the Department, must include acceptable timeframes in which deficiencies will be corrected and must be approved by the Department.

“Podiatrist” means an individual currently licensed as such by 24 **Del.C.** Ch. 5.

“Procedure” means invasive medical procedure.

“Serious Injury” means physical injury that creates a substantial risk of death, or that causes serious disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

“Time-out” means a pause in action conducted in the procedure room immediately before the procedure is to begin. The time-out involves the entire operative team, including the patient, uses active communication and includes correctly identifying: the patient, the procedure, and the site.

3.0 Patient Care Levels

3.1 Level I

- 3.1.1 Procedures are performed under local anesthesia or nitrous oxide inhalation.
- 3.1.2 Preoperative medications are not required or used other than minimal preoperative oral or intramuscular anti-inflammatory or anti-anxiety producing drugs administered on-site so that the patient can be observed.
- 3.1.3 Drug-induced alteration of consciousness is not permitted.
- 3.1.4 Chances of complications requiring hospitalization are remote.
- 3.1.5 The physician/dentist/podiatrist must have Basic Life Support certification.
- 3.1.6 The medical facility must maintain basic age and procedure appropriate medications and equipment to manage toxic or hypersensitivity reactions.
- 3.1.7 The medical facility must maintain and use appropriate sterilization equipment.

3.2 Level II

- 3.2.1 Procedures performed require the administration of minimal or moderate intravenous, intramuscular or rectal sedation. Intra-procedure and post-procedure monitoring must be completed.
- 3.2.2 There is a moderate risk of procedural or anesthetic complications and the likelihood of hospitalization as a result of these complications is unlikely.
- 3.2.3 The physician/dentist/podiatrist will classify each patient using the ASA classification system to determine whether the patient is an appropriate candidate for an invasive medical procedure in the medical facility.
- 3.2.4 The medical facility must maintain written protocols for the timely and safe transfer of a patient to a hospital for emergency care or hospitalization if necessary.
- 3.2.5 At least one attending clinical team member must be certified in Advanced Cardiac Life Support.
- 3.2.6 Equipment and supplies:
 - 3.2.6.1 Crash cart should include:
 - 3.2.6.1.1 Appropriate resuscitative equipment and
 - 3.2.6.1.2 Medications for surgical, procedural or anesthetic complications.
 - 3.2.6.2 Age-appropriate and size-appropriate monitors, resuscitative equipment, supplies and medication in accordance with the scope of the procedures and the anesthesia services provided, including, but not limited to:
 - 3.2.6.2.1 Electrocardiographic monitor;
 - 3.2.6.2.2 Blood pressure monitor;
 - 3.2.6.2.3 Pulse oximeter;
 - 3.2.6.2.4 Continuous suction device;
 - 3.2.6.2.5 Endotracheal tubes;
 - 3.2.6.2.6 Laryngoscopes;
 - 3.2.6.2.7 Positive pressure ventilation device;
 - 3.2.6.2.8 Oxygen;
 - 3.2.6.2.9 Emergency intubation equipment; and

3.2.6.2.10 IV solutions and IV tubing.3.2.6.3 Appropriate sterilization equipment.3.2.6.4 Adequate procedure room lighting.3.2.7 Written informed consent is required prior to the procedure reflecting:3.2.7.1 The patient's knowledge of the identified risks of the procedure (including anesthesia);3.2.7.2 The consent to the procedure;3.2.7.3 The licensed individual performing the procedure;3.2.7.4 The type of anesthesia to be administered; and3.2.7.5 The anesthesia provider.3.2.8 The medical facility must maintain a policy/procedure for a time-out to ensure the risk of medical error is minimized.**3.3 Level III**3.3.1 Procedures performed require the use of deep sedation, general anesthesia or major conduction blockade.3.3.2 The known complications of the proposed procedure may be serious or life-threatening.3.3.3 The physician/dentist/podiatrist will classify each patient using the ASA classification system to determine whether patient is an appropriate candidate for an invasive medical procedure in the medical facility.3.3.4 The medical facility must maintain written protocols for the timely and safe transfer of a patient to a hospital for emergency care or hospitalization if necessary.3.3.5 At least one attending clinical team member must be certified in Advanced Cardiac Life Support.3.3.6 A physician/dentist/podiatrist or registered nurse with post-anesthesia care experience and certification in Advanced Cardiac Life Support must monitor the patient in the recovery room until the patient has recovered from the anesthesia.3.3.7 Equipment and supplies, unless precluded or invalidated by the nature of the patient, procedure, or equipment, including but not limited to:3.3.7.1 Equipment and supplies required for Level II.3.3.7.2 Sufficient ampoules of dantrolene sodium or similar FDA approved drug.3.3.7.3 Esophageal or precordial stethoscope.3.3.7.4 Temperature monitoring device.3.3.7.5 End tidal CO₂ monitor.3.3.8 Written informed consent is required prior to the procedure reflecting:3.2.8.1 The patient's knowledge of the identified risks of the procedure (including anesthesia);3.2.8.2 The consent to the procedure;3.2.8.3 The licensed individual performing the procedure;3.2.8.4 The type of anesthesia to be administered; and3.2.8.5 The anesthesia provider.3.3.9 The medical facility must maintain a policy/procedure for a time-out to ensure the risk of medical error is minimized.**4.0 Infection Control**4.1 The facility must provide and maintain a functional and sanitary environment for procedural services, to avoid sources and transmission of infections and communicable diseases. All areas of the facility must be clean and sanitary.4.2 Level II and III facilities shall establish and implement an infection prevention and control program which shall be based upon nationally recognized infection control guidelines/standards (i.e. CDC, AORN, etc.).

- 4.3 The facility must maintain an ongoing program to prevent, control and investigate infections and communicable diseases. As part of this ongoing program, Level II and III facilities must have an active surveillance component that covers both patients and personnel working in the facility. Surveillance includes infection detection through ongoing data collection and analysis.
- 4.4 Level II and III facilities must develop and implement a comprehensive plan that includes actions to prevent, identify and manage infections and communicable diseases within the facility. The plan of action must include mechanisms that result in immediate action to take preventive or corrective measures that improve the facility's infection control outcomes. The plan should be specific to each particular area of the facility, including, but not limited to, the waiting room(s), the recovery room(s) and the procedure areas.

5.0 **Medical Record**

- 5.1 A legible, comprehensive and accurate medical record must be maintained for each patient evaluated or treated.
- 5.2 The medical record must include:
- 5.2.1 Patient identifying information
 - 5.2.2 History and Physical:
 - 5.2.2.1 Inclusive of the cardiorespiratory system and other systems related to the diagnosis;
 - 5.2.2.2 Completed within 30 days prior to the procedure for any patient who will receive more than a local anesthesia or nitrous oxide inhalation
 - 5.2.3 Diagnosis and plan
 - 5.2.4 Appropriate diagnostic reports
 - 5.2.5 Informed consent for Levels II & III
 - 5.2.6 Documentation of the time-out for Levels II & III
 - 5.2.7 Adequate written documentation of the procedure
 - 5.2.8 Pathology reports
 - 5.2.9 Outcome and follow-up plans
 - 5.2.10 Documentation of anesthesia used:
 - 5.2.10.1 A separate anesthesia record must be kept for all anesthesia/sedation, other than local.
 - 5.2.10.2 Documentation must include:
 - 5.2.10.2.1 Type of anesthesia
 - 5.2.10.2.2 Drug type, dose and route
 - 5.2.10.2.3 Time of administration
 - 5.2.10.2.4 Fluids administered
 - 5.2.10.2.5 Patient weight
 - 5.2.10.2.6 Vital signs monitoring
 - 5.2.10.2.7 Estimated blood loss
 - 5.2.10.2.8 Duration of procedure
 - 5.2.10.2.9 Any complication or unusual event related to the procedure or anesthesia.
 - 5.2.11 Intra-procedure and post-procedure monitoring.
- 5.3 The medical facility must ensure the security and confidentiality of the medical record in accordance with state and federal laws.

6.0 **Patient Rights**

- 6.1 The medical facility must post written notice of patient rights in a place or places within the facility likely to be noticed by patients (or their representatives, if applicable) waiting for treatment. The facility's notice of rights must include the names, addresses, and telephone numbers of the State agencies and accrediting organization to whom patients can report complaints.

PROPOSED REGULATIONS

- 6.1.1 Complaints received by the Department will be investigated as appropriate.
- 6.1.2 Complainants (unless anonymous) will be notified of the outcome of any investigation.

6.2 The patient has the right to:

- 6.2.1 High quality care delivered in a safe, timely, efficient and cost-effective manner and the right to be assured that the expected results can be reasonably anticipated.
- 6.2.2 Dignity, respect and consideration of legitimate concerns.
- 6.2.3 Privacy and confidentiality.
- 6.2.4 Be involved in all aspects of care:
 - 6.2.4.1 Informed consent must be obtained after discussion of the risks, benefits and alternatives for the procedure.
 - 6.2.4.2 The patient must be given information about the current diagnosis, treatment and prognosis.
- 6.2.5 Refuse any procedure or treatment and to be advised of the likely medical consequences of such refusal.
- 6.2.6 Know who will be delivering the care and the qualifications of such individuals.
- 6.2.7 Exercise her/his rights without being subjected to discrimination or reprisal.
- 6.2.8 Voice grievances regarding treatment or care that is (or fails to be) furnished.
- 6.2.9 Be free from all forms of abuse, mistreatment or harassment.
- 6.2.10 Be served by individuals who are properly trained and competent to perform their duties.

7.0 Disciplinary Actions

7.1 The Department may impose sanctions singly or in combination when it finds a medical facility has:

- 7.1.1 Violated any of these regulations:
- 7.1.2 Violated standards for safe and sanitary care in a medical facility;
- 7.1.3 Failed to correct deficiencies in accordance with a timetable submitted by the facility and agreed upon by the Department;
- 7.1.4 Engaged in any conduct or practices detrimental to the welfare of the patients; or
- 7.1.5 Refused to allow the Department access to the agency or records for the purpose of conducting inspections/surveys/investigations as deemed necessary by the Department.

7.2 Disciplinary sanctions:

- 7.2.1 The Department may make and enforce such orders as it deems necessary to protect the health and safety of the public.
 - 7.2.1.1 If the Department determines during the course of any investigation or inspection that any medical facility poses a substantial risk to the health or safety of any person, the Department may order that such facility be closed until such time as it no longer poses a substantial risk.
 - 7.2.1.1.1 An order of closure under this section shall remain in effect for a period not longer than 60 calendar days from the date of the issuance of said order, unless the facility requests a continuance of the date for the final hearing before the Department.
 - 7.2.1.2 If the Department determines during the course of any investigation or inspection that any medical facility poses a possible risk to the health or safety of any person, the Department may:
 - 7.2.1.2.1 Issue of a letter of reprimand and/or
 - 7.2.1.2.2 Require the medical facility to complete a plan of correction.

7.3 Imposition of Disciplinary Action

- 7.3.1 The Department may issue an order to close the facility immediately.
 - 7.3.1.1 An order to close may apply to the performance of invasive medical procedures.
 - 7.3.1.2 An order to close may apply to the facility as a whole.

- 7.3.2 The medical facility shall be notified forthwith in writing. The order to close shall be personally served upon the medical facility or sent by mail, return receipt requested, to the medical facility's last address of record.
- 7.3.2.1 A statement of deficiencies (identified during the investigation/inspection) will be forwarded to the medical facility within 48 hours of completion of the investigation/inspection.
- 7.3.3 In response to the order to close, the medical facility may:
- 7.3.3.1 Take no action, in which case the order to close shall remain in effect.
- 7.3.3.2 Take action to correct the unsafe and unsanitary practices identified during the survey.
- 7.3.3.2.1 The facility may submit evidence through a written plan of correction showing that the deficient practices, identified during the investigation, have been addressed and corrected.
- 7.3.3.2.1.1 A change of location for the facility does not nullify an order to close and an acceptable plan of correction must still be submitted.
- 7.3.3.2.2 The Department shall determine if the plan of correction is acceptable.
- 7.3.3.2.3 Once accepted, the Department shall schedule a revisit as soon as possible.
- 7.3.3.3 Request, in writing, an administrative hearing with the Secretary of the Department to contest the order to close.
- 7.3.3.3.1 Such request must be received within 20 calendar days from the date on which the order to close was issued.
- 7.3.3.3.1.1 As soon as possible, but in no event later than 60 calendar days after the issuance of the closure order, the Department shall convene a hearing on the reasons for closure.
- 7.3.3.3.1.2 The Department shall make a determination based upon the evidence presented.
- 7.3.3.3.1.3 A written copy of the determination and the reasons upon which it is based shall be sent to the facility within 30 calendar days.
- 7.3.3.3.2 A facility may request an expedited hearing.
- 7.3.3.3.2.1 The Department shall schedule the hearing on an expedited basis provided that the Department receives the facility's written request for an expedited hearing within five (5) calendar days from the date on which the facility received notification of the Department's decision to close the facility.
- 7.3.3.3.2.2 The Department shall convene an expedited hearing within 15 calendar days of the receipt by the Department of such a request.
- 7.3.3.3.2.3 The Department shall make a determination based upon the evidence presented.
- 7.3.3.3.2.4 A written copy of the determination and the reasons upon which it is based shall be sent to the facility within 30 calendar days.
- 7.3.4 During an administrative hearing:
- 7.3.4.1 The facility has the right to be represented by counsel.
- 7.3.4.2 All statements made shall be under oath.
- 7.3.4.3 The facility has the right to cross-examine witnesses.
- 7.3.4.4 A stenographic recording will be made.
- 7.3.5 As a result of the hearing, the order to close may be continued, modified or revoked.
- 7.3.6 A facility may appeal the decision of the Department to the Superior Court.

8.0 Accreditation Requirements and Procedures

8.1 General requirements

- 8.1.1 All medical facilities must register with the Department using a form created by the Department. It will include physician/office name, address, phone number, acknowledgment that invasive procedures are performed and level(s) of anesthesia used in the facility.

PROPOSED REGULATIONS

- 8.1.2 No person shall establish, conduct or maintain in this State any Level II or III medical facility without obtaining accreditation from a nationally recognized accrediting organization that is approved by the Department.
- 8.1.3 Level II or III medical facilities must provide proof of accreditation to the Department within 12 months of the first day of operation of such facility.
- 8.1.4 The accreditation certificate shall be posted in a conspicuous place on the Level II or III medical facility premises, at or near the entrance in a manner which is plainly visible and easily read by the public.
- 8.1.5 Level II or III medical facilities must submit an accreditation certificate to the Department within 30 days of each accrediting organization survey.

- 8.1.5.1 The Department shall accept the accreditation certificate of an approved accrediting organization in lieu of a licensure inspection.

- 8.1.5.2 The Department may request and the medical facility must submit a copy of the entire accreditation report.

- 8.1.5.3 Level II or III medical facilities required to submit a plan of correction to an accrediting organization may also be required to submit a copy of the plan of correction to the Department.

8.2 Accreditation termination

8.2.1 Termination of accreditation may occur secondary to:

- 8.2.1.1 Voluntary surrender of accreditation by the medical facility.

- 8.2.1.2 Revocation of accreditation by the accrediting organization.

- 8.2.1.3 Any other valid reason.

8.2.2 Any Level II or III medical facility that fails to maintain accreditation shall immediately cease to perform invasive medical procedures.

8.3 Inspection

8.3.1 Unannounced inspections of any medical facility by authorized representatives of the Department may occur:

- 8.3.1.1 Anytime upon receipt of a complaint by a patient, spouse, parent, legal guardian or legal custodian or upon the occurrence of any adverse event.

- 8.3.1.2 Anytime upon receipt of a referral from the Division of Professional Regulations.

8.4 Notice to patients

8.4.1 The Level II or III medical facility shall notify each patient (or the patient's authorized representative) scheduled for an upcoming invasive medical procedure of an accreditation termination or as directed under an order issued by the Department and shall include information regarding alternative healthcare providers.

8.5 Exclusions from accreditation

8.5.1 The following persons, associations or organizations are not required to obtain accreditation as medical facilities:

- 8.5.1.1 Those facilities required to be licensed under Title 16 of the Delaware Code.

- 8.5.1.2 Level I medical facilities.

9.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

DSSM: 11002.9; Child Care Subsidy Program Definitions and Explanation of Terms

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by April 30, 2013.

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 Child Care Subsidy Program, specifically, *Definitions and Explanation of Terms*.

Statutory Authority

45 CFR Part 98, *Child Care and Development Fund*

Background

The Child Care and Development Fund (CCDF) program is authorized by the Child Care and Development Block Grant Act and Section 418 of the Social Security Act and assists low-income families in obtaining child care so that they can work or attend training and/or education activities. The program also improves the quality of child care and promotes coordination among early childhood development and afterschool programs.

Every two years, states and territories receiving CCDF funds must prepare and submit to the federal government a CCDF state plan detailing how these funds will be allocated and expended (45 CFR Part 98).

The Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC §9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR §98.11 provide that, in addition to retaining "overall responsibilities" for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

Summary of Proposed Changes

DSSM 11002.9, *Definition and Explanation of Terms*, is amended to clarify program definitions. This rule change will more closely align program definitions with current terminology used by the Delaware Office of Child Care Licensing (OCCL).

Specifically:

PROPOSED REGULATIONS

- 1) This regulatory action changes the number of children in "Child Care Centers" from 12 or more to **13** or more; and,
- 2) The definition of "Large Family Child Care Home" is amended to simplify the language and to add licensing compliance language.

DSS PROPOSED REGULATION #13-11

REVISION:

11002.9 Definitions and Explanation of Terms

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

Large Family Child Care Home

~~A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver. A private residence other than the child's residence or a non-residential site where licensed care is provided for seven to twelve children who are not related to the caregiver. The site must be in compliance with Municipal, City and State licensing requirements.~~

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

DSSM: 11002.9; Child Care Subsidy Program Definitions and Explanation of Terms

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

1108 Sulfur Dioxide Emissions From Fuel Burning Equipment

REGISTER NOTICE

SAN #2012-06

1. TITLE OF THE REGULATIONS:

Revision to 7 DE Admin. Code 1108 "Sulfur Dioxide Emissions from Fuel Burning Equipment."

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

The Division of Air Quality (DAQ) of the Department is proposing to revise Delaware 7 DE Admin. Code 1108 to lower the allowable content of sulfur in fuels combusted in Delaware, and to effectively reduce the emissions of sulfur dioxide (SO₂) into the atmosphere, which will aid in the attainment and maintenance of Delaware's air quality relative to the SO₂ and fine particulate matter National Ambient Air Quality Standards (NAAQS). The reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program.

In brief, DAQ proposes to lower sulfur content in residual fuel from 10,000 ppm to 5,000 ppm, in distillate fuel from 3,000 ppm to 15 ppm, and to set up a compliance date of July 1, 2016. DAQ also proposes to add necessary recordkeeping and reporting requirements to ensure compliance of the regulation. DAQ proposes that the new limits apply to all three counties in Delaware.

In addition, the Department will submit the revision of 7 DE Admin Code 1108, after being finalized, to the U.S. Environmental Protection Agency (EPA) as a revision to Delaware's state implementation plan (SIP).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on April 24, 2013, beginning at 6:00 pm, in the conference room (Room 220) of Kent County Complex, 555 South Bay Road, Dover, Delaware 19901.

7. PREPARED BY:

Frank F. Gao Phone: (302) 323-4542 Date: March 13, 2013 E-Mail: Frank.Gao@state.de.us

1108 Sulfur Dioxide Emissions from Fuel Burning Equipment

~~42/08/1983~~ xx/xx/2013

1.0 General Provisions

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

~~05/09/1985~~ xx/xx/2013

2.0 Limit on Sulfur Content of Fuel

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

meets the limit as specified in 2.2 of this regulation but is greater than the limit specified in 2.3.1 of this regulation may be offered for sale, sold, delivered, purchased, and used in Delaware on and after July 1, 2016 only as specified in 2.4.1 and 2.4.2 of this regulation.

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

05/09/1985 xx/xx/2013

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

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

xx/xx/2013

4.0 Sampling and Testing Methods and Requirements

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

- 4.5.2 Sample and determine the actual sulfur content using the sampling and testing methods specified in 4.1 and 4.2 of this regulation.

xx/xx/2013

5.0 Recordkeeping and Reporting

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

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 40 (7 **Del.C.** Ch.40)
7 **DE Admin. Code** 5101

5101 Sediment and Stormwater Regulations

REGISTER NOTICE **SAN #2006-16**

1. Title Of The Regulations:

Delaware Sediment and Stormwater Regulations

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

Substantial revisions to the *Delaware Sediment and Stormwater Regulations* are proposed to address April 2005 recommendations of Governor Minner's Task Force on Surface Water Management. The regulations have been revised to address stormwater volume management, conveyance adequacy, operation and maintenance of stormwater management facilities, and to establish performance standards for sediment and stormwater practices. A public hearing was conducted on March 1, 2012. Following comments received, substantive changes are proposed to the regulatory language necessitating a second public hearing.

3. Possible Terms of the Agency Action:

There is no sunset date for this regulation.

4. Statutory Basis or Legal Authority to Act:

Title 7, Delaware Code, Chapter 40, the Sediment and Stormwater Law

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

Upon the effective date of revised regulations, the *Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds*, effective November 11, 2008, Section 5.0 Sediment and Stormwater Controls, may be affected.

6. Notice of Public Comment:

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a second public hearing on the proposed revisions to the *Delaware Sediment and Stormwater Regulations Regulation No. 5101 Sediment and Stormwater Regulations*, to address the April 2005 recommendations of Governor Minner's Task Force on Surface Water Management, as well as substantive changes to regulatory language following the first public hearing.

The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Tuesday, April 23, 2013, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control 89 Kings Highway Dover, DE 19901	Kirkwood Library 6000 Kirkwood Highway Wilmington DE 19808
Kent County Public Library 497 South Red Haven Lane Dover, DE 19901	Georgetown Public Library 123 West Pine Street, Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, Elaine.Webb@state.de.us. Review of the documents at the libraries will occur during the libraries' scheduled operating hours.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, May 8, 2013, to Elaine Webb and/or statements and testimony may be presented either orally or in writing at the April 23, 2013 public hearing. Comments submitted as part of the first public comment period will remain as part of the record.

It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Webb, DNREC – Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

7. PREPARED BY:

Elaine Webb / (302) 739-9921 / March 8, 2013, Email address: Elaine.Webb@state.de.us

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

5101 Sediment and Stormwater Regulations

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

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

1100 Board of Dentistry and Dental Hygiene

PUBLIC NOTICE

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its rules and regulations. The changes to the regulations remove the permissive grant of CPEs for being employed as a faculty member and clarifies the documentation required by a licensee submitting CPEs for oral or clinical presentations and self-study.

The Board will hold a public hearing on the proposed rule change on May 16, 2013 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Pamela Zickafoose, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Pursuant to 29 **Del.C.** §10118(a), written comments will be accepted until June 2, 2013, which is fifteen days after the public hearing.

1100 Board of Dentistry and Dental Hygiene
(Break in Continuity of Sections)

6.0 Continuing Professional Education (CPE) - Dentists [24 **Del.C.** §1106(a)(1) and (7)]

All persons licensed to practice dentistry in the State of Delaware shall be required to acquire fifty (50) hours of continuing professional education (CPE) credit every two (2) years. Two (2) of the 50 credit hours shall be obtained in courses covering infection control. In addition to the CPE, licensees must provide evidence that they have successfully completed a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association and courses offered or approved by any of the organizations listed in 6.5.1.1 through 6.5.1.4 of these regulations. All dentists, upon initial licensure in Delaware and prior to registration renewal, shall be given a written notice of these CPE requirements.

- 6.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 6.0.
- 6.2 Attestation must be completed electronically at the time of renewal.

- 6.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.8.
- 6.4 Not more than ten (10) hours of the fifty (50) hour biennial CPE requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:
- 6.4.1 Reading dental textbooks
 - 6.4.2 Reading dental tape journals
 - 6.4.3 Viewing and listening to dental audio-visual materials.
- 6.5 CPE credits may be granted upon proof of successful completion of:
- 6.5.1 Scientific CPE programs or courses and/or the scientific sessions of meetings sponsored or approved by:
 - 6.5.1.1 American Dental Association (ADA), its constituents and components including CERP (Continuing Education Recognition Program)
 - 6.5.1.2 American Dental Hygienists' Association (ADHA), its constituents and components
 - 6.5.1.3 American Dental Assisting Association (ADAA), its constituents and components
 - 6.5.1.4 Academy of General Dentistry (AGD) its constituents and components including PACE (Program Approval for Continuing Education)
 - 6.5.1.5 Recognized national, regional, state and local dental and dental hygiene specialty organizations
 - 6.5.1.6 Recognized dental and dental hygiene study clubs
 - 6.5.1.7 Accredited dental and dental hygiene CPE programs offered by dental and dental hygiene schools.
 - 6.5.1.8 Approved hospital programs.
 - 6.5.1.9 Such other organizations and associations as may be approved by the Board.
 - 6.5.2 In addition to the maximum of ten (10) hours of the CPE requirement which may be satisfied by self-study without testing and certification, a maximum of twenty (20) hours of the total CPE requirements may be fulfilled by self-study with test and certificate of completion from bona fide dental educational sources including but not limited to:
 - 6.5.2.1 Dental journals
 - 6.5.2.2 Dental textbooks
 - 6.5.2.3 Dental video and audio tape presentations
 - 6.5.2.4 Dental mail-in courses
 - 6.5.2.5 Dental courses presented on the Internet
 - 6.5.2.6 Dental lectures and courses presented via electronic media including computer disks where CPE credits are not specified, one (1) hour of credit will be given for each hour of scientific session attended.
- 6.6 Special Provisions
- ~~6.6.1 A dentist, employed as a faculty member in a recognized school of dentistry, dental hygiene, dental assisting or any dentally-related field will be allowed not more than ten (10) hours credit for teaching per year.~~
 - 6.6.2~~1~~ A dentist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of ten (10) hours for the two-year period.
 - 6.6.3~~2~~ Table Clinics will be allowed, one (1) hour of credit per hour of presentation for a maximum of two (2) hours.
 - 6.6.4~~3~~ Twelve (12) hours of credit shall be allowed for a scientific article published in a component or state society journal. 25 hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.
 - 6.6.5~~4~~ Any public health dentally-related presentation will be allowed one (1) hour of credit per hour of participation for a maximum of two (2) hours for the two year period.

- 6.6.65 Practice management or personal self-improvement courses shall be limited to a total of ten (10) hours for the two (2) year period.
- 6.6.76 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.
- 6.6.87 All dentists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.
- 6.6.98 For existing holders of an Unrestricted Permit for anesthesia, at least twelve (12) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial licensure renewal period).
- 6.6.109 For existing holders of a Restricted I Permit, at least six (6) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial license renewal period).

(Break in Continuity Within Section)

6.12 Audit of Continuing Education Contact Hours

- 6.12.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Board, to be audited. 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.
- 6.12.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CPE's 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). CPEs for oral or clinical presentations must be accompanied by a signed statement from both the presenter and the sponsoring organization. For hours claimed as self-study CPE without testing, the materials studied must be identified in detail as to type, title, length, and hours spent reading. The Board shall attempt to verify the CPEs shown on the documentation provided by the licensee. Upon completion of the review, the Board will decide whether the licensee's CPEs meet the requirements of these regulations.

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

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

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

1900 Board of Nursing

PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 Del.C. §1904(c), proposes to revise regulation 6.4 to add a new section, 6.4.6. The proposed addition permits graduates of out-of-state programs that may not have attained Board approved status to obtain licensure by examination if, at the time of submission of the application, the Board finds that the content of the out-of-state program is equivalent to the minimum requirements of the Board for full

approval status established by these regulations. There is also an addition to the title of Regulation 6.4, reflecting this addition.

The Board will hold a public hearing on the proposed regulation change on May 8, 2013 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 24, 2013 pursuant to 29 **Del.C.** §10118(a).

1900 Board of Nursing

(Break in Continuity of Sections)

6.0 Requirements and Procedures for Licensure

(Break of Continuity Within Section)

6.4 Requirements for Applicants Graduating from Foreign or out of state Programs

6.4.1 Applicants graduating from programs outside of the United States and not licensed by the State Board Test Pool Examination or NCLEX in another state:

- 6.4.1.1 Must have been issued a certificate of licensure by the licensing agency in the state, territory, or country where the nursing program is located;
- 6.4.1.2 Must submit a certificate issued by the Commission on Graduates of Foreign Nursing Schools or other Board approved agency as evidence of the educational requirements of a curriculum for the preparation of professional nurses which is equivalent to the approved professional schools in Delaware;
- 6.4.1.3 Must submit official English translations of all required credentials;
- 6.4.1.4 Must, in instances when completion of a four-year high school course of study or its equivalent cannot be verified, take the high school equivalence examination given by a State Department of Education;
- 6.4.1.5 Must submit evidence that the program from which applicant is a graduate meets the approved standards adopted by the Board (24 **Del.C.** §§1910, 1914) and Rules and Regulations: 2.4. (If the program does not include the areas specified in the above curricula, the deficiencies must be made up before the applicant is eligible to take NCLEX);
- 6.4.1.6 Are allowed one year from the date of Board review of the completed application to make up all deficiencies, including the taking of the initial examination;
- 6.4.1.7 Effective July 1, 1982, professional nurse applicants must have passed the NCLEX examination (with a minimum standard score of 1600) and practical nurse applicants must have passed the NCLEX examination (with a minimum standard score of 350) within four examination opportunities, within a period of two years or original notification of failure.
- 6.4.1.8 Effective July 1, 1988, results are reported and recorded as pass or fail.
- 6.4.1.9 May be issued a temporary permit and may be employed in professional or practical nursing if the applicant has met all of the Board's prerequisites for taking the NCLEX in Delaware and is scheduled to do so;
- 6.4.1.10 May work only at the institution employing the applicant, under the direct supervision of a registered nurse pending results of the first licensing examination.
- 6.4.1.11 Must meet all other requirements for licensure.

6.4.2 RN applicants who meet the requirements listed in 6.4.1 are eligible to take NCLEX-RN. LPN applicants who meet the requirements listed in 6.4.1 are eligible to take the NLCEX-PN. Applicants will be issued a license upon successful completion of the respective NCLEX.

6.4.3 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination from 1970 - 1979 are eligible for licensure by endorsement.

- 6.4.4 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination, first administered August 1980, are eligible for licensure by endorsement with a passing score of 400. (September 15, 1981)
- 6.4.5 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination after that examination became graded on a pass or fail basis are not eligible for licensure by endorsement and must pass the NCLEX. (June 8, 1996)
- 6.4.6 Applicants graduating from programs outside of this state which, in the opinion of the board at the time the application is filed with the Division of Professional Regulation, are equivalent to the minimum requirements of the board for full approval status established by these regulations, are eligible to take the NCLEX.

Please Note: As the rest of the sections are not being amended, the balance of the regulations is not being published here. A copy of the regulation is available at:

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

2500 Board of Pharmacy

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations. The definition of "compounding" is revised to specify that reconstitution of oral solutions is not considered compounding. Rules 6.4 and 11.2.8, pertaining to "Customized Patient Medication Packages" are amended. In particular, Rule 6.4 states that such packaging of controlled substances is prohibited. Rule 14.0, pertaining to the administration of injectable medications, is amended to encompass registered interns and pharmacy students, with the requirement that registered interns and pharmacy students must be directly supervised by a licensed pharmacist who is approved for injectable administration. Registered interns and pharmacy students shall also be required to complete continuing education in this area of practice. Rule 14.0 is also revised for greater clarity.

A public hearing will be held on May 15, 2013 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 30, 2013 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on June 19, 2013 at 10:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

2500 Board of Pharmacy

(Break in Continuity of Sections)

6.0 Pure Drug Regulations

(Break in Continuity Within Section)

- 6.4 All biologicals, vaccines, drugs, chemicals, preparations and compounds must be packaged, labeled, stored and preserved in compliance with USP/NF and all other State and Federal standards. A pharmacist may, with the permission of the patient or the patient's agent, provide a "Customized

Patient Medication Package” only to patients that are self-medicating. The containers shall meet all of the requirements of the USP/NF standard entitled, "Customized Patient Medication Package." Packaging of controlled substances in a “Customized Patient Medication Package” is prohibited.

- 6.5 Labeling of Over-the-Counter Central Nervous System Stimulants. Over-the-counter central nervous system stimulants must be labeled and packaged in compliance with state and federal requirements.
- 6.6 Over-the-Counter Medication - Over-the-counter drug is one that can be legally sold without a prescription.

NOTE: The only over-the-counter products which currently can be labeled, advertised promoted, marketed or sold as a stimulant are those that do not contain any active ingredient but caffeine.

(Break in Continuity of Sections)

11.0 Pharmaceutical Services in Nursing Homes

(Break in Continuity Within Section)

11.2.8 A pharmacy that provides a "Customized Patient Medication Package" system can supply a maximum of 72 hours supply of medication per patient.

(Break in Continuity of Sections)

14.0 Administration of Injectable Medications, Biologicals and Adult Immunizations

The purpose of this regulation is to implement provisions relating to the training, administration, and documentation of injectable medications, biologicals, and adult immunizations by pharmacists, registered interns and pharmacy students pursuant to 24 **Del.C.** Ch. 25 relating to Pharmacy.

14.1 Educational Requirements

14.1.1 In order to administer injectable medications, biologicals, and adult immunizations a licensed pharmacist, a registered intern or a pharmacy student shall provide proof that the following requirements have been satisfied: complete a Board approved academic and practical curriculum and maintain a current Cardio-Pulmonary Resuscitation (CPR) certificate acceptable to the Board of Pharmacy.

14.1.1.1 ~~The satisfactory completion of an~~ An approved academic and practical curriculum approved by the Board of Pharmacy which includes, but is not limited to, disease epidemiology, vaccine characteristics, injection technique, emergency response to adverse events, and related topics.

14.1.1.2 ~~A current Cardio-Pulmonary Resuscitation (CPR) certificate acceptable to the Board of Pharmacy.~~ Pharmacists successfully completing the above education and practical training shall notify the Board. The Board will record the successful training in Board database systems.

14.1.2 A ~~registered licensed pharmacist, registered intern or pharmacy student~~ may only administer injections consistent with public health and safety and in a competent manner consistent with the academic curriculum and training completed.

14.1.3 Continued competency shall be maintained. ~~A minimum of two hours (0.2 C.E.U.) of the thirty hour requirement for continuing education, every licensure period, must be dedicated to this area of practice. and available for Board inspection.~~

14.1.3.1 A minimum of two hours (0.2 C.E.U.) of the thirty hour requirement for continuing education for licensed pharmacists, every licensure period, must be dedicated to this area of practice.

14.1.3.2 A minimum of two hours of continuing education every two years for registered interns and pharmacy students must be dedicated to this area of practice.

14.1.4 Documentation of the satisfactory completion of the proper academic and practical training requirements shall be listed in a policy and procedures manual available for inspection by the

~~Board of Pharmacy. Maintaining such a policy and procedures manual shall be the responsibility of each registered pharmacist administering injections. documentation shall be the responsibility of the pharmacist-in-charge.~~

14.2 Practice Requirements

14.2.1 The ~~pharmacist-in-charge~~ must maintain a manual with policies consistent with OSHA (Occupational Exposure to Bloodborne Pathogens) and procedures for dealing with acute adverse events.

14.2.2 ~~Prescriptions and/or physician approved written protocols will be maintained and available for inspection by the Board of Pharmacy. The administration of injectable medications, biologicals and adult immunizations by registered interns and pharmacy students must be directly supervised by a licensed pharmacist who is approved for injectable administration.~~

14.2.3 The pharmacist, registered intern, or pharmacy student, before administering an injectable medication, biological, or immunization, must counsel the patient and/or the patient's representative about contraindications and inform them in writing in specific and readily understood terms about the risks and benefits. A signed copy of the patient's consent shall be filed and available for inspection by the Board of Pharmacy.

14.2.4 The pharmacist, registered intern, or pharmacy student must document all injections made and have such documentation available for inspection by the Board of Pharmacy. Documentation shall include:

14.2.4.1 Patient's name, address, phone number, date of birth, and gender.

14.2.4.2 Medication or vaccine administered, expiration date, lot number, site of administration, dose administered.

14.2.4.3 Date of original order and the date of administration(s).

14.2.4.4 The name of the prescribing practitioner and the pharmacist, registered intern or pharmacy student administering the dose.

14.2.5 The pharmacist, registered intern or pharmacy student must document fully and report all clinically significant adverse events to the primary-care provider and to the Vaccine Adverse Event Reporting System (VAERS) when appropriate.

14.2.6 The pharmacist, registered intern or pharmacy student shall provide documentation to each person receiving immunizations and ~~when appropriate to the Immunization Section of the Department of Health and Social Services so the names of those individuals can be added to the Vaccination Registry.~~ shall report to the Immunization Vaccination Registry.

14.2.7 All documentation and records required by this Regulation must be maintained for a period of not less than three years and available for inspection by the Board of Pharmacy.

14.3 ~~Classes and Indications of Approved Medications. Classes of medications shall include injectable medications, immunizations, and biologicals contained in the list of Approved Drug Products with Therapeutic Equivalence Evaluations or drugs under clinical study when administered in accordance with indications approved by the Food & Drug Administration. Administration of medications includes injectable medications, biologicals and adult immunizations pursuant to a valid prescription or approved protocol approved by a physician duly licensed in this State.~~

14.4 ~~Authorization. Only those registered pharmacists meeting the requirements of this Regulation shall administer injectable medications, biologicals, and adult immunizations. The Board of Pharmacy shall maintain a current list of those pharmacists so authorized. It is the responsibility of each registered pharmacist to maintain his or her current status on such list.~~

Please Note: As the rest of the sections are not being amended, the balance of the regulations is not being published here. A copy of the regulation is available at:

2500 Board of Pharmacy

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3506 (24 Del.C. §3506)
24 DE Admin. Code 3500

3500 Board of Examiners of Psychologists

PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists, pursuant to 24 Del.C. §3506(a)(1), proposes to revise its regulations. The Board seeks to correct a typographical error in regulation 5.2.1.3. The Board also seeks to amend regulation 7.2 to clarify the group supervision requirements for postdoctoral applicants. The Board proposes to add a new regulation number 10.1.4 defining a continuing education hour. The Board proposes to amend regulation 10.6.4 to clarify the process by which teaching a workshop may be used for qualifying continuing education. The Board seeks to create a new regulations number 18, addressing the practice of telepsychology by licensees.

The Board will hold a public hearing on the proposed rule change on May 6, 2013 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 21, 2013.

3500 Board of Examiners of Psychologists

(Break in Continuity of Sections)

5.0 Procedures for Licensure

(Break in Continuity Within Section)

5.2 Application - By Reciprocity

(Break in Continuity Within Section)

- 5.2.1.3 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP). The Board shall accept the passing score recommended by the ASPPB for that particular examination (computer or paper) administration. For examinations taken prior to 1992, the Board shall accept either the ASPPB recommended passing score or the minimum passing score accepted by the Delaware Board in the year the examination was taken, whichever was lower.

(Break in Continuity of Sections)

7.0 Supervised Experience

(Break in Continuity Within Section)

- 7.2 Supervised postdoctoral experience is required for initial licensure. Postdoctoral experience must consist of 1,500 hours of actual work experience. This experience must be completed in not less than one calendar year and not more than three calendar years, save for those covered under 24 Del.C. §3519(e). For those individuals the accrual of 1,500 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. At least 25% of the 1500 hours of experience shall be devoted to direct service in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. There must be one hour of face-to-face supervision for every one to 10 hours of clinical work. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) postdoctoral applicants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All postdoctoral applicants must have at least one

(1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

(Break in Continuity of Sections)

10.0 Continuing Education

10.1 Hours required.

10.1.1 The biennial licensing period begins August 1 of each odd-numbered year and ends July 31 of the next odd-numbered year.

10.1.2 Psychologists must obtain 40 hours of continuing education during each biennial licensing period in order to be eligible for renewal of license. Effective as of the license renewal period beginning August 1, 2009, all psychologists must complete three hours of continuing education in ethics.

10.1.3 Psychological assistants must obtain 20 hours of continuing education during each biennial licensing period for re-registration. Effective as of the license renewal period beginning August 1, 2009, all psychological assistants must complete three hours of continuing education in ethics.

10.1.4 A "continuing education hour" is defined as one sixty-minute period, unless otherwise specified.

(Break in Continuity Within Section)

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

(Break in Continuity Within Section)

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. ~~Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented.~~ However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

(Break in Continuity of Sections)

18.0 Telepsychology

18.1 "Telepsychology" means the practice of psychology by distance communication technology such as but not necessarily limited to telephone, email, Internet-based communications, and videoconferencing.

18.2 In order to practice telepsychology one must hold a current, valid license issued by the Board.

18.3 Licensees understand that this rule does not provide licensees with authority to practice telepsychology in service to clients domiciled in any jurisdiction other than Delaware, and licensees bear responsibility for complying with laws, rules, and/or policies for the practice of telepsychology set forth by other jurisdictional boards of psychology.

18.4 Licensees practicing telepsychology shall comply with all of these rules of professional conduct and with requirements incurred in state and federal statutes relevant to the practice of psychology.

18.5 Licensees establish and maintain current competence in the professional practice of telepsychology through continuing education, consultation, or other procedures, in conformance with prevailing standards of scientific and professional knowledge. Licensees establish and maintain competence in the appropriate use of the information technologies utilized in the practice of telepsychology.

18.6 Licensees recognize that telepsychology is not appropriate for all psychological problems and clients, and decisions regarding the appropriate use of telepsychology are made on a case-by-case basis. Licensees practicing telepsychology are aware of additional risks incurred when practicing psychology through the use of distance communication technologies and take special care to conduct their

PROPOSED REGULATIONS

professional practice in a manner that protects the welfare of the client and ensures that the client's welfare is paramount. Licensees practicing telepsychology shall:

- 18.6.1 Conduct a risk-benefit analysis and document findings specific to:
 - 18.6.1.1 Whether the client's presenting problems and apparent condition are consistent with the use of telepsychology to the client's benefit; and
 - 18.6.1.2 Whether the client has sufficient knowledge and skills in the use of the technology involved in rendering the service or can use a personal aid or assistive device to benefit from the service.
- 18.6.2 Not provide telepsychology services to any person or persons when the outcome of the analysis required in paragraphs 18.6.1.1 and 18.6.1.2 of this rule is inconsistent with the delivery of telepsychology services, whether related to clinical or technological issues.
- 18.6.3 Upon initial and subsequent contacts with the client, make reasonable efforts to verify the identity of the client;
- 18.6.4 Obtain alternative means of contacting the client;
- 18.6.5 Provide to the client alternative means of contacting the licensee;
- 18.6.6 Establish a written agreement relative to the client's access to face-to-face emergency services in the client's geographical area, in instances such as, but not necessarily limited to, the client experiencing a suicidal or homicidal crisis;
- 18.6.7 Licensees, whenever feasible, use secure communications with clients, such as encrypted text messages via email or secure websites and obtain and document consent for the use of non-secure communications.
- 18.6.8 Prior to providing telepsychology services, obtain the written informed consent of the client, in language that is likely to be understood and consistent with accepted professional and legal requirements, relative to:
 - 18.6.8.1 The limitations and innovative nature of using distance technology in the provision of psychological services;
 - 18.6.8.2 Potential risks to confidentiality of information due to the use of distance technology;
 - 18.6.8.3 Potential risks of sudden and unpredictable disruption of telepsychology services and how an alternative means of re-establishing electronic or other connection will be used under such circumstances;
 - 18.6.8.4 When and how the licensee will respond to routine electronic messages;
 - 18.6.8.5 Under what circumstances the licensee and service recipient will use alternative means of communications under emergency circumstances;
 - 18.6.8.6 Who else may have access to communications between the client and the licensee;
 - 18.6.8.7 Specific methods for ensuring that a client's electronic communications are directed only to the licensee or supervisee;
 - 18.6.8.8 How the licensee stores electronic communications exchanged with the client;
- 18.6.9 Ensure that confidential communications stored electronically cannot be recovered and/or accessed by unauthorized persons when the licensee disposes of electronic equipment and data;
- 18.6.10 If in the context of a face-to-face professional relationship the following are exempt from this rule:
 - 18.6.10.1 Electronic communication used specific to appointment scheduling, billing, and/or the establishment of benefits and eligibility for services; and,
 - 18.6.10.2 Telephone or other electronic communications made for the purpose of ensuring client welfare in accord with reasonable professional judgment.

Note: As the rest of the sections are not being amended, the balance of the regulations is not being amended here. A copy of the regulation is available at:

3500 Board of Examiners of Psychologists

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2318, and 2741;
29 Delaware Code Section 10113(a)
(5 Del.C. §§121(b), 2318, & 2741; 29 Del.C. §10113(a))
5 DE Admin. Code 2301, 2303, 2701, and 2702

2301 Report of Delaware Sale of Checks, Drafts and Money Orders Volume
2303 Report of Delaware Volume

2701 Licensed Cashier of Checks, Drafts, or Money Orders Operating Regulations

2702 Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records

Notice of Proposed Amendments to Regulations of the State Bank Commissioner

Summary

The State Bank Commissioner proposes to amend Regulation 2301 and adopt new Regulation 2303 governing Sale of Checks and Transmission of Money, and to amend Regulations 2701 and 2702 governing Cashing of Checks, Drafts or Money Orders. The purpose of the amended and new regulations is to clarify, streamline, and update the existing regulations for ease of understanding and increased relevance to current licensee operations. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the April 1, 2013 edition of the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before May 1, 2013. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after May 1, 2013, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended and new Regulations 2301, 2303, 2701, and 2702 or make additional changes because of the public comments received.

~~**2301 Report of Delaware Sale of Checks, Drafts and Money Orders Volume**~~
~~5 Del.C. Ch. 23~~

Formerly Regulation No.: 5-2318-0001

Effective Date: November 12, 1999

This report shall be completed by all institutions licensed under Chapter 23, Title 5 of the ~~Delaware Code~~ and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 31 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 31 and must contain figures from January 1 through December 31 of the previous year.

In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.

The Report is available at:

[2301.pdf Report of Delaware Sale of Checks, Drafts and Money Orders Volume](#)

2301 Operating Regulation

5 Del.C. §2318

Effective Date: Proposed

1.0 Compliance with Applicable Laws

- 1.1 All licensees shall comply with 5 Del.C. Ch. 23, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 1.2 The manager and appropriate staff of each licensee shall familiarize themselves with all such statutes and regulations.
- 1.3 Each licensee shall maintain either by paper copy or through electronic access, 5 Del.C. Ch. 23 and the following regulations:
 - 1.3.1 Regulation 101, Retention of Financial Institution Records;
 - 1.3.2 Regulation 2301, Operating Regulation;
 - 1.3.3 Regulation 2302, Exemptions; and
 - 1.3.4 Regulation 2303, Report of Delaware Volume.

2.0 Minimum Required Records

- 2.1 Each licensee shall maintain any records necessary to verify the licensee's compliance with 5 Del.C. Ch. 23, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 All such records shall be made available to the Commissioner's staff when requested.
- 2.3 Records may be maintained at any suitable location but must be available within a reasonable period of time upon request.
- 2.4 All such records may be maintained by paper copy or in an electronic format.
- 2.5 All records shall be maintained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.
- 2.6 The Commissioner may grant written approval for variations from this section to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this section are satisfied and that the records will be readily available when requested.

3.0 Expired Identification

Licensees shall not accept from a customer any form of identification that has expired.

4.0 Advertising

A licensee shall not advertise in any way that is false, misleading, or deceptive.

5.0 Examination Fees and Supervisory Assessments

- 5.1 The Commissioner may examine licensees and their agents pursuant to 5 Del.C. §122. The costs of such examinations are assessed in accordance with 5 Del.C. §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 5.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 Del.C. §127(b).

5.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 Del.C. §§127(a) and 127(b).

6.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

2303 Report of Delaware Volume

5 Del.C. Ch. 23

Effective Date: Proposed

Each licensee shall submit this report to the Office of the State Bank Commissioner twice each year. The first report must be received no later than July 31 and must contain information from January 1 through June 30 of the current year. The second report must be received no later than January 31 and must contain information from January 1 through December 31 of the previous year.

Licensees with more than one licensed office, whose files are maintained at a consolidated, centralized location, may file a consolidated report. Otherwise, a separate report must be submitted for each licensed office.

A completed, signed report may be scanned and submitted by e-mail to bco_reports@state.de.us.

Failure to submit this report when due will be a violation of this regulation. In addition, an examination may be scheduled and examination staff allocated without respect to the licensee's volume of Delaware business. This may result in additional examination costs.

1. Name of Licensee: _____
2. License No.: _____
3. List the address where the books and records are maintained: _____

4. Examination contact person's name, title, phone number, fax number and e-mail address:

5. List the **Delaware** business conducted in each of the following categories:
 - A. Travelers Checks/Cheques
Number sold: _____
Total dollar value: _____
 - B. Money Orders
Number sold: _____
Total dollar value: _____
 - C. Transmission of Funds in any form
Number of transmissions: _____
Total dollar value: _____
6. Reporting Period: _____ to _____

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

Date Signature Title

Printed Name Phone Number

~~2701 Licensed Cashier of Checks, Drafts, or Money Orders Operating Regulations~~~~5 Del.C. §2741~~

Formerly Regulation No.: 5.2741.0001

Effective Date: November 12, 1998

~~4.0 Maintenance of Operating Regulations for Licensed Cashier of Checks, Drafts or Money Orders~~

- ~~4.1 All licensees shall conduct business in compliance with Chapter 27, Title 5, **Delaware Code**, and any regulations issued thereunder. Each office licensed under Chapter 27, Title 5, **Delaware Code**, shall possess copies of all applicable regulations. These regulations include:~~
- ~~4.1.1 Regulation 2701 (formerly 5.2741.0001) — Licensed Cashier of Checks, Drafts, or Money Orders Operating Regulations~~
 - ~~4.1.2 Regulation 2702 (formerly 5.2743.0002) — Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records~~
 - ~~4.1.3 Regulation 101 (formerly 5.141.0001.NC) — Retention of Financial Institution Records~~
- ~~4.2 The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulation shall be made known to the Office of the State Bank Commissioner and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both 5 **Del.C.** §2743 and this regulation.~~

~~2.0 Examination and Supervisory Assessment Fees~~

- ~~2.1 Cashing of Checks, Drafts, and Money Order licensees shall be subject to examination pursuant to §122 of Title 5 of the **Delaware Code**. The cost of such examinations shall be assessed to the licensee in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner shall assess annually each licensee a supervisory assessment, due and payable on August 1 of each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.~~

~~2-DE-Reg-781 (11/01/98)~~2701 Operating Regulation5 Del.C. §2741Effective Date: Proposed1.0 Compliance with Applicable Laws

- 1.1 All licensees shall comply with 5 **Del.C.** Ch. 27, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 1.2 The manager and appropriate staff of each licensed office, including all mobile units, shall familiarize themselves with all such statutes and regulations.
- 1.3 Each licensed office, including all mobile units, shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 27 and the following regulations:
 - 1.3.1 Regulation 101, Retention of Financial Institution Records;
 - 1.3.2 Regulation 2701, Operating Regulation; and
 - 1.3.3 Regulation 2702, Minimum Records.

2.0 Display of License and Fee ScheduleEach licensed office, including all mobile units, shall prominently display in clear view of all customers:

2.1 its license issued under 5 **Del.C.** Ch. 27, and

2.2 the fee schedule set forth in 5 **Del.C.** §2742.

3.0 Expired Identification

Licenses shall not accept from a customer any form of identification that has expired.

4.0 Advertising

4.1 A licensee shall not advertise in any way that is false, misleading or deceptive.

4.2 When a licensee advertises with respect to its services under 5 **Del.C.** Ch. 27, the advertisement shall clearly and conspicuously state that the licensee is licensed to engage in business in this State under that chapter and specify the license number and expiration date of its license.

5.0 Examination Fees and Supervisory Assessments

5.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §122. The costs of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.

5.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).

5.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

6.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

2702 Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records

5 Del.C. §2743

Formerly Regulation No.: 5.2743.0002

Effective Date: November 12, 1998

~~4.0~~ —The fee schedule set forth in §2742 of Title 5 of the ~~Delaware Code~~ shall be conspicuously displayed in a place easily visible to consumers at the licensed location, whether such location be a mobile unit or otherwise.

~~2.0~~ —Each licensed office shall establish and maintain the following books and records, on a current basis, at the licensed office. Written approval may be granted for variations which accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system as to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested:

~~2.1~~ Transactions Journal — All transactions involving the cashing of checks, drafts, or money orders shall be entered into this journal. All entries in this journal shall contain the following details:

~~2.1.1~~ Date of transaction;

~~2.1.2~~ Customer's name;

~~2.1.3~~ Customer's address;

~~2.1.4~~ Type of identification;

~~2.1.5~~ Check, Draft, or Money Order and Item Number;

- 2.1.6 Amount of item;
 - 2.1.7 Fee paid;
 - 2.1.8 Employee's initials.
 - 2.2 ~~Written approval may be granted for the recording of items 2.1.2, 2.1.3, and 2.1.4 in a card file which assigns an identification number to each customer. The identification number may then be recorded in the Transactions Journal in lieu of the customer's name, address, and form of identification.~~
 - 2.3 ~~Record of Deposits—A copy of each day's deposit made of the checks, drafts, and money orders cashed shall be maintained.~~
 - 2.4 ~~Summary of Business—A record of daily and monthly totals shall be maintained, to include:~~
 - 2.4.1 ~~The number of checks, drafts, and money orders cashed;~~
 - 2.4.2 ~~The aggregate fees received.~~
 - 2.5 ~~Any licensee operating two or more locations may maintain a consolidated or combined set of books and records, provided such books and records reflect separate figures for each location.~~
- ~~2-DE Reg. 781 (11/1/98)~~

2702 Minimum Records

5 Del.C. §§2741 and 2743

Effective Date: Proposed

1.0 Minimum Required Records

Each licensed office, including all mobile units, shall maintain the following records on a current basis:

- 1.1 Transactions Journal. The office shall maintain a journal recording all transactions involving the cashing of checks, drafts, or money orders. The entries in this journal shall include:
 - 1.1.1 the date of the transaction;
 - 1.1.2 the customer's name;
 - 1.1.3 the customer's address;
 - 1.1.4 the type of identification the customer used, the issuer of that identification and its expiration date;
 - 1.1.5 the item number and amount of the check, draft or money order;
 - 1.1.6 the fee received for the transaction; and
 - 1.1.7 an identification of the employee who conducted the transaction.
- 1.2 Daily Deposit Records. The office shall maintain a daily record containing a copy of each day's deposit of the checks, drafts, and money orders cashed.
- 1.3 Business Summary Record. The office shall maintain a record containing the daily and monthly totals of:
 - 1.3.1 the number of checks, drafts, and money orders cashed; and
 - 1.3.2 the aggregate fees received.

2.0 Location, Format and Retention of Records

- 2.1 All records shall be made available to the Commissioner's staff when requested.
- 2.2 Records may be maintained at the licensed office or mobile unit itself or at any other suitable location if they can be available within a reasonable period of time upon request.
- 2.3 The licensee may maintain a separate record for repeat customers containing the information required by §§1.1.2, 1.1.3, and 1.1.4 of this regulation if the journal entry for each transaction clearly identifies the customer. Customer information maintained as a separate record must be updated annually, or sooner if the form of identification or record has expired since the last transaction.
- 2.4 Any licensee operating two or more office locations or mobile units may maintain consolidated or combined records, provided the records reflect separate figures for each location or unit.
- 2.5 All records may be maintained by paper copy or in an electronic format.

2.6 All records shall be retained in accordance with the time periods specified in Regulation 101 Retention of Financial Institution Records.

3.0 Variations

The Commissioner may grant written approval for variations from this regulation to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning this system to ensure that the requirements of this regulation are satisfied and that the records will be readily available when requested.

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 132 & 143
(17 Del.C. §§132, 143)

PUBLIC NOTICE

2401 Utilities Manual Regulations

Under Title 17 of the Delaware Code, Sections 132 and 143, the Delaware Department of Transportation (DelDOT), is updating the Delaware Department of Transportation Utility Manual.

The Department will take written comments on the draft changes to the Delaware Department Transportation Utility Manual from April 1, 2012 through April 30, 2013. Copies of the Draft Delaware Department Transportation Utility Manual can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Joseph Hofstee, P.E., Utility Engineer, Utilities Section, Division of Transportation Solutions, Delaware Department of Transportation P.O. Box 778 800 Bay Road, Dover DE 19903 (302) 760-2358 (telephone) (302) 739-8282 (fax) joseph.hofstee@state.de.us

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

2401 Utilities Manual Regulations

STATE BOARD OF PENSION TRUSTEES

THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Statutory Authority: 29 Delaware Code, Section 8308(c)(1) (29 Del.C. §8308(c)(1))

2002 State Employees' Pension Plan

2003 State Judiciary Pension Plan

2004 State Police Pension Plan

2005 County and Municipal Employees' Pension Plan

2006 County and Municipal/Firefighter Pension Plan

PUBLIC NOTICE

The Delaware Public Employees Pension System ("DPERS") hereby give notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 Del.C. §8308(c)(1) and in compliance with Delaware's Administrative Procedures Act, 29 Del.C. §§10115 and

10117. The proposed regulations delete obsolete language, bring the regulations into compliance with changes in Federal Law, and clarify the definitions of casual/seasonal, regular part-time, substitute, and temporary employee. Identical update and formatting changes are made in each set of regulations. A chart outlining the nature of each change made to each section within each set of regulations follows each set of proposed regulations.

DPERS solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are published in the Delaware Register of Regulations.

Any such submissions should be mailed or delivered to David Craik, State of Delaware Office of Pensions, State of Delaware, Office of Pensions, McArdle Building, 860 Silver Lake Blvd., Suite #1, Dover, DE 19904-2402 by May 15, 2013.

A Public Hearing will be conducted on May 31, 2013 at the offices of Delaware Office of Pensions, State of Delaware McArdle Building, 860 Silver Lake Blvd., Suite #1, Dover, DE 19904.

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

Delaware Public Employees Pension System

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.

DELAWARE STATE FIRE PREVENTION COMMISSION

16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))

1 **DE Admin. Code** 708

708 Fire Department and Ambulance Company Administrative Standards

ORDER

Pursuant to statutory authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1)), the State Fire Prevention Commission ("Commission") issues this Final Order adopting amendments to existing regulations to make them consistent with changes in basic law, but which do not otherwise alter the substance of the regulations, as contemplated by 29 **Del.C.** §10113(b)(5), to correct statutory references in the Commission's Financial Audit Regulations, Chapter 1 of 1 **DE Admin. Code** 708, by changing each reference to 16 **Del.C.** §6622 to a reference to 16 **Del.C.** §6608.

At its public meeting on March 19, 2013, the Commission approved amendments to existing Rule 708 to make Rule 708 consistent with changes in basic law, but which do not otherwise alter the substance of Rule 708, as contemplated by 29 **Del.C.** §10113(b)(5), by making insertions as shown by underlining and deletions as shown by strike through.

IT IS SO ORDERED THIS 19TH DAY OF MARCH, 2013.

STATE FIRE PREVENTION COMMISSION

David Roberts, Chairman

Tom DiCristofaro, Commissioner

Alan Robinson, Vice-Chairman

Marvin C. Sharp, Jr., Commissioner

Bob Ricker, Commissioner

Charles Frampton, Jr., Commissioner

Ron Marvel

708 Fire Department and Ambulance Company Administrative Standards

Chapter 1 Financial Audit Regulations

1.0 General.

- 1.1 **Purpose.** To establish the minimum requirements related to the mandatory submission of financial audits by volunteer fire and ambulance companies in accordance with the provisions of 16 **Del.C.** ~~§6622~~ 6608.
- 1.2 **Scope.** These Regulations address the required types of audits, the reporting periods, procedures for reviewing the audits and the processes to be followed in the event a company fails to submit or submits an inadequate audit.
- 1.3 **Application.** These Regulations apply to all volunteer fire and ambulance companies and their approved subsidiaries (e.g. auxiliaries operating under the same tax identification number) in the State of Delaware and the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad. These regulations do not apply to independent auxiliary organizations operating under a tax identification number that is separate from the fire or ambulance company's number.

2.0 Definitions.

- 2.1 **Review:** Financial data analysis that provides less assurance than a full audit, but more than a compilation (which provides no assurance). In a review, an auditor expresses limited assurance that the company's financial statements do not require any material modification for them to be in conformity with the provisions of generally accepted accounting principles ("GAAP"). (*Ref.* Business Dictionary.com)

3.0 Report Types.

- 3.1 Reports must be completed by an independent certified public accounting firm at a minimum "Review" level. The submission shall include, but not be limited to, the following:
 - 3.1.1 The Accountant's Report provided to the volunteer fire or ambulance companies by their independent accountant.
 - 3.1.2 Financial statements, including:
 - 3.1.2.1 Statement of financial position (Balance sheet).
 - 3.1.2.2 Statement of revenue and expenses.
 - 3.1.2.3 Statement of cash flow.
 - 3.1.2.4 Notes to financial statements.
 - 3.1.2.5 Letter of observations and/or comments.
 - 3.1.2.6 Letter of representation.
 - 3.1.3 The required documentation shall be submitted to the Commission with a cover sheet signed off on by the volunteer fire or ambulance company president verifying that he or she has reviewed the submission and all of the items required by subsections 3.1.1 and 3.1.2 are included.
- 3.2 A full financial audit may be required, in the Commission's discretion, if a fire department or ambulance company receives a second annual "Review" report that continues to indicate insufficient corrective actions have been taken to address inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company.
- 3.3 A fire department or ambulance company may voluntarily submit a full financial audit rather than a review level report if it chooses to do so.

4.0 Reporting Periods.

- 4.1 Any company whose fiscal year begins on or after January 1, 2009 must file no later than six and one-half months after the close of the company's fiscal year. Reports shall be submitted annually thereafter no later than six and one-half months after the close of the company's fiscal year. The report due date

will be calculated by the Commission based on the information provided by the volunteer fire and/or ambulance company as to the close of its fiscal year.

- 4.2 No extensions will be granted except upon a showing of hardship. Requests for a hardship extension must be made in writing prior to the report due date. The request must specify in detail the nature of the hardship. A showing of hardship requires that the lack of compliance with this regulation is due to causes beyond the company's control. The Commission's decision on the extension request shall be final.

5.0 Report Compliance Committee.

- 5.1 The Commission shall appoint a Report Compliance Committee to review submissions. The Report Compliance Committee shall consist of at least of three (3) members who shall be appointed annually at the January meeting of the Commission. The members of the Report Compliance Committee shall have a professional background that includes auditing and financial experience.
- 5.2 The Report Compliance Committee will review the report(s) for compliance with the regulations and will look for any accountant comments that indicate inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company. The Report Compliance Committee shall report to the Commission as follows:
- 5.2.1 Reports that are approved will be forwarded to the Commission with a recommendation for filing with no further action.
- 5.2.2 Fire department and ambulance companies that fail to file the mandatory financial reports will be referred to the Commission with a recommendation for a hearing before the Commission for the imposition of civil penalties as provided in 16 **Del.C. §6622 6608** (b) and any other penalties available under the Chapter.
- 5.2.3 Any report showing financial irregularities will be referred to the Commission with a summary of the deficiencies and a recommendation for a hearing before the Commission to establish a written corrective action plan and/or the imposition of civil penalties as provided in 16 **Del.C. §6622 6608** (b) and any other penalties available under the Chapter.
- 5.3 The Report Compliance Committee may require the volunteer fire or ambulance company to submit such additional documentation as may be necessary for clarification in order for the Report Compliance Committee to make a decision as to whether referral to the Commission for further action is warranted. Failure to comply with the Report Compliance Committee's request for additional documentation will result in referral to the Commission for a hearing.

6.0 Report Compliance Hearings.

- 6.1 The Commission shall schedule a hearing within thirty (30) days of receiving a referral from the Report Compliance Committee.
- 6.2 Notice of the time and place of the hearing shall be personally served, or sent by registered mail to the address provided by the fire department or ambulance company at the time of the report submission, with return requested, to the fire department or ambulance company at least twenty (20) days prior to the date fixed for the hearing.
- 6.3 Hearings will be conducted in accordance with the hearing procedures set forth in Regulation 701, Chapter 1, subsection 7.6.
- 6.4 The fire department or ambulance company that is the subject of the hearing will be provided with a copy of the Report Compliance Committee's report to the Commission.

7.0 Sanctions for Non-compliance.

- 7.1 Where the Commission has determined, upon notice and hearing, that a fire department or ambulance company failed to file or has filed incomplete reports or audits in violation of 16 **Del.C. §6622 6608**, the Commission may impose a civil penalty of \$100 per day beginning on the date the report or audit was due. Each day a violation continues may be deemed a separate offense in the Commission's

discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.

- 7.2 Where the Commission has determined, upon notice and hearing, that the reports or audits of a fire department or ambulance company indicate inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company the Commission may require a written corrective action plan. Failure to submit a written corrective action plan may result in the imposition of a civil penalty of \$100 per day. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.
- 7.3 Continued failure to file reports or audits or to take corrective action may also result in the Commission referring the fire department or ambulance company to other regulatory agencies for review and possible action under their governing authority, including but not limited to, the Internal Revenue Service, the Delaware Division of Revenue and the State Auditor's Office.

8.0 Documents

- 8.1 Report and audit submissions filed with the Commission may be considered public records under the Freedom of Information Act ("FOIA"). The records will not be released except pursuant to a valid FOIA request or subpoena. The volunteer fire department or ambulance company will be given notice of the request. It will be the responsibility of the volunteer fire department or ambulance company to challenge the request in the appropriate court within the time specified by the Commission in the notice; otherwise, the records will be released.

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 540

REGULATORY IMPLEMENTING ORDER

540 Driver Education

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 540 Driver Education to allow for students with Individual Education Programs (IEPs) additional time to complete driver education pursuant to House Bill No. 264 as amended by House Amendment No. 1 of the 146th General Assembly. Additionally, changes were made to reflect the elimination of fees for driver education for nonpublic school students who are Delaware residents.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2013, in the form hereto attached as *Exhibit "A"*. In addition, a public hearing was held on February 27, 2013. Comments were received from Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD), and the Delaware Division of Vocational Rehabilitation. The Department made changes to the regulation to reflect the addition of the words "and related services" in section 1.1.1 as suggested by the GACEC and SCPD. The Department received a comment related to the charging of a fee for a student with an active IEP if the student did not pass the course after two attempts. The ability to delay the course until 11th or 12th grade should help to ensure that driver education is taken at the most appropriate time. In addition, taking the course across two semesters was added as a specific accommodation. The regulation has been revised to allow for additional times to complete the course with no charge to the student.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 540 Driver Education in order to allow

student with an active IEPs until the age of 21 to complete their driver education certification. This regulation also provides the student the ability to enroll in another driver education course if the student fails the driver education course during the regular school year.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 540 Driver Education. Therefore, pursuant to 14 **Del.C.** §122, 14 DE Admin. Code 540 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 540 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 540 Driver Education amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 540 Driver Education in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **March 21, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21 day of March 2013.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21st day of March 2013

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes

540 Driver Education

1.0 Eligibility for Driver Education

- 1.1 A student enrolled in a Delaware public school or nonpublic school (private and homeschool) and who is a residents-are of Delaware is entitled to free driver education one time only. Delaware nonpublic school (private and homeschool) students are entitled to tuition-based driver education at rates approved by co-chairs of the Joint Finance Committee, Delaware General Assembly. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.
 - 1.21.1 For a student with an active Individual Education Program (IEP), the Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program, including but not limited to, allowing multiple opportunities to take the driver education course, delaying the course until the 11th or 12th grade[, taking the course across two semesters] and offering specialized instruction [and related services] for special education students through the student's Individual Education Program (I.E.P. IEP).
 - 1.1.2 A student who is receiving special education services under an active Individual Education Program (IEP) shall be authorized until the age of 21 to complete the driver education certification.
 - 1.1.3 A student with an active IEP retaking the driver education course because of failing the initial driver education course shall not be required to pay a fee for taking the course [one] additional time[s].

- 1.32 Nothing in this regulation shall alter a school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a school from providing driver education to such students.
- 1.43 Delaware ~~students who are residents attending public schools who are attending school out of state as 10th graders, students~~ in excess of the September 30th unit allotment, ~~students attending private schools in the state with 10th grade enrollments of less than twenty-five homeschooled students and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Students attending private schools in state with 10th grade enrollments of less than twenty five, homeschooled students, and eligible Delaware residents attending schools out of state shall be entitled to attend tuition based summer driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly.~~ Districts shall notify all nonpublic and public high schools in their district by May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 10 and August 31 and each request for free tuition must be approved by the Secretary of Education through the ~~Office of the Director of Career & Technical Education and School Climate~~ Director overseeing driver education.
- 1.54 Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The cost per student for adult driver education will be determined by the Department of Education.

12 DE Reg. 670 (11/01/08)

2.0 Requirements for Class Time

- 2.1 The driver education course shall include a minimum of forty four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in the car behind the wheel laboratory instruction and seven (7) hours of actual observation in the car. The class hours must not be less than forty five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind the wheel laboratory instruction no less than three hundred fifteen (315) minutes.
- 2.2 Driving simulators may be substituted for the required hours of behind the wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind the wheel laboratory instruction.
- 2.3 Off the street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind the wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind the wheel laboratory instruction time.
- 2.4 Driving simulation and off the street driving range time shall not be taken from or cause a reduction of classroom instruction time.
- 2.5 Driving simulation and off the street driving range time shall not be substituted for more than one half (1/2) of the total required seven (7) hours of actual behind the wheel laboratory instruction and only at the ratios defined in 2.0. This includes individually or in any combination.

3.0 Curriculum

The Driver Education teachers shall use the statewide curriculum for driver education developed by the Department of Education for classroom instruction and behind the wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

4.0 Final Grades

- 4.1 Final grades for the forty four hour driver education course shall be either pass or fail. Schools may grant one fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind the wheel laboratory experience. The one fourth of a credit for driver education may be included as part of the elective credits counted toward graduation.

- 4.2 Pass or Fail grades must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven year period.

5.0 Use of Driver Education Cars

Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in Driver Education; except that a school district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school. The Director of ~~Career & Technical Education and School Climate~~ overseeing driver education shall assign private school driver education teachers a state parking location to store the vehicle overnight when it appears that it would be unsafe to store the automobile overnight at the school.

12 DE Reg. 670 (11/01/08)

6.0 Scheduling of Driver.

All public and ~~nonpublic~~ private high schools with twenty five or more enrolled 10th grade students shall offer Driver Education as part of the curriculum.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1594

REGULATORY IMPLEMENTING ORDER

1594 Special Education Director

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt 14 DE Admin 1594 Special Education Director. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to upgrade the requirements' rigor including increasing the years of experience necessary and to build upon the other amended administrator regulations (1591 School Principal and Assistant School Principal, 1592 Certified Central Office Personnel, and 1593 Superintendent or Assistant Superintendent). Amendments were also made to reference the newly proposed regulation 1595 Certification Programs for Leaders in Education. This regulation sets forth the requirements for Special Education Director.

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on November 1, 2012. The notice invited written comments. Similar comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Both Councils questioned if there had been an omission allowing "administrative experience with children" as qualifying experience. The reference to administrative experience was included in section 4.2.1.2. Based on the concern, to add clarity an amendment has been made in 4.2.1.3 specifically listing administrative experience as a separate section. Both Councils noted that changes were made regarding qualifying work experience that deleted references to school psychologist, speech pathologist, and audiologist. The amendments in the new section 4.2.1.2 included professional experience under a Delaware Standard Certificate (i.e. School Psychologist) and other professional license (i.e. speech pathologist, audiologist). For clarification, specific language has been added to include school psychologist, speech pathologist, and audiologist as examples. The Councils suggested that future Impact Analysis be more detailed. Councils' concern is noted for future actions and it is the intent to do so.

II. FINDINGS OF FACTS

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

III. DECISION TO ADOPT THE REGULATION

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

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1594 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7th DAY OF FEBRUARY, 2013

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

IT IS SO ORDERED the 21st day of February, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved 21st day of February, 2013

State Board of Education

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

1594 Special Education Director

4.0 Content

4.1 ~~This regulation shall apply to the issuance of a Standard Certificate for Director of Special Education, pursuant to 14 **Del.C.** §1220(a).~~

2.0 Definitions

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

~~“Administrative Experience” means experience in a pK to 12 setting as an assistant principal, principal, School Leader I, or School Leader II.~~

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

~~“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK to 12 setting.~~

3.0 Standard Certificate

The following shall be required for the Standard Certificate for a Director of Special Education.

3.1 Educational requirements.

~~3.1.1 A master's degree in special education from a regionally accredited college or university where the program is NCATE approved or state approved, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and~~

~~3.1.1.1 Successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates shall fulfill the following requirements;~~

~~3.1.1.1.1 A minimum of twenty four (24) semesters hours of graduate level course work in administration, completed either as part of the master's degree or in addition to it, to include at least one course in each of the following areas, unless otherwise indicated:~~

~~3.1.1.1.1.1 Supervision and Evaluation of Staff;~~

~~3.1.1.1.1.2 Curriculum Development;~~

~~3.1.1.1.1.3 School Law and Legal Issues in Education;~~

~~3.1.1.1.1.4 Human Relations; and~~

~~3.1.1.1.1.5 Special Education (12 credits) (may include courses in curriculum, instruction, methods, and administration); or~~

~~3.1.2 A master's degree in school administration; and 30 graduate level semester hours in Special Education taken either as part of a degree program or in addition to it; or~~

~~3.1.3 A master's degree in any field from a regionally accredited college or university; and~~

~~3.1.3.1 30 graduate level semester hours in Special Education taken either as part of a degree program or in addition to it; and~~

~~3.1.3.2 Successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates shall fulfill the following requirements:~~

~~3.1.3.2.1 Supervision and Evaluation of Staff;~~

~~3.1.3.2.2 Curriculum Development;~~

~~3.1.3.2.3 School Law or Legal Issues in Education;~~

~~3.1.3.2.4 Human Relations; and~~

~~3.1.3.2.5 Special Education (12 credits) (may include courses in curriculum, instruction, methods, and administration taken either as part of a degree program or as part of the requirement for graduate level semester hours in Special Education set forth in 3.1.2.1 and 3.1.3.1, above); or~~

~~3.1.4 A current and valid special education administrative certificate from another state or the District of Columbia.~~

3.2 Experience requirements.

~~3.2.1 A minimum of three (3) years of teaching experience with children with disabilities at the pK to 12 level; or~~

- ~~3.2.2 A minimum of three (3) years of professional experience with children with disabilities at the pK to 12 level, in any setting, in a position requiring certification or licensing by the appropriate regulatory body, including, but not limited to a school psychologist, speech pathologist, or audiologist, regardless of whether the applicant's position meets the definition of "teaching experience"; or~~
- ~~3.2.3 A minimum of three (3) years administrative experience with children with disabilities at the pK to 12 level; or~~
- ~~3.2.4 Any combination of these types of experiences which totals a minimum of three (3) years.~~

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate for Director of Special Education, pursuant to 14 Del.C. §1220(a).
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "Certification Program for Leaders in Education"** means a program comprised of education components as defined and approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Special Education Director to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Professional Status Certificate issued by the Department prior to August 31, 2003; and
- 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and
- 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also have met the following additional requirements.

4.1 Education requirements.

- 4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
- 4.1.1.1 A master's or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and
- 4.1.1.1.1 Thirty (30) graduate level semester hours from a regionally accredited college or university in Special Education taken either as part of a degree program or in addition to it, or the equivalent in professional development pre-approved by the Department; or
- 4.1.1.2 A master's or doctoral degree from a regionally accredited college or university in Special Education offered by an NCATE specialty organization recognized educator preparation

program or from a state approved educator preparation program where the state approval body employed the appropriate NCATE specialty organization standards; and

4.1.1.2.1 The successful completion of any approved Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education; or

4.1.1.3 A master's or doctoral degree from a regionally accredited college or university in any field; and

4.1.1.3.1 The successful completion of an approved Special Education Director Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

4.2 Experience requirements.

4.2.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:

4.2.1.1 A minimum of five (5) years of teaching experience with exceptional children special education students at the PreK to 12 public school level or the equivalent as approved by the Department; or

4.2.1.2 A minimum of five (5) years professional experience under a Delaware Standard Certificate or other Delaware professional license [including but not limited to a school psychologist, speech pathologist, or audiologist,] working with exceptional children special education students at the PreK to 12 level or the equivalent as approved by the Department; or

4.2.1.3 [A minimum of five (5) years administrative experience working with exceptional children special education students at the PreK to 12 level or the equivalent as approved by the Department;

4.2.1.4] Any combination of the types of experiences prescribed in subsections 4.2.1.1[, **and 4.2.1.2 and 4.2.1.3**] which totals a minimum of five (5) years.

5.0 Validity

5.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware Register of Regulations.

5.1.1 Educators currently enrolled in a Special Education Director course of study prior to the effective date of this regulation will have until eighteen (18) months subsequent to the effective date to apply for the previous Special Education Director Standard Certificate. Educators are responsible for providing to the Department evidence of enrollment via submission of appropriate transcripts.

5.2 An Emergency Certificate for Special Education Director is not available.

5.3 The Department shall also recognize a Standard Certificate for Special Education Director issued by the Department prior to the effective date of this regulation.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE** Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

ORDER

Long-Term Care Program DSSM 20310.18 Tax Refunds and Advance Payments

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Long-Term Care

program, specifically, *Tax Refunds or Advance Payments*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the February 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Tax Refunds or Advance Payments*.

Statutory Authority

Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312)

Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) was signed into law on December 17, 2010. Section 728 of this Act disregards federal tax refunds or advance payments with respect to a refundable tax credit, received after December 31, 2009, as income and as resources (for a period of 12 months after receipt) for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid and the Children's Health Insurance program (CHIP). Section 728 also provides that these tax refunds and advance payments are not to be taken into account in determining the amount or extent of benefits provided under any program subject to this provision, including Medicaid and CHIP. This provision became effective December 17, 2010, and applies to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013.

Summary of Proposal

DSSM 20310.18, *Tax Refunds and Advance Payments*: The purpose of the proposed change is to clarify that the 12 month disregard of tax refunds and advance payments only applies to the funds that are received through December 31, 2012. Any refunds/advance payments received on or after January 1, 2013 will be considered a resource if retained the month following receipt.

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend its Long-Term Care (LTC) Medicaid resource regulation and would like to affirm that we did not identify any technical concerns. The proposed regulation was published as 16 DE Reg. 825 in the February 1, 2012 issue of the *Register of Regulations*.

DMMA notes that federal legislation enacted in 2010 created a twelve month "disregard" for federal income tax refunds received between December 31, 2009 and December 31, 2012. That "disregard" has expired and the Division is now adding the following conforming sentence: "Any retained portion of a tax refund and/or advance payment that was received on or after January 1, 2013 will be a countable resource the month following receipt."

Agency Response: DMMA thanks you for the affirmation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2013 *Register of Regulations*

should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding Long Term Care Medicaid, specifically, *Tax Refunds or Advance Payments* is adopted and shall be final effective April 10, 2013.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #13-12
REVISION**

20310.18 Tax Refunds and Advance Payments

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P. L. 111-312), which was signed into law on December 17, 2010, includes a provision that requires all programs funded in whole or in part with Federal funds, to disregard Federal tax refunds for a period of twelve months from the month of receipt.

Tax refunds and advance payments with respect to a refundable tax credit received after December 31, 2009 through December 31, 2012 are excluded from resources for the twelve calendar months following the month of receipt.

Any portion of the refund or payment that is still retained after that twelve- month period will be a countable resource.

Any retained portion of a tax refund and/or advance payment that was received on or after January 1, 2013 will be a countable resource the month following receipt.

DEPARTMENT OF JUSTICE

VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL

Statutory Authority: 11 Delaware Code, Section 9004(a) (11 **Del.C.** §9004(a))
1 **DE Admin. Code** 301

ORDER

301 Victims' Compensation Assistance Program Rules and Regulations

The Victims' Compensation Assistance Program's Advisory Council of the State of Delaware hereby adopts this Report and Order, pursuant to 29 **Del.C.** §10118, for the purpose of final enactment of the amended regulations attached hereto. The proposed change would amend Rule 25.0, relating to burial awards. This regulation would limit the aggregate award for funeral and burial expenses to \$5,000. This would be a reduction from the present ceiling of \$8,500. Enactment of this regulation would help preserve VCAP funds and would bring VCAP more in line with how other state compensation programs reimburse families of victims for funeral and burial expenses.

Summary of Comments

Public hearings on the proposed regulation were held in Wilmington on December 5, 2012 at 10:00 am and in Dover on December 5, 2012 at 3:00 pm. No testimony was presented. The public comment period remained open until January 31, 2013 and written comments were submitted by the Delaware State Funeral Directors Association ("DSFDA") and the State Council for Persons with Disabilities. The DSFDA opposed the regulatory change noting that Delaware's program is a successful program and one that is need of support. In addition, the DSFDA requested that the benefit remain at \$8500 or "decrease it at a commensurable rate to other industries." The State Council for Persons with Disabilities supports the regulatory change. In addition, the Wilmington City Council passed Resolution No. 12-088 on December 13, 2012, recommending that the Victims' Compensation Assistance Program Advisory Council request the 18% surcharge that is added to criminal fines be increased to address the Program's revenue shortfall, as opposed to reducing the amounts paid to victims.

Findings of Fact

The Advisory Council, upon review of the testimony presented and comments received and further discussion, determined that no changes in the draft proposal were necessary, and that the new regulation could be submitted for publication as drafted.

The Advisory Council adopted the proposed regulation by a unanimous vote of members present at the meeting on Tuesday, March 5, 2013 at the VCAP offices in Wilmington, Delaware.

The final draft of the proposed rule reflects a significant reduction in the ceiling for such payments. The \$5,000 limit is consistent with ceilings on such reimbursement imposed by other state victim compensation agencies. VCAP has never purported to offer full reimbursement of all costs incurred by victims and their families. Rather, VCAP has sought to provide funds to assist victims and families, in the aftermath of criminal acts. The categories of claims eligible for reimbursement are defined by statute and regulations. With revenue limited, the agency and the Advisory Council have studied ways in which to increase funding, to prioritize the funding and, where needed, reduce reimbursement.

The revised ceiling should enable VCAP to pay basic funeral and burial expenses to the families of homicide victims. It would be up to the family to determine how elaborate the ceremony should be, using other available funds.

Decision of the Advisory Council

The Advisory Council reviewed the various suggested changes at its meeting on March 5, 2013, and voted to adopt the proposed new rule, as drafted, with no changes. The effective date of the amendment is April 11, 2013.

Text of Rules Adopted

The final version of the proposed amended regulations of the Advisory Council is attached hereto.

ADOPTED, this 5th day of March, 2013, by the undersigned members of the Victims' Compensation Assistance Program Advisory Council:

***Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 719 (16 DE Reg. 719). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[301 Victims' Compensation Assistance Program Rules and Regulations](#)

DEPARTMENT OF LABOR**DIVISION OF INDUSTRIAL AFFAIRS****Office of Workers' Compensation**

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

19 DE Admin Code 1341

ORDER**[1341 Workers' Compensation Regulations](#)**

Pursuant to 29 **Del.C.** §10113, the Secretary of the Department of Labor (DOL) issues this Order adopting amendments to the Ambulatory Surgical Treatment, Emergency Department of a Hospital, and Hospital fee methodologies proposed by the members of the Health Care Advisory Panel.

On August 7, 2012, the Governor signed SB238, which replaced the fee methodologies for ambulatory surgical treatment, emergency departments of a hospital, and hospital fee methodologies. Effective April 11, 2013. these

On August 7, 2012, the Governor signed SB238, which replaced the fee methodologies for ambulatory surgical treatment, emergency departments of a hospital, and hospital fee methodologies. Effective April 11, 2013, these changes to subsections 4.6, 4.8, and 4.9 of 19 **DE Admin. Code** 1341 align the regulations with the following statutory revisions in 19 **Del.C.** §§23228(8) and (9):

1. Removed the hospital only fees from the emergency exemption and added them to the general hospital fee methodology. Still exempted arc "healthcare provider services provided in an emergency department of a hospital or any other facility subject to the Federal Emergency Medical Treatment and Active Labor Act. 42 U.S.C. §1395dd, and any emergency medical services provided in a prehospital setting by ambulance attendants and paramedics..."

2. Replaced the fee methodologies for ambulatory surgery centers and hospitals from methodologies that update each individual fee to ones that update the overall percent of charge (POC). which aligns them with federal uniform billing requirements. Both POC updates arc based on the annual change to the consumer price index. medical. as published by the U.S. Department of Labor. However, the baseline POCs differ – individual ambulatory surgery center adjustments begin at 85POC, and hospitals (as one entity) begin at 80POC. Each year, the adjusted POC amounts are published on the Department or Labor's web site.

Pursuant to 29 **Del.C.** §10113(b)(5):

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

..... (5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations."

DEPARTMENT OF LABOR

John McMahon, Secretary

1341 Workers' Compensation Regulations

(Break in Continuity of Sections)

4.0 Workers' Compensation Health Care Payment Rates for Physicians and Hospitals (the "Fee Schedule"). Instructions and Guidelines

(Break in Continuity Within Section)

4.6 Ambulatory Surgical Treatment

~~4.6.1 Fees billed for services provided to injured workers pursuant to the Act by an Ambulatory Surgical Treatment Center ("ASTC") shall be reimbursed at a rate equal to eighty five percent (85%) of each ASTC's actual charges for services as of October 31, 2006. Verification that such billing is performed in compliance with 19 **Del.C.** §2322B(9)(a) shall be provided by each ASTC to the Office of Workers' Compensation within sixty (60) days of the completion and issuance of audited financial statements to the ASTC by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of the above referenced section of the Act shall be reimbursed to the Department of Insurance by the ASTC whose billing is audited. The ASTC fee determination mechanism adopted pursuant to this subsection shall apply to all services provided after the effective date of the regulation implementing the fee schedule and regardless of the date of injury. Ambulatory Surgery Centers shall be reimbursed pursuant to 19 **Del.C.** §2322B(9).~~

~~4.6.2 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(9)(b) for each ASTC's procedures, treatments or services in effect in January of that year. The adjustment factor referenced in 19 **Del.C.** §2322B shall be reviewed by the Health Care Advisory Panel three (3) years after the effective date of this section and the Panel shall make a recommendation concerning the continued use of the Consumer Price Index for Medical Care, or the adoption of a different index for cost adjustments in fees for ASTC services.~~

4.7 Dental Services

~~4.7.1 Whenever the health care payment system does not set a specific fee for a dental treatment, procedure or service in the schedule, the amount of reimbursement shall be eighty-five percent (85%) of actual charge ("POC 85") for such service as of October 31, 2006, subject to verification,~~

shall be reimbursed to the Department of Insurance by the dental practitioner whose billing is audited.

- 4.7.2 The payment system will be adjusted pursuant to 19 ~~Del.C.~~ §2322B(14) for a dental treatment procedure or service in effect in January of that year.
- 4.8 Emergency Department of a Hospital
- 4.8.1 ~~Services provided by an emergency department of a hospital, or any other facility subject to the Federal Emergency Medical Treatment and Active Labor Act, 42 United States Code §1395dd, et seq., and any emergency medical services provided in a pre-hospital setting by ambulance attendants and/or paramedics, shall be exempt from the healthcare payment system and shall not be subject to the requirement that a health care provider be certified pursuant to 19 ~~Del.C.~~ §2322D, requirements for preauthorization of services, or the health care practice guidelines adopted pursuant to 19 ~~Del.C.~~ §2322C.~~
Emergency services in a hospital shall be reimbursed pursuant to 19 ~~Del.C.~~ §2322B(8)(b).
- 4.8.2 ~~Upon admission to a hospital and discharge from an emergency department, hospital charges shall be subject to that which is set forth in the section below titled "Hospital".~~
- 4.9 Hospital
- 4.9.1 ~~Hospital fees billed for inpatient and outpatient services provided to injured workers pursuant to the Act shall be reimbursed at a rate equal to eighty five percent (85%) of each hospital's actual charges for such services as of October 31, 2006, subject to adjustment as provided below. Verification that such billing is performed in compliance with the above and 19 ~~Del.C.~~ §2322B(8) shall be provided by each hospital to the Office of Workers' Compensation within sixty (60) days of the completion and issuance of audited financial statements to the hospital by its independent financial auditors. Such verification shall be subject to further review or audit by the Department of Insurance. Reasonable costs of such review or audit for purposes of this section shall be reimbursed to the Department of Insurance by the hospital whose billing is audited.~~
Hospital fees shall be reimbursed pursuant to 19 ~~Del.C.~~ §2322B(8).
- 4.9.2 ~~The payment system will be adjusted yearly pursuant to 19 ~~Del.C.~~ §2322B(8)(b) for hospital reimbursement rates, as derived pursuant to 19 ~~Del.C.~~ §2322B(8), for procedures, treatments or services in effect in January of that year. The adjustment factor referenced in 19 ~~Del.C.~~ §2322B(8)(b) shall be reviewed by the Health Care Advisory Panel three (3) years after the effective date of the regulation implementing the fee schedule, and the Panel shall make a recommendation concerning the continued use of the Consumer Price Index for medical care, or the adoption of a different index for cost adjustments in fees for hospital services.~~

***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:**

1341 Workers' Compensation Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

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

Secretary's Order No.: 2013-F-0005
3214 Horseshoe Crab Annual Harvest Limit
Date of Issuance: March 7, 2013
Effective Date of the Amendment: April 11, 2013

I. Background:

I. Background:

A public hearing was held on Wednesday, January 23, 2013, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on the Department's proposal to amend 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit. The Department is proposing these regulation amendments to establish the basis for setting Delaware's annual sex-specific horseshoe crab allocation(s). Furthermore, this action seeks to establish criteria for closing the fishery in a manner that would minimize the likelihood of exceeding annual quotas.

Horseshoe crabs are managed under an Interstate Fisheries Management Plan ("IFMP") developed and implemented by the Atlantic States Marine Fisheries Commission ("ASMFC"), of which Delaware is fully represented. Addendum VII to the IFMP instituted an Adaptive Resource Management ("ARM") framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region. The ARM framework transparently incorporates the views of stakeholders along with predictive modeling to assess the potential consequences of multiple, alternative management actions in the Delaware Bay Region. The annual specification process determines the following year's (t + 1) harvest using horseshoe crab data from the previous year (t - 1) and shorebird data from the current year (t). Annual model outputs are reviewed by the ASMFC Technical Committees and Management Board prior to issuing state quota allocations. Should data be unavailable to populate the ARM model, quotas may be set at the Addendum VI levels or the previous year's ARM framework.

This proposed action would also establish measures for closing Delaware's horseshoe crab fishery. Presently, the Department lacks the ability to close the horseshoe crab fishery until landings reach the exact annual harvest limit. This method of closing the fishery fails to adequately consider the timeliness of harvest reporting and delinquent reporting. This has resulted in quota overages in some years. Overages pose a potential risk to horseshoe crab and shorebird resources. Further, overages must be deducted from the following year's quota and, therefore, may disadvantage harvesters or segments of the fishery the following year. Using the most recent landings data to predictively close the fishery upon reaching 95% of quota allocations will minimize the risk of harvest overages.

The Department has the authority to promulgate this proposed regulation amendment, pursuant to 7 **Del.C.** §2701. The proposed amendments to 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit, were published in the January 1, 2013 edition of the *Delaware Register of Regulations*. It should be noted that the Department received no comment whatsoever from the public at any time during this promulgation process, nor were any members of the public present at the time of the public hearing on January 23, 2013. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on January 23, 2013, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated February 20, 2013, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit, as reflected in the Hearing Officer's Memorandum of February 20, 2013, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 **Del.C.** §2701 to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
5. Promulgation of the aforementioned proposed amendments to 7 **DE Admin. Code** 3214 will enable Delaware to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission, specifically, to manage horseshoe crabs in accordance with Addendum VII to the FMP, which instituted an Adaptive Resource Management (ARM) framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region;

6. The aforementioned proposed amendments to 7 **DE Admin. Code** 3214 will establish the basis for setting Delaware's annual sex-specific horseshoe crab allocation(s) and establish criteria for closing the fishery in a manner to minimize quota overages;
7. Additionally, utilization of Delaware's most recent landings data to predictively close the fishery upon reaching 95% of quota allocations will minimize the risk of harvest overages, which pose a potential risk to horseshoe crab and shorebird resources. Should Delaware's annual horseshoe crab quota allocation be exceeded in any calendar year, the overage must be deducted from the following year's allocation, thus keeping Delaware in compliance with the ASMFC's IFMP for Horseshoe Crab;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation, as published in the January 1, 2013 *Delaware Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and
10. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated February 20, 2013 and expressly incorporated herein, it is hereby ordered that the proposed amendments to 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit will enable Delaware to remain in compliance with the provisions of the Atlantic States Marine Fisheries Commission, Addendum VII, to the Interstate Fishery Management Plan for Horseshoe Crab. Specifically, these regulation amendments will establish the basis for setting Delaware's annual sex-specific horseshoe crab allocation(s) and establish criteria for closing the fishery in a manner to minimize quota overages, in accordance with an Adaptive Resource Management (ARM) framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region.

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

Collin P. O'Mara, Secretary

3214 Horseshoe Crab Annual Harvest Limit

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

- 1.0 The annual harvest limits for horseshoe crabs taken and/or landed in the State shall be ~~400,000 male horseshoe crabs for a period extending from November 1, 2010 through April 30, 2013, or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota. No female horseshoe crabs may be taken/landed at any time~~ determined in accordance with the annual sex-specific allocations identified in Addendum VII to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab.
- 2.0 When the Department has determined that the 95% of an annual sex-specific horseshoe crab quota allocation has been met ~~landed~~, the Department shall establish, based on recent fishery performance and landings, a date and time to order that component of the horseshoe crab fishery closed, ~~and no~~

~~Further horseshoe crabs of the component specified~~ may not be taken during the remainder of the calendar year once closed by the Department.

3.0 Any overage in the State's annual horseshoe crab quota will be subtracted from the following year's horseshoe crab quota allocation.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))
24 **DE Admin. Code** 1700

ORDER

1700 Board of Medical Licensure and Discipline

AND NOW, this 5th day of March, 2013 in accordance with 24 **Del.C.** §1713(a)(12), for the reasons stated below, this ORDER adopts new regulations governing the licensing and regulation of Title 24, Chapter 17 licensees.

NATURE OF PROCEEDINGS

On December 1, 2012, the Delaware Board of Medical Licensure and Discipline published proposed regulations to its rules and regulations. Although the Board has updated various regulations over the years, other regulations remained outdated and/or inconsistent with changes to the law. As a result, the Board established a Committee of its members to conduct a comprehensive review of the regulations. These amendments remove those outdated and inconsistent provisions and update the Board's substantially related crime regulation to include new crimes that have been added since the list was originally enacted and to revisit some of the existing crimes on the list in view of changes to the law related to the Board's authority to grant waivers of disqualification related to criminal convictions.

The Board held a public hearing on January 8, 2013 at 4:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the amendments to the regulations. Pursuant to 29 **Del.C.** §100118(a), written comments were also accepted until January 24, 2013, fifteen days following the public hearing.

The Board deliberated on all of the public comment at its regularly scheduled meeting on February 5, 2013 at 3:00 p.m., at which time it decided to adopt the regulations as proposed.

SUMMARY OF THE EVIDENCE

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

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

Board Exhibit 2 – Affidavit of publication of the public hearing notice in the *Delaware State News*; and

Board Exhibit 3 – Correspondence from Priti D. Myers, requesting a change in the regulations regarding the fees for medical records.

There was no verbal testimony given at the public hearing on January 8, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 24 **Del.C.** § 713(a)(12) requires the Board to "promulgate rules and regulations not inconsistent with or beyond the scope of this chapter or other laws of this State for carrying out the powers and duties required by this chapter."

2. Pursuant to this authority, the Board has updated various regulations over the years. However, certain regulations have become outdated and/or inconsistent with changes to the law. As a result, the Board established

a Committee of its members to conduct a comprehensive review of the regulations.

3. After a thorough review, the Committee recommended amendments to remove outdated and inconsistent provisions, update the Board's substantially related crime regulation to include new crimes that have been added since the list was originally enacted, and to revisit some of the existing crimes on the list in view of changes to the law related to the Board's authority to grant waivers of disqualification related to criminal convictions.

4. With regard to public comment from Ms. Myers regarding the regulation pertaining to the maximum charge a patient may incur for copying medical records, the proposed amendments do not change the rates that have been in place for the past four years. This is the first complaint that has ever been received regarding this regulation. Ms. Myers advocates for changing this regulation to match the copy fees proposed by the Governor in Executive Order 31 (October 20, 2011). That is, no charge for the first twenty pages, and ten cents per page thereafter. The Board's regulation precludes licensees from charging more than \$2.00 per page for the first ten pages, \$1.00 per page for the next ten, \$.90 for the next forty, and no more than \$.50 per page thereafter. Comparing rates charged by private licensees to rates charged by the government is not compelling as the difference between medical records and public records is that the public fisc covers the overhead for state agencies, while doctors must cover their own overhead. Further, Executive Order 31 also permits agencies to charge "administrative fees" for "staff time associated with processing FOIA requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs)."

When attorneys are involved with a patient, hundreds of pages of copies must be made on a regular basis by a licensee or the licensee's staff. The Board finds that the maximum charge set forth in the regulations is reasonable given that it permits charging less than these amounts, and the Board finds that general consensus of practitioners is that if the copy request is for the purpose of changing physicians, or referral, most doctors copy and send these records free of charge.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 Del.C. §1713(a)(12) and for the reasons set forth above, the Board of Medical Licensure and Discipline does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on December 1, 2012. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. §10118(g).

SO ORDERED:

Gregory D. Adams, M.D., President
 John W. Banks
 George E. Brown, Vice-President
 Vonda Calhoun
 Garrett H. Colmorgen, M.D.
 Stephen G. Cooper, M.D.
 Thomas Desperito, M.D.
 Vincent Lobo, D.O.

Evelyn Mendez
 Raymond L. Moore, Sr.
 Joseph M. Parise, D.O., Secretary
 Anthony M. Policastro, M.D.
 Karyl Rattay, M.D.
 Malvine Richard, Ed.D.
 Mary K. Ryan
 Daryl Sharman, M.D.

*Please note that no changes were made to the regulation as originally proposed and published in the December 2012 issue of the *Register* at page 617 (16 DE Reg. 617). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1700 Board of Medical Licensure and Discipline

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404 (17 Del.C. §§132, 137 & 149; 29 Del.C. §8404)
2 DE Admin. Code 2309

ORDER

2309 Standards and Regulations for Subdivision Streets and State Highway Access

The Delaware Department of Transportation, through its Division of Planning, sought to adopt amendments to its existing regulations regarding subdivision streets and state highway access, with respect to the current provisions concerning Traffic Impact Studies and Traffic Operational Analyses. Changes were proposed in a definition in Chapter 1, Introduction, and several areas of Chapter 2, Traffic Impact Studies and several sections from Chapter 3, Site Plan Design, were proposed for movement to Chapter 2.

In July, 2011, the Department published proposed revisions to its Standards and Regulations for Subdivision Streets and State Highway Access in the Delaware Register of Regulations, 15 DE Reg. 56 (07/01/11). A significant number of comments were received in response to that publication. After consideration of those comments, in August 2012 the Department decided to publish a re-draft of that document, to reflect the comments received from the July, 2011 version, as well as other considerations. This version appeared in 16 DE Reg. 192 (08/01/12).

The agency also held public hearings on the proposed changes on September 13, 17 and 20, 2012, and continued to receive public comments through October 20, 2012.

In response to some of the comments received, in the December 2012 Register of Regulations (16 DE Reg. 618 (12/01/12)) DelDOT proposed further changes to these regulations, including amended portions of the draft regulations proposed in August 2012. The comments received and reacted to at that time were also published in the December Register. Some of these regulatory proposals differed substantively from the existing regulations and the changes previously proposed. Accordingly, in the December 2012 Register DelDOT (6 DE Reg. 618 (12/01/12)) advertised the proposed changes again, to allow a further opportunity for public comment. These comments were accepted through January 15, 2013.

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

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

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

The changes also include a new section on Transportation Improvement Districts, which were previously discussed in much less detail. The Department seeks to promote the creation of such districts as a superior approach to assessing the transportation impacts of development relative to Traffic Impact Studies for individual developments.

Other proposed changes include the addition of rules for the requirement of Traffic Operational Analyses, previously published as informal guidelines, and the changes to how contributions to the Traffic Signal Revolving Fund should be calculated.

IMPLEMENTATION GUIDANCE. In the December 2012 *Register*, the Department also issued a proposed guideline for implementation regarding certain aspects of the proposed regulations. Unless otherwise affected by these guidelines, the new regulations are intended to go into full effect April 10, 2013.

The December 2012 proposed implementation guidelines are repeated below:

1. Changes to when a Traffic Impact Study (TIS) or Traffic Operational Analysis (TOA) may or shall be required, will be effective ten days from adoption for any development for which DeIDOT has not issued a Letter of No Objection.

2. Changes to the required content of a TIS or TOA will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

3. Changes relating to mitigation measures will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

4. Changes relating to Transportation Improvement Districts (TIDs) will be effective immediately on adoption.

5. Changes relating to the Traffic Signal Revolving Fund will be effective immediately on adoption for any development for which DeIDOT has not specified a contribution to be paid with regard to the Fund.

Based on comments received and described below, the Department now adopts the implementation guidelines 2 through 5, while amending guideline 1 as noted below, in lieu of what was proposed in the December 2012 Register.

1. Changes to when a Traffic Impact Study (TIS) or Traffic Operational Analysis (TOA) may or shall be required, will be effective ten days from adoption for any development for which DeIDOT has not received a Request for Service Level Evaluation, a Support Facilities Report Request or held a Pre-Submittal Meeting.

Support: A transition point in this regard is needed such that the rules do not change after DeIDOT has already provided direction. Sussex and Kent Counties, respectively, use Requests for Service Level Evaluation and Support Facilities Report Requests to ask DeIDOT whether a TIS should be required for various types of land development application before formally accepting them for review. The Pre-Submittal Meeting requirement applies to developments state-wide. Such meetings are not required for developments generating less than 200 vehicles per day but those developments typically would not warrant a TIS or TOA.

2. Changes to the required content of a TIS or TOA will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

Support: The scoping meeting is where the required content of a TIS or TOA is typically discussed and established. The results of that meeting are documented by memorandum. Where a meeting is found to be unnecessary, DeIDOT issues a scope of work by letter or memorandum to establish the required content without a meeting.

3. Changes relating to mitigation measures will be effective immediately on adoption for any such effort for which a scoping meeting has not been held or a scope of work issued.

Support: While criteria for mitigation measures, are not routinely discussed in scoping meetings and scopes of work, this meeting or document is a suitable occasion on which to advise the developer and their engineer of changes in this regard.

4. Changes relating to Transportation Improvement Districts (TIDs) will be effective immediately on adoption.

Support: There presently are no TIDs that are wholly consistent with the proposed regulations. For areas that have been treated by DeIDOT and local governments as being as being like TIDs, the existing procedures can continue until both parties agree to change them. TIDs that are being created should be created in conformance with the new regulations. Developments proposed where TIDs are being created but there is no adopted Land Use and Transportation Plan (LUTP) or Transportation Improvement Program (TIP) will necessarily be allowed to continue in accordance with the normal non-TID land development process. Developments already approved where TIDs are being created will be accounted for in the LUTP. A developer who has an approved plan and finds it to their advantage to participate in the TID rather than comply with the notes on that plan can always file to revise their plan.

5. Changes relating to the Traffic Signal Revolving Fund will be effective immediately on adoption for any development for which DeIDOT has not specified a contribution to be paid with regard to the Fund.

Support: The Fund is an option available to developers as an alternative to entering a signal agreement. Participation in the Fund is not required.

Following are the comments that were received from Roger Roy and Shawn Tucker.

Comment from Roger Roy

If a developer has already filed a plan with the County and has had his scoping meeting with DeIDOT and the scope of work for the TIS or TOA has already been defined, then that developer should be grandfathered in, and not be made to start over again when the new regulations take effect.

Comment from Shawn Tucker

My changes relate to providing applicants an earlier grandfathered status in the process as many applicants who reach the scoping meeting level have already invested significant money in their project or have otherwise entered into a contract based upon your existing rules and regulations. Thus, changing the rules on such applicants already in the application process may cause a significant and unfair financial hardship.

I also suggested in #6 additional grandfathering language for projects that are grandfathered under #1 thru #5 but for which revisions are proposed that do not increase density. This is particularly important as such changes are not uncommon.

Thank you for your consideration of my comments.

Here is the language:

While it is not proposed as part of the regulations, DeIDOT proposes the following implementation process:

1. Changes to when a Traffic Impact Study (TIS) or Traffic Operational Analysis (TOA) may or shall be required, will be effective upon adoption of the DeIDOT's new regulations unless the applicant has officially submitted a local land use application and, when required by the local jurisdiction, has also scheduled a State Plus meeting. (ten days from adoption for any development for which DeIDOT has not issued a Letter of No Objection).

4. Changes relating to Transportation Improvement Districts (TIDs) will be effective immediately on adoption, except any TID change that adversely impacts a land use application for which a scoping meeting has been held or a scope of work issued shall have the option of proceeding under the new TIDs or the former TIDs.

5. Changes relating to the Traffic Signal Revolving Fund will be effective immediately on adoption for any development for which DeIDOT has not held a scoping meeting or issued a scope of work.

6) Updated or revised land use applications that are grandfathered from the DeIDOT's new regulations as set forth above shall maintain their grandfathered status so long as the local updated or revised application does not increase the development density or intensity of the project.

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 summarized in the accompanying table. The Department considers none of these changes after the comment period announced in the December Register to be substantive in nature, and thus causing the need for a new comment period.

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 April 10, 2013.

IT IS SO ORDERED this 19th day of March, 2013.
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

EXECUTIVE DEPARTMENT OFFICE OF MANAGEMENT AND BUDGET

Statewide Benefits Office

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

19 **DE Admin. Code** 2001

ORDER

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

Pursuant to Title 29, Section 9602(b)(4) of the Delaware Code, the State Employee Benefits Committee (SEBC) voted to amend Sections 5.14 and 5.21 of the Group Health Insurance Program (GHIP) Eligibility and Enrollment Rules. The amended rules are effective upon publication in the *Register of Regulations* in accordance with House Bill 190, Section 31.

2001 Group Health Care Insurance Eligibility and Coverage Rules (Effective March 1, 2013)

(Used to determine who may enroll. See "Cost of Coverage" to determine the amount of State contributions, toward an employee's coverage.)

(Break in Continuity of Sections)

5.0 Cost Of Coverage

(Break in Continuity Within Section)

5.14 Any refund of State Share or employee share is subject to the following requirements:

5.14.1 ~~An employee who has paid the State Share in order to insure continuation of health coverage and then later is found to have been eligible for receipt of State Share, is to be refunded the amount that was not paid by the State. The employee must make application for the refund within one calendar year of the date the employee paid the State Share to be refunded; A regular officer, employee or eligible pensioner who has paid the State Share in order to insure continuation of health coverage and then later is found to have been eligible for receipt of State Share, is to be refunded the amount that was not paid by the State. The employee or pensioner must make application for the refund within one calendar year of the date the employee first paid the State Share to be refunded as required under 10 Del.C. §8111.~~

application for the refund within one calendar year of the date the employee first paid the State Share to be refunded as required under 10 Del.C. §8111.

- 5.14.2 ~~An employee who has paid the employee share then later is found to have been eligible for receipt of DSS is to be refunded the amount paid for employee share for a period not to exceed one calendar year. The employee seeking a refund must make application for the refund within one year of the date the employee paid the employee share to be refunded; A regular officer, employee or eligible pensioner who has paid the employee or pensioner share then later is found to have been eligible for receipt of DSS is to be refunded the amount paid for employee or pensioner share for a period not to exceed one calendar year. The employee or pensioner seeking a refund must make application for the refund within one year of the date the employee or pensioner first paid the employee or pensioner share to be refunded as required under 10 Del.C. §8111.~~
- 5.14.3 ~~An employee who has paid the employee share for an ineligible dependent (for example following a divorce, death or exceeding the dependent age limits) is to be refunded the amount paid for employee share for a period not to exceed 60 days, provided that the employee seeking a refund must make application for the refund within 60 days of the date the employee paid the employee share to be refunded and further that the employee shall be liable for any amounts paid by the State Plan on behalf of the ineligible dependent until the employee provides notice to the Statewide Benefits Office of the dependent's ineligibility; A regular officer, employee or pensioner who has paid the employee or pensioner share for an ineligible dependent (for example following divorce, death, or exceeding the dependent age limits) is to be refunded the amount paid for employee or pensioner share for a period not to exceed 60 days, provided that the employee or pensioner seeking a refund must make application for the refund within 60 days of the date the employee or pensioner paid the employee or pensioner share to be refunded and further that the employee or pensioner shall be liable for any amounts paid by the State Plan on behalf of the ineligible dependent until the employee or pensioner provides notice to the Statewide Benefits Office of the dependent's ineligibility.~~
- 5.14.4 If an employee is terminated from employment and does not pay the employee share for the second half of the month in which terminated, coverage under the Plan is terminated as of the first of the month, any claims paid for that month will be reversed and a refund will be given, if employee makes request for refund within 60 days.
- 5.14.5 ~~In any event, r~~Refunds of less than \$1.00 will not be made.
- 5.14.6 The refund is limited to the amount paid by the regular officer, employee, or eligible pensioner during the one employee or pensioner share for which the State should have paid the State Share or employee or pensioner share as established in accordance with 10 Del.C. §8111.

(Break of Continuity Within Section)

- 5.21 ~~In the event that the State has paid the employee share or any co-pays, coinsurance, deductibles or other amounts that OMB determines should have been paid by the regular officer or employee or covered spouse or dependent of the regular officer or employee upon prior written notice to such regular officer or employee (which shall not be less than sixty (60) days), the State, to the extent permissible under applicable law, may recover such amounts from such regular officer or employee by deducting the amount paid by the State from the after tax pay due to the regular officer or employee~~ In the event that the State Plan has paid the employee or pensioner share or any co-pays, coinsurance, deductibles or other amounts that OMB determines should have been paid by the regular officer, employee or pensioner or covered spouse or dependent of the regular officer, employee or pensioner after deducting premiums paid during the applicable period and upon prior written notice to such regular officer, employee or pensioner (which shall not be less than sixty (60) days), the State Plan, to the extent permissible under applicable law, may recover such amounts from such regular officer, employee or pensioner by deducting the amount paid by the State Plan from the after tax pay due to the regular officer or employee or by invoicing the regular officer, employee or pensioner.
- 5.21.1 ~~the regular officer or employee shall be provided an opportunity to dispute such amounts owed to the State to the Statewide Benefits Office and the regular officer, employee or pensioner shall be~~

- 5.21.2 ~~if the amount owed by the regular officer or employee exceeds \$1,000 then the regular officer or employee shall be provided an opportunity to have the amount owed deducted in monthly installments over a period of time not less than twelve (12) months. if the amount owed by the regular officer, employee or pensioner exceeds \$500.00 then the regular officer, employee or pensioner shall be provided an opportunity to have the amount owed deducted or invoiced in monthly installments over a period of time not less than twelve (12) months. In accordance with 10 Del.C. §8106(a), payment which the State Plan has made for the employee or pensioner share or any co-pays, coinsurance, deductible or other amounts that OMB determines should have been paid by the regular officer, employee or pensioners or covered spouse or dependent of the regular officer, employee or pensioner for a period of up to one year may be collected from the regular officer, employee or pensioner after deducting premiums paid during the applicable period and provided the State Plan shall provide such officer, employee or pensioner an opportunity to repay the amount due in a period of time not less than the total number of months being collected by the State Plan or not less than twelve (12) months if the amount owed exceeds \$500.00.~~
- 5.22 Family and Medical Leave Act (FMLA) regulations provide that employees who fail to return to work after their FMLA leave entitlement has been exhausted shall be responsible for repayment of the State Share under the group health plan unless they fail to return to work due to their own or eligible family member's serious health condition, or for some other reason beyond their control.

***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:**

2001 Group Health Care Insurance Eligibility and Coverage Rules

OFFICE OF MANAGEMENT AND BUDGET

29 Delaware Code, Section 6303A(16) and 6913 (29 **Del.C.** §§6303A and 6913)

ORDER

Environmentally Preferred Purchasing Policy

NATURE OF THE PROCEEDINGS:

The Office of Management and Budget (OMB) initiated proceedings to adopt the State of Delaware Environmentally Preferred Purchasing Policy. The OMB proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 29 **Del.C.** §§6303A(16) and 6913.

On January 1, 2013 (Volume 16, Issue 7), OMB published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to OMB by February 20, 2013 or be presented at a public hearing on February 5, 2013, after which time OMB would review information, factual evidence and public comment to the said proposed regulations.

Both written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence." This is OMB's "conclusion" and "order" as required by 29 **Del.C.** §10118(b).

SUMMARY OF EVIDENCE

State of Delaware Environmentally Preferred Purchasing Policy

In accordance with Delaware Law, public notices regarding proposed State of Delaware Environmentally Preferred Purchasing Policy were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Written and verbal comments were received on the proposed regulations during the public comment period

Written and verbal comments were received on the proposed regulations during the public comment period (January 1, 2013 through February 20, 2013). Entities offering comments included:

- Mr. Chip Rankin, representing milliCare.
- Mr. Sean Moore, representing the Consumer Specialty Products Association
- Claire L. Barnett, representing the Healthy Schools Network
- Josh Jacobs, representing UL Environment
- Marcia Deegler, representing the Commonwealth of Massachusetts Operational Services Division
- Richard Bizzozero, and Rick Reibstein, representing the Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs
- Mark Petruzzi, representing Green Seal, Inc.

Public comments and the OMB (Agency) responses are as follows:

Chip Rankin, representing milliCare

Comment: Green Seal certification should be listed along with the EPA DfE program as an acceptable 3rd party certification.

Agency response: Thank you for your comment. This comment refers to Section 4.1 of the proposed regulation that reads as follows:

4.1 To prevent unsubstantiated claims of environmental benefit or reduced impact, any product deemed to be approved or considered under this policy shall be certified by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3rd party certification.

An earlier version of the regulation advertised in 2012 included language citing examples of additional acceptable certifications. OMB received public comment at that time supporting the deletion of language explicitly listing these additional certifications because of lack of uniformity of methodologies used in establishing these certifications. Language has been included in this section allowing for recognition by the State as "...consistent with environmental goals with claims verified through independent 3rd party certification." In essence, this language gives the authority to the State, DNREC or DTI to recognize acceptable certifications, including Green Seal in addition to DfE. Accordingly, the proposed regulation will not be amended to include Green Seal.

Comment: There should be an approved list of standards that is the basis of qualification for purchasing products and services and the GSS should keep an updated list of the most stringent and others that meet a minimum standard.

Agency response: Thank you for your comment. Language in Section 4.1 would require a listing of recognized certifications.

Sean Moore, Director of State Affairs East Region, Consumer Specialty Products Association (CSPA)

Comment: Section 4.1 should include Green Seal and EcoLogo certifications.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Claire L. Barnett, Executive Director, Healthy Schools Network

Comment: Suggest Green Seal and UL-Environment (EcoLogo) be included in 3.0 Definitions and 4.0 Third Party Certification

Agency response. Thank you for your comment. Please see first response to Chip Rankin above.

Comment: Suggest that Integrated Pest Management be defined to eliminate the use of toxic chemicals.

Agency response. Thank you for your comment. The current definition of Integrated Pest Management was incorporated as a result of public comment from the previous version of this regulation and is consistent with industry standard definitions. Accordingly the proposed regulation will not be further amended.

Josh Jacobs, UL Environment

Comment: The proposed regulation should be amended in Sections 4.1, 8.1 and 8.5 to include GREENGUARD, and UL EcoLogo as acceptable third party environmental verification.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Marcia Deegler, Director of Environmental Purchasing, Commonwealth of Massachusetts Operational Services Division

Comment: Delaware should include Green Seal and EcoLogo as acceptable certifications.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Richard Bizzozero, Director and Rick Reibstein, Manager of Outreach and Policy, Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs.

Comment: Delaware should include Green Seal and EcoLogo as acceptable certifications.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Mark Petruzzi, Senior Vice President of Outreach and Strategic Relations, Green Seal, Inc.

Comment: A broad EPP policy should reflect third party certifications with broad scope, such as Green Seal.

Agency Response: Thank you for your comment. Please see first response to Chip Rankin above.

Comment: The proposed EPP Policy should include an explicit definition for "Third Party Certification".

Agency Response: Thank you for your comment. The regulation allows flexibility in choosing third party certifications. As such, the regulation will not be amended to include such a definition.

FINDINGS OF FACT:

The Department finds that the proposed regulation as set forth in the January 2013 *Register of Regulations* should be adopted. While the Office of Management and Budget appreciates the suggestions that specific certifications be referenced in the proposed regulation, the requested references to certain certifications are rendered unnecessary by the State's regulatory power to accept these proposed certifications. Additionally, the more generic approach set forth in this regulation will allow the State to remain flexible and require fewer revisions to the regulation in the future as the name and variety of certifications change.

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Office of Management and Budget does hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Ann Shepard Visalli, Director
Office of Management and Budget

***Please note that no changes were made to the regulation as originally proposed and published in the January 2013 issue of the *Register* at page 743 (16 DE Reg. 743). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Environmentally Preferred Purchasing Policy

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

REGISTER NOTICE

SAN# 2013-04

1. TITLE OF STATE IMPLEMENTATION PLAN REVISION:

State Implementation Plan Revision to Address the Clean Air Act Section 110 Infrastructure Elements for the 2010 Sulfur Dioxide NAAQS

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

On June 2, 2010, the United States Environmental Protection Agency (EPA) strengthened the National Ambient Air Quality Standards (NAAQS) for the pollutant sulfur dioxide (SO₂), by adding a new standard of 75 parts per billion. Section 110(a)(1) of the CAA requires States to submit to the EPA a State Implementation Plan (SIP) that provides for implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. Section 110(a)(2) lists the elements that are to comprise the implementation plan, which include basic program elements such as enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection. Because there have been NAAQS in existence for many years that cover the pollutant SO₂, the CAA 110 requirements are already substantially addressed in Delaware's SIP. The proposed SIP document discusses how Delaware's SIP meets each requirement of Section 110(a)(2)(A)-(M) of the CAA for the 2010 SO₂ NAAQS.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Wednesday, April 24, 2013, beginning at 6:00 p.m. in the conference room of the Kent County Building, 555 South Bay Road, Room 220. Dover, Delaware 19901.

7. PREPARED BY:

Jack Sipple (302) 739-9402 March 11, 2013
Email address: john.sipple@state.de.us

1.0 Background

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

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each

primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

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

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

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

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

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

State Implementation Plan Revision to Address the Clean Air Act Section 110 Infrastructure Elements for the 2010 Sulfur Dioxide NAAQS

DIVISION OF AIR QUALITY

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

Secretary's Order No.: 2013-A-0006

Approving Final Revision to Delaware's State Implementation Plan (SIP) for the Implementation, Maintenance and Enforcement of the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS), Pursuant to the Requirements of Section 110(a)(2)(A)-(M) of the Federal Clean Air Act (CAA)

Date of Issuance: March 7, 2013

Effective Date of the Amendment: April 11, 2013

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

Background and Procedural History

This Order considers the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS). On March 12, 2008, the U.S. Environmental Protection Agency (EPA) revised the NAAQS for the pollutant ozone, at that time reducing the NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. The federal CAA requires each State to submit to the EPA a SIP that provides for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS.

Delaware Register of Regulations, and held a public hearing on August 2, 2012. Written comments on the proposed SIP were submitted to the public record by both the EPA and the State of New Jersey on August 2, 2012. The Department's Division of Air Quality (DAQ) responded fully to those written comments from EPA by adding some additional clarifying language to its initial proposed revision. DAQ provided the Hearing Officer with its Technical Response Document concerning its responses to EPA's comments, as well as providing the reasoning for the same, on January 22, 2013. Proper notice of the hearing was provided as required by law.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

This EPA action is the revision of a NAAQS that has been in existence for many years. Because of this, Delaware's SIP already addresses the requirements of CAA, Section 110(a)(2) relative to ozone. In addition, Delaware has repeatedly regulated its sources under the non-attainment provision of the CAA, and they are now well controlled. It is the Department's position that all of the CAA 100 requirements are already clearly addressed in Delaware's SIP.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 11, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan, which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS), as attached to the Report as Appendix A.

Findings and Discussion

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

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS). With the adoption of this Order, Delaware will once again demonstrate that the contingency requirements of the Clean Air Act (CAA) are met.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed SIP revision as final;
- 2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on August 2, 2012;
- 3.) The Department held a public hearing on August 2, 2012, in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;
- 5.) The recommended revision to Delaware's State Implementation Plan (SIP) which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2008 8-Hour National Ambient Air Quality Standard (NAAQS) should be adopted as final, thereby enabling Delaware to (1) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met; and (2) because the revision is well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final revision to Delaware's State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) to the

Clean Air Act (CAA) for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

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

Secretary's Order No.: 2013-A-0006

DIVISION OF AIR QUALITY

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

Secretary's Order No.: 2013-A-0007

Approving Final Revision to Delaware's State Implementation Plan (SIP) for the Implementation, Maintenance and Enforcement of the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS), Pursuant to the Requirements of Section 110(a)(2)(A)-(M) of the Federal Clean Air Act (CAA)

Date of Issuance: March 7, 2013

Effective Date of the Amendment: April 11, 2013

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

Background and Procedural History

This Order considers the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS). Effective April 12, 2010, the U.S. Environmental Protection Agency (EPA) promulgated a new NAAQS for the pollutant NO₂. Because there have been NAAQSs in existence for many years that cover the pollutant NO₂, the CAA 110 requirements are already substantially addressed in Delaware's SIP. The SIP revision being proposed by the Department at this time demonstrates how Delaware's SIP meets each requirement of Section 110(a)(2)(A)-(M) of the (CAA) for the 2010 NO₂ NAAQS.

The Department published its initial proposed revision to the aforementioned Delaware SIP in the December 1, 2012 *Delaware Register of Regulations*, and held a public hearing on January 3, 2013. It should be noted that no public comment was received by the Department with regard to this proposed promulgation, and no members of the public attended the hearing held by the Department in this matter.

As noted above, effective April 12, 2010, the U.S. Environmental Protection Agency ("EPA") promulgated a new NAAQS for NO₂. The level of the NAAQS was established at 100 parts per million (ppm), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. The CAA requires each State to submit to the EPA a SIP that provides for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. The SIP revision being proposed at this time is to fulfill this federal requirement relative to the 2010 NO₂ NAAQS.

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

GENERAL NOTICES

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 11, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan, which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS) as attached to the Report as Appendix A.

Findings and Discussion

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

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS). With the adoption of this Order, Delaware will once again demonstrate that the contingency requirements of the Clean Air Act (CAA) are met.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed SIP revision as final;
- 2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the hearing held on January 3, 2013;
- 3.) The Department held a public hearing on January 3, 2013, in order to consider public comment and make any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;
- 5.) The recommended revision to Delaware's State Implementation Plan (SIP) which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS) should be adopted as final, thereby enabling Delaware to (1) demonstrate that the contingency requirements of the Clean Air Act are met; and (2) because the revision is well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final revision to Delaware's State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS) to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines appropriate.

Collin P. O'Mara, Secretary

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

Secretary's Order No.: 2013-A-0007

DELAWARE DEPARTMENT OF AGRICULTURE
POULTRY AND ANIMAL HEALTH SECTION
906 Euthanasia of Animals in Shelters
PUBLIC NOTICE

Notice is hereby given that a public comment period for proposed **906 Euthanasia of Animals in Shelters Regulations** will open on April 1, 2013 and close on April 30, 2013. The purpose of the public comment period is to provide the public time to consider the proposed regulation; **906 Euthanasia of Animals in Shelters Regulations** and to make comment with regard to the adoption of said regulations. These proposed regulations have been developed pursuant to 3 **Del.C.** §8004. The proposed regulations govern the acceptable methods of euthanasia, as well as the standards for sanitation and ventilation of the euthanasia areas, for animals held animal shelters. These regulations were developed by the Poultry and Animal Health Section of the Delaware Department of Agriculture in consultation with the Delaware Board of Veterinary Medicine, Division of Professional Regulation.

The proposed regulations are posted on the Delaware Department of Agriculture website (www.dda.delaware.gov). Hard copies of the proposed regulations may be obtained from the Delaware Department of Agriculture. Comments may be submitted in writing and/or e-mail to Heather Hirst (Heather.Hirst@state.de.us) at the Delaware Department of Agriculture, on or before April 30, 2013. A public hearing on these regulations will **NOT** be held unless the Secretary of Agriculture receives a request within 30 days from this notice, or if the Secretary determines that a public hearing is in the public interest. A request for a hearing shall be in writing and shall state the nature of the issues to be raised at the hearing. It must show familiarity with the proposal and a reasoned statement of the proposed regulations impact. It is requested that written comments or requests for a hearing be addressed to:

Heather L. Hirst, Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901
Heather.Hirst@state.de.us

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Medicaid Coverage for Prescribed Drugs
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) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) *regarding discontinuation of Medicaid coverage of barbiturates and benzodiazepines for dual eligible recipients*. An additional amendment is proposed to *update the quantity limits for opioid analgesics*.

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 April 30, 2013.

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

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit a Title XIX Medicaid State Plan Amendment (SPA) to conform with the mandatory provisions of section 175 of Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) which amended section 1860D-2(e)(2)(A) of the Social Security Act regarding the discontinuation of Medicaid coverage of barbiturates and benzodiazepines for dual eligible recipients. An additional amendment is proposed to update the quantity limits for opioid analgesics.

DIVISION OF PUBLIC HEALTH
4408 Regulations Governing Medical Facilities
PUBLIC NOTICE

House Bill 47 and House Bill 144, signed into law in 2011, give the Department of Health and Social Services (DHSS) the authority to require accreditation for medical facilities that perform invasive medical procedures utilizing any level of anesthesia and allows for the Division to investigate complaints made by patients regarding unsafe or unsanitary conditions. It also gives DHSS the authority to promulgate regulations. The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing regulations for medical facilities. On April 1, 2013, DHSS plans to publish as proposed regulations governing medical facilities and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the April 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Tuesday, April 30, 2013 at:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4913

DIVISION OF SOCIAL SERVICES
Child Care Subsidy Program Definitions and Explanation of Terms
PUBLIC NOTICE

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by April 30, 2013.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY****1108 Sulfur Dioxide Emissions From Fuel Burning Equipment
PUBLIC NOTICE**

The Division of Air Quality (DAQ) of the Department is proposing to revise Delaware 7 **DE Admin. Code** 1108 to lower the allowable content of sulfur in fuels combusted in Delaware, and to effectively reduce the emissions of sulfur dioxide (SO₂) into the atmosphere, which will aid in the attainment and maintenance of Delaware's air quality relative to the SO₂ and fine particulate matter National Ambient Air Quality Standards (NAAQS). The reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program.

In brief, DAQ proposes to lower sulfur content in residual fuel from 10,000 ppm to 5,000 ppm, in distillate fuel from 3,000 ppm to 15 ppm, and to set up a compliance date of July 1, 2016. DAQ also proposes to add necessary recordkeeping and reporting requirements to ensure compliance of the regulation. DAQ proposes that the new limits apply to all three counties in Delaware.

In addition, the Department will submit the revision of 7 **DE Admin Code** 1108, after being finalized, to the U.S. Environmental Protection Agency (EPA) as a revision to Delaware's state implementation plan (SIP).

A public hearing will be held on April 24, 2013, beginning at 6:00 pm, in the conference room (Room 220) of Kent County Complex, 555 South Bay Road, Dover, Delaware 19901.

7. PREPARED BY:

Frank F. Gao Phone: (302) 323-4542 Date: March 13, 2013 E-Mail: Frank.Gao@state.de.us

DIVISION OF AIR QUALITY**State Implementation Plan Revision to Address the Clean Air Act Section 110 Infrastructure Elements for the 2010 Sulfur Dioxide NAAQS
REGISTER NOTICE**

On June 2, 2010, the United States Environmental Protection Agency (EPA) strengthened the National Ambient Air Quality Standards (NAAQS) for the pollutant sulfur dioxide (SO₂), by adding a new standard of 75 parts per billion. Section 110(a)(1) of the CAA requires States to submit to the EPA a State Implementation Plan (SIP) that provides for implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. Section 110(a)(2) lists the elements that are to comprise the implementation plan, which include basic program elements such as enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection. Because there have been NAAQS in existence for many years that cover the pollutant SO₂, the CAA 110 requirements are already substantially addressed in Delaware's SIP. The proposed SIP document discusses how Delaware's SIP meets each requirement of Section 110(a)(2)(A)-(M) of the CAA for the 2010 SO₂ NAAQS.

Interested parties may submit comments in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Wednesday, April 24, 2013, beginning at 6:00 p.m. in the conference room of the Kent County Building, 555 South Bay Road, Room 220. Dover, Delaware 19901.

DIVISION OF WATERSHED STEWARDSHIP**5101 Sediment and Stormwater Regulations
PUBLIC NOTICE**

Substantial revisions to the *Delaware Sediment and Stormwater Regulations* are proposed to address April 2005 recommendations of Governor Minner's Task Force on Surface Water Management. The regulations have

been revised to address stormwater volume management, conveyance adequacy, operation and maintenance of stormwater management facilities, and to establish performance standards for sediment and stormwater practices. A public hearing was conducted on March 1, 2012. Following comments received, substantive changes are proposed to the regulatory language necessitating a second public hearing.

Upon the effective date of revised regulations, the *Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds*, effective November 11, 2008, Section 5.0 Sediment and Stormwater Controls, may be affected.

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a second public hearing on the proposed revisions to the *Delaware Sediment and Stormwater Regulations Regulation No. 5101 Sediment and Stormwater Regulations*, to address the April 2005 recommendations of Governor Minner's Task Force on Surface Water Management, as well as substantive changes to regulatory language following the first public hearing.

The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Tuesday, April 23, 2013, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Kirkwood Library
6000 Kirkwood Highway
Wilmington DE 19808

Kent County Public Library
497 South Red Haven Lane
Dover, DE 19901

Georgetown Public Library
123 West Pine Street,
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, Elaine.Webb@state.de.us. Review of the documents at the libraries will occur during the libraries' scheduled operating hours.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, May 8, 2013, to Elaine Webb and/or statements and testimony may be presented either orally or in writing at the April 23, 2013 public hearing. Comments submitted as part of the first public comment period will remain as part of the record.

It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Webb
DNREC – Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1100 Board of Dentistry and Dental Hygiene
PUBLIC NOTICE

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its rules and regulations. The changes to the regulations remove the permissive grant of CPEs for being employed as a faculty member and clarifies the documentation required by a licensee submitting CPEs for oral or clinical presentations and self-study.

The Board will hold a public hearing on the proposed rule change on March 21, 2013 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Pamela Zickafoose, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Pursuant to 29 **Del.C.** §10118(a), written comments will be accepted for fifteen days after the public hearing, until April 5, 2013.

DIVISION OF PROFESSIONAL REGULATION
1900 Board of Nursing
PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulation 6.4 to add a new section, 6.4.6. The proposed addition permits graduates of out-of-state programs that may not have attained Board approved status to obtain licensure by examination if, at the time of submission of the application, the Board finds that the content of the out-of-state program is equivalent to the minimum requirements of the Board for full approval status established by these regulations. There is also an addition to the title of Regulation 6.4, reflecting this addition.

The Board will hold a public hearing on the proposed regulation change on May 8, 2013 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 24, 2013 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
2500 Board of Pharmacy
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations. The definition of "compounding" is revised to specify that reconstitution of oral solutions is not considered compounding. Rules 6.4 and 11.2.8, pertaining to "Customized Patient Medication Packages" are amended. In particular, Rule 6.4 states that such packaging of controlled substances is prohibited. Rule 14.0, pertaining to the administration of injectable medications, is amended to encompass registered interns and pharmacy students, with the requirement that registered interns and pharmacy students must be directly supervised by a licensed pharmacist who is approved for injectable administration. Registered interns and pharmacy students shall also be required to complete continuing education in this area of practice. Rule 14.0 is also revised for greater clarity.

A public hearing will be held on May 15, 2013 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 30, 2013 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on June 19, 2013 at 10:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

DIVISION OF PROFESSIONAL REGULATION
3500 Board of Examiners of Psychologists
PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The Board seeks to correct a typographical error in regulation 5.2.1.3. The Board also seeks to amend regulation 7.2 to clarify the group supervision requirements for postdoctoral applicants. The Board proposes to add a new regulation number 10.1.4 defining a continuing education hour. The Board proposes to amend regulation 10.6.4 to clarify the process by which teaching a workshop may be used for qualifying continuing education. The Board seeks to create a new regulations number 18, addressing the practice of telepsychology by licensees.

The Board will hold a public hearing on the proposed rule change on May 6, 2013 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 21, 2013.

OFFICE OF THE STATE BANK COMMISSIONER
2301 Report of Delaware Sale of Checks, Drafts and Money Orders Volume
2303 Report of Delaware Volume
2701 Licensed Cashier of Checks, Drafts, or Money Orders Operating Regulations
2702 Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records
PUBLIC NOTICE

The State Bank Commissioner proposes to amend Regulation 2301 and adopt new Regulation 2303 governing Sale of Checks and Transmission of Money, and to amend Regulations 2701 and 2702 governing Cashing of Checks, Drafts or Money Orders. The purpose of the amended and new regulations is to clarify, streamline, and update the existing regulations for ease of understanding and increased relevance to current licensee operations. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the April 1, 2013 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2013. Written materials submitted will be available for inspection at the above address.

On or after May 1, 2013, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended and new Regulations 2301, 2303, 2701, and 2702 or make additional changes because of the public comments received.

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS
PUBLIC NOTICE

2401 Utilities Manual Regulations

Under Title 17 of the Delaware Code, Sections 132 and 143, the Delaware Department of Transportation (DelDOT), is updating the Delaware Department of Transportation Utility Manual.

The Department will take written comments on the draft changes to the Delaware Department Transportation Utility Manual from April 1, 2012 through April 30, 2013. Copies of the Draft Delaware Department Transportation Utility Manual can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Joseph Hofstee, P.E., Utility Engineer, Utilities Section, Division of Transportation Solutions, Delaware Department of Transportation P.O. Box 778 800 Bay Road, Dover DE 19903 (302) 760-2358 (telephone) (302) 739-8282 (fax) joseph.hofstee@state.de.us

STATE BOARD OF PENSION TRUSTEES
THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

2002 State Employees' Pension Plan

2003 State Judiciary Pension Plan

2004 State Police Pension Plan

2005 County and Municipal Employees' Pension Plan

2006 County and Municipal/Firefighter Pension Plan

PUBLIC NOTICE

The Delaware Public Employees Pension System ("DPERS") hereby give notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §8308(c)(1) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §§10115 and 10117. The proposed regulations delete obsolete language, bring the regulations into compliance with changes in Federal Law, and clarify the definitions of casual/seasonal, regular part-time, substitute, and temporary employee. Identical update and formatting changes are made in each set of regulations. A chart outlining the nature of each change made to each section within each set of regulations follows each set of proposed regulations.

DPERS solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are published in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to David Craik, State of Delaware Office of Pensions, State of Delaware, Office of Pensions, McArdle Building, 860 Silver Lake Blvd., Suite #1, Dover, DE 19904-2402 by May 15, 2013.

A Public Hearing will be conducted on May 31, 2013 at the offices of Delaware Office of Pensions, State of Delaware McArdle Building, 860 Silver Lake Blvd., Suite #1, Dover, DE 19904.